
(2009) 01 P&H CK 0217

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4542-M of 2008

Malkiat Singh Dhaliwal

APPELLANT

Vs

Manpreet Kaur Dhaliwal and Another

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 200, 202, 202(2), 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1)

Citation : (2009) 1 ILR (P&H) 903

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : J.S. Brar, for the Appellant; C.L. Verma and Mehardeep Singh, Assistant A.G., for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—Present petition has been filed by Malkiat Singh Dhaliwal, Divisional Engineer Telephones, Jagraon, seeking quashing of complaint/ protest petition dated 25th March, 2004 (Annexure P-4) and summoning order dated 1st May, 2004 (Annexure P-5).

2. Case of the Petitioner is that he was working as a Senior Divisional Engineer Telephones and had rendered service of more than 32 years. It has been further averred that husband of the complainant, Darshan Singh was working as Sub-Divisional Officer. On 10th October, 2001, he absented from duty and he was issued a show cause notice for violation of departmental rules (Annexure P-I), due to which wife of Darshan Singh had lodged an FIR bearing No. 217 dated 22nd October, 2001 u/s 3(1)x of Prevention of Atrocities of Scheduled Castes and Scheduled Tribes Act, 1999 at Police Station Jagraon. Counsel has further submitted that departmental inquiry was conducted by three senior level officers, who--vide Annexure P-9 found the allegations to be false and it was further held therein that complainant and her husband are habitual of making such complaints. It has been further averred that the FIR was investigated and enquired into by the DSP Jagraon, who relied upon the testimony of various

witnesses and came to the conclusion that no offence has been committed and that the version of complaint was false, and a cancellation report was submitted. Counsel has further submitted that complainant filed a complaint (Annexure P-4) and also submitted a protest petition in the Court of Illaqua Magistrate, where cancellation report was submitted. Counsel has stated that for the averments made in the petition, the order (Annexure P-5) whereby cognizance has been taken by the Magistrate, is liable to be quashed. Counsel has relied upon order dated 22nd February, 2008 passed by a Coordinate Bench, whereby notice of motion was issued and further proceedings were stayed. Order dated 22nd February, 2008, counsel states, contains all his contentions. Therefore, it will be apposite here to reproduce order dated 22nd February, 2008, which reads as under:

Present: Mr. J.S. Brar, Advocate for the Petitioner.

By filing this petition u/s 482 of Code of Criminal Procedure, quashing of complaint titled "Manpreet Kaur Dhaliwal v. Malkiat Singh Dhaliwal" pending in the Court of Judicial Magistrate 1st Class (for short "JMJC"), Jagraon (Annexure P4) and summoning order dated May 1, 2004 (Annexure P5) is sought on the grounds: (i) that Petitioner was Senior Divisional Engineer Telegraph (for short "DET"), Jagraon in the year 2001; (ii) that Manpreet Kaur Dhaliwal-complainant is wife of Darshan Singh, Sub-Divisional Officer in the department of Telegraph; (iii) that on the statement of complainant, FIR No. 217 October 22, 2001 u/s 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC & ST Act") was registered against the Petitioner; (iv) that matter was investigated by Deputy Superintendent of Police, Jagraon and it was found that allegations levelled were baseless; (v) that prosecution filed cancellation report in the court of Area Magistrate, Jagraon; (vi) that departmental inquiry was also got conducted by a Board of Senior Officers and it was found that complaint filed by the complainant was false. In the inquiry report, it was also observed that earlier Darshan Singh also filed similar complaint in the year 1997 against his seniors levelling allegations under SC and ST Act; (vii) that the allegations levelled by the Petitioner, in brevity, are that on October 11, 2001, Petitioner called her husband in the office and used words "Chuhra Chapra" and on account of that, her husband became unconscious. He was admitted in Emergency in Civil Hospital, Jagraon and regained consciousness after 40 hours when he narrated the said incident to her and (viii) that in fact Darshan Singh, SDE was absent on October 10, 2001 and Petitioner issued him a notice (Annexure P-I) and on that account, the present complaint was filed against the Petitioner.

Notice of motion for 12th March, 2008 Meanwhile, further proceedings in the complaint titled Manpreet Kaur Dhaliwal v. Malkiat Singh Dhaliwal pending in the Court of JMJC Jagraon shall remain stayed.

(Sd.)..., (Nawab Singh) 22nd February, 2008 Judge.

3. Mr. J.S. Brar appearing for the Petitioner states that his contentions recorded in the order of notice of motion may be taken as his submissions for consideration by this Court.

4. Mr. C.L. Verma appearing for the complainant states that departmental inquiry report is not perse admissible. Petitioner is an influential high official and therefore, his grouse is, a false cancellation report has been submitted. He has further stated that show cause notice (Annexure P-I) has been issued later. Leave was duly sanctioned to him on 10th October, 2001.

5. Before the rival submissions made by the counsel for the parties could be examined, it will be necessary to reproduce the impugned order, which reads as under:

Manpreet Kaur v. Malkit Singh Pr: APP/Complainant with R.K. Beri, Advocate Received by transfer; be regd. Complainant has suffered her statement that in her protest petition, she rely upon the inquiry report No. 618, submitted by SP (Headquarter) and she does not want to lead any preliminary evidence. I have heard the learned Counsel for the complainant and APP and have also gone through the file in question very carefully. Perusal of the file shows that cancellation report were sent by the police in spite of the inquiry report No. 618 which has already been placed on file in which the inquiry officer had reached at the conclusion that the allegations levelled by the complainant are true as against the accused. In view of the inquiry report No. 618, I do not agree with the cancellation report submitted by the prosecution. Since the inquiry report No. 618 is complete in itself, as such, notice be issued to accused to appear on 3rd July, 2004. Cancellation report and protest petition are ordered to be consolidated. (Sd.) . . ., SDJM: 1-5-2004

6. A perusal of the above said order will show that the learned Sub Divisional Judicial Magistrate has stated that in view of the subsequent inquiry report No. 618, he does not agree with the cancellation report and further ordered that cancellation report and protest petition be consolidated.

7. I am of the view that such a course is not open to the Sub Divisional Judicial Magistrate. Reliance can be placed upon Pakhandu and Others Vs. State of U.P. and Another, where a similar controversy arose and a reference was made to a Division Bench. The Division Bench, after considering the entire conspectus of case law, held as under:

15. From the aforesaid decisions, it is thus clear that where the Magistrate receives final report the following four courses are open to him and he may adopt any one of them as the facts and circumstances of the case may require:

(i) He may agreeing with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall given an opportunity of hearing to the complainant ; or (ii) He may take cognizance u/s 190(1)(b) and issue process straightway to the accused without being bound by

the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or (iii) he may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner, or (iv) he may, without issuing process or dropping the proceedings decide to take cognizance u/s 190 (I)(a) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202, Code of Criminal Procedure and thereafter decide whether complaint should be dismissed or process should be issued.

16. Where the Magistrate decides to take cognizance of the case u/s 190(I)(b) of the Code ignoring the conclusions arrived at by the investigating agency and applying his mind independently to the facts emerging from the investigation records, in such a situation the Magistrate is not bound to follow the procedure laid down in Sections 200 and 202 of the Code, and consequently the proviso to Section 202(2), Code of Criminal Procedure will have no application. It would however be relevant to mention that for forming such an independent opinion the Magistrate can act only upon the statements of witnesses recorded by the police in the case diary and other material collected during investigation. It is not permissible for him at that stage to make use of any material other than investigation records, unless he decides to take cognizance u/s 190(1) (a) of the Code and calls upon the complainant to examine himself and the witnesses present if any u/s 200.

17. A plain reading of Sub-section (2) of Section 202 with the proviso attached thereto makes it clear that question of applying the proviso will arise only in cases where the Magistrate before taking cognizance of the case opts to hold the inquiry. This matter was thoroughly examined by the Apex Court in the latest decision in *Rosy and Another Vs. State of Kerala and Others*, .

8. This view has been further reiterated by Allahabad High Court in *Surya Bhan Vs. State of U.P. and Deepak Kumar Singh*, .

9. In the present case, not only Annexure P-5 is a cryptic order, but it also reflects no application of mind as to for what reasons the Sub Divisional Judicial Magistrate had not agreed with the cancellation report. As held in *Pakhandu's* case (*supra*), the learned Sub Divisional Judicial Magistrate could either accept the cancellation report and in case the cancellation report was to be rejected, he had to straightaway take the cognizance u/s 190(1)(b) and had to issue the process straightaway or he could have ordered further investigation. In case he had to rely upon the protest petition, then he had to take cognizance u/s 190(I) (a) upon the original complaint (Annexure P-4) or on the protest petition treating the same to be a complaint and to proceed u/s 200 and 202 Cr. P.C. and had to record the preliminary evidence. The order (Annexure P-5) nowhere reveals as to in which fashion the Sub Divisional Judicial Magistrate intended to proceed. In no way he could consolidate the cancellation report with the protest petition.

10. Therefore, the order (Annexure P-5) cannot be sustained and the same is set

aside. The matter is remanded back to the Sub Divisional Judicial Magistrate to examine the legal proposition enumerated in Pakhandu"s and Surya Bhan"s case (supra) and pass a fresh order after hearing the parties.

11. With these observations, present petition is disposed off.