

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

CRM-M-39413-2016 (O&M)

Date of decision : 17.07.2019

Prem Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Dhiraj Chawla, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

Petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner praying for quashing of FIR No.0080 dated 05.05.2016 registered under Sections 420, 467, 468, 471, 120-B, IPC at Police Station Kharar, District Mohali, Annexure P-11 and all the further proceedings arising therefrom.

At the outset, it is apt to notice that the State of Punjab has filed affidavit of Assistant Inspector General of Police, State Crime Police Station, Bureau of Investigation, Punjab, SAS Nagar stating that as per the investigation conducted so far, no evidence has come on record to show that the petitioner-accused ever used any certificate of Scheduled Castes for obtaining admission in any college or during his service career. It has further been found that petitioner-accused belongs to "Faquir" caste which is a

notified backward class by the Government of Punjab. It has also been reported that the petitioner-accused did obtain admission in Guru Nanak Dev Polytechnic College, Ludhiana in the year 1976 under the backward class category, however, in his service career, petitioner-accused never availed the benefit of reservation either on the ground that he is belonging to backward class or scheduled caste.

On 12.07.2019, Senior Deputy Advocate General, Punjab has made the statement that action is being initiated against Rulda Singh-complainant and cancellation report is being submitted.

Although normally the Court would have disposed of this present petition once State of Punjab has undertaken to file cancellation report, however, facts of the case compel this Court to pass some order. Petitioner-accused claims that he belongs to Backward Class category with “Gusain” *gotra* and “Faquir” caste. Petitioner-accused admits that in the year 1976, he applied for caste certificate and he was issued certificate certifying that petitioner belongs to backward class by the competent authority. Petitioner on the basis of the aforesaid certificate got admission in the Diploma Course in Guru Nanak Dev Polytechnic College, Ludhiana where he completed his study in the year 1980. In the year 1985, the petitioner was appointed as Lineman in the Punjab State Power Corporation Limited and the petitioner superannuated on attaining the age of 58 years on 29.02.2016. It has further been submitted that the petitioner had a land dispute with his cousin brother Rulda Singh son of Sant Singh. Rulda Singh is settled out of India. Rulda Singh sent a complaint to Chairman, Punjab State Power Corporation making allegation that petitioner belongs to Gosain

which is not a notified backward class. Other allegation with regard to the accepting bribe money and stealing of electricity etc. were also made. After enquiry by the Director, Bhakra Beas Management Board, where petitioner was working at that time, the complaint was found to be without merit. It was found that complaint is result of family enmity.

Thereafter, an enquiry was held by the District Welfare Officer, in which Rulda Singh-complainant was also joined. Prem Singh-petitioner, Sarpanch of the village and another resident of the village were examined and everyone supported the claim of the petitioner that he belongs to the backward class category and the present complaint is result of land dispute. However, District Welfare Officer only on the basis of the statement of Rulda Singh, recorded that Gosain caste is not included in the list of backward class issued by the State of Punjab and, therefore, the certificate be cancelled and action be taken against the petitioner.

Similarly, another enquiry was held by the Scrutiny Committee. The aforesaid Scrutiny Committee also examined aforesaid persons as examined by the District Welfare Officer and concluded that the petitioner does not belongs to the Backward Class and, therefore, Scheduled Caste Certificate issued by the competent authority dated 22.06.1976 is liable to be cancelled. In view thereof, the Directorate Scheduled Caste and Backward Class Welfare Department recommended to take legal action against Prem Singh. On the basis of the aforesaid, FIR in question was registered.

It may be noted here that the Investigating Agency without having any material and without recording any reasons arrested the

petitioner on 04.09.2016 and kept him in custody for a period of 16 days before the petitioner was bailed out by the Court on 21.09.2016.

It has been noticed by the Courts in various cases that the police or Investigating Agencies arrests the accused without any basis simply on registration of the case, although police and Investigating Agencies have been cautioned more than once. In the case of **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273**, Hon'ble the Supreme Court examined this aspect and held that in case the offence is punishable for a term less than 7 years or 7 years, the police or Investigating Agency shall not arrest the accused except after recording reasons. However, it appears that the officials of the police and Investigating Agencies, as the case may be, have not learnt any lesson.

Here is a classic case where the petitioner who is a retired official has been kept in custody for a period of 16 days without any justifiable reason. The complaint has been made by a cousin who has a dispute with the petitioner in respect to the property, for the first time after a period of 33 years as the complaint was made for the first time in January, 2009 alleging that the petitioner got issued a wrong caste certificate in the year 1976. The then employer investigated the matter and found complaint to be false. However, District Welfare Officer and Scrutiny Committee constituted by the Scheduled Caste and Backward Class Welfare Department recommended action.

The police registered the FIR to which no exception can be taken. However, arrest of the petitioner particularly in absence of any reasons recorded was clearly erroneous and not justified. The action of the

police official who arrested the petitioner, was arbitrary.

In view of the peculiar facts particularly the recent affidavit filed by the police and the statement of the Senior Deputy Advocate General, Punjab, the present petition is disposed of after noting that the police has decided to file cancellation report in the Court of competent jurisdiction. However, liberty is granted to the petitioner to file fresh one on same cause of action, if he has still feel aggrieved. However for arbitrary action of the police officials to arrest the petitioner and keeping in custody for a period of 16 days, the authorities are burdened with costs of ₹1,00,000/- which in first instance shall be paid by the State of Punjab. However, State of Punjab shall be at liberty to recover the costs from the officials who ordered arrest or arrested the petitioner. The State shall also be free to recover the amount of cost from the complainant-Rulda Singh.

Petition disposed of.

17.07.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No