

(1998) 11 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10278-M of 1997

Sangat Singh

APPELLANT

Vs

Senior Superintendent of Police, Ferozepur

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Citation : (1999) 2 RCR(Criminal) 109

Hon'ble Judges : K.K.Srivastava, J

Advocate : S.S. Randhawa, Vinod Khunger, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. The petitioner seeks issuance of a direction to the Senior Superintendent of Police, Ferozepur, District Ferozepur respondent No. 1, to register a criminal case under Sections 354, 427, 447, 453, 506, 148, 149 IPC against respondents 2 to 8.
2. It has been alleged that respondent No. 2, Parkash Singh, Sarpanch son of Narain Singh along with respondents 3 to 6, namely, Faquir Singh son of Bagha Singh, Waryam Singh son of Bhan Singh, Gurmukh Singh son of Labh Singh and Puran Singh son of Surain Singh, member Panchayat, all residents of village Mahalam, Police Station Mallanwala, Tehsil and District Ferozepur in the last week of July, 1996 entered the house of the petitioner in his absence and laid out the Nalla/Khal for disposal of the dirty water of the village by turning the same in the courtyard of the petitioner's house. They also demolished the Kacha boundary wall of the house and constructed a pucca wall towards the house of the petitioner by encroachment in the area of the house of the petitioner and also uprooted 25 Kikkar and Safeda trees. The petitioner approached respondent No. 1, Senior Superintendent of Police, Ferozepur, the Deputy Commissioner, Ferozepur and the Deputy Director, Panchayats, Ferozepur, but no action was taken on his representation, a copy of which has been annexed as Annexure P1 dated 7.8.1996.

3. Notice of motion was issued to the respondents. The respondents filed separate written statements. Respondents 1 and 8 filed joint written statement. Respondent No. 1, Senior Superintendent of Police, Ferozepur, on whose behalf this written statement has been filed, has admitted about the receipt of the representation, copy Annexure P1. He has submitted that an enquiry into the matter was got conducted from Shri Harmander Singh, PPS, Deputy Superintendent of Police (Detective), Ferozepur. The said Deputy Superintendent of Police (Detective) conducted the enquiry and reported that the allegations made in the representation aforesaid were not factually correct. The allegations regarding the uprooting of the Kikkar and Safeda trees were also found to be incorrect. It was also mentioned that a Civil suit had already been filed by the petitioner. It was under these circumstances, that the report was not registered and no action, as a matter of fact, was required to be taken. The private respondents 2 to 6 filed joint written statement contending, inter alia, that the petitioner has purchased only 2 Marlas of land from one Sher Singh son of Jag Singh and he had forcibly occupied 6 Marlas of land. It was also contended that the petitioner was pursuing his matter in the Civil Court and he has no other intention in filing this petition except to harass the entire village panchayat for ulterior motives. No offence was made out from the contents of the petition filed by the petitioner. Respondent No. 7 filed a separate written statement wherein he had taken the same stand regarding the matter enquired into by Shri Harmander Singh, Deputy Superintendent of Police (Detective), which has been referred to in the written statement of respondents 1 and 8. He has also referred to the pendency of the civil suit filed by the petitioner against Gram Panchayat. Regarding the application dated 23.4.1997 moved before the Senior Superintendent of Police, Ferozepur, respondent No. 7 gave the reply in para 7 which reads as under :

"That the contents of this para are admitted to the extent that the application dated 23.4.1997 was received in the office of S.S.P. Ferozepur with the allegation that Sarpanch Gram Panchayat Mohalam had threatened the petitioner and was not entitled to construct new wall while demolishing the old wall. This application was marked to Deputy Superintendent of Police (Detective) for necessary action and report. During enquiry, the petitioner moved another application dated 23.5.1997 stating therein that he had filed a case before the Hon"ble High Court and thus he will abide by the orders of Hon"ble High Court and thus he may not be called by Deputy Superintendent of Police for enquiry purpose (application dated 23.5.1997 is attached as Annexure R5 along with English translation is Annexure R5/T). On the basis of this application the matter was dropped. Rest of the para is wrong and denied."

4. Heard learned counsel for the petitioner and the learned counsel for the respondents. I have carefully perused the petition and the reply as also the rejoinder filed by the petitioner to the written statement filed by respondents 2 to 6.

5. The grievance of the petitioner is that respondent No. 1, Senior Superintendent of Police, Ferozepur, did not take any action in the matter regarding the registration of the FIR and on the other hand he proceeded to get the matter enquired into from Deputy Superintendent of Police who has transferred (travelled ?) beyond the scope of Section 154 Cr.P.C.

6. It has been contended by the learned counsel for the petitioner that the Code of Criminal Procedure does not envisage an enquiry prior to the registration of the FIR. He has referred to Section 154 Cr.P.C. and argued that Section 154 Cr.P.C. is mandatory in nature and imposed a statutory duty on the police officers to register FIR in respect of the occurrence wherein commission of cognizable offences are shown to have been committed by the accused persons. Once the FIR in respect of the cognizable offence has been registered at the police station, then it is to be followed by an investigation into the allegations made in the FIR and thereafter the Investigating Agency may either file a challan or a cancellation report as the case may be. The police cannot refuse to register FIR in respect of an occurrence in which commission of cognizable offences have been prima facie shown against the accused persons. In order to appreciate the submission of the learned counsel for the petitioner, it will be useful to refer to the provisions of Section 154 Cr.P.C. which reads as under :

154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

7. A careful perusal of Section 154 Cr.P.C. will go to show that a statutory duty is cast on the police officer incharge of a police station to register a case on the basis of a complaint which may either be orally or in writing wherein commission of cognizable offences has been alleged. If the report is oral then it has to be reduced in writing and relevant entries in the record of the police station are to be made. Section 154(1) Cr.P.C. requires the Station House Officer Incharge to

find out from the allegations made in the complaint if the commission of the cognizable offences has been shown in the incident reported to him. Once the commission of cognizable offences has been shown to have been committed, the Station Officer Incharge of the police station has no option but to register that report. The provisions of Section 154(3) Cr.P.C. will go to show that a remedy is also provided to a person aggrieved by the inaction on the part of the Station Officer Incharge of the police Station to apprise the Superintendent of Police by sending the substance of the occurrence in which cognizable offences have been committed by post and upon the receipt of such a communication from the aggrieved person, the Superintendent of Police after satisfying himself about the commission of cognizable offences will either proceed to investigate the case himself or get it investigated by any officer subordinate to him and the Superintendent of Police or any other officer to whom the investigation is entrusted will exercise the powers of the Station Officer Incharge of a Police Station. The crux of the matter is that what is required to be enquired into by either the Station Officer Incharge under Section 154(1) Cr.P.C. or by the Superintendent of Police under Section 154(3) Cr.P.C. is whether the occurrence which is reported to have taken place shows commission of cognizable offence by the culprits. If upon such an enquiry into the matter, it is found that in the occurrence reported, cognizable offences have been committed the report in that case has to be registered and investigated in accordance with the provisions contained in the Code of Criminal Procedure. Viewed from this angle, respondent No. 1 failed to enquire into the matter of knowing whether the occurrence showed commission of cognizable offences but he entrusted it to the Deputy Superintendent of Police (D), Ferozepur, who conducted a fact finding enquiry and held on facts that the averments made in the complaint were factually incorrect and no offences were committed. This is not the intention of Section 154 Cr.P.C.

8. Resultantly, respondents No. 1 and 8 have failed to perform their statutory duty as imposed by section 154 Cr.P.C. on them. The petition has thus considerable merit and is allowed. A direction is issued to respondent No. 1 to decide the representation, copy Annexure P.1, in accordance with the provisions of Section 154 Cr.P.C. and in case he finds that the averments made in the representation, Annexure P1, shows commission of cognizable offences then a report as envisaged under Section 154 Cr.P.C. shall be registered and duly investigated according to law.