

287 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-33026 of 2015 (O&M)
DECIDED ON: SEPTEMBER 29, 2016

BALWANT SINGH @ NANHA RAM

.....PETITIONER

VERSUS

UT OF CHANDIGARH & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE JUSTICE JASPAL SINGH

Present: Mr. Amninder Preet, Advocate
for the petitioner.

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate
for the respondent-UT Chandigarh.

Mr. Sanjiv Pandit, Advocate
for respondent No.2.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought quashing of FIR No. 312, dated 07.08.2015, under Section 353 IPC registered at Police Station Sector 26, Chandigarh (Annexure P-1) as well as all the subsequent proceedings arising therefrom.

Instant case has been registered on the basis of complaint lodged by Chairman, Market Committee, Chandigarh, who has unfolded that on August 06, 2015, he alongwith Sukhwinder Singh, Vice Chairman, Sh. Kishori Lal,

Assistant Secretary and Security staff, was on general Inspection to see the encroachment position in the Mandi. During inspection, it was found that one Sh. Nanha Ram had installed dry fruit phari over a large area and had blocked the road by displaying his goods. When he was asked to vacate portion of road encroached upon by him, for general public, he started misbehaving with the staff by using filthy language. He also created nuisance in the Mandi causing inconvenience to the general public. He also abused Mr. Sukhwinder Singh, Vice Chairman, and started manhandling him.

Heard learned counsel for the parties.

Petitioner was earning his livelihood by plying a rehri in Grain Market, Sector 26, Chandigarh, since long, but was removed by the Market Committee. He filed a writ petition bearing CWP No. 4617 of 1998 which was dismissed by this Court vide order dated April 22, 2002. Aggrieved by the aforesaid judgment, he preferred SLP before the Hon'ble Supreme Court, which was disposed of vide order/judgment dated April 08, 2004 with a direction to the Market Committee to consider case(s) of Rehriwalas/phariwalas, including the petitioner, sympathetically for grant of licence either in Grain Market, Sector 26, Chandigarh or in any other market. Subsequently, in compliance of the direction issued by Hon'ble Apex Court vide order dated February 14, 2005, in a review application, petitioner moved an application to the Chandigarh Administration for grant of licence but to no effect. Ultimately, petitioner submitted a representation to this Court which was treated as CWP No. 21584 of 2010 and as an interim measure, vide order dated August 03, 2012 (Annexure P-2), the Division Bench of this Court directed the Market Committee, Chandigarh to allow the petitioner to install a rehri in the Market Committee area of Sector 26, Chandigarh, till such time this Court decides as to who is the

competent authority to grant rehri license. Market Committee, Chandigarh approached the Hon'ble Supreme Court against order/judgment dated August 03, 2012 which was dismissed vide judgment dated November 05, 2012 (Annexure P-3) while observing as under:-

“Ms. Kamini Jaiswal, learned counsel for the petitioners vehemently argued that the impugned order is liable to be set aside because the direction given by the High Court is contrary to the earlier orders passed for evicting unauthorized vendors from the market, but we have not felt impressed. In its very nature the impugned order is an interlocutory one and the High Court is sized with the issue of the entitlement of the respondents to operate Rehadi. When the matter is taken up for final hearing, the petitioners can contest the claim of respondent No.1 on all legally permissible grounds. Therefore, we do not find any justification to interfere with the impugned order.

The special leave petition is accordingly dismissed.”

Subsequently, the Division Bench of this Court, on January 11, 2013 (Annexure P-4) passed the following order in the aforesaid writ petition (CWP No.21584 of 2010):-

“It is stated by Ms. Divya Sharma, his learned counsel that the petitioner though is allowed to install a rehri but even after the dismissal of their SLP on 05.11.2012 preferred against the order dated 03.08.2012, factually the petitioner is not being permitted to carry on his business as some goons probably hired at the instance of the authorities of Market Committee are constantly threatening and brow-beating him. If that is so, we direct the Senior Superintendent of Police, Chandigarh and the SHO, Sector 26, Chandigarh to take necessary steps to ensure that no one is allowed to take law in his hands and obstruct the installation and/carrying out *rehri* business by the petitioner in a lawful manner. If any anti-social element is found black-mailing or brow-beating the petitioner, appropriate action against such unlawful activity be promptly taken and a compliance report be placed on record on the next date of hearing.

List on 22.02.2013.

Let a dasti copy of this order be handed over to Mr. Sanjay Kaushal, Sr. Standing Counsel, UT Chandigarh for information and necessary

compliance.”

Dehorse the aforesaid order, on August 06, 2015, officers/officials of the Market Committee restrained the petitioner from installing his rehri and took away the rehri to the office of Market Committee, inspite of showing order dated August 03, 2012. Even the petitioner was beaten up and his shirt was torn, which fact has been depicted in the photographs (Annexure P-5, Colly.) and aforesaid FIR was lodged against him.

Moreover, the aforesaid writ petition (CWP No.21584 of 2010) was disposed of vide judgment dated August 25, 2015 with a direction to Union Territory, Chandigarh to make Fruit and Vegetable Market, New Grain Market, Sector 39, Chandigarh operation by 31.3.2016 and to consider petitioner's claim for grant of rehri licence to him. It was further ordered that till request of petitioner for grant of a rehri licence is disposed of, arrangement referred to in order dated August 03, 2012, shall continue and Market Committee would not disturb installation of a rehri by the petitioner in Market Committee area of Sector 26, Chandigarh. Further, the grievance of the petitioner was redressed on after filing a contempt petition viz. COCP No.2070 of 2015 which was disposed of vide judgment dated November 02, 2015 on the statement of petitioner to the effect that his grievance has been redressed.

In the facts and circumstances, referred to above, it is evident that FIR No.312, dated 07.08.2015, under Section 353 IPC registered at Police Station Sector 26, Chandigarh, is nothing but an abuse of process of law and outcome of the ill-will and grudge of the Chairman and Vice Chairman etc of the Market Committee, Grain Market, Sector 26, Chandigarh. It also emerges from the facts situation that the Chairman as well as other officers/officials have flouted/violated the various orders passed by this Court as well as by the

Hon'ble Apex Court. Even the criminal proceedings initiated through FIR in question are manifestly attended with malafide and are maliciously instituted with an ulterior motive for wrecking vengeance on the petitioner (accused) due to filing of writ petition and other complaints by him (petitioner) against the authorities of the Market Committee.

In the light of what has been discussed above, this Court is of the considered view that FIR lodged against the petitioner is not sustainable in the eyes of law and deserves to be quashed. Accordingly, the petition is allowed with costs to the tune of ₹ 25,000/- which shall be recoverable from complainant – respondent No.2, Rambir Bhatti, Chairman, Market Committee, Grain Market, Sector 26, Chandigarh, payable to the petitioner. Consequently, FIR No. 312, dated 07.08.2015, under Section 353 IPC registered at Police Station Sector 26, Chandigarh (Annexure P-1) as well as all the subsequent proceedings arising therefrom, are hereby quashed.

SEPTEMBER 29, 2016

**(JASPAL SINGH)
JUDGE**

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*