

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

CRM-M No. 30358 of 2012 (O&M)

Date of decision: 02.05.2018

Gurcharan @ Charan Singh and others

...Petitioners

Versus

Gurdev Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S.Sudan, Advocate for
Dr. P.K. Sekhon, Advocate
for the petitioners.

Mr. Manoj Sharma, Advocate
for respondent No.1.

Mr. Abhaypal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of Criminal Complaint case No.117 dated 23.07.2009 titled “Gurdev Singh Vs. Gurcharan @ Charan Singh and others” filed under Sections 382, 457, 506, 148, 149 of IPC read with Section 3(1)(V)(X)(XV) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (Annexure P-1) and the summoning order dated 15.05.2012 (Annexure P-2), vide which, the petitioners have been summoned to face the trial in the said complaint.

Brief facts of the case are that respondent No.1/complainant Gurdev Singh filed the present complaint with the allegation that he belongs to Majhabhi Sikh Caste, which falls under the definition of Scheduled Castes and Scheduled Tribes. On 18.07.2009, at about 8 p.m., he was taking meals in the Veranda of his house where all the accused persons, 9 in number, came on tractor from the side of Kabristan and started calling him by name.

When he tried to stop them, they broke open the wall of his house, jumped inside and started carrying away his cooler and other articles by saying that “Tusi Kutte Churio Pind Vich Gandh Paya Hai and Saadi Marji To Bagair Tusi Congress Party To Votes Payian Hai Te Isda Tuhanu Maja Chuka Dene Ha Te Tuhanu Pind Vicho Kadh K Panchayati Jagah Te Tusi Jo Kabza Kitta Hoeya Hai Chhudda Lawange Te Ta He Chain Di Saath Lawaange”. Thereafter, accused Hurcharan @ Charan Singh, Sohail Singh, Balwinder and Gurwinder Singh, armed with Kirpan, dragged the complainant in the street and started beating him. Nirmal Kaur accused caught hold the hair of the wife of complainant and grappled with her. Accused Gurmej Singh, Tarsem Singh, Sukhchain Singh and Sukhdev Singh, armed with daangs/sticks, demolished the wall and put the bricks in trolley and on raising hue and cry by the complainant party, all the accused persons took away the said articles and further threatened them with dire consequences by abusing him in the name of their caste. The matter was reported to the police, but when no action was taken, therefore, the complaint was filed on 23.07.2009.

The complainant in support of his preliminary evidence examined himself as CW1, Labh Singh as CW2 and Jagtar Singh as CW3 and produced on record his Scheduled Caste Certificate as Mark-A and application given to police as Mark-B.

The trial Court, thereafter, summoned the petitioners, vide impugned order dated 15.05.2012 to face the trial for offence punishable under Sections 382, 457, 506, 148, 149 of IPC read with Section 3 (1) (v) (x) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for 11.07.2012 (hereafter referred to as Act) prior to

the amendment w.e.f. 26.01.2016 as the alleged occurrence pertains to 08.07.2009..

The petitioners have filed the present petition praying for quashing of the complaint as well as the summoning order dated 15.05.2012.

On 27.09.2012, while issuing notice of motion, the trial Court was directed to adjourn the case beyond the date given by this Court and the said interim order is continue till date and this petition is pending for the last 5 ½ years.

Counsel for the petitioners has argued that a bare perusal of the complaint (Annexure P-1) shows that the complainant has no where alleged that the petitioners/accused persons knew that he belongs to SC/ST category and further that the accused persons do not belong to the same category. Learned counsel for the petitioners, in support of his arguments, has relied upon **2008(1) R.C.R. (Criminal) 377 Chaman Lal Goyal Vs. Kaur Singh**, wherein, this Court has held that in the absence of any specific averment in the impugned complaint that the petitioners/accused had knowledge that the complainant-respondent belongs to Scheduled Caste and consequently, no offence under the Act is made out.

Counsel for the petitioners has further argued that a perusal of the complaint further shows that though in para No.2 of the complaint, it is stated that the complainant was abused in the name of his caste as noticed above, however, there is no allegation as to which accused persons has uttered the said words and the averments made in the complaint in this regard are vague.

Counsel for the petitioners has further submitted that in fact,

immediately prior to filing of the complaint, the petitioners who are Sarpanch, Panches and Nambardars of the village, being the members of Gram Panchayat of village Achintkot, Block Verka, Tehsil & District Amritsar had moved a complaint dated 15.07.2009 (Annexure P-3) to SHO, Police Station Gharinda regarding the illegal possession taken by complainant-Gurdev Singh S/o Mohinder Singh on the Gram Panchayat land bearing No.13/1 of Khasra No. 22 where the Gram Panchayat has got sanctioned a water tank from the Water Supply and Sanitation Department for providing water to the villagers and had given land measuring 3 kanal out of Khasra No.83. It is further stated in the complaint that a passage measuring 9/10 marlas out of Khasra No.22/18 has been left by the Panchayat, however, the said land has been taken in illegal possession by complainant-Gurdev Singh and his father, namely, Mohinder Singh. This complaint was signed by all the Panchayat members.

Counsel for the petitioners next contended that even before filing of the present complaint, the complainant has filed a suit for permanent injunction (Annexure P-6) on 16.07.2009 against three of the petitioners, namely, Gurcharan Singh, Sarpanch, Nirmal Singh and Sohal Singh, both Member Panchayat, praying for a decree that the defendants be restrained from taking the possession from the complainant (plaintiff in that suit) over the land in dispute, except in due course of law.

Counsel for the petitioners has referred to para No.3 of the plaint where it is stated that on 15.07.2009, the defendants (3 of the present petitioners) have tried to demolish the outer wall of the suit property.

Counsel for the petitioners next submitted that the Gram Panchayat has also filed an application under Section 7 of the Punjab

Village Common Lands Act, 1961 praying for eviction of complainant -Gurdev Singh, his father Mohinder Singh and mother-Gurcharan Kaur from the aforesaid land comprising in Khasra No.22//13/1(4-0) and the said application was allowed by the Collector-cum-District Development & Panchayat Officer, Amritsar vide order dated 19.04.2010 and this order was later on upheld by the Director, Rural Development and Panchayat vide order dated 06.07.2011 and thereafter, the Panchayat got vacated the illegal possession of petitioners over the passage in dispute.

Counsel for the petitioners has, thus, submitted that in fact, the petitioners, who are the then Sarpanch, Members of the Panchayat and the Nambardar of the village, being representatives of the Panchayat, were taking legal recourse to get the illegal possession of the land/passage vacated from the petitioners' family and the complainant has filed the impugned complaint with a mala fide motive, in order to settle personal vendetta.

Counsel for the petitioners has further submitted that in the impugned complaint, it is nowhere mentioned that the complainant or his wife were medico legally examined and no such medical evidence is produced by the complainant in his preliminary evidence. He further submitted that the complainant has further failed to lead any evidence that before filing the complaint, he has ever approached the police authority with regard to the alleged incident and no witness from the police department was summoned to prove the alleged application given to the police (Mark B) and therefore, the same cannot be read in the evidence.

Counsel for the petitioners has relied upon **2008 (4) R.C.R. (Criminal) 171 Gorige Pentaiah Vs. State of A.P. & others**, wherein, the

Hon'ble Supreme Court has held that in order to prove an offence under Section 3(1) (x) of the Act, the complainant is required to prove that the accused are not members of SC/ST category and they have intentionally insulted or intimidated with intent to humiliate the complainant in a public place within public view. The operative part of the judgment of the Hon'ble Supreme Court is reproduced as under:-

“ 6. In the instand case, the allegation of respondent no.3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent no.3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No.3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

Learned counsel for the petitioners has also relied upon **2012 (1) R.C.R. (Criminal) 931 Dr. Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh and another** and **2008(1) R.C.R. (Criminal) 370 Kuldip Raj Mahajan, Vs. Hukam Chand**, wherein similar view has been taken by this Court.

In reply, counsel for the respondent No.1/complainant has submitted that the suit filed by the complainant was decreed vide judgment

and decree dated 12.02.2011 and a photocopy of the same is placed on record as Mark 'X'. A perusal of para No. 8 of this judgment shows that Civil Judge has held that defendants (3 of the present petitioners) are restrained from interfering into the peaceful possession of the plaintiff except in due course of law and decreed the suit that the defendants are restrained from interfering in the possession of the plaintiff (present complainant).

Learned counsel for respondent No.1/complainant further submitted that the complainant has already been acquitted in FIR No. 44, dated 01.08.2009 registered under Sections 446, 447, 148, 149 of IPC which was registered on the complaint (Annexure P-3). It is further submitted that the complainant as well as two of the witnesses, who appeared as CW2 and CW3, have proved on record that the petitioners not only abused the complainant in the name of their caste but also caused injuries to them.

In reply, counsel for the petitioners submitted that in pursuance to the eviction order, the Gram Panchayat has taken the possession of the land on which encroachment was made by the complainant and no evidence was led by the complainant that the petitioners have demolished the wall of the house of the complainant and in the complaint, no such allegations are made.

Counsel for the petitioners further submitted that even the civil suit/decreed dated 12.02.2011 is passed only against three persons and since it was not against the Gram Panchayat, the Gram Panchayat in execution of the eviction order has already been taken in possession of the land.

After hearing counsel for the parties, I find merit in the present

petition for the following reasons:-

(a) a bare perusal of the impugned complaint (Annexure P-1) shows that there are no specific allegation against any of the accused persons as to who has uttered the words/abused the complainant in the name of his caste and it cannot be said that all the nine accused persons, in one voice have uttered the same words to the complainant.

The complaint has also silent about the fact that the petitioners/accused knew that the complainant belongs to Scheduled Caste category or that the petitioners do not belong to Scheduled Caste category. It has been held by this Court in ***Dr. Onkar Chander Jagpal's case (Supra)*** that in the absence of any specific allegations in the complaint, the same is liable to be quashed.

(b) The mala fide on the part of the complainant is also apparent on record as it is not in dispute that the petitioners are the then Sarpanch, Panches and Nambardar of the village and being representative of the Gram Panchayat, they were resorting to their legal remedy for vacating the illegal possession of the Gram Panchayat lan, which was reserved for a passage and on a part thereof, the Gram Panchayat has got sanctioned a water tank for the welfare of the inhabitants of the village from the Water and Sanitation Department, by providing the said land. It is not disputed by the complainant that with regard to the land which is the bone of contention between the parties, the Gram Panchayat has filed a petition for eviction under Section 7 of the Punjab Village Common Lands Act.

(c) On 19.04.2010, the Collector-cum-District Development & Panchayat Officer, Amritsar had passed order of eviction against complainant-Gurdev Singh, his father-Mohinder Singh and mother-

Gurcharan Kaur, who was also a Panch at that time. Counsel for the complainant also could not dispute that the said order was upheld in an appeal filed by the complainant before the Director, Development & Panchayat, Amritsar, vide order dated 06.07.2011 and thereafter, in execution thereof, the Panchayat has got the land reserved for the passage from the family of the complainant and their illegal possession was removed.

(d) It is also on record that respondent No.1/complainant had filed a suit for permanent injunction against 3 petitioners in their individual capacity without impleading the Gram Panchayat as a party, praying for a decree of permanent injunction restraining the defendants (3 petitioners) from interfering in their possession. Counsel for the complainant has placed on record a copy of the judgment dated 12.02.2011 passed in Civil Suit No.681 dated 17.07.2009, vide which, the said suit was decreed with the finding that the defendants can take recourse as per law but cannot interfere into the possession of the plaintiff except in due course of law. Though in the relief clause, it is not specifically mentioned that the defendants can take the possession except in due course of law, however, since a finding has been recorded on issue No.1 to this effect, the judgment deemed to have been passed granting liberty to the defendants to take the possession except in due course of law.

(e) Counsel for the complainant could not dispute that the Gram Panchayat has taken the possession of this land in pursuance to the eviction order passed by the Collector and, therefore, the petitioners were acting within the four corners of law to protect the property of Gram Panchyat from the illegal encroachment and therefore, the complaint was filed as a

counter-blast to the same.

(f) Even otherwise, on a comparative perusal of the impugned complaint (Annexure P-1) and the plaint (Annexure P-6) filed by the complainant in the aforesaid civil suit reveals that the complainant has made improvement in his version to file a complaint by giving a different version in the suit and the complaint. Para No.3 of the civil suit which was filed on 17.07.2009 shows that it is averred that the defendants (3 of the petitioners) along with some anti social elements tried to demolish the wall of the suit property on 15.07.2009. A perusal of Para No.2 of the impugned complaint which was instituted just six days thereafter i.e. on 23.07.2009 reveals that it is alleged that on 18.07.2009, the petitioners came to the house of the complainant and with the help of a tractor, broken the wall and by jumping inside, took away his articles like cooler and utensils by abusing him and his family members in their name of his caste and caused injuries. Thus, it is apparent that the complainant has improved his version, in order to file the instant complaint.

(g) Even otherwise, the summoning of the petitioners under Sections 382, 457, 506, 148, 149 of IPC even prima facie is not proved on record as a perusal of the summoning order itself shows that though the complainant has alleged that the petitioners gave injuries to the family members of the complainant, however, neither any MLR has been placed on record nor any other supporting evidence is on record. No doctor was examined by the complainant and the alleged application moved to the SHO i.e. Mark B was also not proved on record in accordance with law as no witness from the police station was examined to prove that the complainant has ever given any such application.

(h) It is apparent that the petitioners, being Sarpanch, Panches and Nambardar of the village had sought the eviction of the complainant from the illegal land of the Gram Panchayat and took the possession in due course of law and the complainant having lost in appeal, in order to put pressure, has filed the impugned complaint and therefore, prima facie, it is a mala fide action on the part of the complainant to rope in all the members of the Gram Panchayat, in impugned complaint to put pressure on them.

In view of the same, the present petition is allowed. The impugned complaint case bearing No.117 dated 23.07.2009 titled as “Gurdev Singh Vs. Gurcharan @ Charan Singh and others” (Annexure P-1) and the summoning order dated 15.05.2012 (Annexure P-2) are hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

02.05.2018

Hemlata

Whether speaking/reasoned	Yes
Whether reportable	Yes