
(2011) 10 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Criminal Rev. No. 1267 of 2011

Rajbir Dhiman and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Land Acquisition Act, 1894 — Section 4, 6
Penal Code, 1860 (IPC) — Section 323, 34, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1), 3(2)

Citation : (2011) 4 RCR(Criminal) 756

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Accused Rajbir Dhiman, D. R. Kamboj and Rajinder Singh have filed the instant criminal revision petition assailing order dated 13.05.2011 Annexure P-1 passed by Learned Additional Sessions Judge (Special Court), Kurukshetra thereby ordering framing of charge against the accused- petitioners under Sections 323 and 506/34 Indian Penal Code (in short, "IPC") and Section 3(1)(x), 3(1)(xiv) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989 (in short, "Act") and the consequent charge-sheet Annexure P-2.

2. Respondent No. 2 Rajesh Kumar instituted criminal complaint Annexure P-10 against the petitioners under Sections 323 and 506 IPC and Section 3 of the Act. Rajbir Dhiman petitioner No. 1 was Tehsildar-cum-Executive Magistrate, Kurukshetra; D. R. Kamboj petitioner No. 2 was Assistant Estate Officer, HUDA, Kurukshetra and Rajinder Singh, petitioner No. 3 was Junior Engineer, HUDA, Kurukshetra. Case of the complainant is that he is devotee of Mahakaleshwar Mandir situated adjacent to village Umri and usually goes daily to the said Mandir for worship and for attending to cows having suffered injuries in accidents being

kept there. On 16.05.2007 at about 5.15pm/5.30pm, the complainant was going to" start his worship in the aforesaid Mandir. Gulshan Kumar devotee also come there. All the three accused accompanied by one S.B. Lohia entered the temple with their leather shoes on their feet. The complainant and Gulshan Kumar objected to the same and asked the accused to put off their shoes outside the temple. Accused No. 1 Rajinder Kumar Rohila (petitioner No. 3 Rajinder Singh) exploded with anger and asked the complainant as to who he was and also asked his caste. The complainant replied that he belonged to Harijan Ravidasia Chamar caste. On hearing it, accused No. 1 humiliated the complainant by abusing him in the name of his caste. Accused No. 2 D.R. Kamboj (petitioner No. 2) also joined accused No. 1 and used filthy language against complainant to humiliate him. Gulshan Kumar tried to" intervene, but accused No. 3 Rajbir Dhiman (petitioner No. 1) used unparliamentary language with reference to the caste of the complainant. Accused No. 1 called his labourers who entered the temple wearing leather shoes. They were asked to throw out the complainant from the temple. They caught hold of the complainant and threw him out of the temple. The accused also threatened the complainant and kicked the idols installed in the temple. They also put dirty water on Shivling. Accused also damaged portion of the temple. Several other devotees also gathered during the occurrence.

3. The accused were ordered to be summoned after recording preliminary evidence. The case was committed to Special Court. Learned Special Court vide impugned order Annexure P-1 ordered framing of charge against the accused and accordingly framed charge Annexure P-2. Feeling aggrieved, accused have filed the instant revision petition.

4. I have heard learned counsel for the parties and perused the case file.

5. Learned counsel for the petitioners vehemently contended that chunk of land including land of khasra No. 78//3 belonging to Rajbir Singh was acquired by State of Haryana for Transport Nagar, Sector 33, Kurukshetra to be developed by HUDA, by issuing notification dated 11.11.2002 and notification dated 07.11.2003 under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 and by passing award dated 28.10.2005 Annexure P-3 whereby possession of the acquired land was also taken and handed over to HUDA. Report in Rojnamcha Patwari dated 29.10.2005 Annexure P-4 was also made regarding handing over of possession of the acquired land to HUDA. Learned counsel for the petitioners next submitted that on the night between 14/15.05.2007, Rajbir Singh who was previously owner of acquired land of khasra No. 78//3 started hurriedly raising temple in the said land. The Estate Officer, HUDA sent letter dated 15.05.2007 Annexure P-5 to Superintendent of Police for lodging FIR against "Jai Onkar Anter-Rashtriya Sewa Shram Sangh, Kurukshetra" (in short, Sewa Shram Sangh) for raising unauthorized construction of Mandir and Gaushala in the acquired land of HUDA in khasra No. 78//3. Similar letter was also sent to District Magistrate, Kurukshetra. Accordingly, District Magistrate vide letter dated 16.05.2007 Annexure P-6 asked the Superintendent of Police to

provide police help for removal of aforesaid unauthorized construction. Tehsildar, Thanesar i.e. petitioner No. 1 was appointed as Duty Magistrate for removal of the said construction on 16.05.2007 and Assistant Estate Officer, HUDA i.e. petitioner No. 2 was also asked to remain present along with concerned staff. Pursuant thereto, all the three petitioners along with big police force went to the spot. Police officials of Police Station, Sadar Thanesar accompanied the petitioners to the spot vide DDR Annexure P-7. It was submitted that petitioners demolished outer boundary wall of the unauthorized construction over 2 Kanals land and there was also inner wall in area of 5 meters X 5 meters without roof which was not demolished. Rajbir Singh who was previously owner of this land gave writing Annexure P-8 that his case for release of the land from acquisition was under consideration and it would take at least ten days for approval and till then, he undertook not to raise any construction on this land. This writing was also signed by Mr. V.B. Bhatti, Advocate and Mr. Shiv Narayan, Advocate. The police returned to Police Station vide report Annexure P-9. Learned counsel for the petitioners also pointed out that Shram Sewa Sangh also filed CWP No. 21093 of 2008 in this Court for quashing of aforesaid notifications under Sections 4 and 6 of the Land Acquisition Act and the consequent award, but the said writ petition was dismissed by this Court vide order dated 16.12.2008 Annexure P-11. Learned counsel for the petitioners also submitted that it was reported in the "Times of India", Ahamdabad Edition dated May 2, 2006 that 1200 temples and 260 Islamic shrines had encroached upon public places. High Court of Gujarat took suo motu action and issued notice to 14 persons/authorities and gave interim direction. SLP (Civil) No. 8519 of 2006 was preferred against the said order in Hon"ble Supreme Court. It was submitted that Hon"ble Supreme Court was seized of the matter since the year 2006 and passed order dated 29.09.2009 Annexure P-12 directing that no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurdwara etc. on public streets, public parks or other public places etc. This direction was issued to all the States and Union Territories. District Collectors and Magistrates/Deputy Commissioners were directed to ensure compliance of this order.

6. Learned counsel for the petitioners contended that the petitioners had gone to the spot to remove unauthorized construction and the impugned criminal complainant has been lodged as counter blast to the same and is abuse of process of Court.

7. Learned counsel for the complainant submitted that before the trial Court, petitioners had taken the plea that they could not be prosecuted for want of sanction u/s 197 of the Code of Criminal Procedure (in short, "Cr.P.C."), but no such plea has been raised in the instant revision petition. It was contended that Section 197 Cr.P.C. is not applicable as abusing and beating the complainant was not part of official duty of the petitioners. Learned counsel for the complainant also contended that since charge has been framed, the trial has to proceed and the complaint cannot be quashed. Reliance in support of this contention has been placed on judgment of Hon"ble Supreme Court in Swaran Singh & Others v.

State through Standing Counsel & Another 2008 (4) RCR (Criminal) 74. It was also submitted that petitioner No. 1 Rajbir Dhiman had preferred revision petition in Sessions Court against summoning order passed by Magistrate, but the said revision petition was dismissed by Additional Sessions Judge, Kurukshetra vide judgment dated 17.11.2009.

I have carefully considered the rival contentions.

8. Facts pleaded by the petitioner in the revision petition containing the sequence of events as argued by learned counsel for the petitioners have not been rebutted by the respondents in any manner. No counter thereto has been filed. On the other hand, the said facts are supported by documents annexed with the revision petition. It is evident that State acquired land including the disputed land of Khasra No. 78//3 and handed over its possession to HUDA vide award dated 28.10.2005 Annexure P-3 and report Rojnamcha Patwari dated 29.10.2005 Annexure P-4. Thus HUDA was in possession of the disputed land for more than one and half years prior to the alleged occurrence. However, suddenly on the night between 14/15.05.2007, unauthorized construction was started in the disputed land. HUDA took steps for removal of the same. Police help was provided to HUDA officials i.e. petitioners No. 2 and 3 by order of District Magistrate, whereas petitioner No. 1-Tehsildar was appointed as Duty Magistrate to ensure maintenance of law and order at the time of removal of the unauthorized construction. Accordingly unauthorized construction was being removed at the spot. Rajbir Singh who was previously owner of the disputed land gave writing Annexure P-8 that he would not raise any further construction till release of the land from acquisition was under consideration. This writing dated 16.05.2007 (date of occurrence) has also been signed by Mr. V.B. Bhatti, Advocate and Mr. Shiv Narayan, Advocate. It is surprising that thereafter impugned criminal complaint Annexure P-10 dated 18.05.2007 was instituted by the complainant through Mr. V. B. Bhatti, Advocate. It would also not be out of place to notice that CWP No. 21093 of 2008 filed for release of this land from acquisition was dismissed by this Court vide order Annexure P-11.

9. Menace of grabbing of public land by raising unauthorized structure of religious nature has been taken note of by Hon''ble Supreme Court and directions have been issued by Hon''ble Supreme Court to prevent such encroachments of public places. In the instant case, the petitioners went to the spot to remove unauthorized construction being raised on acquired land of which possession had already been taken by HUDA. The impugned criminal complaint is apparently counter blast to the said action of the petitioners.

10. The version mentioned in the complaint is inherently improbable and intrinsically unreliable. The complainant was not previously known to the petitioners/accused. Accordingly, to bring the case within the purview of the Act, the complainant alleged that accused No. 1 asked him about his caste. However, there was no occasion for any accused to ask about the caste of the complainant. This plea was taken to depict that the accused had become aware of the caste of

the complainant being Scheduled Caste. It is also worth mentioning that in the complaint, it is mentioned that the accused were accompanied by Mr. S.B. Lohia. However, it has been concealed in the complaint that Mr. S.B. Lohia was Sub-Divisional Magistrate, Thanesar, Kurukshetra at the relevant time as submitted by counsel for the petitioners. Presence of large number of police officials, who accompanied the accused vide report Annexure P-7, has also been concealed in the complaint. It has also been concealed that the accused had gone to the spot to remove the unauthorized construction. Thus the complaint has been made by concealing material facts and by misrepresenting and distorting the facts.

11. The complaint has been made to thwart the demolition of unauthorized construction made in the disputed land. The petitioners were acting in the discharge of their official duty to demolish the said construction. It is thus manifest that the impugned criminal complaint is abuse of process of the Court. There is no sufficient ground for proceeding against the accused or for framing charge against them for the alleged offences.

12. Section 197 Cr. P.C. may not be applicable to the alleged acts of the accused as mentioned in the complaint. However, the version of the complainant mentioned in the complaint is inherently improbable as already noticed hereinbefore. Here it may be added that the complainant is resident of Pehowa whereas the alleged occurrence took place near village Umri at distance of 30 kilometers from Pehowa. Very presence of the complainant at the place of occurrence is also highly improbable.

13. Judgment in the case of Swaran Singh (supra) is of no help to the complainant. In that case, It was found from the material on record that there was prima facie case to proceed against appellants No. 2 and 3 of that case for the alleged offence under the Act. However, in the instant case, there is no sufficient material to proceed against the petitioners and to frame charge against them for the alleged offences. On the other hand, even in the case of Swaran Singh (supra), appeal of appellant No. 1 was allowed and proceedings against him were quashed. Thus contention of counsel for the petitioners that prosecution cannot be quashed after charge has been framed, is completely untenable. No such proposition of law was at all laid down in the aforesaid judgment. On the other hand, charge framed in criminal case can certainly be challenged by accused by filing revision petition and if sufficient ground is made out, charge can certainly be quashed.

14. Dismissal of revision petition preferred by petitioner No. 1 alone against summoning order would have no bearing on the instant revision petition, particularly because plea of protection u/s 197 Cr.P.C. only was dealt with and negated in the said revision petition.

15. For the reasons aforesaid, I find that complaint Annexure P-10 instituted by respondent No. 2-complainant is motivated and mala fide and is gross abuse of process of the Court. Prosecution of the petitioners, who were performing their

official duty of removing unauthorized construction being raised in acquired land, would result in great miscarriage of justice, which has to be prevented by this Court to secure the ends of justice, if public servants have to face such criminal prosecution for performing their official functions, it would become very difficulty for the public servants to discharge their official duty.

16. Accordingly the instant criminal revision petition is allowed. Impugned order Annexure P-1 and consequent charge-sheet Annexure P-2 ordered by learned Special Court, Kurukshetra are set aside and the petitioners/accused are discharged in the criminal complaint Annexure P-10 instituted by respondent No. 2.