

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

CRM No.M-7616 of 2016 (O&M)

Date of Decision: July 25, 2017

Dinesh Kumar

...Petitioner

VERSUS

The Devsar Sansaar Sahkari Parivahan Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manjeet Singh, Advocate
for the petitioner.

Mr.R.S.Sheroan, Advocate
for the respondents.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents The Devsar Sansaar Sahkari Parivahan Ltd. and Bijender Singh for quashing the complaint case No.439-1 of 2009 dated 05.10.2009, summoning order dated 12.05.2011 passed by learned JMIC, Bhiwani and order dated 15.02.2016 passed by learned Addl. Sessions Judge, Bhiwani, vide which the revision petition filed by the petitioner against the summoning order was partly allowed.

Notice of motion was issued. Learned counsel for the respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that The Devsar Sansaar Sahkari

Parivahan Ltd. through its Secretary Bijender Singh filed a complaint against Dinesh Kumar, SI/SHO, Traffic under Sections 341, 161, 165, 166, 323, 427 and 506 IPC. The brief averments of the complaint as noted down by learned JMIC, Bhiwani, are as under:-

“2. Complainant ply bus No.HR-61A-0735 of the Samiti on Route No.17 enroute Bhiwani to Devralla as per route allotted by Haryana Government as per terms and conditions imposed by the Government.

3. On 02.10.2009 at about 11.00 A.M. the bus of the complainant took the passengers from Bus Stand Bhiwani and thereafter when the bus was taking passengers from Rohtak Gate, Bhiwani then accused Dinesh Kumar took the bus in illegal possession and took the same in the Police Station Traffic along with driver and conductor. Neither the bus was challaned nor any proceedings were taken against the driver and conductor. The bus remained parked in the Police Station for two days. When enquired, accused told that bus is required for election arrangement on 13.10.2009. It is pertinent to mention that as per route permit only R.T.A., Bhiwani has authority to take any legal action and accused has no right to take the bus in question in his possession. Complainant has suffered a loss of Rs.10000/- per day due to illegal possession of the bus by the accused.

4. When the complainant approached and asked him the reason for taking the bus in illegal possession then accused abused the complainant, gave fists and slaps blows. The accused also threatened to kill the complainant and demanded Rs.2,000/- per month. Since the accused is police official, therefore, no complaint has been filed against the accused. Hence, this complaint.”

Learned CJM, Bhiwani, on the basis of the complaint and preliminary evidence, summoned accused under Sections 341, 161, 165, 166, 323, 427 and 506 IPC. A revision was filed by the accused-petitioner and learned Addl. Sessions Judge, Bhiwani partly allowed the same vide order dated 15.02.2016 and summoning order was upheld to the extent under Sections 341, 323, 427 and 506 IPC.

First of all, I find that the complaint has been filed by the

company and not by private person. The title of the complaint shows that it

was filed by The Devsar Sansaar Sahkari Parivahan Ltd. through its Secretary Bijender Singh against Dinesh Kumar SI/SHO. The perusal of the complaint shows that on 02.10.2009, Dinesh Kumar, SI/SHO took the bus in his possession and he told the driver that bus would be used till 13.10.2009 for election arrangements. It is in the complaint itself that police officer had neither challaned the bus nor took any action against the driver or conductor, which means that bus was taken by accused Dinesh Kumar for election duty. There is nothing in the complaint that this bus was taken into possession for any personal use. In para No.6 of the complaint, it is stated that complainant went to accused and asked a reason for illegal detention of the bus and the accused held the complainant by collar and slapped him and gave kick and fist blows and threatened to kill him. No particulars of any type have been mentioned on which date and month, the complainant had gone to the accused and at what time, he has gone or in whose presence the accused gave slaps and kick blows. There are also no particulars as to who has gone to SI/SHO. The complainant in the present case is the company and company has filed the complaint through its Secretary Bijender Singh. It is nowhere specifically stated in the complaint as to whether Bijender Singh had gone to the accused or someone else had gone.

The perusal of the record shows that Annexure P-1 is the letter written by State Transport Controller to The Chief Electoral Officer regarding payment of the transportation charges for motor vehicles requisitioned during the ensuring General Elections of Haryana Vidhan Sabha, 2005. Annexure P-2 is the letter from The Chief Election Officer to all The Deputy Commissioner-cum-District Election Officers in the State

provisions regarding requisition of premises/vehicles for election purposes are contained in Section 160 to 165 of the Representation of the People Act, 1951, Govt. of Haryana vide Notification No.Elec.67M-948 dated 13.02.1967 and authorized the District Magistrates in the State of Haryana to exercise the powers and discharge the duties of the State Govt. Annexure P-3 is the order passed by Deputy Commissioner on 09.09.2009 appointing Manoj Jain, PO, IREP, as Nodal Officer for making arrangements of transportation for the Election Observers, Polling Parties, Supervisory Officers & Duty Magistrates during General Elections. Annexure P-9 is the request for requisition of premises/vehicles to be needed for the purpose of being used as polling station or for the transportation of Electronic voting machine. Annexure P-10 is the receipt signed by Bijender Singh that Bhiwani Police had taken his bus on 02.10.2009 for transporting the police force from one place to other on Election Duty and he is taking back the bus. Similarly, Annexure P-11 shows that bus was handed over to Bijender Singh on 08.10.2009. Annexure P-13 further shows that Rs.7000/- was received in the name of Bijender Singh and he was informed through telephone, however, Bijender Singh told that he will not receive this amount because he has filed a case in the Court in this regard and above-said amount is still pending for disbursal at Police Lines, Bhiwani. This document is executed by Balwant Singh, Cashier, PL Bhiwani.

The perusal of these documents shows that the bus has been requisitioned for Election duty by the accused. It was not used for personal purposes by the accused. The bus was taken into possession by the accused in performance of his official duty. Even if he was told orally to take the

accused. Learned counsel for the respondent argued that Deputy Commissioner has passed the order afterwards i.e. on 05.10.2009 whereas the bus was apprehended on 02.10.2009.

The perusal of the official orders passed by the District Magistrate and further the bill prepared by the Government department for payment to Bijender Singh for the use of bus for Election duty etc. shows that the bus was taken into possession for Election duty, though, without obtaining written orders from the District Magistrate. For this negligence, it cannot be held that the accused can be tried even without obtaining the sanction under Section 197 Cr.P.C. The sanction under Section 197 Cr.P.C. is required as the act has been done in performance of the official duty by the accused, who is a public servant. Furthermore, as already discussed, there are no particulars that on which date, in which month, the slaps etc. gave been given and to whom.

In view of the above discussion, I find that filing of present complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. The complaint case No.439-1 of 2009 dated 05.10.2009, summoning order dated 12.05.2011 and all subsequent proceedings arising therefrom, are hereby quashed.

July 25, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No