

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 3406 of 2016

Date of Decision: 03.02.2017

Kaam Dass and another

.....Petitioners

VERSUS

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Sidhu, Advocate
for the petitioner (s).

Ms. Bhavna Gupta, D.A.G. Punjab,
counsel for respondent-State.

Mr. Gurcharan Singh, Advocate
for complainant-respondent No.2.

SURINDER GUPTA, J.

Respondent No.2 Jasmer Singh submitted an unattested, undated affidavit to police of Police Station Ghanaur, District Patiala levelling the allegations that Kanshi Dass, **who was *mohatmim* of *Dera Thakurdwara* was murdered by his brother Kaam Dass (petitioner), Khem Dass, Narang Dass and Passo Devi on 24.06.1989** and his dead body was buried in the *Dera*. Petitioner-Kaam Dass was a very dangerous person and under his threat to finish his family, if he gives information of the murder, complainant did not report the matter to the police.

2. On this complaint, Senior Superintendent of Police, Patiala vide order dated 03.04.2015 directed Deputy Superintendent of Police, Ghanaur “to verify the facts and send the report”. On the basis of secret and open enquiry, D.S.P., Ghanaur reported that Kanshi Dass was addicted to liquor and had started selling the land of *Dera*. His brothers Kaam Dass,

Khem Dass and Narang Dass and sister-in-law Prakashwati were annoyed due to the sale of *Dera* property. As per statement of Rajpal son of Sohan Lal, who was cultivating *Dera* land, he had found persons, named in the complaint, raising wall in the *Dera* and thereafter, *Mahant* Kansi Dass was not seen by anybody. A DDR No.17 dated 20.06.1989 was recorded at Police Station Ghanaur concerning missing information of Kansi Dass. Deputy Superintendent of Police, Ghanaur found that elopement of *Mahant* Kansi Dass and thereafter committing of suicide by his brother Narang Dass as suspicious circumstances which require thorough investigation and recommended to call the opinion of District Attorney (Legal) in the matter. Senior Superintendent of Police, Patiala referred the matter for the opinion of District Attorney (Legal) who gave opinion that further action under Section 176 Code of Criminal Procedure is called for in the matter, and if allegations levelled in complaint got verified, the matter be thoroughly investigated after recording FIR. Police registered FIR No. 50 dated 09.06.2015 on the complaint of Jasmer Singh for offences punishable under Sections 302 and 201 of Indian Penal Code (for short 'IPC') and presented the challan on 02.02.2016 against petitioners. Petitioners moved application for their discharge, which was declined by learned Sessions Judge, Patiala.

3. Both the accused were ordered to be charge-sheeted for offences punishable under Sections 302 and 201 IPC.

4. I have heard learned counsel for petitioners, learned State counsel and learned counsel for complainant-respondent No.2 and perused the paper book with their assistance.

5. Before proceeding further, it will be relevant to take a note of

certain undisputed facts, which have emerged during arguments and are enumerated as follows:-

- (i) Atma Ram was *Mahant* of Thakurdwara Dera, Ghanaur and his successor was Shardha Ram, who left behind four sons namely Khem Dass, Kansi Dass, Kaam Dass and Narang Dass. After death of Shardha, Kansi Dass become *Mohatmim* of *Dera*.
- (ii) Kansi Dass had gone missing and a DDR No.17 dated 24.06.1989 to this effect was recorded at Police Station Ghanaur. In the DDR, which was registered on the complaint of petitioner-Kaam Dass, it was mentioned that Kansi Dass had left *Dera* about two months back and had not returned. He could not be searched despite all efforts. On this DDR, a note was recorded by the police that Kansi Dass was missing for the last two months and his missing report was sent to all police stations through wireless message. However, no further action in the matter appears to have been taken by the police.
- (iii) Petitioner-Kaam Dass filed civil suit No.532 dated 29.07.1996 seeking declaration that Kansi Dass (Kansi Ram) be deemed as dead as he was missing for a period of more than seven years. His suit was decreed on 13.12.1997.
- (iv) Kaam Dass became *Mahant* of *Dera* on 17.12.2000 and this fact is so held in Civil Suit No. 247-T dated

13.09.1999/23.08.2002 decided on 04.11.2008 by Civil Judge (Junior Division), Rajpura.

- (v) **Above suit filed by petitioner No.1 against complainant was decreed on 04.11.2008 for possession of the site measuring 5 *biswas* 14 *biswansi* forming part of khasra No. 1839.** Admittedly, *Dera* owns 31 *bighas* 15 *biswas* of land and the suit land in that suit was part of the *Dera* land.
- (vi) Jasmer Singh filed appeal against the judgment, which was dismissed and his Regular Second Appeal no. 4755 of 2011 was also dismissed on 17.09.2012 by this Court.
- (vii) Warrants of possession (Annexure P-6) of the property of *Dera* were issued by the executing Court on 31.10.2013 against complainant Jasmer Singh.
- (viii) Complainant Jasmer Singh filed a suit for specific performance against the petitioner and the *Dera* bearing civil suit No.489-RT of 2013 wherein he moved application seeking interim relief of injunction which was dismissed vide order dated 20.11.2013 (Annexure P-7).
- (ix) Petitioner filed objection in the execution petition which were also dismissed vide order dated 23.08.2016 (Annexure P-8).
- (x) Petitioner moved complaint against Jasmer Singh to SHO, Police Station Ghanaur (Annexure P-9) on 07.03.2014 and it was at this stage, Jasmer Singh swung

into action and filed unattested affidavit on which the present FIR was registered.

6. As per version in affidavit of Jasmer Singh, who as per facts discussed above, is deadly inimical towards petitioners because of civil litigation, losing of civil suit upto Regular Second Appeal in this Court and issuance of warrants of possession against him, petitioners with Narang Dass (since deceased) and Khem Dass killed Kanshi Dass on 24.06.1989 and his dead body was buried in *dera*. The police went to the spot and pin pointed point site 'A' in the *dera* where dead body was alleged to have been buried, but in the site plan prepared at the spot and attached with the challan, a note was given by the investigating officer that no place was identified by complainant, where dead body was buried. The prosecution heavily relied on the statement of Surjit Singh who had stated that in the year 1989, petitioner-Kaam Dass alongwith his brothers Narang Dass, Khem Dass and wife of Khem Dass killed Kanshi Dass and buried his dead body under the bathroom. Point 'A' in the site plan is an open place and not a bathroom. Surjit Singh is not an eye-witness of the occurrence. The police recorded statement of one Rajpal as eye-witness, who has stated that he was cultivating land of *dera*. Kanshi Dass was having three brothers, namely, Khem Dass, Kaam Dass and Narang Dass. Khem Dass got married with Parkasho Devi. Brothers of Kanshi Dass used to discuss with him that Kanshi Dass was selling *dera* land as such they will kill him. He had gone to fields at 10 O'clock where Kaam Dass came under the influence of liquor. When he had gone to *dera* to start the engine, *Mahant* Kanshi Dass was not in *dera* and he found that Kaam Dass, Narang Dass and Khem Dass were raising a wall in the *dera*. He suspected that they have killed Kanshi Dass

and buried him under the bathroom. Thereafter, he was also threatened and attempt was made to take the land of *dera* from him. He stated that Narang Dass was also killed by his brothers and his case was shown as that of suicide. Out of fear he never disclosed this incident to anybody for about 26 years.

7. Prosecution has cited Jasmer Singh-complainant as its star witness who has stated that on 24.06.1989 at about 09.30/10.00 p.m., he had gone to ease himself where he heard a noise. When he peeped through holes of the room of *Thakurdwara*, he found that Khem Dass, Narang Dass and Parkasho Devi had caught Kanshi Dass while Kaam Dass was pressing his throat. Thereafter, they buried his dead body in the *Thakurdwara* itself.

8. Before proceeding further, it will be relevant to have a note of the statement of Jasmer Singh in the civil suit with petitioner, which was recorded on 09.05.2008. In that suit he propounded an agreement to lease executed by Kanshi Dass on 04.02.1987. **“While appearing as DW-2, he has stated that Kanshi Dass had died 7/8 months after the agreement (dated 04.02.1987). He was not aware where Kanshi Dass died. At the time of his death his age was 35 years.”**

9. Above statement of Jasmer Singh made on oath in Court shows that statement made to the police by him on 11.06.2015 under Section 161 Cr.P.C. is motivated. Admittedly, at no stage in the litigation Jasmer Singh has ever raised the plea that Kanshi Dass was murdered by petitioner or anybody else. The timing of affidavit to the police shows that Jasmer Singh was out and out against petitioner to protect his land and finding no other way out he gave an unattested affidavit before the police on the basis of which instant FIR was recorded and challan was presented without proper

and thorough investigation despite report by the Deputy Superintendent of Police and legal opinion to this effect. Motive of Jasmer Singh to implicate petitioner is writ large from the fact that while appearing as DW-2 he has stated that Kaam Dass-petitioner had filed five suits against him concerning suit land. In Civil Suit no. 247-T of 17.03.1999/23.08.2002 decided on 04.11.2008 by Civil Judge (Junior Division), Rajpura, Jasmer Singh had lost possession of site measuring 5 *biswas* 14 *biswas* (286 sq. yards) was ordered to be delivered it to *dera*. After loosing upto this Court and also failing to seek the relief of injunction in suit filed by him bearing Civil Suit No. 489-RT of 2013, he played very smart and levelled allegations of murdered of Kanshi Dass against petitioners and the police without looking into the reason, motive and enmity of complainant swung into action and without thoroughly investigating serious allegations levelled by complainant rushed to file the challan simply by relying on the statement of complainant and one witness Rajpal. The investigating officer failed to look into this fact that in the complaint made on unattested affidavit, the complainant has nowhere described himself to be an eye-witness but he was also converted to an eye-witness at later stage. The investigating officer failed to take note of the fact that there was enmity of complainant with petitioners because of the land dispute and Rajpal was also having similar reasons as the land of *dera* which he was cultivating was taken back from him. All this indicate that investigation conducted in this case is shoddy and show casual approach of police, rather its eagerness to file challan against petitioners.

10. In this case allegations pertain to murder of a person 26 years prior to complaint made to the police. It was required to investigate the

matter thoroughly to come to conclusion as to whether there is any substance in allegations levelled by complainant. Petitioners were made to face a very very serious allegation of murder of Kanshi Dass. The police did not take notice of fact that complainant, despite having long litigation with petitioner-Kaam Dass, had never levelled allegation prior to filing of complaint on 03.04.2015 on unattested affidavit that Kanshi Dass was murdered by petitioners. Complainant was not even asked to give a duly attested affidavit in support of his complaint. The dead body of Kanshi Dass was never located. Even no attempt was made to locate the site, where dead body was allegedly buried. The complainant and PW Rajpal have stated that they have seen petitioners and other accused burying the dead body but that place was never pointed out. Police also failed to take note of the fact that Missing report regarding Kanshi Dass was recorded in the year 1989 and no action on that report was taken at any point of time. Kaam Dass filed a civil suit with the plea that Kanshi Dass had not been heard for more than last 7 years and even at that point of time nobody came forward to raise any objection. The complainant has also alleged that even Narang Dass was killed by petitioners but the police did not take any action in this regard and filed challan for the murder of Kanshi Dass by petitioners for the reason that complainant had sought the relief qua agreement alleged to have been executed by Kanshi Dass in his favour.

11. It is quite surprising that the police did not try to find out truthfulness of the statement of complainant and PW Rajpal or to corroborate it. Apparently, the complainant had attempted to get the property of *dera* by raising accusations against petitioners that he murdered his brother. Even this fact was not looked into that in the complaint,

complainant nowhere stated that he ever witnessed petitioners committing murder of Kanshi Dass or at any point of time he (complainant) despite having opportunity, did not allege the murder of Kanshi Dass by petitioners. There was no substance in this plea that he was feeling frightened, as such, did not report the matter to police, as complainant was having long drawn litigation with petitioner-Kaam Dass. In the civil suits he was alleging death of Kanshi Dass 7 months after the agreement to lease dated 04.02.1987 executed in his favour by Kanshi Dass and had categorically stated that he was not aware where he died.

12. Here, a very serious question arises for consideration is as to whether the police should act in such a casual, careless and unprofessional manner in the facts and circumstances discussed above and make a citizen to face serious charge of murder without conducting proper investigation. The way challan was presented in this case by the police shows that investigation was neither thorough, nor professional or even honest, rather it reflects hurry and interestedness of police officers in the matter.

13. Hon'ble Supreme Court in **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335**, laid down certain categories of cases by way of illustration wherein extraordinary power can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) xx xx xx xx x

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) to (6) xx xx xx xx xx

(7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”***

14. From the above discussion, it is evident that criminal proceedings launched against the petitioners were instituted with an ulterior motive for wreaking vengeance on the accused because of his personal motive by Jasmer Singh.

15. The complaint made by the complainant and presentation of challan by the police has resulted in thorough abuse of process of court and has resulted in defeat of ends of justice.

16. In view of my discussion above, this revision petition has merit and is accepted. FIR No. 50 dated 09.06.2015 alongwith all the subsequent proceedings on it, is quashed.

17. Copy of this order be sent to Director General of Police, Punjab to look into the matter and take appropriate action.

(SURINDER GUPTA)
JUDGE

February 03, 2017
jk

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No