

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.01.07 17:12
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CRM No. M-34231 of 2009 (O/M)
Date of decision : 5.1.2015

Surinder Singh Vaid and others Petitioners

Versus

Union Territory, Chandigarh and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate, with,
Mr. B.B.S. Randhawa, Advocate, for the petitioners.

Mr. J.S. Toor, Public Prosecutor,
for respondent No. 1-Union Territory, Chandigarh.

Mr. S.S. Katnoria, Advocate, for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Petitioners, who are officials/officers (now retired) of the Punjab State Cooperative Bank Limited (in short 'the Bank'), Sector-34, Chandigarh, have filed this petition for quashing of FIR No. 122 dated 29.4.1997, registered under Sections 342 and 353 IPC at Police Station Central, U.T. Chandigarh (Annexure-P-6). They have also sought the quashing of the summoning order dated 13.8.2009 (Annexure-P-12), passed by the learned Judicial Magistrate 1st Class, Chandigarh.

A combined reading of the FIR in question as well as the application (Annexures-P-6 and P-7 respectively) shows that Ram Lal, Bailliff in the District Courts, Chandigarh, was entrusted with the execution of warrants of possession against the Punjab State Cooperative Bank Limited, SCOs No. 2421-22, Sector-22-C, Chandigarh (Judgment Debtor). It comes out that the said Bailliff accompanied by Baldev Krishan (Decree Holder) and some other persons visited the premises of JD Bank for executing the warrants of possession. Surinder Singh Vaid, Manager of the said Bank, told the said Bailliff to contact his Managing Director (MD). Thereafter, the said Bailliff went to the office of the M.D. of the said Bank, where the M.D. of the said Bank did not meet him, rather his P.A. told him that there are stay orders from the Court. The said Bailliff came back to the premises of JD Bank. Shri Jagdeep Suri, Senior Accountant, after verification from his lawyer, came at 3:15 PM and told the said Bailliff and the decree holder that they do not have any stay order at present, but they would have obtain the same from the High Court on 23.4.1997. When the said Bailliff tried to deliver the possession, the accused resisted the same and stated that they will not allow delivery of the possession. The employees of the JD Bank raised slogans in loud voice against the decision of the Court. Ram Lal, Bailliff alongwith the decree holder Baldev Krishan were locked inside the Bank and they were told that if they tried to get the bank vacated, then there would be blood shed. Bhag Singh, the guard of

the Bank stood in front of the main gate alongwith his gun and said that he is bound by the orders of his officers and he would fire the gun if the need arises. The said Bailliff and the decree holder were not allowed to come out from the Bank by the officers/officials and they were kept confined inside the Bank. Then, at about 5:00 PM, the Bailliff and the decree holder were allowed to come out of the Bank only after they made repeated requests for the same. Thereafter, the gate of the Bank was locked. A large number of employees of other branches of the JD Bank also reached the Bank and raised slogans at the spot. The said Bailliff accordingly moved an application before the Senior Sub Judge, Chandigarh, making a complaint of the matter, which was forwarded to the police, on which the present case was registered.

I have heard the learned counsel for the parties and have also carefully gone through the file.

Learned senior counsel for the petitioners has vehemently argued that in this case, the petitioners are the employees of the said Bank. They had no personal interest. Infact, the ejectment of the Bank was ordered by the lower Court as well as by the appellate Court and that the said Bank had moved to the High Court in Regular Second Appeal i.e. RSA No. 1079 of 1997. It is stated that the stay order was granted on 23.4.1997 (Annexure-P-3). The present occurrence is stated to be of 21.4.1997. It is conceded that on the day of occurrence, there was no stay order. It was

argued that the petitioner had earlier filed CRM No. 19519-M of 1997, in which this Court, vide order dated 14.11.2002 (Annexure-P-10), had dismissed the petition as not pressed with a direction to the Senior Superintendent of Police to consider the representation/application dated 3.5.1997, filed by the Manager, Punjab State Cooperative Bank, Sector-22-C, Chandigarh and decide the same after holding such inquiry as he may deem necessary under the circumstances of the case. It is stated that in pursuance of the said order, an inquiry was held and Report dated 21.4.2003 (Annexure-P-11) was prepared, in which the cancellation report was recommended. It is further stated that when the cancellation report was submitted, the same was opposed by the complainant Bailliff saying that he is not satisfied with the report and prayed for further investigation. Thereafter, the learned Magistrate passed the summoning order dated 13.8.2009. The relevant extract from the same is reproduced below :-

“..... I have perused the file. From the allegations made in the complaint, it appears that the accused have committed offence u/s 186, 353, 332, 342, 357 IPC while complainant Ram Lal was discharging his official duty. Let all the accused be summoned for 12.10.2009.”

It is stated that the said order is a non-speaking order and that there was no protest petition filed by the said Bailliff. It has been prayed that the said order may be quashed or at least, the case should be remanded back.

A perusal of the inquiry report dated 21.4.2003 (Annexure-P-11) shows that Ram Lal, Bailliff, stood by his statement before the Deputy Superintendent of Police, who conducted the inquiry. Even during the inquiry, it had come out that the said Bailliff was detained, but it was held that due to security reasons, the grill gate of the Bank was closed at the time of closing the cash, but the said Bailliff, due to some misunderstanding on his part, took it as his detention. It was stated that the eye witnesses have not supported the version of the said Bailliff. Therefore, the cancellation report was recommended. It also comes out that in the civil litigation pending before this Court being RSA No. 1079 of 1997, the said Bank and the decree holder entered into a compromise, under which the said Bank agreed to vacate the premises within one year, as coming out from the order passed by this Court on 19.2.1998 (Annexure-P-3). Therefore, it comes out that now the decree holder is satisfied. Thus, he will be the last person to support the complaint of the said Bailliff.

Now, the question would arise whether any written protest petition is a condition precedent for passing any order on the cancellation report ?

I find the reply in negative. Even if the protest petition is not filed, the Court is bound to consider the report of the police under Section 173 Cr.P.C., the statements of witnesses recorded under Section 161 Cr.P.C. and the documents placed on file. In the

present case, the said Bailliff was acting in discharge of his official duties and he had no ill-will and enmity against bank officials. He had specifically complained that he alongwith the decree holder was detained; the gates were closed and the guard of the bank threatened to fire, if the necessity arises. Even the slogans were also raised against the orders of the Court. The said Bailliff was let off at 5:00 PM only after his repeated requests. The story of closing the gate for security reason due to closing of cash is the defence story of the bank officials. Therefore, the inquiry report dated 21.4.2003 (Annexure-P-11) cannot be taken as gospel truth. Even in the said inquiry, the allegations of detention of the said Bailliff were proved though, the explanation was sought to be given.

In these circumstances, I am of the view that even if the said Bailliff did not file a written protest petition and only made a statement that he is not satisfied with the report, the Court, after examining the report under Section 173 Cr.P.C., the statements of the witnesses recorded under Section 161 Cr.P.C. and the documents placed on file, could pass the summoning order. Even though the order is not detailed one, but it shows that the learned Magistrate had applied his mind to the facts of the case. During the trial, it is not the quantity but the quality of evidence, which matters. It is not the law that the statement of single witness is not to be relied upon. The defence of the accused cannot be considered at the stage of summoning. Therefore, there is no illegality or infirmity

in the impugned order dated 13.8.2009 (Annexure-P-12), vide which the cancellation report was rejected and the learned Magistrate took the cognizance of the case and summoned the accused.

Learned senior counsel for the petitioners has relied upon the authorities of the Hon'ble Supreme Court in Dharmatma Singh Versus Harminder Singh and others, 2011 (3) RCR (Criminal) 38 and M/s Pepsi Foods Ltd. Versus Special Judicial Magistrate, 1997(4) RCR (Criminal) 761 as well as authority of this Court in Niranjan Singh Versus State of Punjab, 2003 (2) RCR (Criminal) 843. The learned senior counsel has further relied upon the authority of Allahabad High Court in Chandra Pal alias Chachchu and others Versus State of U.P. and another, 2008 Cri.LJ 4677.

A perusal of these authorities shows that these are regarding different facts. It depends upon the facts of each case whether it is a fit case for quashing or not. The facts of the present case are distinguishable. Here the officer of the Court had gone to the Bank to execute the warrants of possession and he alongwith the decree holder was locked inside by the bank officials. The defence of locking the gate for security reason due to closing of cash is to be examined on merit during trial. Therefore, even if no other witness supports the prosecution case, the Court is to examine the statement of the said Bailliff accompanied by the documents to see whether the alleged occurrence is proved or not. In these circumstances, I do not find any merit in the present petition and the

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same is dismissed.

Before parting with the order, it comes out that the present petition was filed in the year 2009, in which proceedings before the trial Court were stayed. Therefore, it is expected that now the trial Court will dispose of the case expeditiously.

(KULDIP SINGH)
JUDGE

5.1.2015
sjks