

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 555 of 2016

Date of Decision: 02.08.2018

Rakesh Kumar Arora

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

SURINDER GUPTA, J.

Case bearing FIR No. 226 dated 09.07.2008 was registered on the complaint of petitioner-Rakesh Kumar Arora, who was posted as Assistant Executive Engineer in Electricity Board, Model Town, Sub Division, Jalandhar at the time of occurrence. He has stated in his complaint to police, which formed part of FIR, copy of which has been placed on file as Annexure P-2 and reads as follows:-

“Statement of Rakesh Kumar Arora s/o Sola Ram R/o 198/9, Krishna Nagar, near Adarsh Nagar, Jalandhar, age around 55 years. Stated that I am resident of the aforesaid address and am posted as Assistant Executive Engineer in Electricity Board, Model Town Sub-Division. Today on 09.07.08 at around 4.30/4.45 p.m. I and Ramesh Kumar, J.E., Raj Kumar, Lineman, Des Raj, Lineman at 10-11 Guru Teg Bahadur Nagar Enclave on the request of Sh. Gurmeet Singh and on the spot Khata No. 9046/431 PDCO No. 1376014 dated

09.07.08 in order to permanently close the aforesaid number Khata when we were inspecting the L.T. Line then Pritpal Singh s/o Manohar Snigh and Navdeep Singh s/o Manohar Singh, residents of GTB Enclave came there and started misbehaving with me and yet I was just stopping them when Pritpal Singh held me from neck and caused grievous injuries to me and had thrown me down. When I was about to get up then Navdeep Singh had pulled my hairs and had hit me with fists and took off my glasses and threw it and break it. Both the aforesaid persons had obstructed the government work while I was on duty. When my colleagues had tried to stop them then both of them had started threatening to kill me and had sped away from the spot. They have done so only because they intended to stop us in the performance of our duty. I was going to the police station for giving the information when you have met. Action may be taken....”

2. The police after investigation presented cancellation report before the Judicial Magistrate, Jalandhar, which was not accepted and vide order dated 21.02.2013 cognizance of offence punishable under Sections 332/353/186/427/506 was taken with the observations in paras 9 and 10 of the order, which reads as follows:-

“9. After giving my thoughtful consideration to rival contentions of both the sides and cancellation report submitted by the police, I am of the view that police has exceeded its jurisdiction by exonerating the accused from the said occurrence, because there is report that

occurrence took place between complainant and accused persons. In the report, it has been stated that accused had given injury to complainant in self defence and this finding of police in the report is a matter of trial, because it is to be seen, whether injuries received by accused were self suffered or received during the scuffle and injuries on the person of complainant were caused by accused in self defence. There is sufficient evidence on the file to prove the fact that occurrence took place. Moreover, complainant is a public servant, who was performing his official duty. However, it is a matter of evidence, whether complainant has any connivance with Gurmeet Singh to disconnect the electricity connection installed in the house of accused .

- 10. Apart from that, I have also gone through the file and perused the statement of complainant and other eye-witnesses, who have fully given the detail of the incident and levelled allegations against the accused. So, I am not agree with the cancellation report submitted by the police, because there is sufficient evidence on record to proceed further with the case. Accordingly, accused namely Pritpal Singh and Navdeep Singh are ordered to be summoned to face trial under Sections 332, 353, 186, 427, 506 of IPC for 23.03.2013. Ahlmad is directed to register it as IPC challan. The prosecution is directed to file the list of witnesses within 15 days from today.”*

3. Respondent no. 2 preferred revision before learned Additional Sessions Judge, Jalandhar and learned Court of revision vide order dated 31.10.2015 set aside order dated 21.02.2013 passed by learned Magistrate.

4. I have heard learned counsel for parties and perused the paper-book with their assistance.

5. Learned counsel for the petitioner has argued that Court of revision instead of evaluating the statement of complainant and witnesses, which find corroboration from medical evidence has only concentrated on the fact that the petitioner had gone to the house of respondent no. 2 to disconnect the electric connection despite the fact that he was having seven days' time to reply notice dated 09.07.2008. Firstly, this fact is a matter of evidence to be appreciated by the trial Court; secondly, respondent no. 2 has not come up with any version regarding injuries caused to petitioner, who had gone to the spot in discharge of his official duties.

6. I have perused order passed by learned Additional Sessions Judge, Jalandhar, which revolves around issuance of notice of disconnection dated 09.07.2008 and petitioner going to the house of respondent no. 2- Pritpal Singh on the same day for disconnection of electric connection. Learned trial Court has not taken note of statement of petitioner (complainant) regarding the occurrence, injuries suffered by him, medical evidence and statement of witnesses. As per allegations in the FIR, respondent no. 2 had not only obstructed the petitioner in performance of his duties but had also caused him injuries. Learned Magistrate while declining to accept the cancellation report has observed that the occurrence took place between complainant and accused and complainant was caused injuries. The police had tried to built a case that injuries were caused in self

defence and learned Magistrate has rightly observed that this fact is to be scrutinized and appreciated by the trial Court. Learned Magistrate found sufficient evidence on file to prove that the occurrence took place. Learned Court of revision below instead of appreciating the conclusions drawn by learned Magistrate and finding any flaw in the observations made in order dated 21.02.2013 proceeded to take note of the plea raised by the accused relying on disconnection of his electric connection and set aside the order. Learned Court of revision has nowhere observed that order of learned Magistrate is perverse or suffers from any legal infirmity calling for interference in revision. Learned Court of revision has exceeded its jurisdiction while setting aside the order passed by learned Magistrate, as such, order passed by learned Additional Sessions Judge, Jalandhar being perverse and against settled proposition of law is not sustainable and is set aside.

7. As a sequel of my above discussion, this revision has merit and the same is accepted. Learned trial Court is directed to proceed further in the matter in accordance with law. Parties are directed to appear there on 28.08.2018.

August 02, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No