
(2002) 10 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Cri.M.No. 46292-M of 2001

Khushi Ram and others

APPELLANT

Vs

State of Haryana & Ors.

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Citation : (2003) 1 RCR(Criminal) 745

Hon'ble Judges : Nirmal Singh, J

Advocate : Shri S.K. Garg Narwana, Advocate. Shri K.S. Chauhan, DAG, Haryana. Shri Bhoop Singh, Advocate., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This is a petition under Section 482 Cr.P.C. for quashing FIR No. 383 dated 5.9.2001 under Sections 420, 467, 468, 471 IPC, Police Station City Jind and all consequential proceedings.

2. The relevant facts for the disposal of this petition are that the petitioners were working in District Rural Development Authority, Jind (hereinafter called 'the DRDA, Jind'). Petitioner No. 1 belong to Scheduled Caste and there was no representation of a Scheduled Caste in the grade of 50007850 in the DRDA, Jind. Respondent No. 3, after considering the service record of petitioner No. 1 and applying his mind promoted petitioner No. 1 from the post of Clerk to the post of Assistant on 22.9.2001. On the same day, he promoted one Shri Jai Parkash Sharma to the post of Clerk from the post of Peon. Respondent No. 2 replaced respondent No. 3 as Additional Deputy Commissioner cum Chief Executive Officer (for short ADC/EAO). It has further been pleaded that respondent No. 2 is a casteist and started hating petitioner No. 1 as he belongs to Chamar caste. Respondent No. 2 did not give charge of the Assistant to petitioner No. 1 and started finding out the ways to revert petitioner No. 1. On the other hand, respondent No. 2 gave charge to Jai Parkash Sharma as respondent No. 2 belong to his caste. The office of ADC, Jind, after perusing the record of petitioner No. 1, reported that the petitioner No. 1 was promoted under rules as he belongs to

Scheduled Caste and was having nine Good and one Very Good A.C.R. and respondent No. 3 promoted petitioner No. 1 on vacant post of Assistant. Petitioner No. 2 Jai Parkash Sharma did not make wrong report as desired by respondent No. 2. He sought a legal opinion from the District Attorney, Jind who reported that the promotion of the petitioner No. 1 was legal and valid one. Again the respondent No. 2 sought the opinion of the District Attorney on the point that a criminal case was pending against petitioner No. 1 at the time of promotion and under these circumstances whether the promotion of petitioner No. 1 was legal or not. The District Attorney again opined vide Annexure P5 that pending criminal cases do not bar an employee from his promotion. When respondent No. 2 could not find any ground to revert petitioner No. 1 and found the promotion as legal and valid one, respondent No. 2 in order to make grounds for reversion of the petitioner No. 1 from the post of Assistant to Clerk, passed an order re writing promotion order of petitioner No. 1 by adding fresh conditions in the promotion order dated 22.9.2000 passed by his predecessor. The conditions incorporated by respondent No. 2 were that the petitioner No. 1 is put on probation and in case of his A.C.R. for the year 1999/2000 was received with adverse remarks then petitioner No. 1 will be reverted back. Respondent No. 2 told petitioner No. 1 that he keeps Chure/Chamar as Peons only. On this petitioner No. 1 moved complaints against respondent No. 2 and sent a legal notice to D.C. Jind, S.P. Jind and complainant for giving him charge of the post of Assistant. Shri Ravinder Sharma, a close associate of the complainant stopped petitioner No. 1 from drinking water from water cooler of the department from stating that petitioner No. 1 had polluted the water as he belongs to Scheduled Caste. Petitioner No. 1 contacted respondent No. 2 but he did not hear him rather rebuked him in the presence of petitioner No. 2 and Jaswant Singh, Clerk, DRDA, Jind. Respondent No. 2 continued to humiliate petitioner No. 1 and no action was taken on the complaints of petitioner No. 1. Petitioner No. 1 approached the High Court by filing Crl.M.No. 23893M of 2001 which was supported by an affidavit of petitioner No. 2 and Jaswant Singh. The High Court vide order Annexure P8 dated 4.7.2001 directed S.P., Jind to look into the complaint dated 4.6.2001 submitted by the petitioner before him and to take necessary action thereon in accordance with law. In compliance of the directions of this Court, after holding an enquiry S.P., Jind found prima facie case against respondent No. 2 and lodged FIR No. 377 dated 2.9.2001 under Section 3(i)(x) and 3(ii)(vii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Respondent No. 2 was released on bail by Judge, Special Court, Jind. After getting bail respondent No. 2 became vindictive. In order to pressurise petitioner No. 1 and his witnesses, the petitioner was reverted from the post of Assistant to the post of Clerk and also suspended both the witnesses of the petitioner including petitioner No. 2. Respondent No. 2 also lodged a report against the petitioners that petitioner No. 1 has forged the record for getting promotion in connivance with petitioner No. 2 and others and on the basis of that

FIR No. 382 dated 5.9.2001, under Sections 420, 467, 468, 471 IPC was registered. The petitioners have sought the quashing of the FIR on the ground that it is counter blast to the FIR got registered by petitioner No. 1 against the respondent No. 2 complainant. However, abruptly the complainant misusing and abusing his powers got lodged the present FIR without going through record in order to put pressure on the petitioners. Petitioner No. 2 is a witness in the FIR lodged by petitioner No. 1 against respondent No. 2. It is pleaded that from the FIR, no criminal offence is made out against the petitioners. It was further pleaded that reversion order of petitioner No. 1 dated 24.8.2001 was set aside by the Division Bench of this Court on the sole ground that petitioner No. 1 was not given any chance of hearing before passing the reversion order.

4. On notice, reply on behalf of respondent No. 1 has been filed by Inspector Karan Singh, SHO, PS City, Jind. It was pleaded that Shri J.P. Goyal, Assistant Project Officer, Shri Jai Parkash Dy. Supdt. and Shri Khusi Ram with common intention fraudulently and dishonestly managed to get promotion to the post of Assistant in favour of petitioner No. 1 and the ACP Scale was also granted by concealing the material facts from the then Addl. D.C., Jind and in this way great financial loss was caused to the State Government.

5. Respondent No. 2 filed separate reply and raised preliminary objections that the matter is at the investigating stage and serious allegations have been levelled against the petitioners by a responsible officer after considering the record. On merits, it was plead that petitioner No. 1 was wrongly promoted to the post of Assistant by the then Additional Deputy Commissioner cum Chief Executive Officer, DRDA, Jind. The promotion was got made by forging the record and the petitioners alongwith Shri J.P. Goyal, Assistant Project Officer (APO) submitted a wrong, false and forged case for promotion of petitioner No. 1 to the post of Assistant. There is no sanctioned post of Assistant in DRDA Jind and it was knowingly, intentionally, falsely recorded in the case put up for promotion of petitioner No. 1 that four posts of Assistants are in existence in DRDA Jind and three persons namely Shri Tulsi Dass, Shri Rakesh Kumar and Sh. Mahabir Singh have been promoted as Assistants and the 4th post of Assistant goes to the Scheduled Caste candidate. The instructions vide No. 78857900 dated 9.5.1995 and 5.5.92 IB&C dated 19.4.1999 were not brought to the notice of the then Additional Deputy Commissioner which bar the filling of posts without approval of the State Government and later on vide instructions dated 19.4.99 there was a complete ban on creation/upgradation of the posts and the posts which were lying vacant for more than two years as on 31.3.1998 were abolished. There was no sanctioned posts of Assistants in DRDA Jind. Therefore, the question of petitioner No. 1 being promoted to the post after application of mind does not arise. Moreover, FIR does not only relate to the promotion but also for granting the Assured Career Promotion Scale. Petitioner No. 1 was also earlier proceeded under Rule 7 of the Punishment & Appeal Rules, 1987 twice and in one case his two increments with cumulative effect were stopped and in other case he was punished by bringing him at minimum time scale in the year 1988. These facts

were also brought to the notice of the then Additional Deputy Commissioner. He has also tampered with the ACR of the year 198788, where in the column regarding integrity it has been mentioned as 'doubtful'. Whereas in the next column i.e. fault, if any, the word 'NAHIN' has been scored off by petitioner No. 1 whereas actually the comments were 'KHYATI THIK NAHIN HAIN' the word 'NAHIN' has been scored off. Similarly, he has made alteration/addition in application dated 21.8.2000 for promotion. In this manner, the petitioners in connivance with one another employee, namely, Sh. J.P. Goyal, APO have forged/tampered the documents and put up a wrong, false case for promotion of petitioner No. 1 deliberately. By wrongly granting of ACP scale to petitioner No. 1 due to deliberately putting of wrong case by petitioners alongwith Sh. J.P. Goyal for promotion of petitioner No. 1, the DRDA Jind has suffered a total loss of Rs. 42,000/ which was given to petitioner No. 1 due to his wrong promotion and granting of ACP scale.

6. Respondent No. 3 has filed detailed reply. In his reply he has submitted that he has promoted petitioner after taking into consideration his service record which was 'good' or 'very good' and service record beyond 10 years was not to be taken into consideration. He has further pleaded that the petitioner has not fabricated or has not made any forgery in the record nor anybody has fabricated the same.

7. I have heard the learned counsel for the parties and have perused the record.

8. It is well settled principle of law that the High Court will not interfere where the investigation is still going on because ultimately it is the investigating agency to see whether the evidence collected by the prosecution which prima facie disclose the offence but if the complaint and the FIR, on the face of it, is the result of ulterior motive to humiliate and to harass the accused and it shows that the complaint/FIR has been filed to take revenge then there is no bar that the High Court can not interfere. In *State of West Bengal and others v. Swapan Kumar Guha and others*, AIR 1982 SC 949 it has been held as under :

"If an offence is disclosed, the High Court under Art. 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it can not be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation."

Further in para No. 65, it has been held as under :

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the court has mainly to take into consideration the complaint or the FIR and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand the court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for the unnecessary harassment to an individual."

9. The Apex Court in *State of Haryana & others v. Ch. Bhajan Lal & others*, 1991(1) RCR(Cr.) 383 : AIR 1992 SC 604 has laid down guidelines where High Court can exercise inherent powers under Section 482 Cr.P.C. to prevent the abuse of process of law. However, this should be done sparingly and in rarest of rare cases. The guidelines are as under :

- 1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. The case in hand is covered under clauses 7 of the guidelines. The allegations against the petitioner are that petitioner No. 1 got his promotion by forging the record. Petitioner No. 1 was promoted by respondent No. 3. Respondent No. 3 in his reply has submitted that the posts of Statistical Assistant, Investigator and the Accountants are to be filled by way of promotion from Clerk. All the promotions were made from the general category. The petitioners belong to scheduled caste category and in the State of Haryana, there is 20% reservation for this category and there is direction from the Haryana Government to give due representation to these categories. He has pleaded that the petitioner No. 1 made representation for his promotion. His representation was considered as he was the sole candidate who belongs to the scheduled caste category among the Clerks of DRDA, Jind. Petitioner No. 1 has qualified for promotion as an Assistant as he was having good or very good service record for the preceding 10 years.

11. The promotion order of petitioner No. 1 has been passed by respondent No. 3 on 22.9.2001 alongwith one Jai Parkash Sharma but before giving charge to petitioner No. 1, respondent No. 3 was transferred and respondent No. 2 has taken over the charge. The petitioner No. 1 was not given charge whereas the charge of the promotional post was given to Jai Parkash Sharma who was also promoted with petitioner No. 1. The respondent No. 2 also sought opinion from the District Attorney, Jind whether petitioner No. 1 has legally been promoted. The District Attorney opined vide Annexure P5 that he was legally promoted. Respondent No. 2 added some more conditions in the promotional order which was passed by his predecessor on 22.9.2000 that he will be on probation and in case his ACR for the year 1999-2000 was received with adverse remarks, the petitioner No. 1 will be reverted back. From the conduct of respondent No. 2, it shows that respondent No. 2 has put these conditions in the promotion order with ulterior motive and respondent No. 2 was finding a way to revert petitioner No. 1. The ACR of petitioner No. 1 has to be written by respondent No. 2. The petitioner No. 1 has alleged that respondent No. 2 in order to humiliate him has said that he keeps chure/chamar as Peons only. Upon this, petitioner No. 1 sent an application to S.P., Jind, D.C., Jind and also sent a notice that he may be given charge of the post. When no action was taken on the complaint of petitioner No. 1, he approached this court by filing Criminal Misc. No. 23893M of 2001. This court vide order dated 4.7.2001 directed S.P. Jind to look into the complaint. On the basis of these directions FIR No. 377 dated 2.9.2001 under Section 3(i)(x) and 3(ii)(vii) of the Act was registered against respondent No. 2. Respondent No.

2 reverted petitioner No. 1 from the post of Assistant to Clerk and also suspended the witnesses. Petitioner No. 1 again approached this Court that he has illegally been reverted back. This Court vide order dated 23.10.2001 set aside the order of reversion.

12. On the complaint of petitioner No. 1 registered under Section 3 of the Act, respondent No. 2 was arrested and he was allowed bail immediately on the next date. The present F.I.R. has been registered against petitioner No. 1 that he has fabricated the record for getting his promotion. Respondent No. 3 has specifically stated that when he has promoted petitioner No. 1, there was no forgery in the record. The case of respondent No. 2 is that petitioner No. 1 has tampered with the ACR for the years 1987-88 and in the column of integrity, it has been mentioned as 'doubtful' whereas in the next column i.e., FAULT IF ANY the word NAHIN has been scored off by petitioner No. 1 whereas actually the comments were 'KHYATI THIK NAHIN HAIN', in the previous column i.e. with regard to integrity that remained as doubtful. Even respondent No. 2 has himself admitted that there is no alteration in the column of integrity. If the petitioner No. 1 is to make any forgery then he can make forgery in the column of integrity which was recorded as doubtful. Once the ACR is to remain adverse, petitioner No. 1 was not to gain by making forgery in another column. Respondent No. 3 has pleaded that he has not taken into consideration the report for the year 1987-88 while promoting petitioner No. 1. The record of any employee for the last 10 years is to be taken into consideration for promotion. When the record for the year 1987-88 is not to be taken into consideration then the petitioner No. 1 is not to gain by making forgery in that year.

13. As it has been noticed above that respondent No. 2 has not only reverted petitioner No. 1 from the post of the Assistant to the post of Clerk but also put more conditions in the promotion order whereas no such conditions were put in the promotion order of J.P. Sharma who belongs to the caste of respondent No. 2 as alleged by the petitioner and this assertion made by petitioner No. 1 has not been rebutted by respondent No. 2. Respondent No. 2 was arrested on the complaint filed by the petitioner No. 1 and was bailed out. On the next date of release of bail, he got the present case registered against the petitioners. Respondent No. 2 not only got the case registered against the petitioner but also suspended the witnesses of the petitioner. So this shows that the present F.I.R. is nothing but a counter blast of the F.I.R. by the petitioners for wreaking vengeance from the petitioners and the witnesses.

14. So from the facts, it is clear that the present F.I.R. is the result of mala fide and has been lodged for wreaking vengeance from the petitioners and to humiliate and harass them for the reasons best known to respondent No. 2.

15. For the reasons mentioned above, the petition is accepted and F.I.R. No. 382 dated 5.9.2001 under Sections 420, 467, 468 and 471 IPC, registered at police station City Jind is quashed.