

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

CRM-M-13815-2016

Date of decision:-6.3.2018

Baljinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sapan Dhir, Advocate
for the petitioners.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Parveen K. Kataria, Advocate
for respondent No.2.

Mr.Karamjit Verma, Advocate
for respondent No.3.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. for quashing of FIR No.42 dated 1.3.2016, under Sections 295 IPC, registered at Police Station Moga City, Moga along with all the consequential proceedings arising out of the same has been filed by petitioners – Baljinder Singh and Balwant Rai, both of them being accused in the FIR.

Inter alia in the petition, the petitioners have contended that they are running a printing press under the name and style of 'Mittar

Printers, Moga' as business partners; that the premises in which the printing press is being run was taken on rent by them in the year 1991; that the said premises was purchased by respondent No.3 – Kuldeep Singh also known as Sant Baba Kuldeep Singh Sekha in the year 2012; that in the year 2013 said respondent No.3 tried to take forcible possession of the premises from the petitioners, as such, the latter filed a suit for permanent injunction against the former; that Kuldeep Singh @ Sant Baba Kuldeep Singh Sekha appeared in that suit and made a statement that he would take the possession as per law and not otherwise, therefore, the said suit was withdrawn; that thereafter respondent No.3 filed an ejectment petition on the ground of personal necessity against the petitioners, which is pending before Rent Controller, Moga; that during pendency of that ejectment petition, Kuldeep Singh got his statement recorded, during his cross-examination; the counsel representing the petitioners in order to show that Kuldeep Singh, present respondent No.3 is not a cloth merchant as alleged by him in the ejectment petition and is in fact is a Preacher, put questions to him in that regard and he put the pamphlets got printed by respondent No.3 and other religious organizations regarding 'Gurmat Chetna March' having photograph of respondent No.3; besides pamphlets of 'Kar Sewa' (voluntary service) of Gurudwara Baba Jeewan Singh, Moga being done under the supervision of respondent No.3 as well as his performing Kirtan Programmes, which he admitted; that no objection was raised by respondent No.3 or his counsel at that time; that as a matter of fact no defamatory question was put to the witness, however, subsequently on the basis of questions put to Kuldeep Singh during cross examination,

the FIR in question was got registered, which is clearly an abuse and misuse of process of law; that though the FIR is shown to have been lodged at the instance of religious and social organizations, but it is clear that the same is lodged at the behest of respondent No.3; that the counsel engaged by respondent No.3 for filing ejectment petition also appeared for complainant to oppose the pre-arrest bail of the petitioners; that the petitioners were granted interim bail and while granting that concession learned Additional Sessions Judge, Moga has observed that “*Present case appears to be device to arm twist accused-applicants for vacation of the shop in dispute*”; that even otherwise from the FIR, no offence under Section 295 IPC is made out. Sections 295 IPC has been reproduced in para No.10 of the petition, which is as under:

Injuring or defiling place of worship with intent to insult the religion of any class.—Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

According to the petitioners, the FIR is nothing but a pressure tactic to harass them and to put physical and mental stress upon them in view of civil litigation between the parties; that the questions asked were within four corners of the Section 146 of the Indian

Evidence Act, therefore, the FIR in question and ancillary proceedings be quashed.

Notice of the petition was given to respondents, who put in appearance through counsel.

Respondent No.2 in the written reply filed by him has taken up preliminary objections that the petition has been filed without attaching complete documents, statements etc. filed along with the charge-sheet/challan before the trial Court; that the case is at the stage of framing of charge and all the documents, evidence collected by the investigating agency need to be gone into for decision of the present petition; that the trial Court has got power under Section 227 Cr.P.C. to discharge the accused but the petitioners have directly approached this Court without availing of remedy of filing petition under Section 227 Cr.P.C.; that the trial Court if after going through the record collected by the investigating agency and filed with the challan, comes to the conclusion that the charge has to be framed either under Section 295 IPC or 295-A IPC or any other provision of IPC, it has ample power to frame the charge under appropriate sections and proceed with the case; that the present case does not fall within the ambit of the law laid down by the Apex Court in *State of Haryana Versus Bhajan Lal* as inherent powers of this Court are to be exercised very carefully and with great caution so that a legitimate prosecution is not stifled; that questions of fact are involved in the present case and there is no legal ground to quash the present FIR; that the petitioners have clearly insulted/defiled the religion of a class as well as religious beliefs of answering respondent and others; that when complainant and others met

the petitioners, they levelled such allegations against respondent No.3 such as respondent No.3 is indulging in *Dhaga* or *Taveet* and all other organizations were helping him besides other allegations; that in Sikh religion there is no such system of *Dhaga Taveet* and it is ***Guru Ki Bani*** which is greater than any black magic or evil power and the belief is that nothing can harm those who follow *Shri Guru Granth Sahib* and do Naam Simran every day; that the petitioners have not come to the Court with clean hands and misstated the facts; that in fact the petitioners want to grab the shop of respondent No.3, who had already filed an ejectment petition against them; that the petitioners had not paid rent and earlier also made certain alterations in the shop and also tried to demolish the wall but later on the matter was reported to police and petitioners agreed before the Panchayat on 24.6.2013 that they would not make any alterations but further petitioners have stated that respondent No.3 wanted to take forcible possession and as such they had filed a suit for permanent injunction, where respondent No.3 appeared on 28.1.2014 and suffered statement that he would take possession in due process of law and thereafter filed an ejectment petition; that the ejectment petition was filed much prior to 28.1.2014 and the date of ejectment petition is 12.7.2013, that falsifies the stand of petitioners regarding respondent No.3 trying to take forcible possession; that the complaint/FIR has not been lodged only by respondent No.2 but by eleven other organizations, such as Shahebzada Zorawar Singh Shahebzada Fateh Singh Sewa Society, Moga, Baljit Singh on behalf of Khalsa Shri Guru Granth Sahib Satkar Committee, Moga, who joined hands since false allegations had been levelled against the religious beliefs and religion of a class of

persons, however such persons/organizations have not been impleaded as respondents, therefore the petition is not maintainable. On merits material averments alleged in the petition are refuted whereas pleas taken in the preliminary objections are reiterated. In the end, a prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners has argued that no offence under Section 295 IPC is made out even from bare perusal of the FIR and it was lodged just to pressurize the petitioners to vacate the shop of respondent – Kuldeep Singh, therefore, the FIR is nothing but an abuse of process of law and the same along with ancillary proceedings arising therefrom be quashed. In support of such contentions, he has referred to various authorities being *Shatrughna Prasad Sinha Versus Rajbhau Surajmal Rathi and others*, 1996(4) Crimes 27 by the Apex Court wherein it was observed in para No.12 as under:

A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under [Section 500, IPC](#). The contents of the magazine are alleged to be defamatory against the Marwari community, lowering them in the estimate of the public or their reputation is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the Court of the Judicial Magistrate, First Class in Court No.4 at Pune does not contain any of the allegations so as to constitute the offence of defamation defined in [Section 499](#) and punishable under [Section 500](#). Consequently, the Magistrate was not justified in issuing the process against the appellant. The

complaint is accordingly quashed.

He has further referred to authority *Ajay Versus Seema d/o Wamanrao Gedam and Ors., 2013(21) R.C.R.(Criminal) 321* by Nagpur Bench of Bombay High Court. Para No.8 of this authority is relevant, which is reproduced as under:

Reading of Complaint, by itself, shows that no case of any nature was made out against the applicant. In fact, it was not necessary for the learned trial Magistrate to proceed to record statement of the complainant. The Complaint could have been dismissed in limine. Even if the statement of the non-applicant no.1 and two witnesses is read to ascertain whether process could have been issued, the result is the same. The alleged obscene words etc. have not been stated in the statement. It was, therefore, difficult for the learned Magistrate to decide whether offence of defamation was committed or not. Moreover, what is pertinent to note is that the applicant was appearing as an Advocate on behalf the original accused nos.1 to 3 in Regular Criminal Case No.235/1999. The questions, if any, had been asked by him on the basis of instructions given to him. Apart from this, what is necessary to be noted is that there was nothing on record to indicate that any frivolous and scandalous question was asked to the non-applicant no.1. In the circumstances, the order discharging the applicant was right and did not require any interference by the learned Addl. Sessions Judge. It was not necessary for the learned Addl. Sessions Judge to remand the matter for hearing. What is pertinent to note here is that the non-applicant no.1 has compounded the offences with the main accused nos. 1 to 3 in Regular Criminal Case No.235/1999. It is apparent that the prosecution against the applicant was intended to be continued maliciously without there being any material for the same.

He has further referred to *South Eastern Railway and another Versus State of Jharkhand and another, 2012(15) RCR(Criminal) 161* by Jharkhand High Court where while dealing with a petition under Section 482 Cr.P.C. for quashing of a complaint when the allegations were that accused persons assaulted the complainant and committed theft, however, cognizance of offence under Section 500 and 295 IPC had been taken, it was observed that the allegations made in the complaint do not appear to be with an intention to insult the religion of complainant although accused person had hurled abuses, nothing appeared from the complaint that the same were intended to harm reputation or to defame the complainant; that the prosecution was lodged maliciously in order to wreak vengeance which amounts to abuse of process of the Court, as such while allowing the petition, the proceedings were quashed.

On the other hand, learned counsel for respondent No.2 duly assisted by learned counsel for respondent No.3 has contended that prima facie ingredients of offence under Section 295 IPC are fulfilled; that challan has been filed against the accused and his guilt would be determined during the trial, therefore no case for accepting the petition and quashing of FIR and other ancillary proceedings is made out. In support of his said arguments, he has referred to authority *S. Veerabadran Chettiar Versus E.V. Ramaswami Naicker & others, 1958 AIR 1032*. In the said authority it was observed that any object held sacred by any class of persons occurring in S. 295 of the Indian Penal Code are of general import and cannot be limited to idols in

temples or idols carried on festival occasions. Not merely idols or sacred books, but any other object which is regarded as sacred by any class of persons, whether actually worshipped or not, fall within the description. He has further referred to authority ***The State represented by Inspector of Police, 'Q' Branch CID, Tirunelveli Range, Tamil Nadu Versus Mariya Anton***, Criminal Appeal No.836 of 2015 decided on 1st July, 2015.

However, after hearing learned counsel for the petitioner, counsel for respondent No.2 and 3 as well as State counsel and going through the record, I find that from bare perusal of the FIR, no offence under Section 295 IPC is made out. Certainly the petitioners have not destroyed, damaged or defiled any place of worship or object held sacred and holy by persons following Sikh religion. The intention of the petitioners for insulting the religion of the complainants i.e. Sikh religion in this case also does not come out to be there. As it transpires from the record, the petitioners through counsel had cross-examined his landlord Kuldeep Singh, who had filed a petition for ejectment against them on the ground of personal necessity so as to bring on record that he was a Preacher and not a cloth merchant requiring the premises for running his business. The cross-examination of Kuldeep Singh on those lines and confronting him with various pamphlets etc. certainly cannot be taken as insult to Sikh religion what to talk of injuring or defiling any Gurudwara or article held in high esteem by followers of Sikh religion. No intention to insult the religious feelings of complainants also comes out to be there. Furthermore, the FIR lodged comes out to be an abuse of process of law having been lodged just to pressurize the petitioners in

proceedings under Section 13 of East Punjab Urban Rent Restriction Act, that seems to have been done at the instance of Kuldeep Singh as is evident from the written reply filed by the complainants to the present petition where in para No.6, they have contended that petitioners want to grab shop of respondent No.3, who had already filed an ejectment petition against the petitioners then the detailed version of Kuldeep Singh has been mentioned therein. It seems to be a fit case to exercise powers under Section 482 Cr.P.C. so as to quash the FIR and consequent proceedings thereto.

Therefore, the petition is accepted and FIR No.42 dated 1.3.2016, under Sections 295 IPC, registered at Police Station Moga City, Moga along with all the consequential proceedings arising out of the same are ordered to be quashed.

(H.S.MADAAN)
JUDGE

6.3.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No