

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

**CRM-M No.33095 of 2015(O&M)
Date of Decision-21.04.2017**

Puneet Miglani and others ... Petitioners

Versus

Vijay Kumar ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Swati Verma, Advocate for the petitioners.
Mr. Balram Singh, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have prayed for quashing of criminal complaint titled Vijay Kumar Vs. Puneet Miglani and others under Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and entire subsequent proceedings including summoning order dated 05.08.2015 passed by Sub Divisional Judicial Magistrate, Phagwara being illegal and abuse of process of law.

[2]. Respondent filed a complaint against the petitioners and one Shiv Kumar under Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act with the allegations that the petitioners are running a factory in the name and style of Upkar International in Mohalla Basant Nagar, Phagwara for the last 20 years. During the process of industrial activity in the said factory,

acidic water as well as water polluted with oil is discharged. Petitioners No.1 to 3 dug a bore well in the earth and put the said acidic and oil mixed water discharged by the industrial process in the earth through the said bore well. Shiv Kumar is an employee of the petitioners who acts as per wishes of the petitioners. Due to wrongful act of the petitioners, the underground potable water of the area has become polluted and its colour has become yellow. Complainant and Mohalla persons have been adversely affected. The potable ground water has been polluted by the discharge of industrial affluent in the earth by way of illegal digging of bore well and the water has become unfit for human consumption. The complaint was filed by the complainant with the Punjab Pollution Control Board at Jalandhar against the Upkar International owned by the petitioners.

[3]. Petitioners filed a writ petition in this Court. After the decision of the writ petition, respondent moved to the Green Tribunal at New Delhi. The application filed by the complainant before the Green Tribunal, New Delhi is pending adjudication. Petitioners started construction of a new factory in the same locality. Punjab Pollution Control Board restrained the petitioners from constructing the industry in the residential area, but they did not bother. On 01.02.2013, the complainant along with other residents of the Mohalla approached the petitioners who belong to general category and met them near the gate of Mohalla Basant Nagar. Respondent and other inhabitants of the Mohalla enquired about the necessary permission to construct the new industrial unit in the Mohalla.

[4]. Complainant also alleged that he along with other Mohalla people requested the petitioners not to discharge industrial chemical waste in the underground water as the water has become unfit for human consumption. Complainant also informed the petitioners in respect of filing of writ petition in the High Court. Then all the accused/petitioners called some musclemen who manhandled the complainant. Shiv Kumar was also with them at that time whose name came to be known to the complainant at a subsequent stage. Complainant/respondents further alleged that he belongs to Adharmi Bradri which is a scheduled caste and this fact was known to the petitioners. All the petitioners abused the complainant in the name of his caste in a public view in the street near the gate of Mohalla Basant Nagar. Petitioner No.1 abused the complainant by stating “Kuteya chamara teri High Court v dekh lavange” in the presence of persons present in the street in a public view.

[5]. Complainant also pleaded in the complaint that number of persons including Kuldeep, Vinod, Jatinder Jeet and Ramesh Kumar were present at the spot who tried to stop the petitioners/accused and stated that they also belong to schedule caste and the petitioners should not abuse in the name of caste of the complainant and others. Complainant further alleged that a complaint was moved before the DIG, Jalandhar Range, Jalandhar. When the petitioners came to know about the said complaint, petitioners and the police of Phagwara started intimidating the complainant to withdraw the complaint, otherwise, the complainant would be involved in some false criminal

case. Thereafter, complainant had moved another complaint before the DIG, Jalandhar Range, Jalandhar.

[6]. According to the complainant, the police instead of taking any action against the accused/petitioners, started acting under their influence and the complainant was challaned under Sections 107/151 Cr.P.C on the false application of Shiv Kumar. The said proceedings were dropped by the SDJM, Phagwara as none came forward to pursue the same. Thereafter, the petitioners used aforesaid Shiv Kumar in a concocted manner and got registered one FIR No.14 dated 08.03.2013 under Sections 323/341/506/149 IPC in Police Station Satnampura, Phagwara against the complainant. The inquiry of the said case was conducted by the Superintendent of Police (H), Kapurthala. In the said inquiry, other offences except Section 341 IPC were deleted and it was also observed that the accused/petitioners were causing pollution by putting acidic water in the earth by means of illegal bore well. The said case is pending in the Court at Phagwara. Thereafter, the complainant filed a petition in this Court challenging the said FIR.

[7]. Complainant further alleged that in the application moved before the DIG, Jalandhar, complainant was never associated in the inquiry and Calandra under Section 182 IPC was filed by the Superintendent of Police, Phagwara against the complainant which is pending in the Court at Phagwara. Complainant alleged that Superintendent of Police, Phagwara had no jurisdiction to proceed

under Section 182 IPC against the complainant. Complainant also filed a petition before the Green Tribunal, New Delhi in respect of pollution having been created by the petitioners. The act of the petitioners was claimed to be an instance of creating pressure on the complainant to stop his agitation in the context of discharge of industrial affluent in the earth.

[8]. Thereafter, the complainant moved an application before the Vice Chairman, National Commission for Schedule Caste, New Delhi and the same is statedly pending. Complainant has been regularly approaching Superintendent of Police, Phagwara and Senior Superintendent of Police, Kapurthala for withdrawal of all cases against him. A separate application was also filed for inquiry of FIR registered under Section 341 IPC with Police Station Satnampura, Phagwara. With this background, the complaint in question came to be filed at the instance of the respondent.

[9]. In the complaint after adducing preliminary evidence, Sub Divisional Judicial Magistrate, Phagwara passed an order dated 05.08.2015 summoning the petitioners to face trial under Sections 3 and 4 of Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, whereas no *prima facie* case was found against Shiv Kumar and the complaint was dismissed qua him.

[10]. Petitioners alleged that filing of the complaint is absolutely malicious and *mala fide* act on behalf of the respondent in order to wreak vengeance against the petitioners with a view to settle scores.

Petitioners further alleged that the complainant is having grudge against the petitioners as the petitioners did not buy a piece of land measuring 107 marlas adjoining to their existing industry. Ram Lal wanted to get the deal finalized at an exorbitant rate. The owner of the land was a non-resident Indian. Petitioners came to know about the owner of the aforesaid land and as a consequence of that, they directly bought the land from the true owner at a lesser price, which ultimately kept away the respondent from making additional amount from the petitioners by way of cheating. This fact could not be digested by Ram Lal as he could not make huge money in the absence of any deal through him. Petitioners initially purchased 107 marlas of land from Makhan Singh, General Power of Attorney holder of Kuljeet Singh Hundal on 30.05.2011 by way of registered sale deed. Another 10 marls of land was purchased through registered sale deed dated 22.08.2012 from the same owner through General Power of Attorney Makhan Singh. After purchasing the plot when the petitioners started raising boundary wall, the factum of sale came to the knowledge of Ram Lal and he along with his sons Vijay Kumar and Ajit Kumar @ Babbo started making complaints against the petitioners to various authorities. Complaint dated 30.07.2012 was moved before the Chairman, Punjab Pollution Control Board, Nabha Road, Patiala allegedly through residents of Basant Nagar, Phagwara. One of the signatory was Vijay Kumar son of Ram Lal. On 02.02.2013, petitioners submitted a written complaint to the Superintendent of Police, Phagwara apprising the authority that the petitioners are

running the industrial unit since 1995 which is a 100% export unit. The industry falls under the colony No.42 of the Punjab Pollution Control Board and the same is a pollution free industry. Petitioners highlighted that a family of Vijay Kumar and his brother Babbu, Ram Lal and his wife Satya Devi have moved into the neighbourhood of the industry and have instigated the villagers against the petitioners for filing complaints through authorities and they used to demand money by black mailing the petitioners. When the petitioners started foundation work, then mother of Vijay Kumar along with 5-7 women came to the plot and started abusing the petitioners. The incident was reported to the police and the police reached at the spot and incident was highlighted in the local newspaper on 03.02.2013 as well.

[11]. Petitioners are running their business by means of diesel engines. No manufacturing activity is being carried out. The parts are procured from Rajkot, Agra, Ludhiana, Jalandhar and Phagwara and thereafter, the same are being assembled and tested with the engine oil and by re-circulating the water in the cooling system. Thereafter, the said engine was to be painted, packed and exported to the Middle East countries to be used for pumping water in the agricultural fields. Since the petitioners are assembling single cylinder diesel engines from 3.5 HP to 10 HP, they are exempted from NOC as per order dated 31.08.2010 issued by the competent Court. The complainant is residing in an unauthorized colony which has come up on one side of the railway line having a population of about 800-900 people. One more unauthorized colony is in existence adjoining to the aforesaid

colony and these colonies have no sewerage, therefore, domestic affluent flows through the street and the same used to get accumulated in the pond on one side of Basant Nagar.

[12]. Civil Writ Petition No.1376 of 2013 filed by Vijay Kumar against the petitioners industry was ultimately disposed of by this Court on 11.07.2013. The direction sought by Vijay Kumar against the industry of the petitioners for restraining them from putting dirty water in the bore well was not entertained as the writ petitioner was having remedy of approaching National Green Tribunal. However, the plea of providing drinking water was entertained by the Division Bench of this Court. The task was to be performed by the Punjab Water Supply and Sewerage Board, Phagwara and the Board had already sent a letter to the Municipal Corporation, Phagwara in the context of preparing estimates for sewerage and water supply. The funds were awaited and the learned counsel for the State of Punjab stated that the necessary action will be taken. Learned counsel for the Municipal Corporation stated before the Court that in view of drinking water not being available, the tankers were put in service regularly for supplying the drinking water. The directions were issued to State of Punjab to take action in pursuance of letter dated 04.03.2013 within a stipulated period.

[13]. Thereafter, Vijay Kumar filed a petition before the National Green Tribunal, New Delhi. The National Green Tribunal, New Delhi vide order dated 04.03.2014 passed the following order:-

“As per the reports submitted by the PPCB, in so far as, it relates to the respondent No.5, we are not able to see any enormous environment hazards but still it cannot be permitted to operate without the order of consent to operate from the PPCB.

In view of such circumstances, we do not want to express any opinion about this unit in respect of its environmental norms. Needless to say that if permission is granted by the PPCB, the unit shall be entitled to operate only if the norms are fulfilled in full sense.

We make it clear that the PPCB shall ensure that the respondent No.5 is closed immediately and it is permitted to open only after proper consent to operate is granted by the PPCB.”

[14]. A consent was accorded by the Punjab Pollution Control Board on 07.03.2014, therefore the industry of the petitioners was not violating any mandatory norms. The review application filed by the complainant/respondent of the order dated 04.03.2014 was also dismissed on 02.04.2014. Thereafter, an appeal was filed by the complainant before the Appellate Authority i.e. Principal Secretary, Department of Science, Technology and Environment which was also dismissed on 18.09.2014.

[15]. In a complaint dated 05.02.2013 filed by Vijay Kumar before DIG, Jalandhar, a detailed enquiry was held. A report was submitted by the Superintendent of Police, Sub Division Phagwara on 12.03.2013 to Senior Superintendent of Police, Kapurthala and the allegations made by Vijay Kumar in the complaint dated 05.02.2013 were found to be false. Yet another report was submitted by the

Superintendent of Police, Sub Division Phagwara on 17.03.2013 wherein also allegations made by the complainant were found to be false. A recommendation was made to initiate proceedings against the complainant in terms of Section 182 IPC. On the basis of two reports dated 12.03.2013 and 17.07.2013, a Calandra under Section 182 IPC was filed by the Superintendent of Police, Phagwara before the Illaqa Magistrate, Phagwara which is statedly pending.

[16]. In the context of alleged continued victimization of the petitioners at the hands of the complainant, the petitioners filed a civil suit for recovery of Rs.10 lacs against the complainant and others inasmuch as that these persons had extracted the aforesaid amount from the petitioners. A criminal complaint was also filed by petitioner No.3 against the respondent and others under Sections 384, 389, 506 and 120-B IPC which is also pending at Phagwara. Yet another complaint under Sections 499/500/501/506/193 and 120-B IPC was filed by M/s Upkar International Private Limited and petitioner No.1 against the complainant and others which is also pending at Phagwara. In view of aforesaid facts and circumstances, the petitioners have prayed for quashing of complaint and summoning order passed by the trial Court.

[17]. Learned counsel for the petitioners vehemently submitted that alleged violations in running of industry were never commented upon by the competent authority at any point of time. This Court while passing order dated 11.07.2013 in Civil writ petition No.1376 of 2013, National Green Tribunal, Principal Bench, New Delhi while passing order dated

04.03.2014 and the Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act 1981 did not find any violation by the Industry of the petitioners as the industry has complied with the pollution control norms to the satisfaction of the Board except some minor violations which needs to be removed so that vicinity is not affected. Board granted permission to the industry after adopting due process of law in compliance to the directions of the National Green Tribunal, New Delhi. The appeal filed by the respondent was dismissed on 18.09.2014. The argument in filing complaint under Scheduled Castes and Scheduled Tribes Act and order of summoning was in the said context and therefore, no offence much less offence under Section 3 of Scheduled Castes and Scheduled Tribes Act is made out against the petitioners.

[18]. The petition has been contested by the respondent on the ground that the petitioners are running the factory in an illegal manner without permission from the competent authority. The illegal activities of the petitioners in the context of polluting drinking water of the area were brought to the notice of the authority and whole of the drinking water has been declared to be unfit for human consumption by the District Administration. An intimation was sent by the Sub Divisional Magistrate to Deputy Commissioner, Kapurthala vide letter dated 19.10.2012 after survey of the situation. A five members committee was constituted. After due sampling, it was found that the water was containing excess phloride colour, smell, turbidity taste, excess iron and orsanik which may cause Cancer and serious diseases to the human body. The Sub Divisional

Magistrate also noticed that the Punjab Pollution Control Board called some higher officer of the department and deputed him so as to visit M/s Upkar International and see water used for preparing diesel engine and other chemical to clean the diesel engine and the factory disposal system to be verified. The Pollution Control Board can take action against the wrongdoer. The industry which is running from several years has not given bank guarantee and has not cleared necessary requirements of the Punjab Pollution Board. The aforesaid letter was issued in the context of drinking water of Basant Nagar. The estimate of about 34 lacs has already been sent to the Office of Deputy Commissioner. The dirty sewerage water of Basant Nagar which fell into the pond was also sought to be sorted out by way of connecting dirty water of sewerage through sewerage pipe with the treatment plant.

[19]. The respondent also contended that vide order dated 04.03.2014, the National Green Tribunal, New Delhi ordered to close the factory of the petitioners. Respondent further alleged that the FIR which was got registered at the instance of Shiv Kumar was quashed by this Court in CRM-M No.28480 of 2013 on 19.03.2014. The said order was also assailed before the Hon'ble Apex Court and the SLP No.6537 of 2014 was dismissed by the Hon'ble Apex Court on 05.09.2014. The respondent also relied upon the order dated 23.04.2015 passed in CRM-M No.34582 of 2014, whereby the direction was issued that the issue which has already been decided by the High Court shall not be opened unless and until lawful orders were received from the High Court or some new culpable act comes to fore.

[20]. Learned counsel for the respondent also highlighted that vide letter dated 07.07.2015, AIG, Crime Branch, Punjab recommended to invoke Section 182 IPC against petitioners and Shiv Kumar and a communication was addressed to Director Bureau of Investigation vide the aforesaid order. Learned counsel also relied upon order dated 02.03.2016 passed by this Court in CRM-M No.7260 of 2016 in which respondent-Vijay Kumar was relegated to avail the remedy before the Illaqa Magistrate. The prayer of the respondent in seeking sanction in terms of Section 197 Cr.P.C was disposed of with a liberty to the respondent to seek sanction before the competent authority and in the event of denial, he would be at liberty to approach the High Court. On the aforesaid broad parameters, petition has been contested by the respondent.

[21]. Both the parties have tried to argue on the basis of voluminous records pertaining to past litigation between the parties in order to show *mala fide* of each other in long standing litigations between them.

[22]. Complaint under Section 3 of Scheduled Castes and Scheduled Tribes Act can be quashed on definite parameters if no case is made out on the touchstone of those parameters. Complainant has specifically pleaded in the complaint that factum of complainant being from Schedule Caste and Schedule Tribe category is known to the petitioners. The incident dated 01.02.2013 had taken place in a public view and was witnessed by the witnesses as pleaded by the complainant in para Nos.8 and 9 of the complaint. The decisions given by the police authority from time to time as well as by the Courts and

public authorities would be a matter of evidence during trial. Question of *mala fide* or otherwise can also be gone into at the relevant stage after leading evidence by both the sides. The use of derogatory words with an intention to harass and humiliate the complainant party would be gone into by the trial Court after appreciating the material to be led by the complainant in due course of proceedings.

[23]. Since the factum of belongingness of the complainant to the schedule caste category and knowledge on the part of the petitioners to that effect were specifically mentioned in para No.8 of the complaint and the happening of the incident in a public view was also specifically pleaded in the complaint, therefore I cannot stretch any such evidence beyond the scope of pleadings. Both the parties have their own view points in the context of commission of offence which requires evidence.

[24]. In view of above, since disputed questions of facts are involved in the present case, I do not deem it appropriate to quash the proceedings, complaint and summoning order at this stage. This petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

21.04.2017
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No