
(2010) 01 P&H CK 0274

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-43088 of 2007

Sita Ram and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 148, 149, 323, 324, 326
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4, 6

Citation : (2010) 31 CriminalCC 815 : (2011) 5 RCR(Criminal) 675

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : G.S. Jaiswal, for the Appellant; T.S. Salana, DAG, Punjab for Respondent No. 1/State and Mr. M.L. Saini, for Respondent No. 2/Complainant, for the Respondent

Final Decision : Allowed

Judgement

Sham Sunder, J.—This petition u/s 482 of the Code of Criminal Procedure, for quashing the complaint under Sections 3,4, and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, (hereinafter referred to be as SC & ST Act only), and 323,324,447 read with Section 149 of the Indian Penal Code, filed by respondent No. 2, and pending in the Court of Sub-Divisional Judicial Magistrate, Anandpur Sahib, as also the summoning order, has been filed by the petitioners.

2. The complaint, aforesaid, was filed by Joga Singh, (respondent No. 2) on the allegations, that on 28.05.2006 at about 11.30 A.M., he alongwith his wife was working in the land, when the petitioners, in prosecution of the common object of unlawful assembly, came there and trespassed into the said land. Subhash Chander, petitioner, was armed with Kohara, Jagdish Ram, petitioner, was armed with wooden Phora, Hem Raj, petitioner, was armed with Kehi and others were

armed with lathies. Subhash Chander, petitioner, raised an exhortation, using offending language against the caste of the complainant, who belongs to scheduled caste. Injuries were also caused on the person of the complainant. Hem Raj, accused, also used offending language against the caste of the complainant. Harbhajan Singh, uncle of the complainant, informed the police about the incident on telephone, but it did not take any action. It was further stated that a false case with regard to the said incident, was registered against the complainant, vide FIR No23 dated 08.05.2006. Ultimately, the complaint, aforesaid was filed.

3. After recording the preliminary evidence, the petitioners were summoned for the offences, aforesaid.

4. I have heard the Counsel for the parties, and have gone through the record of the case, carefully.

5. The Counsel for the petitioners, has submitted that on 28.05.2006, grievous as well as simple injuries were caused by the complainant, and members of his party, on the person of the petitioners. He has further submitted that, in fact, the complainant, and the persons of his party, also received injuries and cross-cases were registered against the petitioners, as also the complainant, and his companions. He has further submitted that since an injury, on the person of one of the petitioners, had been declared grievous, in nature falling within the purview of the offence, punishable u/s 326 of the Indian Penal Code, the instant false complaint was filed. He has further submitted that when the complainant, made a statement before the Police, on the basis whereof, the DDR was recorded, he did not state even a single word, that the petitioners used the offending language, against the caste of the complainant. He has further submitted that thereafter, an afterthought story was concocted, and a criminal complaint, aforesaid, was filed. He has further submitted that the continuation of the complaint and the summoning order, would amount to the abuse of the process of the Court.

6. On the other hand, the Counsel for respondent No. 2, has submitted that the complaint, aforesaid, is not false. He has further submitted that the allegations, contained in the complaint, constituted the offence, punishable u/s 3 of the SC & ST Act. He has further submitted that the complainant, made a statement, before the police, which was not correctly recorded. He has further submitted that the complaint and the summoning order, cannot be quashed.

7. After giving my thoughtful consideration, to the rival contentions, raised by the Counsel for the parties, in my considered opinion, the petition is liable to be accepted, for the reasons to be recorded hereinafter. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, it was held that, in following categories of cases, the High Court may exercise all power, under Article 226 or u/s 482 of the Code of Criminal Procedure, may interfere in proceedings, relating to cognizable offences, to prevent the abuse of the process of any Court, or otherwise, to

secure the ends of justice. However, such power should be exercised sparingly, and that too in the rarest of rare cases:

- 1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence, or make out a case against the accused.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge. Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases, enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.
8. Now, advertent to the facts of the instant case, let us see, as to where it is a fit case, in which the complaint and the summoning order passed therein, should be quashed or not. It is evident, from the record mat in respect of the alleged occurrence, Joga Singh, complainant made a statement on 29.05.2005. before the police, on the basis whereof the DDR, was recorded. In the statement, made first in point of time, after the alleged occurrence, before Gurbax Singh, ASI, by the complainant, he did not state even a single word, that the offending language, was used, by the petitioners, against his caste. Ultimately, on the basis of the statement of Joga Singh, complainant, a criminal case was registered against the petitioners under Sections 148, 323 and 506 read with Section 149

IPC. On the basis of the statement of Hem Raj, one of the petitioners, regarding the same occurrence, case under Sections 148, 323, 324 and 326 read with Section 149 IPC was registered against Joga Singh complainant, and his companions. Had the offending words been used against me caste of Joga Singh, by the petitioners, he would have certainly stated so, while making the statement aforesaid, before Gurbax Singh, ASI. It appears that with mala fide intention and to wreak vengeance, the complaint referred to in para No. 1 of the petition, was filed by the complainant, for the commission of offences, u/s 3 of the SC and ST Act, 1989. In this view of the matter, the instant case, falls within one of the categories mentioned in State of Haryana & Ors. case (supra). In these circumstances, continuation of complaint and the summoning order, would amount to sheer abuse of the process of the Court. With a view to prevent injustice, and to do complete justice, the complaint and the summoning order are liable to be quashed.

9. For the reasons recorded above, Criminal Misc. No. M-43088 of 2007 is accepted. The complaint, as also the summoning order are quashed, qua the petitioners. This order shall not, however, affect the merits of the criminal case, registered against the petitioners, with regard to the same occurrence, in which the challan has already been presented.