

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

CWP No. 12601 of 2015 (O&M)

Date of decision: 20.9.2016

Ranjit Singh Bath and another

.... Petitioner

VS

Union of India and others

.... Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Darshan Singh**

Present: Mr. S. S. Swaich, Mr. Siddharth Gupta and
Mr. Gurminder Singh Salana, Advocates, for the petitioners.
Mr. Manish Dadwal, Advocate, for respondent no. 1.
Mr. Rajiv Sharma, Advocate, for respondent nos. 2 to 8.
Mr. Karanvir Singh Khehar, Advocate, for respondent no. 12.

Rajesh Bindal, J.

The petitioners have filed the present petition seeking quashing of the order dated 8.4.2015 (Annexure P-11) passed by the Police Complaints Authority, U. T. Chandigarh (for short, 'the Authority).

Learned counsel for the petitioners submitted that in view of the judgment of Hon'ble the Supreme Court in Prakash Singh and others vs Union of India and others 2006 (4) R. C. R. (Criminal) 439, the Police Authorities were constituted in all the districts and at the State level with a view to go into the allegations of misconduct against the police personnel. In pursuance to the direction issued by Hon'ble the Supreme Court, State Level Police Complaints Authority was re-constituted in Chandigarh vide notification dated 8.11.2013. The powers and functions are defined, which

are in line with the directions issued by Hon'ble the Supreme Court. Still in a complaint filed by respondent no. 12 against the petitioners, which was initially found to be a dispute of civil nature, the Authority vide order dated 8.4.2015, directed the complaint of respondent no. 12 to be re-investigated. The officer against whom the complaint was filed was exonerated. It was submitted that as the directions issued by the Authority are totally without jurisdiction, the order deserves to be set aside to that extent.

Learned counsel appearing for Union Territory, Chandigarh, submitted that the order passed by the authority is well reasoned. There is no direction issued for registration of FIR and the matter was directed to be re-enquired into to see the truth.

Learned counsel appearing for Union of India submitted that only jurisdiction vested with the Authority is to enquire into the complaints filed against the police officials/ officers and the Authority could not examine the merit of the complaint filed by a complainant against some accused person.

Learned counsel for respondent no. 12 submitted that respondent no. 12 has been cheated. The matter was not properly investigated by the Investigating Officer. The material produced by him was not considered especially the CD. If the matter is investigated properly, it is a clear case where FIR is required to be registered.

Heard learned counsel for the parties and perused the paper book.

In terms of the order passed on 29.6.2015, the report of the enquiry conducted by Deputy Inspector General of Police, U. T. Chandigarh, dated 17.9.2015, was produced in Court in a sealed cover. The

same was opened and perused. A copy thereof has been retained on file and the original has been returned to counsel for U.T. Chandigarh. After investigation, the Deputy Inspector General of Police has recommended for registration of FIR under Sections 406, 420, 120-B IPC against the petitioners. Be that as it may, the question as raised by learned counsel for the petitioners is as to whether the Authority had jurisdiction to direct re-investigation of the complaint filed by respondent no. 12 against the petitioners or the officials before the Authority against alleged misconduct by him.

The Police Complaints Authorities were constituted in different districts and at the State level in terms of the directions issued by Hon'ble the Supreme Court in Prakash Singh's case (supra). The relevant para thereof is extracted below:-

“Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members

depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.”

In compliance to the directions of Hon'ble the Supreme Court, vide notification dated 8.11.2013, the Police Complaints Authority was constituted in U. T. Chandigarh. The powers and the functions have been well defined in the notification. Clauses 3 and 4 of the notification are extracted below:-

“3. Powers and functions :

(a) The functions of the Police Complaints Authority are as under:-

- (i) This Authority shall inquire into allegations of "serious misconduct" against police personnel, as detailed below, either suo moto or on a complaint received from any of the following:
 - (a) a victim or any person on his/her behalf;
 - (b) the National or State Human Rights Commission;
 - (c) the police; or
 - (d) any other source.

Explanation: "Serious misconduct" for the purpose of this clause shall mean any act or omission of a police officer that leads to or amounts to:

- (a) death in police custody ;
- (b) grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;
- (c) rape or attempt to commit rape;
- (d) arrest or detention without due process of law;
- (e) extortion;
- (f) land/house grabbing; or
- (g) any incident involving serious abuse of authority;

Provided that the Authority shall inquire into complaint of such arrest or detention, only if it is satisfied prima facie about the veracity of the complaint.

- (ii) The Authority may also inquire into any other case referred to it by the Administrator, Union Territory of Chandigarh or Central Government.
- (b) The powers of the Police Complaints Authority are as under:-

- (i) The Authority may require any person or authority to furnish information on such points or matter as in the opinion of the Authority may be useful for or relevant to the subject matter of enquiry.
- (ii) The Authority before finalizing its opinion, shall give the police officer, heading the police force in the Union Territory of Chandigarh an opportunity to

present the department's view and additional facts, if any, not already in the notice of the Authority and in such cases, the Authority may review its findings upon receipt of additional information from the Police Officer heading the police force in the Union Territory of Chandigarh that may have a material bearing on the case.

(iii) In the cases directly inquired by the Authority, it may, upon completion of the inquiry, communicate its findings to the police officer heading the police force in the Union Territory, Chandigarh with a direction to-

(a) register a First Information Report; and/or

(b) initiate departmental action based on such findings,

duly forwarding the evidence collected by it to the police.

(iv) The recommendation of the Police Complaints Authority shall ordinarily be binding, unless for the reason to be recorded in writing, the UT Administration decides to disagree with the findings of the Authority.

4. The Police Complaints Authority will submit its findings in a case within a period of 60 days from the date of receipt of the complaint and in case of inability to meet the deadline, the Authority may submit a report showing reasons thereof to the Administrator, Union Territory of Chandigarh.”

A perusal of the judgment of Hon'ble the Supreme Court in Prakash Singh's case (supra) shows that the State Level Complaints Authority was to be constituted to take cognizance of allegations of 'serious misconduct' against the police personnel, which would include death in police custody, grievous hurt, rape or attempt to commit rape, arrest or

detention without due process of law, extortion, land/ house grabbing or any incident involving serious abuse of authority. No other jurisdiction was vested. Even in the notification dated 8.11.2013 issued by the Chandigarh Administration, constituting the Police Complaints Authority, the powers and functions are well defined. The Authority is to enquire into the allegations of 'serious misconduct' against the police personnel as detailed in the notification either suo-moto or on a complaint. The Authority has also been vested with powers to enquire into any other case referred to it by the Administrator, Union Territory of Chandigarh or Central Government. Nowhere in the notification constituting the Authority, any power has been given to the Authority to go into the merits of the complaint filed by any person against another person.

In the case in hand, on account of some dispute arising between respondent no. 12 and the petitioners with reference to an agreement to sell signed in May, 2011, a complaint was filed by respondent no. 12 against the petitioners to the police on 20.1.2014. With a grievance that the police had not taken any action, respondent no. 12 filed CRM No. M-27434 of 2014 Baljinder Singh vs U. T. Chandigarh and others in this Court seeking a direction to the police authorities to decide his representation. The aforesaid petition was disposed of on 13.8.2014 with a direction to the Senior Superintendent of Police, Chandigarh, for deciding the representation by passing a speaking order. Thereafter, Senior Superintendent of Police vide order dated 11.11.2014 found that the dispute was of a civil nature and no cognizable offence was made out. Prior to that even the Investigating Officer had investigated the matter and found that no cognizable offence was made out, hence, the complaint was filed which had been approved by the Senior

Superintendent of Police. Thereafter, respondent no. 12 filed a complaint before the Authority on 17.11.2014 praying for taking suitable action against the erring officers alleging that the matter was not properly investigated. Further prayer was made for registration of FIR. The authority vide its order dated 8.4.2015 did not find any merit in the complaint filed by respondent no. 12 against the police officials/ officers, however, it went into the merits of the dispute between the parties namely, the petitioners and respondent no. 12 and directed that there is further scope of investigation of complaint and it would be proper if the matter is enquired into.

If the judgment of Hon'ble the Supreme Court in Prakash Singh's case (supra) is read along with notification dated 8.11.2013 issued by Chandigarh Administration constituting the Police Complaints Authority, it had no jurisdiction to go into the merits of the dispute between the parties. The jurisdiction is limited to the extent of enquiring the allegations of serious misconduct against the police personnel only. As the authority had travelled beyond its jurisdiction, the direction to that extent are set aside and consequential proceedings are also set aside.

The petition is disposed of accordingly.

(Rajesh Bindal)
Judge

20.9.2016
vs

(Darshan Singh)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No