

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-36361 of 2016 (O&M)

Date of decision : 07.10.2016

Harish Jain

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gulzar Mohd., Advocate
for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.21 dated 17.02.2016, registered under Section 3(1)(iv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') at Police Station Sadar Phagwara, Distt. Kapurthala, and all consequential proceedings arising therefrom.

A perusal of the FIR Annexure P-9 shows that there are serious allegations levelled against the petitioner who abused and humiliated the complainant in the name of his caste, refused to be served by him and then threw Jalebis at him. As per the FIR, this act was committed in view of general public outside Haveli restaurant.

The learned counsel for the petitioner states that the present FIR has been registered after three months at the instance of the brother of the petitioner as there was an ongoing dispute over the title of Haveli restaurant between him and the petitioner. The present FIR is nothing but a tool to ruin the business of the petitioner and to malign his reputation. He further states that the petitioner had neither met the complainant nor uttered any words against him.

Heard.

The allegation against the petitioner is that on 05.11.2015, when the complainant served Jalebis to him and his friends, they commented that they would not eat Jalebis served through a sweeper (choora). It is evident that the petitioner has prima facie, committed an offence punishable under the SC/ST Act. In **State of Haryana Vs. Ch. Bhajan Lal, 1991(1) RCR (Cri.) 383**, it was observed as under:-

"10. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Applying the aforementioned principles, it cannot be said that the allegations in the present FIR do not disclose the commission of an

offence. Rather the allegations in the FIR do prima facie constitute a cognizable offence.

Consequently, the present petition is dismissed.

07.10.2016

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No