

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-14025 of 2014 (O&M)

Prof. Nirmal Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(ii) CRM No.M-17279 of 2014 (O&M)

Kuldeep Singh and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

Date of Decision: March 18, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Sewak, Advocate
for the petitioners

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected cases as the matter in dispute is same in both the cases.

The above-mentioned petitions have been filed by petitioners for quashing of criminal complaint No.197-A of 31.10.2009

titled as 'Malti Batra vs. Dharam Singh and others, under Sections 186, 353, 506 and 120-B IPC and summoning orders dated 22.08.2012 along with all consequential proceedings arising out of it.

Notice of motion was issued in both the cases. Learned State counsel appeared and contested the petitions. However, respondent No.2 earlier appeared in person but later on she absented from the proceedings.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that Dr.Malti Batra got registered FIR No146 dated 08.07.2002 under sections 186, 353, 448, 506, 427, 332, 148 and 149 IPC. The occurrence took place on 06.07.2002. As per the complainant, occurrence took place at about 1.00 P.M., when mob of 150 people came in the gallery and five persons namely Dharam Singh, Retired Punjabi Teacher, Kuldeep Singh, JBT Teacher, Pritam Singh, Science Teacher, Nirmal Singh, Punjabi Lecturer and Sucha Singh, Social Studies Teacher, entered in her office. Sucha Singh caught hold from her left arm, Nirmal Singh from right arm and thrown her out of the room. They damaged the rooms and cut the telephone wires. Sucha Singh opened the record kept in bundles and scattered on ground. Nirmal Singh has also broken the type machines. Due to terror, complainant left Ropar along with her mother. On that day, it was Sunday and she made a telephonic call in Police Station City Ropar. It is also in the FIR that all these persons had done all this with the sole motive to compel her that she may

withdrew the cases, which are pending against those persons in the department as well as in the Courts.

As per the record, the police filed cancellation report in this case after investigation. Learned Magistrate returned the cancellation report with direction to re-investigate the case. Again, after re-investigation, cancellation report was submitted. Then statement of the complainant was recorded, who disagreed with the cancellation report. Then, learned Magistrate treated the cancellation report as private complaint and complainant was directed to lead preliminary evidence and on the basis of preliminary evidence, the Court summoned the accused under Sections 186, 353, 506 IPC read with Section 120-B IPC vide impugned order dated 22.08.2012. It is also in this summoning order that order was passed to treat the cancellation report as private complaint on 31.10.2009.

Admittedly, the occurrence took place on 06.07.2002 and the cancellation report is taken as private complaint vide order dated 31.10.2009 i.e. the Court took the cognizance after more than seven years of the occurrence. The accused were summoned under Sections 186, 353, 506 IPC read with Section 120-B IPC, but none of the offence is punishable for more than three years and as per Section 468 Cr.P.C., the Court cannot take cognizance after the period of three years. Section 468 Cr.P.C. provides as under:-

“468. Bar to taking cognizance after lapse of the period of limitation.

- (1) Except as otherwise provided elsewhere in this Code, no court, shall take cognizance of an offence of the category specified in sub-section (2), after the

- expiry of the period of limitation.
- (2) The period of limitation shall be-
 - (a) Six months, if the offence is punishable with fine only;
 - (b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.”

Admittedly, the Court has taken the cognizance of the offences after more than seven years on the cancellation report by treating it as a private complaint beyond the period of limitation. On this ground alone, the proceedings as well as the summoning order, are liable to be quashed.

Secondly, I find that learned Chief Judicial Magistrate, Rupnagar, while passing the impugned order dated 22.08.2012, nowhere discussed the cancellation report in the order, as to how it was wrong and why he differed from the cancellation report. Even cancellation report was not rejected vide specific order. No protest petition has been filed by private respondent. Even the preliminary evidence has not been discussed primarily as to what witnesses have deposed.

The Court only on the ground that unrebutted evidence has been brought on the record, find out prima facie case to summon the accused. When preliminary evidence is recorded, it is to remain unrebutted and unchallenged. The accused will have the right to rebut only after the summoning. The accused is not supposed to cross-examine the witnesses or rebut the evidence by leading evidence before summoning stage. Therefore, the order passed by

learned CJM, Rupnagar, while summoning the accused, is also not as per law.

In view of the above discussion, I find that proceedings initiated by the Court and the summoning order passed by the Court is nothing but abuse of the process of the law.

Therefore, finding merit in both the petitions, the same are allowed. The criminal complaint No.197-A, summoning order dated 22.08.2012 and subsequent proceedings arising therefrom are hereby quashed.

March 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE