

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

Crl. Misc. No. M-11786 of 2015

Date of decision: 10.01.2017

Mahabir and others

...Petitioners

versus

Bheem Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.C. Shahpuri, Advocate,
for the petitioners.

Mr. S.K. Kaushik, Advocate,
for respondent No.1.

Mr. D.R. Singla, DAG, Haryana.

RITU BAHRI , J.

Petitioners are seeking quashing of Complaint Case No.304/1 dated 19.10.2016, titled as, Bheem Singh Vs. Mahabir and others, under Sections 147/148/323/354/436/452/506/509 read with Section 34 IPC and Sections 3 (i) (iii) (x) (xi) (xv) (2) (iv) & (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') (Annexure P-1); summoning order dated 09.09.2011 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Gurgaon and the order dated 28.11.2014 (Annexure P-7) passed by the Additional Sessions Judge, Gurgaon, dismissing the revision petition filed by the petitioners against the summoning order dated 09.09.2011.

Bheem Singh-respondent No.1 (complainant) filed a complaint (Annexure P-1) with the allegations the he belonged to the Scheduled Caste community and about 50 years back, his forefathers were given some land in

village Uncha Majra, where they had constructed a *chhappar* and since then they had been residing there. The accused persons were asking them to vacate the said land. On 10.05.2006, all the accused-petitioners collectively came to the mother of complainant and asked her to leave the said place or to get ready for consequences. Thereafter, they abused and gave beatings to her. They also put her house on fire. Thereafter, the complainant reached at the spot and saved his mother. On 25.06.2006, they again put the house of complainant on fire along with household articles i.e. almirah, chairs, stools, clothes etc., amounting to Rs.15,000/-.

In his preliminary evidence, complainant-Bheem Singh himself appeared in the witness box as PW-1 and examined Bhateri Devi as PW-2. Copies of their statements have been annexed as Annexures P-2 and P-3. On conclusion of the preliminary evidence, the trial Court, vide order dated 09.09.2011 (Annexure P-4) summoned all the accused-petitioners to face trial.

The petitioners are seeking quashing of the complaint (Annexure P-1) on the ground that with regard to the same incident dated 25.06.2006, an FIR No.114 dated 02.07.2006, under Sections 323, 506 read with Section 34 IPC had been registered at Police Station, Pataudi. In that case, after facing trial, all the accused-petitioners have been acquitted of the charges framed against them vide judgment dated 07.10.2013 (Annexure P-8). While acquitting the accused-petitioners, the trial Court had recorded a finding that the probability of the occurrence and the factum of injuries could not be proved by the prosecution, which had drawn adverse inference against the prosecution. Learned counsel further argued that with regard to the same incident i.e. 25.06.2006, the present complaint (Annexure P-1) has

been filed by the complainant by adding new Sections under the SC and ST Act. Therefore, it would amount to an abuse of the process of law, as again the petitioners have to face trial with regard to the same occurrence, in which they had been acquitted earlier. He further argued that while dismissing revision against the summoning order dated 09.09.2011, the revisional Court has observed that in FIR No. 114 dated 02.07.2006, relevant Sections under the SC and ST Act had been deleted and the complainant has an independent right to file a private complaint by adding those sections. Learned Counsel finally argued that in view of the judgment of acquittal, proceedings initiated pursuant to the present complaint (Annexure P-1) should be quashed by this Court while exercising powers under Section 482 Cr.P.C. Reliance has been placed on the decision given by Hon'ble the Supreme Court in **Ravinder Singh Vs. Sukhbir Singh and others**, 2013 (1) RCR (Criminal) 1020.

On the other hand, learned counsel for respondent No.1 has argued that after availing the remedy of revision under Section 397 Cr.P.C. against the summoning order dated 09.09.2011 (Annexure P-4), the petitioners cannot seek quashing of the complaint by invoking the provisions of Section 482 Cr.P.C. He has referred to the judgments passed by this Court in **Gulshan Kumar and others Vs. Krishan Lal Sharma**, 2007 (1) Law Herald 107 and **Rishi LalGoel Vs. Nand Kishore Gupta and others**, 2009 (4) Cri.CC 93.

After hearing learned counsel for the parties, present petition deserves to be allowed. A perusal of the order dated 28.11.2014 (Annexure P-7), whereby revision filed by the petitioners against the summoning order dated 09.09.2011 (Annexure P-4) has been dismissed, shows that initially,

an FIR No.114 dated 02.07.2016, under Sections 323, 506 read with Section 34 IPC had been got registered at Police Station, Pataudi and during investigation, the Deputy Superintendent of Police had found that Sections 3/33/89 of the SC and ST Act and Sections 147, 148, 447, 435 IPC were not proved. Accordingly, the said sections were deleted on 18.07.2006. This fact is not in dispute between the parties. In that case, the petitioners had faced trial and vide judgment dated 07.10.2013 (Annexure P-8), they were acquitted of the charges framed against them. The aforesaid FIR was registered with regard to the incident, which took place on 25.06.2006, at about 03.00 A.M., when complainant was present at the pit along with his daughter-in-law. In the meantime, Anil, Bulla and Mangtu came there and started abusing them. Thereafter, they inflicted injuries on these persons. Anil gave *danda* blow to the complainant, which hit on his right arm as well as right knee. Sunil @ Bhulla gave *danda* blow, which hit on her hips and right hand. Anil gave *danda* blow to the daughter-in-law of the complainant, which hit on her right leg. In the trial, Dr. Ramesh Kumar (PW-2) had stated that Kanta Devi, daughter-in-law of complainant, did not sustain any grievous injury. Moreover, eye witness Subhash and injured-Kanta Devi did not step into the witness box to prove the alleged occurrence or to corroborate the prosecution version. Apart from that, there were material contradictions in the statement made by the witnesses. Satbir (PW-1) did not support the prosecution version and had been declared hostile. Even the injuries suffered by the complainant and Kanta Devi were not proved. Ultimately, the accused (petitioners) were acquitted by giving them the benefit of doubt and the judgment of acquittal has attained finality.

The main allegation in the aforesaid FIR was with regard to

setting the house of complainant on fire and causing injuries with *dandas*, which were attributed to the petitioners. The prosecution could not prove these allegations before the trial Court. In this backdrop, continuation of the criminal proceedings in the shape of complaint would amount to an abuse of the process of Court.

At this stage, reference can be made to the judgment passed by Hon'ble the Supreme Court in **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and others**, 2015 (1) RCR (Criminal) 570. This was a case under the Prevention of Corruption Act, 1988, where allegations of demand of bribe were supported by conversation recorded by voice recorder. As per report of Forensic Science Laboratory, the conversation was not in audible condition and hence, could not be considered for spectrographic analysis. In view of the said fact, the Magistrate had accepted the closure report. In para 17 of the judgment, Hon'ble the Supreme Court observed as under:-

“17. The Magistrate, having seen the records and having heard th parties, has come to the conclusion that no offence is made out against the appellant under the provisions of the PC Act so as to prosecute him. Even according to the High Court, “the crux of the matter is the conversation between the complainant and the accused No.1 of 22.11.2010.” That conversation is inaudible and the same is not to be taken in evidence. Therefore, once the 'crux' goes, the superstructure also falls, lacking in legs. Hence, prosecution becomes a futile exercise as the materials available do not show that an offence is made out as against the appellant. This part, unfortunately, the High Court missed. “summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.”. (***Pepsi Foods Limited and another v. Special Judicial Magistrate and others, 1997 (4) RCR (Criminal) 761: (1998) 5 SCC 749***, Paragraph-28). The process of the criminal court shall not be permitted to be used as a weapon of harassment. “Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to

continue against such a person” (See *State of Karnataka v. L. Muniswamy and others, (1977) 2 SCC 699*. Unmerited and underserved prosecution is an infringement of the guarantee under Article 21 of the Constitution of India. Article 21 assures every person right to life and personal liberty. The word personal liberty is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme law, the Constitution. (*State of Bihar v. P.P. Sharma, IAS and another, 1991 (2) SCT 397 : 1992 Supp (1) SCC 222*, Paragraph-60.”

In the present case, the allegations are that the complainant belongs to Scheduled Caste community and in the presence of Subhash & Kanta Devi, the petitioners had abused them being member of the Scheduled Caste community. While leading preliminary evidence, Subhash and Kanta Devi appeared as CW-3 and CW-4 respectively. However, both these witnesses did not appear before the trial Court in the proceedings initiated on basis of FIR, in which the petitioners had been acquitted vide judgment dated 07.10.2013 (Annexure P-8). Their oral deposition would not be sufficient to summon the accused-petitioners. Moreover, mere utterance of offending words would not constitute an offence under the SC and ST Act. As per Section 3 (1) (x) of the SC and ST Act, there should be an intention to insult or intimidate a member of the Scheduled Caste in public view. For reference, Section 3 (1) (x) is reproduced as under:-

“Section 3(1)(x)- intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

In the present case, two of the witnesses, who had appeared at the time of summoning the petitioners, had not supported the prosecution version in the previous trial. Moreover, their deposition itself would not constitute an offence under Section 3 of the SC and ST Act. In similar

circumstances, while examining Section 3 of the SC and ST Act, this Court in **Dr. Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh and another**, 2012 (1) RCR (Criminal) 931 observed as under:-

“16. It is not a matter of dispute that the Scheduled Caste & Scheduled Tribe Act is a special enactment/statute and its provisions have to be strictly construed in the same manner as mandate by the Act and not otherwise. The element of intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in public view, should clearly be borne out from the FIR. Merely, the alleged utterance by the petitioners in the verandah of the house (not within public view) appears to be the result of fit of anger and emotion and not with the intention to insult the complainant party as a member of Scheduled Caste and Scheduled Tribe. It is a matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act. That means, merely uttering such words in the absence of intention/mens-rea to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste & scheduled caste and if the imputations are grossly vague and perfunctory, would not, ipso facto, constitute acts of commission of offence, which are capable of cognizance under the Act. Moreover, during the course of investigation, the police has recorded the statements of Kamlesh wife of Sohan Lal and Constable Avtar Singh. They did not support the allegations contained in the FIR, wherein they have stated that they have only heard the verbal abuses.”

In **R.Sunder Vs. State NCT of Delhi and another**, 2016 (3)

RCR (Criminal) 87, the Delhi High Court while examining the provisions of Section 203 Cr.P.C., observed as under:

“32. The law is well settled that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning accused must reflect that the Court has applied its mind to the facts of the case and the law applicable. It has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate has to

carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses, elicit answers to find out truthfulness of the allegations.

The Magistrate has to carefully examine both oral and documentary evidence before summoning an accused to face a criminal trial. A person cannot be summoned to face trial as a matter of course. In the facts of the present case, two material witnesses did not support the prosecution version in the earlier trial with regard to the same incident, in which the petitioners had been acquitted vide judgment dated 07.10.2013 (Annexure P-8). The said judgment has attained finality. In these circumstances, continuation of the present proceedings on the basis of complaint (Annexure P-1) by adding few sections under the SC and ST Act, would amount to an abuse of the process of law and the same are liable to be quashed.

Resultantly, Complaint No.304/1 dated 19.10.2016, titled as **Bheem Singh Vs. Mahabir and others**, (Annexure P-1) and summoning order dated 09.09.2011 (Annexure P-4) are quashed with all consequential proceedings arising therefrom qua the present petitioners.

Allowed accordingly.

10.01.2017
ajp

(RITU BAHRI)
JUDGE

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