

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

Date of decision: 03.07.2017

CRM-M No.26929 of 2015

Anil Kumar Bansal

...Petitioner

Vs.

Sikander Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sunil Chadha, Senior Advocate, with
Ms. Swati Verma, Advocate, for the petitioner.

Mr. Gaurav Sharma, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

The present petition has been filed invoking the jurisdiction under Section 482 of the Code of Criminal Procedure with request to quash Criminal Complaint No.23 dated 05.07.2014 under Sections 3 & 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter 'the Act') as well as under Sections 506 and 34 IPC, which is pending before the Judicial Magistrate Ist Class, Malerkotla; as well as all other subsequent proceedings including summoning order dated 15.04.2015 in the private complaint.

As per allegations in the complaint dated 05.07.2014 (Annex P-1), Simarjit Singh son of the complainant, a student of class III, suffered an injury on his right hand while playing on a swing in the play field of the Government Primary School, Village Togaheri, Tehsil Malerkotla on

25.02.2014. The petitioner is the Principal/Incharge of the said school. The injured boy was sent by the petitioner and Smt. Jaswinder Kaur (Teacher in the school) to his parents' house after giving the child first aid, the injury being simple. After some time, the respondent-complainant along with his injured son went to the school and inquired about how the child had suffered injury. He admonished the complainant-In charge remarking that instead of sending the child home, it was the School's duty and the petitioner to get the child provided medical aid from a doctor. There was altercation between staff and Sikander Singh, the present respondent. In the meantime, while the father and son were haranguing the petitioner and his staff/ Smt. Jaswinder Kaur, Gulab Singh and Kuldeep Singh, residents of Village Togaheri, Tehsil Malerkotla came to the spot on hearing a ruckus and in their presence, the petitioner is alleged to have told the respondent he could take whatever action he could and also used "derogatory" words against his caste by saying: '*Tuhadi Chamar, Churian di Kahdi zimewari hein*' and, similarly, Jaswinder Kaur also used derogatory language against his caste. What she uttered is not known.

It is the petitioner's case that the criminal complaint has been filed by the respondent as a counter blast to the FIR No.57 dated 03.05.2014 registered at his instance against the respondent under Sections 294 and 506 IPC as well as Section 3A of the Prevention of Damage to Public Property Act, 1984 (Annex P-4).

As per the contents of the FIR, the storyline is that at about 1.30 PM on 25.02.2014, Sikander Singh, Karanvir Singh and Sukhwinder Singh came to the school i.e. after the incident of child suffering an injury the present respondent recklessly uprooted the swing that had injured Simarjit

Singh while playing during recess despite the assurance given by the petitioner that he would get removed the swing by the following week. After uprooting the swing, the accused persons hurled filthy abuses at them and issued threats as well. Not only this, the accused persons also tried to scuffle with them. However, the petitioner kept on standing quietly in order to save their lives and avoid any provocation. The accused Sikander Singh allegedly humiliated them before the students and staff on a school working day.

It is pointed out that on the very same day i.e. 25.02.2014, the petitioner moved a complaint to the Additional Deputy Commissioner (Development), Sangrur bringing to the officer's notice the unbecoming acts and conduct of Sikander Singh and his two accomplices in the incident. The complaint was marked to the Block Development and Panchayat Officer, Malerkotla-I for conducting an enquiry. It is only after receiving the notice dated 03.03.2014 by the BDPO, that the respondent started making false complaints against the petitioner by leveling absolutely false and fabricated allegations.

It is very pertinently pointed out by Mr. Chadha learned senior counsel for the petitioner that in the complaint (Annex P-6) addressed to the Deputy Inspector General of Police, Patiala Range, Patiala, the respondent did not attribute or level any allegation against the petitioner that he ever used any objectionable word much less the words mentioned in the criminal complaint (Annex P-1) and that the only word used against the brother of the respondent, namely Jaswinder Singh was '*dhed*'. Sikander Singh did not impute any bad words against the petitioner. It is also pointed out that in the first complaint (Annex P-6), names of the alleged two witnesses, namely,

Gulab Singh and Kuldip Singh mentioned prominently in the criminal complaint, do not find mention at all, which shows that the allegations made are absolutely false and fabricated with a view to abuse the process of law and put the petitioner to a false trial. The BDPO vide his enquiry report dated 26.03.2014 (Annex P-7) found the respondent guilty of having caused damage to the public property, while the allegations levelled by the respondent against the petitioner were found to be false. On the basis of this report, Additional Deputy Commissioner (Development), Sangrur vide his letter dated 01.04.2014 addressed to the Director, Rural Development and Panchayat Department, Punjab, Ajitgarh asked the officials to take action against the respondent and to remove him from the post of Panch. Vide separate letter of even date, the Additional Deputy Commissioner (Development), Sangrur directed the Senior Superintendent of Police, Sangrur to initiate criminal action against the respondent on account of causing loss to the public property and using abusive language and entering into physical altercation with the teachers during their duty hours. It is on the basis of such recommendation, FIR No.57 dated 03.05.2014 was registered against the respondent and his accomplices.

The petitioner would also point out that pending regular department enquiry, the respondent was suspended from the post of Panch of Village Togaheri, District Sangrur on 01.08.2014 and even in such regular departmental enquiry, the respondent has been found guilty vide report dated 29.09.2014 of the Divisional Deputy Director, Rural Development & Panchayat, Patiala.

I have heard learned counsel for the parties at length and given my careful consideration to the facts of the case and the submissions made at the Bar.

In Para.4 of the complaint (Annex P-6) moved by the respondent to the Deputy Inspector General of Police, Patiala Range, Patiala, he stated that after his son was brought back injured, he went to the school and asked the Teachers to get rectified the offending swing. It was alleged that both the teachers instead of listening him, started an altercation engaging in giving out threats and abuses in school premises. It was further stated that at the relevant time Jaswinder Singh, brother of Sikander Singh, who worked in the Panchayat Ghar standing nearby the school, arrived there on hearing the loud threats to the respondent by the above said teachers. He also stated that the present Sarpanch, namely, Dalbara Singh and a number of other persons were gathered in the school premises in the wake of the incident. He stated that when his brother asked Anil Kumar Bansal – petitioner to remain pacified, the petitioner told his brother Jaswinder Singh as to what type of *dhed* could do to him. This letter of Sikander Singh – respondent is the first motion on the occurrence and he must be held down to its contents. It is obvious that nothing was said to Sikander Singh by the petitioner and the abuse ‘*dhed*’ was not to Sikander Singh, but to his brother Jaswinder Singh, who only came on hearing sounds of commotion in the School campus from the Panchayat Ghar said to be in the vicinity of the school.

This accusation is in sharp contrast with the allegations made in the criminal complaint where embellishments and improvements have been made and new words have been introduced directly against the petitioner.

The name of Jaswinder Singh is remarkably absent from the complaint dated 05.07.2017 (Annex P-1) presented in the Court of the Judicial Magistrate Ist Class, Malerkotla by Sikander Singh against the petitioner and one Jaswinder Kaur. The words imputed against the petitioner are "*Tuhadi Chamar, Churian di Kahdi zimewari hein*". There is no doubt that FIR No.57 dated 03.05.2014 was got registered by the petitioner against Sikander Singh and his two other accomplices. It is also significant that in the enquiry conducted by the Station House officer, P.S.Amargarh in pursuance to the complaint moved by the petitioner regarding genuineness of the resolution dated 17.05.2017 passed by the Gram Panchayat, Village Togaheri relied upon by the respondent in Para.5 of his criminal complaint, it was found that Panch Sikander Singh – petitioner is responsible for preparing forged resolutions of the Panchayat dated 17.05.2014 and 13.07.2014, which were prepared after forging the signatures of Sarpanch and Panchayat members with a view to use them to implicate innocent persons. Sarpanch Darbara Singh in his statement recorded during the enquiry has stated that the Gram panchayat of the Village has neither passed the resolution dated 17.05.2014 nor any such resolution has been mentioned in the record of the Panchayat. Panch Sikander Singh has been held responsible for preparing forged resolutions so as to influence the investigation of the criminal case lodged at the instance of the petitioner and with the intention to defame both the Government Teachers i.e. the petitioner and Smt. Jaswinder Kaur. Legal action has been recommended against the suspended Panch Sikander Singh.

It is another matter that the respondent Sikander Singh has been reinstated as Panch upon consideration of the case by the Director, Rural Development and Panchayat Panjab vide order dated 06.07.2016 regarding

causing loss to the property and of verbally abusing the teachers in the incident. These are two distinct paths. One is reinstatement by revoking suspension of Panch Sikander Singh and the statement made to attract the provisions of Sections 3 & 4 of the Act. The story in the first written complaint to the Deputy Inspector General of Police, Patiala Range, Patiala and the criminal complaint are incompatible. There is a clear improvement and padding in the criminal complaint by introduction of words put in inverted commas, as above reproduced. Even presence of his brother Jaswinder Singh has not been mentioned in the criminal complaint which nails the lie according to Mr. Chadha and he would be far from wrong in his submission. Such garnishing in the criminal complaint is clearly an abuse of the process of law engineered to cause summoning. And I am convinced the complaint and all that has followed to the summoning order are built on improper foundations and have no legs to stand on. I can foresee the trial failing on many counts if put to the mechanical motions in search of ultimate truth after protracted processes of law. As the idiom goes; a stitch in time saves nine.

To summarize the case, the reasons which dictate me for quashing the proceedings are as follows:

- (i) Allegations made in the criminal complaint have already been found to be false and fabricated vide letters dated 26.03.2014 and 27.03.2015;
- (ii) Allegations in the criminal complaint are counter blast to the FIR registered against the respondent and his accomplices at the instance of the petitioner;

- (iii) The resolutions relied upon in Para.5 of the criminal complaint have been found to be fabricated and forged one vide report dated 24.10.2014 (Annex P-9);
- (iv) FIR lodged at the instance of the petitioner has been investigated and challan has been presented against the complainant-respondent and his accomplices and they are facing trial;
- (v) The allegations made in the first complaint i.e. Annex P-6 by the respondent – Sikander Singh are material different from those made in the criminal complaint;
- (vi) The names of Gulab Singh son of Kashmira Singh and Kuldeep Singh son of Charanjit Singh as witnesses to the occurrence have been introduced for the first time in the criminal complaint;
- (vii) There is delay of more than 4 months in filing the complaint as against the alleged incident of 25.02.2014;
- (viii) The complaint is not maintainable for the simple reason that in the complaint filed under Section 200 Cr.P.C. there is no whisper that the petitioner and his co-accused knew that the respondent-complainant is the member of the Scheduled Caste or Scheduled Tribe.

In view of the above, in my considered view, the commission of offences under Sections 3 & 4 of the Act as well as under Sections 506 and 34 IPC is not made out in the complaint. Consequently, while allowing the instant petition, Criminal Complaint No.23 dated 05.07.2014, which is pending before the Judicial Magistrate Ist Class, Malerkotla as well as all

other subsequent proceedings including the summoning order dated 15.04.2015 are held an abuse of the process of law and therefore deserves not to be put to a full-fledged trial, as ex facie no offence is made out and instead require to be quashed as false and vexatious.

Accordingly, the petition is allowed. The criminal complaint and the proceedings leading up to the issuance of the summoning order are set aside.

07.07.2017

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*