

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 9th October, 2018
Judgment delivered on: 30th October, 2018

+ CRL.M.C. 2306/2013

SAKET SINGH & ORS Petitioner

versus

GIRDHARI LAL Respondent

+ CRL.M.C. 2307/2013

RAHUL GUPTA Petitioner

versus

GIRDHARI LAL Respondent

+ CRL.M.C. 241/2014

DEBABRATA MISHRA Petitioner

versus

GIRDHARI LAL Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ankur Aggarwal and Mr. Nitin Sharma, Advs
in Crl.M.C.2306/2013
Mr. Omung Gupta and Mr. Naresh Kaushik, Advs.
in Crl.M.C.2307/2013
Mr. J.P. Mishra, Adv. in Crl.M.C.241/2014

For the Respondent: Mr. Vijay Kr. Singh, Adv.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CRL.M.C. 2306/2013 & Crl. M.A. 8876/2013 (stay), 4574/2014 (for bringing on record additional facts); CRL.M.C. 2307/2013 & Crl. M.A. 8879/2013 (stay) & CRL.M.C. 241/2014 & Crl. M.A. 19287/2014 (for bringing on record additional facts and grounds), 6154/2015 (for bringing on record additional facts and grounds), 6155/2015 (for condonation of delay of 33 days in re-filing

1. Petitioners in these petitions seek quashing of summoning order dated 02.01.2013 and Complaint Case No.277/1/10 filed under Section 200 Cr.P.C. read with Section 3(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. All these petitions emanate out of a complaint filed by respondent Girdhari Lal. Petitioners have been arrayed as management of M/s. RT Outsourcing Services Limited.

3. Allegations in the complaint are that the complainant was working with the management for several years. It is alleged that the management sought to terminate the services of the complainant because the complainant belongs to scheduled caste category.

4. It is alleged that on 14.05.2010, the management namely Rahul Gupta, Praveen Jain, Devbrath Mishra, Sandeep Sharma, Sumit Sharma, Saket Singh, Siddharth Ojha and Rehan Khan were present and few workers were also present and the management was trying to force them to sign their resignation letters and the complainant

declined to sign his resignation letter. Thereafter, it is alleged that Rahul Gupta, Siddharth Ojha, Praveen Jain and Sandeep Sharma became angry and abused the complainant by using casteist remarks. They came out of the office when it is alleged that Siddharth Ojha and Praveen Jain pulled him and Rahul Gupta and Sandeep Sharma slapped him while using casteist remarks. It is alleged that same day the complainant lodged various complaints against the accused. Further, on 15.05.2010, he had lodged written complaint before the police authorities but they failed to take any action.

5. Present petitions have been filed by accused Rahul Gupta (Crl.M.C.2307/2013), Saket Singh, Sandeep Sharma, Praveen Jain (Crl.M.C.2306/2013) and Devbrath Mishra (Crl.M.C.241/2014).

6. Petitioners have contended that the complainant was employed on 01.06.2000 and had thereafter received letters of appreciation, increments and promotions, which showed that there was no discrimination of the complainant or any atrocity on him. Since the work of the Company had expanded, the Company intended to transfer some employees out of station. Name of the petitioner was included in the list of employees to be transferred. As soon as the petitioner came to know that he was being considered for being transferred outside Delhi, he stopped attending work from 05.05.2010. Thereafter he did not attend office. Since he was an old employee, the Company did not take any action against the complainant and on

24.05.2010 issued his transfer orders. Subject Complaint has been filed on 10.06.2010.

7. It is contended that the subject complaint is false and has been lodged only to harass the petitioners. It is submitted by learned counsel for the petitioners that the complaint filed by the complainant before the concerned Court is false and contains false and fabricated facts. It is contended that in the complaint filed to the DCP, Police on 14.05.2010, petitioners Rahul Gupta and Praveen Jain were not even named. Further, it is contended that in the legal notice sent, by the complainant, on 18.05.2010, it is alleged that the alleged incident happened on 15.05.2010. Further, in the legal notice there is no reference to any casteist remarks. The only allegation is that the management called the workmen to its office and was forcing them to sign resignations or else they would be falsely implicated in criminal cases.

8. Learned counsel for the petitioners further contends that the petitioners Rahul Gupta and Praveen Jain were not in country on the date when the alleged incident is stated to have happened.

9. Reference is also drawn to the status report filed by the Investigating Officer on the application filed under Section 156(3) Cr.P.C., wherein, the Investigating Officer had stated that an inquiry was conducted and the inquiry had revealed that the complainant had

proceeded on leave on 05.05.2010 and did not join his duties thereafter and had been issued a show cause notice by the management on 05.06.2010. The Investigating Officer has also reported that in the statement given by the complainant before the Labour Court in a suit filed by him he has stated that he had attended office only till 05.05.2010.

10. Petitioners – Praveen Jain and Rahul Gupta – have produced their passports in Court which clearly shows they were not in country on the date when the alleged incident is stated to have happened.

11. Further, learned counsel for the respondent/complainant during arguments has conceded that the petitioner Rahul Gupta was not in country when the alleged incident is stated to have happened.

12. The allegations in the complaint about the incident is as under:-

*“3. That on 14.05.2010 the above mention management called the complainant where all the management namely 1. Rahul Gupta 2. Siddharth Ojha 3. Praveen Jain 4. Sandeep Sharma 5. Devbrath Mishra 6. Sumit Sharma 7. Saket Singh 8. Rehan Khan were present there and few workers are also present there the management was trying to forcefully sign the resignation letter and complainant was denying for signature of resignation letter, suddenly Rahul Gupta 2. Siddharth Ojha 3. Praveen Jain 4. Sandeep Sharma become angry and loudly abusing the complainant at public place ***** (redacted) they came out from office and COUF MY COLOR By Siddharth Ojha, Praveen Jain, and pull me and Rahul Gupta and Sandeep Sharma*

*slapped the complainant and loudly stating
***** (redacted) if you came again here than we
will kill you or falsely implicate in criminal case. And
Devbrath Mishra, Sumit Sharma, Saket Singh and Rehan
Khan loudly stating in public place that if
***** (redacted) you came here again than we will
kill you ***** (redacted) ”*

(alleged casteist remarks have been redacted)

13. Perusal of the complaint clearly shows that in the narration of the incident given by the complainant in his complaint, not only petitioners Rahul Gupta and Praveen Jain are stated to be present at the time of the incident but are alleged to have actively participated in abusing the complainant using casteist remarks and physically assaulting him.

14. Passports produced by the petitioners Rahul Gupta and Praveen Jain clearly show that they were not in country on the date when the alleged incident is stated to have happened. The narration of the alleged incident given by the complainant is clearly not correct. The complainant in his complaint has grouped all the petitioners together and has alleged that all of them made casteist remarks, abused him and physically assaulted him.

15. When the complainant had specifically named individuals and ascribed roles to them and it is found that the allegations are ex-facie false, the complaint is nothing but an abuse of process of the Court.

Further, the investigation report of the Investigating Officer shows that the complainant did not attend office after 05.05.2010 and the alleged incident is stated to have happened on 14.05.2010. Clearly the complaint is not reliable and contains false facts.

16. The Supreme Court of India in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under*

Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (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.”

17. It is seen that the complainant did not attend office after 05.05.2010 and the complaint contains facts which are false to the knowledge of the complainant. He has ascribed specific roles to persons who were not even in the country on the date of the alleged incident. It is even admitted by the complainant that the alleged main perpetrator – Rahul Gupta, was not in the country and passport entries of Praveen Jain also shows that he was not in the country on the date of the alleged incident. There is no explanation as to why he has falsely implicated and ascribed specific roles to Rahul Gupta and Praveen Jain that they had abused him, used casteist remarks and slapped him. It is clear that the complaint has been filed for the purposes of harassing the petitioners and is a counterblast to an order of transfer, transferring complainant out of Delhi. The Complainant in his first complaint and before the labour court has not made any allegation of use of casteist remarks by the petitioners. Since the complainant has been very specific about his allegations and at least some of those allegations qua some of the persons are ex-facie false, it satisfies the test laid down by the Supreme Court in *Bhajan Lal* (supra), that the criminal proceedings are manifestly attended with mala fide and with an ulterior motive. I am of the view that it is a fit case where powers should be exercised to prevent abuse of the

process of the court and the proceedings quashed.

18. In view of the above, the impugned order summoning the petitioners cannot be sustained. Accordingly, the impugned order dated 02.01.2013 is set aside and the complaint filed by the complainant is, accordingly, quashed being an abuse of the process of law.

19. The petitions are, accordingly, allowed. There shall be no order as to cost.

20. Order *Dasti* under the signatures of the Court Master.

OCTOBER 30, 2018
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SANJEEV SACHDEVA, J