
(2009) 03 SHI CK 0012
In the High Court Of Himachal Pradesh

Kulbir Chauhan

APPELLANT

Vs

S.M. Katwal

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 380, 447, 451, 500, 506

Citation : (2009) 1 ShimLC 509

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surinder Singh, J.—The petitioner herein is an Assistant District Attorney in the Prosecution Department of Himachal Pradesh. He has challenged the order dated 10.6.2005 of his summoning by the learned trial court in Criminal Complaint No. 37-1-04/22-II-04 (RBT No. 66-II-05/04) as an accused for the offences punishable under Sections 447, 451, 380, 506 and 500 of the Indian Penal Code, on the grounds firstly, that no case is made out against him and secondly, for want of prosecution sanction, as contemplated u/s 197 of the Code of Criminal Procedure.

2. In brief, the facts giving rise to the present case can be summed up thus. In March 2003, the respondent herein was the Chairman of "Himachal Pradesh Subordinate Service Selection Board", in short the "Board" posted at Hamirpur. There were complaints of illegal recruitments made by the respondent in his capacity as a Chairman. With the change of new Government, an inquiry was initiated against him. A team of Enforcement department of the police headed by Sh. J.K. Gupta, DIG (Enforcement) was constituted by the Government. In addition, the petitioner being the Assistant District Attorney (Enforcement) was also deputed along with Shri Satish Thakur, and Shri Jawahar Sharma, District Attorney's for rendering legal assistance and they were required to report to Shri Jagjit Singh, DIG Camp at Hamirpur. In the early hours of the morning on

8.3.2009 office of the Board at Hamirpur was sealed by the Officers of Enforcement Department.

3. The search and seizure procedure started and continued w.e.f. 8.3.2003 to 13.3.2003 in the office of the Board as well as at the residences of the respondent and his wife at different places. Most of the record was sealed and some of the record was taken to Police headquarters Shimla for its detailed examination, as is evident from the letter mark "X" of the Secretary of the Board, addressed to the Principal Secretary (Personnel) to the Government of Himachal Pradesh, placed on record in preliminary evidence by the respondent.

4. The allegations of the respondent as contained in complaint against the petitioner herein are that he had visited the office of the respondent on 11.3.2003 when the respondent had returned from Amritsar after attending a marriage ceremony. There were some police Officers in Uniform and some were in civil and many on-lookers including persons from Press were found present. His office was found sealed and locked. He went to the room of his Secretary Ms. Rakhil Kahlon, where he found two persons present, one introduced himself as Superintendent of Police and other was the petitioner Assistant District Attorney. The accused-petitioner claimed himself to be the overall Officer of the Investigation Team and claimed that he would supervise the search and seizure operation. He also alleged that the respondent had recruited many non-Himachalis and his tone was threatening, annoying, insulting and offensive. His inclusion in the team was deliberate with a view to insult him. The respondent brought this fact to the notice of the DIG and other members of the Board, namely Shri Tashi Dawa. Later, his room was opened and the petitioner started rummaging through the drawers of his table without subjecting himself to any search. His behaviour was offensive. He visited every room of his office and started handling records, took it to the different rooms and on going through them, gave the instructions to the police personnels, showing that he was in command and overall incharge of the whole search and seizure operation. Thereafter, the said party including the petitioner went to his rented residence at Hira Nagar and unsealed his house and conducted the search operation in the presence of the two witnesses. The petitioner who was not subjected to search by him, he without any authority and sanction trespassed into his residence, causing a great annoyance to him in the presence of DIG. A Goldsmith was also called with the Scale and weights. Many people including the Press had gathered there. The medical record of the respondent was also found missing, which according to the respondent might have been stolen by the petitioner-accused. It was alleged that similar things happened at Una while conducting search of the house of his wife and the attitude of the petitioner remained unchanged.

5. The respondent allegedly complained about the high handedness of the petitioner to the then Superintendent of Police Mrs. Sadwant Atwal Trivedi, Una vide his DO No. HPSSB/Chairman/99/Gen. 531 dated 20.3.2003 and the same story was also repeated by the accused-petitioner in his farm-house in village

Badhera.

6. It was also alleged that the accused-petitioner was not a police Officer, but merely an Assistant District Attorney and under law he could not have taken part in search and seizure operation to which only a Police Officer could do. Thus the complainant sought action for offence punishable under Sections 447, 380, 500 and 506 of the Indian Penal Code.

7. The matter was allegedly reported to the police in December 2000, but according to the respondent no action was taken, as such, he requested for the registration of his case u/s 156(3) of the Code of Criminal Procedure.

8. The learned trial Magistrate treated it as private complaint and recorded the preliminary evidence in the matter. On considering the matter, vide impugned order dated 10.6.2005, he observed that the accused-petitioner, who was the Assistant District Attorney did not fall within the definition of the "Police Officer" and was also not subordinate to them, nor there was anything on record to show that he was authorized to conduct the search of the house(s) of the respondent, which otherwise fell within the domain of police officer. Thus, in the opinion of the Magistrate, prima-facie a case was made out against the accused-petitioner without specifying the offences and ordered to summon him, which order is under challenged in the present petition, on the above mentioned two grounds.

9. I have perused the complaint and the preliminary evidence led before the learned trial court carefully. In my opinion, there is absolutely no evidence worth the name, prima-facie even to presume the commission of offences punishable under Sections 447, 451, 380, 506 and 500 of the Indian Penal Code.

10. The petitioner along with other Law Officers was to render legal assistance to the police party camp at Hamirpur.

11. To constitute the offence u/s 447 or 451 of the Indian Penal Code, the main intention in the action causing annoyance has to be seen which sine quo non and not the subsiding intention which may also be present. In order to establish that entry on the property was with intent to annoy, intimidate or insult, it is necessary for the satisfaction of the court that causing such annoyance, intimidation or insult was the aim of the entry. Thus all the circumstances put forth are required to be considered dispassionately.

12. In Mathuri and Others Vs. State of Punjab, the Supreme Court held that in deciding whether the aim of entry was causing of such annoyance, intimidation or insult, the court has to consider all the relevant circumstances including the presence of the knowledge that its natural consequence would be such annoyance, intimidation or insult, including also the probability of something else than the causing of such intimidation, insult or annoyance being the dominant intention which prompted the entry.

13. The mere facts that the person in possession of his property is annoyed is not enough to constitute the aforesaid offences, the preliminary evidence has

failed to prima-facie establish that the entry made by the petitioner in the office/ residence(s) was to commit an offence. In so far the commission of the offences under Sections 380 and 506 of the Indian Penal Code are concerned, there is no iota of evidence and there is no explanation as to how the respondent was felt defamed, after about six months of the alleged incident.

14. Yet there is another regrettable feature of the case. The alleged offences were committed in the month of March, 2003. The complaint was filed by the respondent in the month of December to the police which was entered by them in the Daily Diary and the respondent filed the present complaint on. 4.1.2004, i.e. after about six months imputing the above allegations of tress-pass etc. The delay has not been explained.

15. It is pertinent to note that in his communication dated 21.3.2003 "Mark Y" made to the Principal Secretary (Personnel) placed on record in evidence by the respondent, immediately within a week of the search, no such allegations were made against the accused petitioner nor it was referred in his DO letter dated 20.3.03 (Mark-Z).

16. Therefore, in the above circumstances, in my opinion, there are no reasonable grounds even to believe the existence of commission of the offences aforesaid. Otherwise also, the petitioner being a Class-I Officer of the State Government, in the circumstances, is entitled for the protection of Section 197 of the Code of Criminal Procedure, in the facts and circumstances of the case.

17. Therefore, for the reasons aforesaid on examining the legality, propriety and correctness of the impugned order passed on 10.6.2005 by the learned trial Magistrate, to summon the petitioner as an accused, in my view, is unsustainable, therefore, liable to be quashed and set-aside. Thus ordered accordingly. The complaint filed by the respondent is dismissed, the proceedings stands closed.

The revision petition is allowed and disposed of.

Send down the records.