

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1889-2015 (O&M)
Date of decision: 22.08.2019

Davinder Vij

... Petitioner

Vs.

Nirmal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Aman Dhir, Advocate
for respondent No.1.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this revision petition is for setting aside the order dated 16.03.2015, vide which the charges were framed against the petitioner under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC&ST Act') and the charge sheet dated 03.02.2016, vide which the petitioner was further charged under Sections 341, 323, 506 of the Indian Penal Code (for short 'IPC'), in criminal complaint No.SC-66/15 dated 20.02.2015 titled as Nirmal Singh Vs. Davinder Vij and another.

Brief facts of the case are that respondent Nirmal Singh had filed the aforesaid complaint against petitioner Davinder Vij, Branch Head and Tej Singh, Assistant Branch Head, PNB Housing Finance Ltd., Jalandhar, with the allegations that the complainant belongs to scheduled caste and this fact is known to the accused persons. On 17.01.2010, PNB Housing Finance Ltd. issued an advertisement in the newspaper for auction of a property situated in Village Dhina, Tehsil and District Jalandhar by way of sealed bid, to be opened on 11.02.2010. It was stated in the advertisement that successful bidder will be given possession of the property. The complainant further stated that he deposited the earnest money of Rs.66,000/- with PNB Housing Finance Ltd. and again deposited another amount of Rs.1.00 lac on 18.02.2010 for execution of the conveyance deed. Thereafter, on 26.04.2010, when the complainant along with his wife Paramjit Kaur visited the office of PNB Housing Finance Ltd., Jalandhar, accused No.2 informed that they are unable to execute the conveyance deed, as the property in dispute is subject to litigation. When he approached accused No.1, he used filthy language in the name of his caste. Thereafter, accused No.2 caught him from the collar and took him inside the room and slapped him. When wife of the complainant raised voice, Kuljit Kaur @ Baljit Kaur and her son Kuldeep Singh, residents of Rurki reached there and rescued the complainant. It is thus prayed that the accused persons have committed the offence punishable under Sections 323, 341, 506 IPC and Section 3 of SC&ST Act.

The trial Court, after recording the preliminary evidence, vide order dated 06.12.2012, summoned the accused persons, including the

petitioner and on appearance, the trial Court, vide impugned order dated 16.03.2015, framed the charge initially under Section 3(1)(x) of SC&ST Act, however, later on, the same was amended on 03.02.2016 by adding Sections 341, 323, 506 IPC.

The petitioner has filed the present revision petition challenging the impugned orders framing charge.

Learned counsel for the petitioner submits that on the date of alleged incident, petitioner-accused No.1 was not present in the Bank, as he had gone to attend the official meeting held at Infinity Resort, Jim Corbet Park, Ram Nagar, Uttarakhand and he was on official duty from 24.04.2010 to 28.04.2010 and in this regard, he has relied upon certificate dated 25.04.2013 (Annexure P-4) issued by the Head, HR Department, PNB Housing Finance Ltd., copy of attendance register (Annexure P-5) and affidavits of two of his colleagues, who had also attended the same meeting (Annexures P-6 & P-7), deposing that the petitioner was present in the Manager's meeting held on 26.04.2010 at Infinity Resort, Jim Corbet Park, Ram Nagar, Uttarakhand. It is further submitted that in fact, the complainant, after making the payment of Rs.1.66 lac, did not make the balance payment and therefore, no conveyance deed could be executed in his favour and as per terms and conditions of the advertisement (Annexure P-3), earnest money deposited by the complainant was forfeited by PNB Housing Finance Ltd. and he was demanding the money back, which the petitioner could not return, as he was not the authorized person for doing the same. Learned counsel has relied upon the advertisement (Annexure P-3) to submit that it is specifically provided in this advertisement

that “in case of default of payment within the period mentioned above, the property shall be re-sold and the deposit shall stand forfeited and the defaulting purchaser shall not have any claim to the property or to any part of the sum for which the property may be subsequently sold”.

Learned counsel for the petitioner has submitted that since the complainant has purchased the property against Account No.882, owned by one Vikram Bangar, for which the reserve price was Rs.6.50 lacs and failed to make the balance payment, he had adopted a novel method to file the complaint to put pressure on the accused persons for refund of his money. It is further argued that from a bare perusal of the complaint, it is apparent that even the allegations of uttering or abusing the complainant in the name of his caste, are not falling within the purview of public view, as it is stated in the complaint that accused persons took him in a room and gave him slaps and therefore, no offence is made out under Section 3(1)(x) of SC&ST Act. Learned counsel has relied upon **Dilbagh Singh and others Vs. Sukhjinder Kaur, 2010 (24) RCR (Crl.) 93** to submit that where the complaint under Section 3(1)(x) of SC&ST Act has been filed with malafide intention to put pressure on the accused person, the same is liable to be quashed. Learned counsel has further relied upon **Rashmi @ Nandni and others Vs. State of Punjab and another, 2015 (3) RCR (Crl.) 832** to submit that where the incident has not taken place in a place within the public view, no offence under Section 3(1)(x) of SC&ST Act is made out. Learned counsel has also relied upon **Dr. Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh and another, 2012 (1) RCR (Crl.) 931** and **Chaman Lal Goyal Vs. Kaur Singh, 2008 (1) RCR (Crl.) 377**, wherein

similar view was taken.

Learned counsel has further argued that the petitioner was acting in discharge of his official duty as Branch Head of PNB Housing Finance Ltd. and relies upon **Mrs. Priyanka Srivastava and another Vs. State of U.P. and others, 2015 (2) RCR (CrI.) 1034** to submit that in case of default of payment by a person to a financial institution, the subsequent action on behalf of such defaulter in filing an application under Section 156 (3) Cr.P.C. against the officials of the Bank/Company, is nothing but misuse of process of law and the Hon'ble Supreme Court has quashed the FIR. It is further argued that the complainant had already availed his alternative and efficacious remedy of filing a civil suit for recovery of earnest money of Rs.1.66 lac against PNB Housing Finance Ltd. and owner of the property and the same has already been decreed by the Civil Judge (Junior Division), Jalandhar on 04.01.2016 along with interest @6% per annum. A copy of this judgment is taken on record as Mark 'X'.

It is next argued on behalf of the petitioner that a perusal of the judgment dated 04.01.2016 shows that in the suit filed before the Civil Court, the complainant has nowhere mentioned about allegations of abusing in the name of his caste and therefore, Section 3(1)(x) of SC&ST Act is not made out and the suit has been filed only for refund of amount and not for execution of the conveyance deed. It is lastly argued that the property in dispute was free from all encumbrances and in fact having failed to pay the balance amount, the present complaint has been filed with malafide intention.

Learned counsel for the respondent-complainant has submitted that

at the time when the petition was filed, two witnesses were examined and therefore, the trial is in the midway and proceedings may not be quashed. However, he could not dispute that the civil suit for recovery of earnest money filed by the complainant stands decreed in his favour vide judgment dated 04.01.2016.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) The complainant, in his reply, could not dispute that on the date of alleged incident, petitioner-accused No.1 being the Branch Head was not present in the Bank, as he has placed on record the certificate (Annexure P-4) that he was away to attend a meeting in Uttarakhand and therefore, there is no rebuttal to the documents (Annexures P-4 to P-7) showing that the petitioner was not present in the Bank on that day.
- (b) As per terms and conditions of the advertisement, PNB Housing Finance Ltd. has forfeited the earnest money deposited by the complainant to the tune of Rs.1.66 lac, as he failed to make the balance payment and therefore, PNB Housing Finance Ltd. was justified in not executing the conveyance deed.
- (c) The allegations levelled by the complainant that the property in dispute was subject to litigation, is not proved on record, as it is case of the petitioner that there was no dispute regarding title of the property.
- (d) In view of judgment of the Hon'ble Supreme Court in **Mrs.**

Priyanka Srivastava's case (supra), it is apparent that the complainant, having failed to make the balance payment, has adopted a novel method and has filed the complaint levelling allegations that the petitioner-accused, who is working as Branch Head, has abused him in the name of his caste and given him slaps, while taking inside a room. It is held by the Hon'ble Supreme Court that in such circumstances, the action of the defaulter is malafide and the criminal proceedings are liable to be quashed.

- (e) Even otherwise, a bare perusal of the complaint shows that no offence under Section 3(1)(x) of SC&ST Act is not made out in view of judgment of the Hon'ble Supreme Court in **Dilbagh Singh's** case (supra).
- (e) The complainant has already availed his alternative remedy of filing a civil suit for recovery of earnest money against PNB Housing Finance Ltd. and the suit stands decreed vide judgment and decree dated 04.01.2016 passed by the Civil Court and therefore, prosecution of the petitioner is nothing but misuse of process of law. In this suit, the complainant has not pleaded the allegations of commission of offence under Section 3(1)(x) of SC&ST Act. Admittedly, the suit was filed subsequent to filing of criminal complaint, which demonstrate that the complainant was interested in refund of his money.

Accordingly, the present petition is allowed and the impugned order dated 16.03.2015 and the subsequent order dated 03.02.2016, framing

charge under Section 3(1)(x) of SC&ST Act and Sections 341, 323, 506 IPC,
are hereby set aside and resultantly, the complaint qua petitioner is dismissed.

22.08.2019

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[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No