
(1997) 07 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 19387-M of 1996

Kuldip Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 145

Hon'ble Judges : R.L.Anand, J

Advocate : Navkiran Singh, Baljinder Singh, Sarabjit Singh, J.S. Brar, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Kuldip Singh, son of Pritam Singh, petitioner has filed the present petition under Section 482 Cr.P.C. against the State of Punjab, Senior Superintendent of Police, Patiala, Gurdip Singh, S.P.(D), Patiala and Darshan Singh Mann, Dy. Superintendent of Police, Jalandhar, seeking the directions of this Court against the respondents No. 1 to 3 to take final action in the enquiry pending against respondent No. 4 on the complaint filed by the petitioner.

2. The case set up by the petitioner is that he is a victim of the repression and highhandedness on the part of respondent No. 4 Darshan Singh Mann, Dy. S.P., who at the time of filing this petition was posted at Jalandhar. According to the petitioner he is having a business of commission agent in New Grain Market, Sirhind Road, Patiala. He had a joint business with one Inder Singh son of Harnam Singh, who was a rich farmer. His partner was killed by his wife and her paramour on 14.10.1993 by administering slow poison. On 22.4.1996, the wife, the paramour and another accomplice were arrested by the CIA Staff, Patiala. In the evening of 22.4.1994, respondent No. 4 who was then Inspector and incharge of CIA, Staff Patiala and who was conducting the investigation of that case came to the shop of petitioner and he took search of the shop and in that search, he seized Rs. 40,000/ out of the cash box of the petitioner. So much so, Darshan Singh Mann, respondent No. 4 took away the petitioner and cash to the

CIA, Staff. Respondent No. 4 started threatening the petitioner on the allegations that the petitioner had killed his partner Inder Singh and in case the petitioner wanted to save himself he should pay a bribe of Rs. 1,50,000/-. The petitioner told respondent No. 4 that he was innocent and he had no connection with the crime, but respondent No. 4 gave beating to the petitioner. In order to save his skin ultimately, the petitioner promised to respondent No. 4 that he would supply him one lac of bricks for his house in village Sullar. The petitioner became helpless and ultimately he was forced to supply the bricks from M/s Goyal Brick Industry, Patiala and paid the price of the bricks to the owner of the brickkiln. The petitioner also made representations to the Higher Authorities regarding the said highhandedness of respondent No. 4 who had extorted Rs. 40,000/- from the petitioner and also compelled the petitioner to part with one lac brick for his benefit by way of pecuniary advantage. Ultimately, the petitioner became helpless and when he moved the department against respondent No. 4, the department made preliminary enquiries against respondent No. 4.

3. In the written statement filed by respondents No. 1 to 3 it has been categorically admitted in Para No. 1 of the reply "As regards repression and highhandedness of the petitioner in the hands of respondent No. 4 is concerned a detailed enquiry has been conducted by respondent No. 3, in which respondent No. 4 has been held guilty of taking Rs. 40,000/- from the shop of the petitioner and taking one lac bricks for the construction of his house in Sullar and report of respondent No. 3 has been forwarded by respondent No. 2 to DIG/PR/Patiala vide its letter dated 4.12.96. It is submitted that DIG/PR/PTL has forwarded the report of respondent No. 3 to DGP vide his letter dated 31.12.96 for taking necessary action against respondent No. 4".

4. Darshan Singh, respondent No. 4 filed a separate written statement and also an additional affidavit in which he totally denied the allegations of the petitioner by stating that he is the victim of departmental rivalry at the hands of Shri Chander Shekhar who was then DIG, Patiala Range. The stand taken up by the respondent No. 4 is that he suffered the personal vendetta of Shri Chander Shekhar, DIG, and other high ups as a result of which he was demoted to the rank of Sub Inspector and that action of the department has also been challenged by him in the Hon'ble High Court which has even stayed the operation of the order demoting respondent No. 4 from the post of DSP to the post of Sub Inspector.

5. This petition, I am disposing of with the assistance rendered by Mr. Navkiran Singh and Mr. Sarabjit Singh, Advocates, on behalf of the petitioner, Mr. J.S. Brar, DAG, Punjab, for respondents No. 1 to 3 and Mr. Baljinder Singh, Advocate, who put in appearance on behalf of respondent No. 4.

6. To summarise the allegations of the petitioner it was a specific case that respondent No. 4 extorted Rs. 40,000/- from him under threat that the petitioner would be involved in a murder case of his partner Inder Singh. The petitioner has also alleged that under pressure he had to part with one lac bricks to respondent

No. 4 and those bricks were supplied by brickkiln owner namely M/s Goyal Traders. He moved the department for action against respondent No. 4 and in that fact finding enquiry respondent No. 4 has been held guilty.

7. Now the point that arises for the determination of this court is that whether it was justified on the part of respondent No. 4 to extort Rs. 40,000/ from a citizen and whether it was within his competence to accept the pecuniary advantage in the shape of one lac bricks costing Rs. 1,00,000/ under the threat and promise that the petitioner will be exonerated from the murder of his partner. The other aspect of this case is that whether the allegations of the petitioner prima facie disclose of commission of cognizable offence connecting respondent No. 4.

8. The learned AAG, Punjab fairly conceded that as per the allegations of the complaint a prima facie case was made out against respondent No. 4. The contention of the learned counsel for the State was that as the departmental action has already been taken against respondent No. 4, therefore, the State did not think proper to register a case against this respondent as he has already been demoted from the post of DSP to his substantive post of Sub Inspector.

9. The learned counsel for respondent No. 4 has defended his client mainly on the ground that the petitioner has not availed the alternative remedy. He has not approached the Higher Authorities for the registration of the case against respondent No. 4 and that if the petitioner has been declined his prayer by the department his remedy lies in filing a criminal complaint against respondent No. 4 and the directions which are being sought by the petitioner through this petition cannot be granted. The learned counsel appearing on behalf of respondent No. 4 has relied upon a judgment of the Hon''ble Supreme Court reported as 1996(4) Crimes 180, All India Institute of Medical Sciences Employees Union v. Union of India and others.

10. Before I proceed further with the contentions raised by the learned counsel for respondent No. 4, I would like to say that the case law relied upon by the learned counsel is not applicable to the facts in hand. It is totally distinguishable. The petitioners of that petition approached the High Court of Delhi without adopting the procedure provided in the Code of Criminal Procedure that enquiry may be conducted against the Director of All India Medical Institute of Sciences and that they had already placed the data before the high ups including the Ministers and no action was being taken. The Delhi High Court did not agree with the contentions of the employees of All India Medical Institute of Medical Sciences. The employees approached the Hon''ble Supreme Court and the Hon''ble Supreme Court was pleased to hold that since the petitioners had alternative remedy in filing a complaint against the Director, therefore, the question of CBI enquiry does not arise. Present is a case where the petitioner also made a prayer against the State that let the State may discharge its statutory obligation and complete the enquiry against respondent No. 4 on the basis of his complaint. To that extent the enquiry has been completed. During the pendency of this petition, the prayer of the learned counsel for the petitioner

was that as the State itself admits that Darshan Singh had extorted Rs. 40,000/ from the petitioner and had also received a consideration in the shape of bricks worth Rs. 1,00,000/. These allegations once proved prima facie against respondent No. 4, the State was under a statutory obligation under Section 151(1) Cr.PC to register a criminal case against respondent No. 4 and the mere departmental action against respondent No. 4 demoting him from the post of DSP to the post of Sub Inspector was not enough.

11. The position of law has been well crystallised in the authority reported as AIR 1992 Supreme Court 604, *State of Haryana and others v. Ch. Bhajan Lal and others*, 1991(1) RCR (CrI) 383 , wherein it was held that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

12. Now the question arises when the department was itself satisfied about the accepting of bribe on the part of respondent No. 4 and it was also satisfied that respondent No. 4 had first illegally accepted Rs. 40,000/ by way of extortion from the petitioner and then illegally detained it without showing it anywhere, whether in these circumstances the offence was made out against respondent No. 4 or not. The department admits the allegations of the petitioner in this regard, but wants to convince this court that it had demoted the respondent No. 4 from the post of DSP to Sub Inspector. This is not enough so far as the petitioner is concerned. He has laid his information before the authorities by various representations about the commission of cognizable offence. When the State has not discharged its obligation under the Code then the powers under Section 482 Cr.PC has to be invoked as it is the only efficacious remedy available to a citizen under the given circumstances.

13. In this view of the matter, I allow this petition and give directions to respondents No. 1 to 3 to register a case against respondent No. 4 and it should be investigated expeditiously giving final shape of the investigation within six months from the receipt of the copy of this order.

14. Copy dasti on payment to the petitioner. A copy of the order be also sent to the SSP, Patiala for compliance.