

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

**CRM No.M-23041 of 2014 (O&M)
Date of Decision: November 17, 2018**

K.S.Ghuman and another

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Atul Goyal, Advocate
for the petitioners.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioners K.S.Ghuman, Deputy Commandant General, Punjab Home Guard, Patiala and Charanpal, Company Commandant Urban Punjab Home Guard, Sangrur have filed this petition under Section 482 Cr.P.C. for quashing of complaint No.33 dated 04.06.2009 under Sections 166, 500, 506, 120-B IPC, Sections 7 and 8 of the Prevention of Corruption Act as well as summoning order dated 04.02.2012 passed by learned JMIC, Sangrur along with all consequential proceedings arising therefrom.

Notice of motion was issued. Learned State counsel appeared and contested the petition. Respondent No.2 was appearing in person on earlier dates but today, neither respondent No.2 nor any counsel on his

behalf has appeared.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that Major Singh-respondent has filed the complaint against K.S.Ghuman, Deputy Commandant, Charanpal, Company Commandant and Gurnam Singh, Company Commander under Sections 166, 500, 506, 120-B IPC and Sections 7 and 8 of the Prevention of Corruption Act. It is stated in the application that complainant joined Punjab Home Guard Department in the year 1991. During the period of his tenure, his work and conduct remained quite satisfactory. Accused No.1 and 2, who are in Punjab Home Guard Department, used to take illegal gratification of ₹50/- every month from each of the Home Guard and complainant through P.C. Gurdev Singh. In this regard, the complainant made a complaint to the higher officers on 27.12.2007. On the basis of that complaint, an inquiry was conducted on 13.02.2008. In the said enquiry, accused No.1 and 2 called the complainant and P.C. Gurdev Singh. P.C. Gurdev Singh orally confessed regarding acceptance of illegal gratification before them. Accused No.1 and 2 pressurized the complainant to withdraw the complaint but he refused to do so. Due to his reason, accused No.1 and 2 used un-parliamentary words and filthy language towards the complainant. It is further stated in the complaint that at that time, Harpreet Singh and Kundan Singh were present with the complainant. Accused No.1 and 2 said to the complainant that he is liar, dishonest, corrupt and habitual of filing complaints and he was suspended from service and gave order of suspension, whereas Gurdev Singh admitted the fact of handing over of

03.02.2009. It is the allegation that accused in connivance with each other has used the words liar, dishonest and corrupt intentionally without any basis and without any type of proof just to defame and lower down the reputation of the complainant in the eyes of public, inhabitant of his village and other Home Guards.

Learned JMIC, Sangrur, vide impugned order dated 04.02.2012 summoned the petitioners under Sections 500, 506 and 120-B IPC.

The perusal of the record shows that both the petitioners are public servants and they were discharging their official duties while conducting enquiry against the present complainant. Therefore, before taking cognizance against the public servants, for the offences under IPC, while they discharging their official duties, the sanction under Section 197 Cr.P.C. is necessary in the present case but no such sanction has been obtained by the complainant before filing the complaint or before taking of cognizance by the Court against them. On this ground alone, summoning order could not have been passed.

Secondly, perusal of the complaint itself shows that complainant is alleging that the words 'liar, dishonest and corrupt' were uttered when the complainant was called by present petitioners in the enquiry. Even if these words were uttered when the complainant was called by the officers during the enquiry, then independent witnesses are not supposed to be present nor any other employee is supposed to be present there. In no way, these defamatory words, if at all, are stated in the presence of public. On this ground also, no offence of defamation is made out. Nothing has been specifically mentioned as to how the petitioners abused

the complainant.

From the perusal of the record, it looks that complainant has been suspended by his senior officers, therefore, this complaint has been filed against them. The filing of the present complaint against the petitioners is nothing but abuse of process of law and amounts to miscarriage of justice. Otherwise also, this complaint does not lie without sanction under Section 197 Cr.P.C.

Therefore, finding merit in the present petition, the same is allowed. Complaint No.33 dated 04.06.2009 under Sections 166, 500, 506, 120-B IPC, Sections 7 and 8 of the Prevention of Corruption Act along with all subsequent proceedings arising therefrom against the petitioners, are hereby quashed.

November 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No