
(1993) 08 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11429-M of 1992

Prem Pal Piplani Sub Divisional Officer, Punjab State
Electricity Board

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Citation : (1993) 3 RCR(Criminal) 668

Hon'ble Judges : A.S.Nehra, J

Advocate : K.S. Dadwal, N.S. Boparai, Advocates for appearing Parties

Judgement

A.S. Nehra, J.

1. Prem Lal Piplani, Sub Divisional Officer, Punjab State Electricity Board, Hoshiarpur, has filed this petition under Section 482 of the Code of Criminal Procedure for quashing FIR No. 87 dated 1101992 under Sections 7 and 13(1)(d) (ii) of the Prevention of Corruption Act, 1988, registered at Police Station, Adampur, District Jalandhar. The First Information Report was registered on the statement of Santokh Singh son of Kundan Singh, resident of village Jalbhey, Police Station, Adampur, District Jalandhar. The allegations mentioned in the First Information Report are as under :

"I am resident of village Jalbhey. Our Cold Storage and Ice Factory is in village Badala Mahi, District Hoshiarpur. Shri Prem Lal Piplani, S.D.O., Punjab Electricity Board is posted at Sham Chorasi. Shri Prem Pal Piplani, S.D.O., visited the storage and demanded Rs. 2000/ monthly. I gave him Rs. 1300/ in the presence of Raj Kumar Manager, Cold Storage, because he had threatened to impose power cut and to spoil the season. yesterday morning when I was waiting for bus to come back to Jalandhar, then Shri Prem Pal Piplani came there on scooter and he called me to a corner at bus stand and asked me to pay Rs. 700/ the previous balance and Rs. 2000/ for monthly of this month failing which he threatened me to spoil the season by imposing power cut. I humbly requested him, then he agreed to have Rs. 2000/ and asked me to arrange the money by 1.00 p.m. at

Cold Storage, when he will collect the amount personally. I am not willing to pay the bribe, but have given promise under compulsions. I hereby submit currency notes of Rs. 2000/. Action be taken. I have heard my statement which is correct."

2. The petitioner has submitted that he was initially appointed as Line Superintendent and was subsequently promoted to the post of Sub Divisional Officer and, at the time of occurrence, he was posted at SubDivision, Sham Chorasi, Punjab State Electricity Board, District Hoshiarpur, that, during the performance of his official duties as SubDivisional Officer, the petitioner had to verify complaints, if any, made by customers as some cold storages are located in the jurisdiction of that SubDivision Sham Chorasi; that Santokh Singh, who is complainant in this case, is running a Cold Storage within the area of Sub Division Sham Chorasi, District Hoshiarpur and his Cold Storage is known as M/s. Satkartar Cold Storage, village Badala Mahi, Tehsil and District Hoshiarpur; that as the consumption of electricity of M/s. Satkartar Cold Storage was heavy, so Santokh Singh, with a view to get less bill, approached the petitioner many a time but the petitioner refused to oblige him; that, in the year 1990, a bill of actual electricity consumption was sent to Santokh Singh but Santokh Singh, without making the payment of that bill, filed a civil suit in the Court of Senior Sub Judge, Hoshiarpur, impleading the petitioner as defendant No. 3 and that the civil suit is still pending in the Civil Court at Hoshiarpur. The petitioner has filed a copy of the plaint dated 2831990, as Annexure P1 to this petition.

3. It has been further mentioned by the petitioner that, although correct bills were issued to Santokh Singh but even then the petitioner has been dragged into litigation due to mala fide intention by mentioning that excess bill has been issued at the instance of the petitioner, which was factually incorrect.

4. It is further mentioned in the petition that the Flying Squad of the Punjab State Electricity Board checked the premises of the unit of Cold Storage of Santokh Singh and found that a load of 7.60 K.W. excess than the sanctioned load was being consumed by Santokh Singh and, therefore, Santokh Singh was asked to pay Rs. 7460/ as load surcharge that M/s. Satkartar Cold Storage through Santokh Singh was directed to submit test report after giving away the extra load with a warning that "otherwise the electricity connection" will have to be discontinued; and that this instruction was sent in writing to Santokh Singh, vide letter No. 4852 dated 4th April 1990, but, instead of complying with the instructions, Santokh Singh filed another civil suit in the Court of Sub Judge Ist Class, Hoshiarpur, and a copy of the said plaint dated 1741990 is Annexure P2 to the petition. The first suit, vide Annexure P1, was filed for restraining the Punjab State Electricity Board from recovering electricity charges of Rs. 40,326/ and the second suit was filed for restraining the Superintending Engineer, the Executive Engineer and the Sub Divisional Officer, Sub Division Sham Chorasi, District Hoshiarpur, from disconnecting the electricity connection and also for restraining them from recovering an amount of Rs. 7460/. It is further alleged in the petition that when the civil suits pending, Santokh Singh pressurized the petitioner to

help him illegally, ignoring the rules and regulations and that the petitioner showed his helplessness, upon which, Santokh Singh warned the petitioner that, in case he failed to comply with his words, then the petitioner will be in trouble, but the petitioner did not give any weightage to such talks. It is further alleged that Santokh Singh became inimical to the petitioner for the said reason, and, with the help of Balram, who is the brotherinlaw of Santokh Singh and is working as ASI/Reader to D.S.P., Vigilance, Jalandhar, concocted a false story with a view to involve the petitioner in this corruption case. It is further alleged that, on 1101992 when the petitioner was on his way to Hoshiarpur, he was illegally detained by the Vigilance Staff and was firstly taken to the Cold Storage of Santokh Singh at village Badala Mahi, District Hoshiarpur, where Santokh Singh joined the vigilance staff and the petitioner was taken to Police Station, Adampur in District Jalandhar. It is further alleged that the petitioner protested against his illegal arrest and asked the police officials as to why he had been kidnapped and that then the petitioner learned that Santokh Singh had lodged a complaint alleging therein about the demand of illegal gratification by the petitioner from him. It is further mentioned in the petition that Santokh Singh's mala fide intention is clear from the fact that the petitioner is working at Sham Chorasi, District Hoshiarpur, and the Cold Storage is also located in District Hoshiarpur and that, since Santokh Singh has relations in the Vigilance department, so they connived with him to involve the petitioner in this false case and that is the reason that the petitioner was kidnapped illegally by the police other than the police of District Hoshiarpur.

5. Notice of this petition was given to the State of Punjab. Reply on behalf of Charan Singh, Vigilance Bureau, Jalandhar, has been filed. The contents of para 4 of the petition, wherein it has been stated by the petitioner that Santokh Singh, who is the complainant in this case, is running a Cold Storage within the area of the petitioner, which is known as M/s. Satkartar Cold Storage, village Badala Mahi, Tehsil and District Hoshiarpur, have been admitted. In para 12 of the reply, it has been admitted that Balram Kumar is working as ASI in the Vigilance Bureau. It has been further stated in the reply that the first demand of illegal gratification was made by the petitioner on 3091992 at Bus Stand of village Kuthar which falls within the jalandhar District, that some of the villages of the Jalandhar District fall, for the purpose of electricity supply, under the Sub Division Sham Chorasi, and that, moreover, for want of jurisdiction, the First Information Report cannot be filed.

6. Mr. K.S. Dadwal, Advocate, learned counsel for the petitioner, has submitted that, in paragraph 13 of the reply filed by Charan Singh, Inspector, Vigilance Bureau, Jalandhar, it has been stated :

"On the request of the complainant/respondent No. 2, petitioner agreed to receive Rs. 2000/ as illegal gratification and told the respondent No. 2 that he (petitioner) will receive the above said illegal gratification at the Cold Storage of the complainant/respondent No. 2. Ultimately, the petitioner was caught

redhanded on 1101992 at the premises of the Cold Storage of the complainant/respondent No. 2. The recovery was effected from the personal diary of the petitioner. As per Chemical Examiner's report, the handwash solution of the petitioner contains phenolphthale in powder and sodium carbonate. This shows that the petitioner received the illegal gratification with his hands."

7. The learned counsel for the petitioner has further contended that it is the admitted case that the alleged gratification was received by the petitioner at the Cold Storage which is situated in village Badala mahi, Tehsil and District Hoshiarpur and that, therefore, the Court at Jalandhar has no jurisdiction to try this case against the petitioner. In support of his argument, he has referred to Section 177 of the Code reads as under :

"Ordinary place of inquiry or trial Every offence shall ordinarily be inquired into and tried by Court within whose local jurisdiction it was committed."

8. It has been observed by the Supreme Court in paragraphs 8 and 9 of the judgment reported as *Narumal v. State of Bombay*, AIR 1960 Supreme Court 1329, as under :

"At this stage, we would refer briefly to the relevant Sections of the Code of Criminal Procedure. Section 5(2) provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence. Section 28(c) provides that, subject to the other provisions of the Code, any offence under the Indian Penal Code may be tried by any other Court by which such offence is shown in the eighth column of Schedule II to be tried. The offence under Section 5, which is punishable with seven years rigorous imprisonment would accordingly be triable by the Court of Session. Section 29(1) prescribes that, subject to the other provisions of the Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. In this connection, we must refer to one more section of the Code. It is section 177 which provides that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. The rule laid down by this section is one of general application and governs all criminal trials held under the provisions of the Code of Criminal Procedure. It is true that the section has used the word "ordinarily" but it is not disputed that the said word means "except where provided otherwise in the Code" (See *Ram Narayan Baburao Kapur v. Emperor* ILR (1937) Bom. 244 at p. 253 : (AIR 1937 Bom. 180 p. 190). There is no doubt that the State Legislature is competent to provide for the trial of offences created by its statutes otherwise than is prescribed by Section 177 of the Code; but it must clearly appear from the relevant provision of the special statute that a departure from the general principle prescribed by Section 177 is intended. Does Section 8 of the Act intend to make such a departure ? Does it intend to provide that the presidency Magistrate or a Magistrate of First Class in the State of

Bombay specified by it should try offences which had been committed outside their ordinary territorial jurisdiction ?

The construction of Section 8A does not present any difficulty. Though the nonobstante clause in this section refers to the Code of Criminal Procedure is general, it is clear that its effect is not to modify the provisions of Section 177 of the Code. All that the said section purports to do is to exclude the jurisdiction of the Second and the Third Class magistrate to try offences under Sections 6 and 7. If the jurisdiction to try the said offences had been left to be determined by reference of the Code of Criminal Procedure even the specially empowered Second and Third Class magistrates would have been competent to try them under Section 190 of the Code. The Legislature desired that these offences should not be tried by a Court inferior to that of the presidency Magistrate or a magistrate of First Class. Even in the case of *Radhabai Mohandas*, ILR (1955) Bom 1039; (S) AIR 1955 Bom (439), the Bombay High Court has not construed Section 8A as empowering the Courts specified in it to try offences punishable under 7 though they may have been committed outside the territorial jurisdiction of the said Courts. Indeed, Mr. Sen Fairly conceded that the effect of the nonobstante clause used in this section is not to depart from and override the normal territorial limitation prescribed by Section 177 of the Code. It is obvious that a contrary view would be manifestly unreasonable."

9. It has been held by this Court in *Sukhdev Singh and others v. Sukhvinder Kaur*, 1974 Criminal Law Journal 229 that an offence under Section 494, Indian Penal Code, can be tried by the Court of the District in which the remarriage had taken place and not by the Court of the District where the complainant resided; and that Section 531, Crl. PC., cannot be invoked to overlook a material irregularity to jurisdiction when it was brought to the notice of the Court before the commencement of the trial.

After hearing the learned counsel for the parties, I find force in the arguments advanced by the learned counsel for the petitioner and hold that, since the offence alleged to have been committed was committed at the Cold Storage of M/s. Satkartar Cold Storage situated in village Badala Mahi, Tehsil and District Hoshiarpur, therefore, the Courts at Jalandhar have no jurisdiction to try the case against the petitioner. Santokh Singh is admittedly inimical towards the petitioner and, as mentioned above, he filed two civil suits against the Punjab State Electricity Board, in which the petitioner was impleaded as respondent. Since the petitioner had not obliged Santokh Singh, therefore, with the help of his brotherinlaw Balram Kumar, ASI/Reader to the DSP (Vigilance), Jalandhar, the petitioner has been involved in this case by the Vigilance Bureau nit of Jalandhar.

10. In view of what has been discussed above, the First Information Report No. 87 dated 1101992 of Police Station, Adampur (District Jalandhar) registered in consequence of the complaint of Santokh Singh and the proceedings, if any pending in any Court, in pursuance of the aforesaid First Information Report, are quashed.