

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

**CRR No.1141 of 2011 (O&M)
Decided on: 11.12.2017**

Jaspal Singh and others

....Petitioners

Versus

Ram Chander and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Bajaj, Advocate
for the petitioners.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 19.04.2011 passed by the Additional Sessions Judge, Jalandhar vide which the charges were framed against the petitioners under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

This petition was filed in the year 2011 and vide order dated 12.07.2011, the proceedings before the trial Court were ordered to be subject to final decision of this case.

Before advertng to the facts narrated in the complaint (Annexure P8), it would be relevant to refer to the background of the case as submitted by counsel for the petitioners.

The respondent/complainant – Ram Chander (since deceased) was running a factory in the name and style of M/s. Perfect Electricals which was involved in the manufacturing of switch gears. It is submitted on behalf of the petitioners that the said factory was set up in a residential area of Swaran Park, Salempur Road, Jalandhar and the

property was owned by wife of the complainant namely Smt. Sheela Devi.

Counsel for the petitioners has further submitted that the petitioners/accused persons have given various complaints by way of availing their legal remedy and one of the complaint was given to the Deputy Commissioner on 09.06.2008 (Annexure P2). When no action was taken, the petitioners filed CWP no.12097 of 2008 and vide order dated 16.07.2008, the said writ petition was disposed of by this Court by issuing a direction to the Deputy Commissioner, Jalandhar to dispose of the representation dated 09.06.2008 filed by the petitioners.

In the meantime, on the basis of the complaint made by the petitioners to the Punjab Pollution Control Board that the complainant has not obtained any no objection certificate regarding the factory in residential area qua noise pollution, the environmental engineer issued a show cause notice dated 16.07.2008 to Sheela Devi wife of the complainant – Ram Chander.

Sheela Devi also filed CWP No.18915 of 2008 challenging the show cause notice issued by the Punjab Pollution Control Board. The said writ petition was also disposed of by this Court vide order dated 15.10.2009 with a direction that she should file a reply to the show cause notice before the Board and the Board shall finalized the proceedings within a period of one month on receiving the certified copy of the said order dated 15.10.2009.

The Deputy Commissioner, Jalandhar in compliance to the order passed by this Court dated 16.07.2008 passed an order on 18.02.2009 and directed that Sheela Devi wife of the complainant

should not be granted the three Phase commercial electric connection in the said factory premises.

In the meantime, the Punjab Pollution Control Board also in terms of the order dated 15.10.2009 passed by this Court, passed an order dated 21.04.2010 (Annexure P7) directing the complainant and his wife that the industry shall not operate any machinery installed in the premises as noise levels are higher than the prescribed standards and it was directed that the Board shall seal the machinery generating the noise above the standard prescribed for the residential area/zone and the Board also issued a direction to PSEB not to release the three phase electric connection.

Counsel for the petitioners has submitted that in order to put pressure upon the petitioners that they may not pursue their legal remedy before the competent authority, the complainant filed a complaint with the Superintendent of Police, City Jalandhar and the same was duly enquired into. As per the enquiry report dated 30.05.2008, it was held as under:-

“From the secret and other investigation and the statements recorded by me, it has been found that the complainant Ram Chander had submitted complaint against Jaspal Singh, President and other residents of the locality because they had objected to the extension of electric load. During investigation, no evidence was found that any foul language had been used against the complainant pertaining to his caste. For getting extension of load of electricity, both the parties have filed cases in Hon'ble Punjab & Haryana High Court, Chandigarh and Civil Courts at Jalandhar. No further action is required to be taken on the complaint. Both the parties are directed to

await the outcome of the decision of the Courts. As such, it is recommended that the complaint be filed.”

Thereafter, the respondent No.2/complainant filed the impugned complaint (Annexure P8) before the Special Judge/Magistrate, Jalandhar under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and in para No.4, it was alleged that the petitioners abused the complainant in the name of his caste and maltreated him and stopped the officials of electricity department from releasing the connection.

The complainant led his preliminary evidence and the trial Court vide order dated 09.11.2010 summoned the petitioners. Counsel for the petitioners has further argued that the summoning order (Annexure P10) show that the complainant, though, was well aware about the proceedings/enquiry report of the police as well as the 02 orders passed by this Court and the orders passed by the Deputy Commissioner, Jalandhar and the Punjab Pollution Control Board in compliance to the directions issued by this Court, however, has not brought it to the notice of the trial Court. It is further submitted that by concealing the material facts, the complainant has wrongly stated that the area which is residential area, except for the complainant, no other persons of the Scheduled Castes category are residing whereas as per the list of persons given in para No.14 of the petition, number of persons belonging to the Scheduled Castes category are residing in the said residential area.

The trial Court vide impugned order dated 19.04.2011 has framed the charge against the petitioners and the present

petition has been filed challenging the order dated 19.04.2011 (Annexure P1).

Counsel for the petitioner has also argued that the owner of the property – Sheela Devi has already died and similarly, the respondent/complainant – Ram Chander has also died and legal representatives of respondent No.2 i.e. Ram Chander have already been impleaded but despite service there is no representation on their behalf contest the present petition.

There is no representation on behalf of respondent No.2 for the last date of hearing and, therefore, considering the fact that this petition is pending since, 2011, the arguments were heard on merits.

After hearing counsel for the petitioner, I find merit in the present petition on the following grounds:

a) A bare perusal of the complaint dated 30.03.2011 filed before the trial Court itself reveal that the complainant – Ram Chander has given the detailed facts that his wife Sheela Devi has applied for three phase electric connection for his manufacturing the units for M/s. Perfect Electrical Company. It is also stated in this complaint that on 08.07.2008 when the PSEB employees came at the spot for installation of the connection, the accused persons threatened the complainant and his wife and later on, on 10.07.2008, the accused persons forcibly entered the house of the complainant and abused him in the name of his caste. He being belonging to a Adharmi caste (scheduled caste).

b) This complaint which is filed on 30.03.2011 is absolutely silent about the earlier litigation as noticed above. The alleged incident, as per the complaint is dated 08.07.2008 when the PSEB employees/officials came to

install the three phase electric connection as well as on 10.07.2008 when allegedly, the accused persons abused the complainant in the name of his caste. Much prior to filing of this complaint or a complaint given by the petitioners to the Deputy Commissioner, a direction was issued by this Court in CWP No.12097 of 2008 vide order dated 16.07.2008 disposed of the representation dated 09.06.2008. In pursuance to the said direction, the Deputy Commissioner, Jalandhar has passed the order that three phase commercial connection be not released in the factory premises of the complainant.

c) The complainant has also concealed the fact that his wife Sheela Devi filed CWP No.18915 of 2008 challenging the show cause notice issued by the Punjab Pollution Control Board and the same was decided on 15.10.2009 with a direction to the Board to decide the same within a period of one month vide order dated 15.10.2009 passing a similar order that no objection certification qua noise pollution cannot be granted.

d) A perusal of the summoning order dated 09.11.2010 (Annexure P10) also show that though, the complainant has mentioned in the complaint that he has given a complaint to the police but he has intentionally stated that the police has not taken any action whereas the police has already enquired into the matter and submitted a report on 30.05.2008 that no evidence of use of any foul language was found against the complainant pertaining to his caste.

e) In view of the fact that the petitioner/accused were resorting to their legal remedies and some adverse have already been passed by the Deputy Commissioner, Jalandhar as well as the Punjab Pollution Control Board for not releasing the three phase commercial connection, the allegations leveled in the complaint that the petitioners

on 08.07.2008 restrained the PSEB employees from installing the connection is apparently false. The incident dated 10.07.2008 on which the accused persons allegedly abused the complainant in the name of his caste is also not proved on record in view of the fact that the complainant has concealed the material facts especially the order passed by this Court while leading his preliminary evidence.

f) Even otherwise, from a bare perusal of the complaint, the offence under Section 3(i)(x) of the Act is not made out. It has been held by this Court in ***“Dilbagh Singh and others vs Sukhjinder Kaur”***, 2010(24) RCR (Criminal) 93 that when from a perusal of the complaint, allegation of commission of offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are not made out and a complaint is filed not for the reasons that the accused have committed an offence and rather it is proved that the same has been filed with some ulterior motive, the same is liable to be quashed.

g) In the instant case, it is proved on record that dispute between the complainant – Ram Chander and his wife – Sheela Devi on one hand and the petitioner/accused on the other hand was that the complainant side was running a factory of manufacturing of electric switches and wanted to install a three phase commercial connection which would have resulted in noise pollution as it was a residential area and the accused who are residents of that area/locality well within their rights approached the Deputy Commissioner, Jalandhar as well as this Court for redressal of their grievances and the competent authority passed an order directing the electricity board not to release the three phase commercial connection in the factory premises owned by the complainant. A perusal of the complaint show that the allegations are that when the officials of electricity department visited the spot for

installing the connection, the petitioner/accused restrained them whereas the fact is that by way of a legal order, the Board was restrained from releasing the electricity connection and therefore, there was no occasion for the accused persons to go and physically protest at the premises of the complainant.

For the reasons stated hereinabove, it is apparent on the face of record that the complaint made by the respondent/complainant is false as material facts/orders of the Court/competent authority have been concealed and it has not been proved from the statement of the prosecution witnesses that the petitioners/accused have committed any offence. It is also proved on record that the complaint was filed with an ulterior motive as the petitioners/accused persons got an order from the competent authority restraining the electricity board from releasing the three phase commercial connection in the premises of the complainant, therefore, the complaint is abuse and misuse of the process of law.

Accordingly, the present revision petition is allowed, the order dated 19.04.2011 passed by the Additional Sessions Judge, Jalandhar is set-aside and the petitioners are acquitted of the charges framed against them.

(ARVIND SINGH SANGWAN)
JUDGE

11.12.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No