

In the High Court of Punjab and Haryana at Chandigarh

1. Criminal Misc. No. M-15789 of 2016
Date of Decision: 22.9.2017

Daljit Singh SandhuPetitioner

Versus

Mohinder Singh and anotherRespondents

2. Criminal Misc. No. M-18219 of 2016

Sukhdev Singh and othersPetitioners

Versus

Mohinder Singh and anotherRespondents

3. Criminal Misc. No. M-18242 of 2016

Labh SinghPetitioner

Versus

Mohinder Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P.S.Deol, Senior Advocate with
Mr. Himmat Deol, Advocate and
Mr. Neeraj Sharma, Advocate
for the petitioners.
(in CRM Nos. M-18219-2016 & M-18242-2016)

Mr. Sanjeev Sharma, Advocate
for the petitioner.
(in CRM-M-15789-2016).

Mr. Arun Gosain, Advocate
for respondent No. 1.

Ms. Rajni Gupta, Sr. DAG, Punjab.

AMIT RAWAL, J. (ORAL)

1. These are three petitions preferred by the accused-petitioners in a private complaint No. 69 dated 4.3.2013 Sukhdev Singh, Jagjit Singh and Mohinderpal Singh (in CRM-M-18219-2016) who were arrayed as accused No. 2 to 4 respectively selected as Drivers and Jatinder Pal Singh, who was selected as Clerk in the year 1999 was arrayed as accused No. 9. Daljeet Singh Sandhu (in CRM-M-15789-2016) posted as Executive Officer, Municipal Council, Dera Bassi, arrayed as accused No. 11. Labh Singh (in CRM-M-18242-2016) who was deputed to check the documents in respect of process of selection of Clerks/Drivers arrayed as accused No. 1. All these accused were summoned in the aforementioned complaint for commission of alleged offence under Section 419, 420, 465, 467, 468, 471, 120-B IPC.

2. The facts are being taken from CRM-M-15789-2016. The facts leading to file the quashing of the complaint (Annexure P-2) and the summoning order dated 13.11.2015 (Annexure P-5) are, that in pursuance to the advertisement, dated 15.10.1998, for filling up the post of Clerks and Drivers in the Municipal Council, Dera Bassi 20 candidates including complainant Mohinder Singh had applied, for the post of Clerk. In the aforementioned selection process, the complainant remained unsuccessful. For seeking redressal of the grievance, the complainant preferred CWP No. 8404 of 1999 attached as R-1/1 claiming following relief:-

“Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari quashing the selection of respondent No. 4 and 5 for the post of Clerk; and a writ in the nature of Mandamus be issued

directing the respondent to appoint the petitioner to the post of Clerk; or any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be issued.”

3. The aforementioned writ petition was contested by the Municipal Council, Dera Bassi by filing reply.

4. This Court vide order dated 9.8.2000 (Annexure P-1) dismissed the writ petition and the said order reads as under:-

“Primary challenge in this writ petition is to the selection of respondents No. 4 and 5 for the posts of a Clerk in the Municipal Council, Dera Bassi. The challenge is on the ground that none of respondents No. 4 and 5 had passed the type test and further they were relations of the Municipal Councilors. The allegation goes further that one of the Municipal Councilors was also a member of the Selection Committee. It has further been averred that the petitioner is better qualified academically as compared to respondents No. 4 & 5 inasmuch as they are Matriculate in the IInd Division whereas he has passed it in the Ist Division and has also passed the Punjabi Type Certificate course. It is not the case that the petitioner was not considered for the post in question. It is not disputed that respondent no. 5 is not one of the persons selected who are in the merit list but has been kept on the waiting list and no appointment has been given to him. In para 2 of the preliminary submissions made on behalf of respondent no. 3 (Municipal Council, Dera Bassi), it has been averred as under:-

“That the petitioner has tried to mislead this Hon'ble Court by making false and wrong averments in para 11 of the writ petition wherein he has mentioned that Smt. Saroj Mohindru, Municipal councilor, real sister of respondent no. 4 was the Member of the Selection Committee which

selected respondent no. 4 even though respondent no. 4 was not eligible and had not appeared for the type test. In fact the selected candidate Shri Rajesh Kumar is the brother of Saroj Mohindru but Smt. Saroj Mohindru was not the member of the Selection Committee and she did not take part in any manner in the selection. The Selection Committee was constituted vide Resolution No. 9 dated 30.10.1998 by the Municipal Council, Dera Bassi. The Selection constituted of the President, one member Shri Sardari Lal and the then Executive Officer Shri D.S.Sandhu as the Secretary of the Selection Committee. Smt. Saroj never participated in the selection. Moreover, before appointing Rajesh Kumar son of Shri Dev Raj, the approval as required under Rule 8 of the Punjab Municipal General Rules, 1979 was taken from the Regional Deputy Director, Local Government. It is incorrect to state that Rajesh Kumar never participated in the type test or failed in the type test. The committee selected Rajesh Kumar on the basis of his merit. The petitioner competed and failed and is making all kinds of allegations that too without any substance. Therefore, the averments made in para 11 of the writ petition are incorrect and hence as the notice of motion was issued on the basis of the averments made by the petitioner in para 11, the writ petition is liable to be dismissed on this court ground alone.

In view of what has been stated on behalf of the Municipal Council, we are of the view that no case for interference in the selection of the respondent has been made out. Dismissed.”

5. The aforementioned order thereafter remained unchallenged.

The complainant after remaining silent for almost 14 years, submitted an application under Section 156(3) of the Code of Criminal Procedure, before the Judicial Magistrate Ist Class, Dera Bassi by making allegations against

the accused for commission of aforementioned offences. Vide order dated 30.4.2015 (Annexure P-3), the Judicial Magistrate Ist Class, Dera Bassi in view of the provisions of Section 202 Cr.P.C. sought the report from the SHO, Police Station Dera Bassi. The said order reads as under:-

“Present: Complainant with counsel Sh. Gaurav Agnihotri.

Having heard the counsel for the complainant on the preliminary evidence led by the complainant, I am satisfied that this is a fit case, in which inquiry under section 202 Cr.P.C. should be got conducted by this court through the process of police satisfaction has been drawn on account of the fact that a selection process has been challenged by the complainant on the allegations that it is fraught with fraud and cheating whereby the persons, who have been selected to the police posts, do not have the required minimum qualification. The record is voluminous, out of which, the complainant has only produced the said part of the record, which is necessary for lending credence to his allegations. However, a detailed enquiry needs to be conducted by sitting of various candidates, who were appointed and had participated in the selection to various posts, which are under challenge. As such, the S.H.O. of Police Station Dera Bassi is hereby directed to conduct inquiry on the following points and submit his report”-

- 1. Look into the entire record of selection process.*
- 2. Look into the educational record produced by various candidates for each of the posts, which are under challenge.*
- 3. Record statements of all the persons whom he may considered necessary.*
- 4. Apart from the above, the SHO may also look into all other necessary angles and adopt such directions he deem fit to elucidate the truth of the matter.*

The SHO produced to conduct the detailed enquiry and submit

the report as expedition as possible and preferably within a period of 45 days from today. Let the file be put up on 15.06.2015 for awaiting report.

Sd/-

*Pronounced (J.S.Mehndiratta)
Judicial Magistrate Ist Class
Dera Bassi."*

6. The aforementioned matter was inquired into by the police. The SHO, Police Station Dera Bassi submitted his conclusion report dated 10.8.2015 stating therein, that the complainant was in the habit of making perpetual complaints and the entire matter had already been put to an end as per the decision rendered in CWP No. 8404 of 1999. The operative part of the report reads as under:-

"CONCLUSION REPORT:

It has been found from the inquiry conducted by me upto and from the statements of the witnesses and documents produced by the witnesses that petitioner Mohinder Singh son of Raghbir Singh had also applied for the job in the year 1999 after seeing the advertisement given by the Municipal Council, Derabassi, at that time the then candidates whose names have been given by the petitioner in his petition had also applied. So above said all the persons in which Labh Singh son of Sh. Sadhu Singh Clerk Municipal Council Dera Bassi, Sukhdev Singh son of Sh. Sadhu Singh Driver, Municipal Council Dera Bassi, Jagjit Singh son of Sh. Surmukh Singh, Driver, Municipal Council Dera Bassi, Mohinderpal Singh son of Babu Ram @ Babu Lal, Driver, Municipal Council Dera Bassi, Mohanpal Singh, Clerk, Municipal Council Dera Bassi, Isher Singh, leading fireman Municipal Council Dera Bassi, Rajesh Kumar son of Sh. Dev Raj, Clerk Municipal Council Dera Bassi, Saroj Mahendru, Ex. MC Municipal Council, Dera Bassi, Jatinder Pal Singh son of Sh. Swaran Singh, Clerk

Municipal Council Dera Bassi, Amarjit Singh, Senior Clerk (retired) resident of Ramgarh, Dera Bassi and Daljit Singh Sandhu, Law Officer, Director Local Bodies Punjab, Chandigarh were appointed on the basis of merit by the Municipal Council, Derabassi. Petitioner Mohinder Singh had applied for the appointment as Clerk and not as Driver. As per the merit prepared by that committee in that the name of the petitioner was below Rajesh Kumar due to which he could not be appointed. Regarding this recruitment petitioner had filed CWP No. 8404 of 1999 Vs. State before the Hon'ble High Court, the judgment of which was passed on 08.02.09 in favour of Municipal Council, Derabassi, writ petition was dismissed. Thereafter Civil Writ Petition No. 3466 of 1999 Jaswant Singh Vs. State of Punjab was filed, the order dated 23.1.2001 the order of which regarding the above said recruitment was passed in favour of Municipal Council, Derabassi. Apart from this the enquiry was also conducted by Chief Vigilance, Local Government, Chandigarh in which also the recruitment was found valid. Apart from it petitioner has alleged the licences to be fake. In this regard Municipal Council, Derrabassi had already got the written report from the D.T.O. Officer Patiala. D.T.O. Office, Patiala has found the licences to be valid, which are attach. Thereafter Municipal Council, Derabassi on 09.05.2013 received the opinion from the legal expert in which in his opinion it has been stated that recruitment is valid. Apart from this the licences have been renewed from District Mohali. The copies of which are enclosed for proof. If licences were fake or wrong then the same could not have been renewed. The case of Anil Kumar, Driver, Municipal Council, Derabassi was also going on in the court of Sh. Rajiv Kumar, (Sr. Divn.) Judge, Derabassi and order dated 01.01.2012 was passed in favour of Anil Kumar, copy of which is enclosed. Petitioner Mohinder Singh is filing petitions again and again on the same matter which have already been

dismissed. Keeping in view the above said circumstances no other action is required to be taken. After preparing cancellation report the same is presented before the Hon'ble Court for the further orders.

Sd/- Kewal Singh

Police Station Dera Bassi

Dated 10.8.15"

7. Reference has also been made to CWP No. 3466 of 1999 titled 'Jaswant Singh and others versus State of Punjab and others' challenging same very selection which was dismissed as withdrawn on 23.3.2001. The trial Court vide order dated 13.11.2015, while ignoring the report of the SHO and after recording the preliminary evidence, summoned the present petitioners for the purpose of pre-charge evidence.

8. Mr. A.P.S.Deol, Senior Advocate, Mr. Sanjeev Sharma, Advocate and Mr. Neeraj Sharma, Advocate representing the petitioners in support of their submissions have raised following legal submissions:-

(i) That Chapter XXXVI of the Code of Criminal Procedure (Cr.P.C.) provides that the limitation for taking cognizance of certain offences i.e. six months in respect of the offence punishable with fine only, one year, as if the offence punishable with imprisonment for a term not exceeding one year and upto three years, if the offence punishable with imprisonment for a term exceeding one year but not exceeding three years, but the provisions of Section 468 Cr.P.C. do not envisage any limitation for the purpose of commission of offence where the punishment is more than three years yet the principles of delay and laches would come into play. In this

regard, reference has been made to the decision rendered by the Hon'ble Supreme Court of India in ***Sirajul and others versus The State of U.P. and another 2015(9) SCC 201*** wherein the summoning order and the complaint preferred under Section 307 IPC after a delay of 16 years involving the punishment of more than three years has been quashed.

(ii) No reasons have been assigned to the report sought under Section 202 Cr.P.C. In this regard reliance was laid to the decision of this Court rendered in ***CRM-M-15313-2014*** titled ***Prem Swarup and another versus Sudesh and another.***

(iii) The complainant has not been able to *prima facie* establish by way of documentary evidence regarding the illegality in the process of selection for the aforementioned posts as had already lost in civil litigation or for approaching the Court after a lapse of 14 years.

9. All these aspects were required to be gone into by the Court before issuing the summoning order on the basis of preliminary evidence.

10. A reference has been made to the order passed by this Court dated 10.5.2017 whereby the trial Court was directed to adjourn the case beyond the date fixed by this Court till the next date of hearing only. All these factors if read in cumulative, fall within the purview of the abuse of process of law with the ulterior and *mala fide* purpose.

11. (i) Per contra, Mr. Arun Gosain, Advocate appearing on behalf of the complainant submits that the present petition is not maintainable. At the best the petitioners are at liberty to

cross-examine the witnesses and confront the documents as the stage of serving the charge sheet has not reached.

(ii) There is no limitation for trying the commission of an offence where the punishment is beyond three years. The judgment relied upon by the petitioners in *Sirajul's* case (supra) for quashing the offence under Section 307 IPC cannot be equated for the commission of the offence under Section 419, 420, 465, 467, 468, 471 and 120-B IPC.

(iii) Nothing prevents the petitioners to defend and lead the evidence in pending complaint as the provisions of Section 482 of the Code of Criminal Procedure have to be exercised sparingly and not in a routine manner.

(iv) A reference has been made to the decision rendered in *M/s Indseam Services Ltd. versus Bimal Kumar Kejriwal (HUF) AIR 2001 Supreme Court 3512* that the decision rendered in the earlier order cannot come in the way of this Court to form a different opinion. It has been held in *Mushtaq Ahmad versus Mohd. Habibur Rehman Faizi and others AIR 1996 Supreme Court 2982* that entering into the debatable area to decide the correctness of the version would not fall within the purview of Section 482 of the Code of Criminal Procedure.

12. I have heard the learned counsel for the parties and of the view that there is force and merit in the submissions of the learned counsel for the petitioners as the complaint and the summoning order cannot be allowed to

sustain for the following reasons:-

(i) On conjunctive reading of the relief sought in the writ petition (supra), order of the trial Court (supra) as well as the conclusion report of the SHO (supra), the trial Court has not *prima facie* formed an opinion as to how the complaint after a lapse of 14 years was maintainable. No doubt the provisions of Section 468 of the Code of Criminal Procedure does not postulate any period of limitation for treating a complaint dealing with the offences where the punishment is more than three years but the fact of the matter is that *doctrine akin* to “Delay and Laches” cannot be ignored.

(ii) The contents of the complaint after giving the facts is bereft of any explanation of raking up issue of selection again in the year 2013. Even there is no reference to the filing of the writ and its decision. Thus, it actuated from the *mala fide* and definitely would fall within the realm of scrutiny of this Court by pressing into malice.

(iii) No doubt the Courts dealing with the complaint are required to be circumspect in issuing the summoning order but not in a routine manner, rather an obligation is enjoined to look into the allegations with a microscopic eye. The entertainment of the complainant and the summoning order is an attempt to put the clock back. Even one of the person who was assigned the work to scrutinize the documents has superannuated. All these facts lead to an irresistible conclusion that continuation of complaint and other proceedings lead to gross misuse of the abuse of the process of law and cannot be allowed to be perpetuated with impunity.

(iv) Hon'ble Supreme Court of India in ***Kishan Singh (D) through LRs versus Gurpal Singh and others 2010 AIR (SC) 3624***

had an occasion to deal with the matter where an affected party having lost in a civil Court in respect of a suit seeking specific performance of the agreement after an inordinate delay had lodged an FIR and it was held to be a sufficient ground for invoking the provisions under Section 482 Cr.P.C. If there was some delay in filing of the FIR or the complaint, the complainant must give an explanation for the same. The filing of the belated complaint would not make the contents improbable but the facts narrated above would be an essential requirement of law. A litigant should not be permitted to give a weight to misuse it at any point of time.

(v) Thus, in my view it is a clear case of wrecking vengeance which the complainant could not digest despite a lapse of 14 years. In ***Sirajul's*** case (supra) the Hon'ble Supreme Court while dealing with the matter quashed the complaint and the summoning order for commission of offence under Section 307 IPC after 16 years of the occurrence holding that the principles enunciated under Section 468 Cr.P.C. though would not come to the aid of the accused but equally so the violation of a speedy trial would also be one of the factors to be taken note of. In the instant case the length of delay has not sufficiently warrant a finding that the accused was deprived of a right to a speedy trial rather it is only one of the factors to be considered and must be weighed against other factors. The question of delay in lodging a criminal prosecution may be a circumstance to be taken into

consideration for arriving at a final decision and can be a ground to dismiss the complaint. The allegations made in the complaint are not that serious in nature which could give a cause of action to the complainant after an expiry of 14 years of the event.

13. In *Prem Sarup and another* (supra) this Court also had an occasion to examine the provisions of Section 202 Cr.P.C. as to whether the trial Court is required to imply the report in a mandatory form or not, however, on perusal of the summoning order there is no reference of the same.

14. As an upshot of my findings, I am of the view that the complaint, the summoning order and all subsequent proceedings arising therefrom are a gross abuse of process of law and nothing beyond.

15. Resultantly, the complaint bearing No. 69 dated 4.3.2013, the summoning order dated 13.11.2015 (Annexure P-5) and all subsequent proceedings are hereby quashed.

All the petitions are allowed.

(AMIT RAWAL)
JUDGE

September 22, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No