

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-24294-2015

Date of Decision: 26.09.2019

Bhim Singh and others

...Petitioners

Versus

State of Haryana and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hemant Bassi, Advocate and
Mr. Harmanjeet Singh, Advocate for the petitioners.
Mr. Vikas Chopra, DAG, Haryana.

ANIL KSHETARPAL, J.

The present petition under Section 482 Cr. P.C. has been filed seeking quashing of order dated 31.07.2014 (Annexure P-2), summoning the petitioners as also the order dated 20.04.2015 dismissing the application filed for discharge under Section 197 Cr. P.C.

Petitioners are police officials serving in the Police Department, Haryana. Late Shr. Mahinder Singh had died due to police firing. The case of the complainant, who is brother of the deceased, is that his brother was killed by the police, whereas it is the case of the petitioners i.e. police officials that in spite of signal to stop the vehicle, Mahinder Singh and his accomplices did not stop the vehicle and when police tried to chase, Mahinder and his accomplices fired upon the police vehicle and in defence when the police returned the fire, Mahinder Singh died.

It may be mentioned here that police had initially registered a case vide FIR No. 309 dated 19.06.2008 under Section 307/353/186 IPC read with Sections 25/54/59 of the Arms Act against unknown persons on

the ground that brother of the complainant Late Sh. Mahinder Singh had fired upon the police party and in self-defence when the police party returned fire, Mahinder Singh died, whereas other accused fled away. A country-made pistol 3.154 bore was also shown to be lying near the body. Investigating agency after carrying out the investigation filed a untraced report in the aforesaid FIR.

Brother of Late Sh. Mahinder Singh filed the present complaint. Learned Additional Chief Judicial Magistrate, Hisar, after appreciating the preliminary evidence, summoned the petitioners vide order dated 31.07.2014. On appearance of the accused, the case was committed to the Court of Sessions. Before the Court of Sessions, application under Section 197 Cr. P.C. was filed for discharge of the accused, which has been dismissed by the learned Additional Sessions Judge. Correctness and validity of both these orders have been challenged.

This Court heard the learned counsel for the petitioners at length.

Learned counsel for the petitioners, while referring to various judgments passed by the Hon'ble Supreme Court, has contended that petitioners, who are police officials/public servants, are entitled to protection under Section 195 Cr.P.C. and since, they were acting or purporting to act in discharge of their official duties, therefore, the court can take cognizance of such offence except with the previous sanction of the competent authority. He has further submitted that the order of summoning is also erroneous, as the learned Magistrate did not take into consideration the report submitted during Magisterial inquiry.

Section 197 Cr.P.C. does protect a Judge or Magistrate or a

public servant not removable from his office save by or with the sanction of the Government, while acting or purporting to act in discharge of his official duty, from criminal prosecution unless prior sanction has been obtained from the competent authority.

However, before protection under Section 197 Cr.P.C. is available, it must be established that there is coherent nexus between the act complained and the duty of the public servant. Only those acts or omissions which are done by public servant in discharge of his duty are protected. The actions/steps must have been taken bonafidely and there must be a direct nexus with the official duty. Hon'ble Supreme Court in the case of *Bakhshish Singh Brar Vs. Gurmej Kaur and another, AIR 1988 (SC) 257* has laid down that the court must pose itself a question as to whether it was necessary for the police officer to conduct himself in a manner which is alleged against him. If this Court poses this question to itself in facts of the present case, the answer is no. The police had made an attempt, after the brother of the petitioner was killed, to prove that the brother of the complainant and his alleged accomplices, who had run away, were criminals. But as noted above, in the aforesaid effort, the police had failed. Untraced report has already been filed.

The brother of the complainant Late Sh. Mahinder Singh had no criminal background. It is the case of the complainant that Late Sh. Mahinder Singh along with Devi Lal were traveling in a pickup vehicle and their vehicle had a small accident with the police vehicle due to which they were terrified and tried to sped away. However, police fired, due to which brother of the complainant Late Sh. Mahinder Singh was killed.

On the basis of the facts which have been alleged, it cannot be

said that the offence committed had a direct nexus with the official duties of the petitioners. The act cannot be said to be having coherent nexus between the offence committed and duty of the public servant. It was not necessary for the petitioners to open fire towards the vehicle which was trying to run away unless the police officials were sure that there were hardened criminals in the aforesaid vehicle.

As regards second submission of the learned counsel for the petitioners that the Magisterial inquiry should have been taken into consideration by the Court while ordering summoning is also liable to be rejected as the summoning order was passed in the year 2014. The present petition has been filed after a period of one year. Still further, the facts of this case and particularly subsequent events which have taken place, this Court is not inclined to entertain second submission of learned counsel for the petitioner at this stage. The inherent jurisdiction sought to be invoked by the petitioners is discretionary. Much water has gone down the drain from the date the petitioners were summoned. Petitioners have not filed a revision petition against the order of summoning.

In view of the above, the present petition is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

26..09.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No