
(2010) 04 SHI CK 0179

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 20 of 2003

Sudarshan Lal Bhatia and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182

Penal Code, 1860 (IPC) — Section 332, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) 04 SHI CK 0179

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—Petitioners, in this Criminal Revision have challenged the order of the learned Special Judge, passed on 22.1.2003, in private complaint No. 2 of 1996, whereby, while disagreeing with the cancellation report filed by the police, was ordered to return the file with the direction that Police Officer, not below the rank of Deputy Superintendent of Police shall re-investigate the matter as the objections filed by Respondent No. 2 complainant Karam Dei appeared to be justified.

2. Heard and gone through the record of the case.

3. On the perusal of the record, following facts emerges:

In the year 1996, Atma Ram (Petitioner No. 12) was posted as Superintendent Grade-II in HPSEB Department at Palampur. Smt. Karam Dei Respondent No. 2 herein was working as U.D.C. in the same office. She had filed an application in the then H.P. State Administrative Tribunal with respect to the house allotment to her. The official record was sought to be produced in the Tribunal by the Department.

4. On 22.4.1996 said Shri Atma Ram produced the record before the State

Administrative Tribunal camp at Dharamshala. Thereafter husband of Respondent Karam Dei picked-up a quarrel and held out threats to him. Atma Ram reported the matter to police against her and her husband.

5. Thereafter on 1st May, 1996, Petitioner Atma Ram was present in his office. Around 10.15 a.m. Respondent Karam Dei came there and attacked Atma Ram and gave beatings with Chapal and threw bell on him lying on the table and also gave thrashing to him. Atma Ram suffered some injuries on his person. She also threatened Atma Ram with dire consequences. Atma Ram lodged the report with the police against her. She was arrested. Police investigated the matter and concluded that an offence under Sections 332 and 506 Indian Penal code was made out, as such challan was presented in the court for her trial. At the end of the trial, she was convicted for the offences aforesaid vide judgment (Annexure P-2) in Cr. Case No. 97-II/96 dated 31.5.2002 decided by Addl. Chief Judicial Magistrate, Palampur, and sentenced to undergo imprisonment till rising of the court and a fine Rs. 3000 u/s 332 and 506 Indian Penal Code and also to pay a fine of Rs. 3000/- and Rs. 2,000/- respectively, with a default clause. It was also ordered that out of the total amount of fine, i.e., Rs. 5000/-, Rs. 2000/- shall be paid as compensation to Atma Ram aforesaid.

6. As noticed above, the incident which took place was on 1st May, 1996. Respondent Karam Dei also filed a complaint u/s 3(viii)(ix) and (xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") before the learned Sessions Judge, Dharamshala, exercising the powers of Special Judge.

7. Vide para 5 of the complaint, she admitted that she had gone to the room of Atma Ram on 1.5.1996 at 10.20 a.m. According to her, she had gone to mark her presence in the attendance Register. But Atma Ram abused her and proclaimed that "Tere ghar wale ka ilaaj to dharamshala main kar dia hai ab tera ilaj karenge" thereafter at the instance of Shri Sudarshan Lal Bhatia, the then Exen he criminally assaulted her and caused bruises on her left wrist and Sudarshan Lal abused her by saying "Haramjaadi Chamari" and criminally intimidated and intentionally insulted her.

8. It is pertinent to note that no such defence was raised by her in the criminal prosecution against her before the Additional Chief Judicial Magistrate on the complaint of Atma Ram. Her case was denial simplicitor. In para 6 of the judgment (Annexure P-2) there is a reference that Smt. Karam Dei had set up the defence that she had filed a contempt petition against Sudarshan Lal Bhatia the then Executive Engineer as he failed to implement the orders of the Tribunal. That was the reason that he was inimically disposed against her. Thus, he in connivance with Atma Ram Superintendent foisted a false case upon her. It is also pertinent to note that Atma Ram Petitioner is also a scheduled caste.

9. The complaint which was filed by her before the Special Judge with respect to the said incident was marked to the Deputy Superintendent of Police for inquiry

and report. The said Dy. S.P. conducted the inquiry and found her allegations false and he recommended action against her u/s 182 of the Code of Criminal Procedure. To this report Karam Dei complainant filed objections. The then Special Judge M.R. Chaudhary ordered for the fresh inquiry to be conducted by the Dy. Superintendent of Police (Vigilance), Kangra at Dharamshala at her request. On 6.8.1997, he submitted his report but the Learned Special Judge vide his order dated 7.8.1996 is stated to have returned the report to the said Dy. Superintendent of Police with direction to re-submit it on 9.9.1996.

10. Vide order (Annexure P-2) dated 10.9.19908 the then Special Judge directed the S.H.O. Palampur for registering the case against the Petitioners. On this FIR was registered and investigation was conducted by Shri Rama Nand sharma Dy. S.P., Palampur. But Respondent Karam Dei raised objections against the investigation being conducted by him. On her request Shri Gopal Singh Dy. S.P. was entrusted with the investigation. On 29.3.1997 he submitted his report that no case was made out against the Petitioners and categorically stated that the Respondent's case was false. He also recommended cancellation of the FIR. On his report notice was sent to the Respondent Karam Dei. She filed her objections before the learned Special Judge.

11. On 23.7.1997, learned Special Judge ordered the sending of the report of the police, to the Superintendent of Police Kangra at Dharamshala to take appropriate steps in the matter in accordance with law. But he did not decide the objections.

12. The matter was again examined by the Superintendent of Police, Kangra considering the entire record and submitted his report on 16.3.1998 to the learned Special Judge., before him Respondent Karam Dei filed applications to take action against the S.P. Dharamshala and vide order dated 8.9.1997 (Annexure P-10) all these applications were decided and after considering the matter, it was observed that no case was made out under the Act for taking action against the Superintendent of Police Dharamshala and also the Petitioners.

13. Vide order of the same day (Annexure P-13) cancellation report submitted by the Police was accepted against which she filed Cr. revision petition No. 24 of 2000 in the High Court. Vide order dated 7.8.2002 it was observed that grounds/ reasons which prevail with the learned Special Judge while passing the said order could not be spelt out from the said order. Consequently, the said order was set aside and the case was remanded back to pass speaking order after hearing the parties. Thereafter the matter was heard by Shri T.N. Vaidya the then Special Judge Kangra at Dharamshala. On considering the rival contentions, the learned Special Judge thought it proper and in the interest of justice thus sent the file for further investigation to the police not below the rank of Dy. Superintendent of Police, as to how the objections appears to be justified.

14. Against the aforesaid background, it is apparent that the matter was not investigated once but many times, that too, with the intervention of the then

Special Judge. The alleged offence, as per Respondent was committed in the year 1996 and the fresh investigation was ordered to be done after the lapse of almost 7 years. As a matter of fact, it was not open for the Special Judge to order for the re-investigation of the case but he was required to hear the Respondent in view of the objections filed by her against the cancellation of the FIR, and if need he could have taken the cognizance himself.

15. But on going through the entire facts, which culminated into the impugned order, I do find that the complaint filed by the Respondent was in retaliation to the FIR filed by Atma Ram against her in which she was convicted and sentenced. Two times, investigation was conducted by the different Investigating Officers. They also came to the same conclusion that no case was made out and they recommended action against the Respondent u/s 182 of the Code of Criminal Procedure. Otherwise also, witnesses of the complainant before the registration of the FIR did not state anything when the matter was investigated by the senior Offices of the Police. The complaint against the Petitioners clearly appears to be counter blast of the earlier FIR. The investigation, re-investigation and further investigation for years together is abuse of process of law when no case is made out in the facts and circumstances of the case.

16. After examining the legality and propriety of the impugned order, I find that the impugned order is unsustainable, therefore is set aside. Objections filed by the Respondent against the cancellation report are without any merit and, as already stated above, they were made only in retaliation of the earlier FIR registered against the Respondent by Atma Ram and also to square her grudge against the then XEN and other employees of the same office where she was working to boom beat them on account of putting the case of Department against her before the Tribunal. Therefore, FIR against the Petitioner is hereby ordered to be cancelled and no case on facts as alleged is made out.

17. Send down the record forthwith.