

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20067 of 2010 (O&M)

Date of Decision:13.7.2015

Harsharan Singh and another

....Petitioners

Versus

Deepak Sharda and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. S.S. Narula, Advocate,
 Mr. R.K. Trikha, Advocate and
 Mr. R.K. Handa, Advocate for the petitioners.

Mr. Jaswinder Singh, Advocate for respondent No.1.

NAVITA SINGH, J.

1. Vide this petition, the order dated 19.7.2008 passed by Chief Judicial Magistrate, Ambala, is sought to be quashed, vide which charge was framed against the petitioners under Section 330 of the Indian Penal Code. The order dated 21.5.2010 passed by Additional Sessions Judge, Ambala is also sought to be set aside.

2. The back drop of the matter is that the complainant (respondent No.1 herein) was posted as Executive Engineer, Railway Electrification, Ambala Cantt. and on 15.10.1996 a case was registered against him under Section 7 of the Prevention of Corruption Act (hereinafter referred to as the Act). The complainant in that case was one Pawan Kumar. Trap was laid by the police and respondent No.1 instead of accepting the money in his office, took the complainant in his car and asked him to place the money in the boot of the car.

3. Respondent No.1 was arrested from his house and some part of the investigation was conducted there. On way to Chandigarh, respondent No.1 said near Zirakpur that he wanted to make a disclosure

statement. Police party stopped at Pinky Dhaba, Zirakpur, where his disclosure statement was recorded and the police party headed back to Ambala for making recovery of the money, which respondent No.1 had stated to have been kept with his friend Capt. D.K. Tyagi. Recovery of the briefcase was made.

4. In the complaint made by respondent No.1 against the petitioners, he alleged that he was tortured while he was in their custody and he was beaten up for the purpose of extracting a confession before him. According to the statement made before him in the pre-charge evidence, the beating was given to him at a bus shelter on G.T. road and he was boxed, slapped and kicked near dairy farm crossing on the said road while going from Ambala to Chandigarh. He moved the court for getting medical examination conducted on 18.10.1996 and the medical examination was conducted on 19.10.1996.

5. Counsel for the petitioners argued that first of all there would be no question of torturing respondent No.1 for extracting a confession from him because as per the case against him under the Act, recovery had been made in Ambala Cantt. itself on 16.10.1996. Secondly, the alleged torture was meted out on 16.10.1996 whereas the request for medical examination was made on 18.10.1996 and it was conducted on 19.10.1996.

6. The doctor, who conducted the examination on 19.10.1996, mentioned in his report that the history of the torture was related to 16.10.1996 by the injured and probable duration of the injuries was more than 24 hours.

7. Counsel for respondent No.1, however, argued that it was clear from the application made to the court for medical examination that it was of 17.10.1996, though the order was passed on 18.10.1996. Copy of the

application placed on record shows that the date typed on it was 17.10.1996 but there is nothing on the record of the case to show that the same was presented on that day itself. Rather the order dated 18.10.1996 makes a mention that accused was produced in the court on 17.10.1996 and he was remanded to judicial custody declining the request of CBI for police remand. There is nothing in the order to show that application was moved on the previous day nor there is any endorsement of the court on the application on 17.10.1996 regarding its presentation nor there is any separate order to that effect. It can, therefore, be construed from the order dated 18.10.1996 that the application was moved on that day and not on 17.10.1996.

8. It was rightly argued by counsel for the petitioners that the doctor gave probable duration of injuries as more than 24 hours which could at the most be stretched to 36 hours or maximum to 48 hours but the injury examined on 19.10.1996 could not be related to 16.10.1996 in view of the probable duration given by the doctor. The Medical Officer in his cross examination after charge, mentioned that it was possible that the injuries on the person of the complainant might have been inflicted within 30-36 hours prior to the time of examination. The examination having been conducted on 19.10.1996, the injury could not be related back to 16.10.1996.

9. Furthermore, it is highly unbelievable that respondent No.1 was beaten on the road mercilessly as alleged. If the petitioners had intended to torture him, they could have very conveniently taken him either to the police station or to any secluded place. There was no need for the petitioners to have beaten him at a public place.

10. Also the injuries found on the person of respondent No.1 could not be the result of merciless beating as alleged. He complained of loss of hearing in the left ear and there were five contusions, four of which were on

the right upper arm and suprascapular region. If respondent No.1 was beaten on the road as alleged and was also kicked, he must be lying on the road and if unscrupulous beating was given, the injuries would not be confined only to particular area of the body i.e. the right upper arm of the body i.e. suprascapular and infrascapular region on the right and left. There was no injury on any part of the body below the waist. Also the contusions, which were obliquely placed on the right suprascapular region and were going downwards towards the vertical column towards axilla, could not have been caused with bare hands.

11. In the complaint made by respondent No.1, he simply said that he was subjected to inhuman treatment by adopting third degree methods for the purpose of acceptance of the offence under the Act. He did not mention as to what was the manner in which he was being beaten and what were the seats of the injuries. He also did not mention in the complaint that he was beaten on the road as was mentioned by him in his statement before charge. He rather said that he was illegally detained in custody and was tortured. He said that there was contingent of police personnel along with the present petitioners and he was brutally beaten up. This would affirm the view taken above that the nature of injuries revealed on medical examination could not be the result of brutal beating by many persons as alleged.

12. It would be seen that in the complaint the complainant mentioned that for the purpose of compelling him to accept the crime under the Act, the accused adopted third degree methods. However, he neither mentioned the date on which he was allegedly tortured nor he gave the time and place. He stated for the first time in his statement before the court trying the complaint that he was beaten on 16.10.1996 at a public place by the

accused and others as mentioned above. The story of the complainant is, therefore, not believable. If he had actually been treated as alleged by him, he would have surely given the time, date and place of the occurrence in the complaint itself. He later on made up a story which was far from creditworthy as is already discussed above. He tried to build up a case that he was beaten on 16.10.1996 on the highway by the present petitioners and some other associates of theirs. It may be mentioned at the cost of repetition that according to the statement of the complainant, though it is not so mentioned in the complaint, he was subjected to torture while the police was on the highway proceeding from Ambala Cantt. towards Chandigarh. The place was the junction of the GT road near dairy farm crossing. It is absolutely not believable and convincing that the police beat up the complainant on the busiest highway in broad day light as if they had no other place to carry out their intention into action, if they had any.

13. It was then argued on behalf of the petitioners that sanction of prosecution under Section 197 of the Code of Criminal Procedure (Cr.P.C. for short) was required as the petitioners are public servants and the offence allegedly committed by them was done while discharging the official duty. Reliance was placed on the authority reported as Raghunath Anant Govilkar Vs. State of Maharashtra and others 2008 (1) RCR (Criminal) 1042, Somchand Sanghvi Vs. Bibhuti Bhusan Chakravarty AIR 1965 Supreme Court 588, K. Kalimuthu Vs. State by D.S.P. 2005 (2) RCR (Criminal) 463 and Rakesh Kumar Mishra Vs. State of Bihar and others 2006 (1) RCR (Criminal) 456.

14. The reason given by the court of revision below for not accepting the arguments on the point of sanction was not valid enough. In the reported cases, it was held that if a public servant committed an offence

during the discharge of official duty or used force, sanction would be required. It appears that in order to bring the matter outside the purview of Section 197 Cr.P.C., the complainant put up a cock and bull story that he was beaten after the investigation in Ambala was over and he along with the police party was going from Ambala Cantt. near dairy farm crossing towards Chandigarh. By then, according to the story of the prosecution in the case under the Act against the complainant, recovery had already been made. Therefore, according to the complainant, sanction was not required. However, the case of the complainant being that he was tortured for extracting a confession and he having denied the recovery in the other case against him, it would be presumed from the allegations made by him that the police officials used force in connection with investigation of the criminal case against the complainant allegedly for extracting a confession. Making investigation in any case is discharge of official duty and if force was used during investigation, sanction would be required. The complainant failed in his planned effort to bring the matter outside the purview of official duty so as to make sanction Section 197 Cr.P.C. non-applicable.

15. In view of the detailed discussion above, the petition is allowed and the order dated 19.7.2008, vide which the charge was drawn up against the petitioners as also the order dated 21.5.2010 dismissing the revision petition of the petitioners, are quashed and the petitioners stand discharged.

(NAVITA SINGH)
JUDGE

13.7.2015
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