

**CRM-M-29530-2017 (O&M)
and connected cases** **1**

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

1. CRM-M-29530-2017 (O&M)

Ajay Kumar

....Petitioner

Versus

State of Haryana and another

...Respondents

2. CRM-M-48868-2017 (O&M)

Ajay Kumar and others

....Petitioners

Versus

State of Haryana and others

...Respondents

3. CWP-21483-2017 (O&M)

Ajay Kumar and others

....Petitioners

Versus

State of Haryana and others

...Respondents

Date of Decision : 24.10.2019

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

**Present : Mr.Arjun Sheoran, Advocate for the petitioner
in all cases**

Mr. Chetan Sharma, AAG, Haryana

Ms. Kaavya Jariyal, Advocate for

Mr. Sumeet Goel, Standing Counsel for CBI
in CRM-M-48868-2017 and CWP No.21483-2017

Mr. P.S.Poonia, Advocate for respondents No. 6 to 11
in CWP No. 21483-2017

ANIL KSHETARPAL, J.

By this order Criminal Misc. petitions bearing Nos. M-29530, M-48858 of 2017 and CWP No. 21483 of 2017 shall stand disposed of.

Learned counsel for the parties are also agreed that all the three petitions can be conveniently disposed of by a common order.

In Criminal Misc. M-29530 of 2017 prayer is for cancellation of pre-arrest bail granted by the Court of Sessions vide order dated 25.7.2017. In CRM-M-48858 of 2017 and CWP No. 21483-2017 prayer is to transfer the investigation to Central Bureau of Investigation or some other independent agency.

A small dispute between children of two different communities residing in the village together for ages has resulted in the registration of cases for and against members of the communities. Keeping in view the facts of the present case, a detailed order was passed in CRM-M-29530-2017 on 24.8.2017, which is extracted as under:-

“Learned counsel for the petitioner submits that after this Court had taken cognizance looking to the seriousness of the social problem that has arisen in the village Bhatla, Tehsil Hansi Sadar, Hansi District, what the administration has done is to send one SDM and one DSP Narender Kadyan to the village. According to the petitioner there is a complaint against the DSP.

According to him except them nobody has come to the village and the community is suffering in the sense that the people from the community are not allowed to work in the fields and the children are not allowed to go to school even, as the social boycott continues.

In my opinion, the District and Sessions Judge, Hisar now should be directed to visit the place and to mediate and also record the statements if necessary as a Commissioner appointed by this Court. He should make all out efforts to find out the resolution of the dispute also making the villagers aware about the bar under Section 18 of the SC & ST Act, 1989. He may take the assistance of two other judges if he so decides.

The entire copy of the petition shall be sent to the District and Sessions Judge, Hisar, who shall then, with his team visit the village on 26.08.2017 itself and record the statements if necessary and then make a report to this Court in any case on 28.08.2017, if he thinks it necessary by remaining present personally before this Court.

The State may, in addition, send its representatives to assist the District and Sessions Judge, Hisar. This order be sent to the District Judge by FAX for compliance.

Put up on 28.08.2017 for compliance.

Copy of this order be supplied to both the counsel for the parties under the signatures of the Bench Secretary.”

Pursuant to the aforesaid order two District and Sessions Judges alongwith two Additional District & Sessions Judges visited village Bahtla, Tehsil and District Hansi. With the sincere efforts of members of the committee, members of the parties agreed to resolve their disputes amicably. However, it appears that rather than resolving the disputes as agreed before the Committee, the parties have started now litigating in the Courts. At this stage, it will be noticed that learned District & Sessions Judge, Hisar has submitted a detailed report and after taking note of the aforesaid report following order was passed on 12.9.2017:-

“The grievance raised in the present petition is that the trial Court granted anticipatory bail despite bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') and further that though the amendment; namely, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 came into force with effect from 26.01.2016, but the petitioner was not made a party to the proceedings for anticipatory bail nor was he heard in terms of Section 15-A(5) of the Act. According to him, therefore, the impugned order deserves to be quashed and set aside.

When the petition was taken up for hearing

on 11.08.2017, this Court found that it relates to a serious issue regarding practice of untouchability in Village Bhatla, Tehsil Hansi, District Hisar. Realising that the matter was required to be handled looking at the social angle, this Court called upon the Advocate General, Haryana to assist the Court in resolving the conflict by mediation and the proceedings were adjourned to 24.08.2017. On 24.08.2017, the learned counsel for the petitioner submitted that the administration had sent one SDM and one DSP Narender Kadyan to the village and that the DSP himself was facing a complaint made by the villagers. He further submitted that people belonging to the Scheduled Caste community were not allowed to work in the fields of the non-Scheduled Castes and there was a social boycott which continues. This Court, therefore, found it necessary to appoint the District and Sessions Judge, Hisar as a Commissioner to visit the village in order to mediate and to make an attempt to resolve the issue amicably and to make a report to this Court on or before 28.08.2017. However, after the passing of the order dated 24.08.2017, the State of Haryana went into a law and order situation and, therefore, the District and Sessions Judge, Hisar sought extension of time, which was granted to him. Thereafter, the District and Sessions Judge, Hisar, two Additional

District and Sessions Judges and Judge, Family Court, Hisar, visited Village Bhatla on 02.09.2017 and held mediation. The report has been placed. This Court has seen the report and would not like to make the said report public. The report is, therefore, ordered to be kept in a duly sealed cover.

However, this Court finds the District and Sessions Judge and his team have done wonderful work in the sense that they have brought down the level of social disturbance to a great extent. The report also shows that the villagers of both the communities have decided not to indulge in any dispute qua untouchability. The non-Scheduled Castes villagers have also agreed and have been implementing by getting rid of the social boycott that was allegedly imposed. Looking to the above scenario, I think the issue raised in the present petition must be dealt with in a responsible and sedate manner rather than acting with any hard expression of order.

It has been reported by the District and Sessions Judge, Hisar that before his visit to the village, the Station House Officer of the concerned Police Station, Sadar Hansi arrested the petitioner a day earlier, thereby vitiating the atmosphere in the village. It was difficult for the District and Sessions Judge and his team to calm down the people in the village. Today, during the course

of hearing, therefore, this Court asked the State counsel as to why the Station House Officer, knowing fully well that the District and Sessions Judge was to visit the village, arrested the petitioner to which the answer was that the petitioner was arrested and immediately released on bail. According to me, the Station House Officer was, thus, responsible in vitiating the atmosphere knowing fully well that the District and Sessions Judge was to visit the village as per the orders of this Court. He should not have arrested the petitioner as due to the said arrest the people belonging to the Scheduled Caste community again got enraged. The conduct of the Station House Officer, therefore, cannot be appreciated. I, however, leave it to the learned Advocate General, Haryana and the State to do the needful in this behalf.

The learned counsel for the petitioner invited my attention to amendment to Rule 17-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short 'the Rules'), which came into effect from 08.11.2013. Rule 17-A of the Rules was amended from time to time and to be precise with effect from 8.11.2013, 5.11.2014 and 14.04.2016. As per the said Rule, Sub-division level vigilance and monitoring committees are required to be constituted in each sub-division of the State. The counsel has placed on

record a Notification dated 20.07.2015 issued by the Haryana Government, Welfare of Scheduled Castes and Backward Classes Department, by which the Committee contemplated by Rule 16 of the Rules i.e. State Level Vigilance and Monitoring Committee, has been constituted. Rule 17 of the Rules speaks about constitution of District Level Vigilance and Monitoring Committee while Rule 17-A of the Rules speaks about constitution of Sub Division Level Vigilance and Monitoring Committee. The other Notifications dated 02.07.2015 and 20.07.2015 under Rules 17-A and Rule 17 of the Rules, respectively, also show constitution of these Committees. However, it does not appear that despite constitution of these Committees, the actual implementation has been made at least insofar as the present case is concerned as counsel for the State is unable to make any positive statement in that behalf as to who have been appointed.

In view of the above discussion, I think it is necessary to make an interim order for implementation of the above Rule 17-A of the Rules by constituting a committee of a retired Judge from the superior judiciary and a retired Superintendent of Police, whose names the District and Sessions Judge, Hisar shall submit to this Court within a week from today.

Hence, I make the following order :-

ORDER :

i) the District and Sessions Judge, Hisar is directed to submit the names of a retired Judge of superior judiciary (rank of District Judge) and retired Superintendent of Police residing in the District of Hisar within a week.

ii) the committee of two persons, as aforesaid, shall visit village Bhatla at least once in a period of 15 days and shall make a report to the District and Sessions Judge, Hisar, who shall monitor the activities of the Committee every month.

iii) In addition, Director General of Police, Haryana is directed in consultation with Superintendent of Police, Hisar or such other officers/public representatives, to do the needful in terms of Rule 12(3) of the Rules.

iv) the petition is adjourned to 20.09.2017.”

During the pendency of the present petitions, an Advocate of this Court was also appointed as Court Commissioner vide order dated 28.5.2018. Thereafter, once again the Deputy Commissioner, Hisar has also submitted a separate status report.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the paper books. Learned counsel for the petitioner on the one hand has submitted that this Court in exercise of its inherent power should order investigation by an independent agency and more particularly, Central Bureau of Investigation keeping in view the biased investigations carried out by the police whereas on the other

hand, learned counsel appearing for the respondents has submitted that after completion of the investigation, final report have been filed and after framing of the charges, the proceedings before the Trial Court had made substantial progress as three witnesses on behalf of the prosecution have already been examined.

Learned counsel for the petitioner has admitted that for the last six months there has been no incident and normalcy is coming back although slowly. Time, as is well known, is a big healer. Now the question which this Court is called upon to answer is whether this Court in exercise of its inherent power should transfer the investigation or not. The incident in question took place on 15.6.2017. From the very beginning this Court has been making efforts to bring and promote harmony between different communities living in the village cordially for ages. Various orders passed in these petitions bear testimony to the aforesaid fact. If one carefully reads the report submitted by the committee headed by the learned District & Sessions Judge, Hisar, it is apparent that much differences between the communities had been resolved and in fact they had agreed before members of the committee to amicably resolve their differences. As noted above, there has been no incident for more than six months and communal harmony between different communities cohabiting together in the village is inching toward normalcy. However, the decision to resolve their dispute amicably did not translate into action. Various criminal cases pending before the Courts of competent jurisdiction have also made substantial progress.

Keeping in view the totality of facts while taking note of the fact that more than two years and four months have elapsed since the alleged

incident took place and various efforts have been made by this Court, this Court is of the opinion that now at this stage it would not be appropriate to transfer the investigation to some other agency.

In view thereof, the present petitions are accordingly disposed of.

(ANIL KSHETARPAL)
JUDGE

24 .10.2019
rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No