

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

**CRM-M-47406-2019
Date of Decision : 20.12.2019**

Paramjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. S.C. Arora, Advocate for the petitioner.

ARUN KUMAR TYAGI, J.

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for directing the respondents to provide security to the petitioner.

2. Briefly stated, the petition has been filed on the averments that the petitioner is carrying on Cable TV net-work business in his native village. One Gagandeep Singh, who was employed as menial worker by him, left his job about two months back. Thereafter, the petitioner has no personal/professional concern with him. The petitioner was called at Police Station Sadar, Sri Muktsar Sahib on 30.10.2019 and was questioned about said Gagandeep Singh who was wanted for commission of some heinous crime regarding which FIR had been registered against him at the said Police Station. The petitioner was detained at the Police Station till evening from morning and was allowed to go on the intervention of the respectables of the village. The petitioner was again called to the Police Station on 01.11.2019 and was released on intervention by his father and co-villagers who accompanied him. The petitioner accompanied by his

father went to the office of Senior Superintendent of Police, Sri Muktsar Sahib, whose Reader advised them to meet the Deputy Superintendent of Police concerned. They visited the office of the concerned Deputy Superintendent of Police who avoided meeting them. The local police is acting in contravention of the law and infringing upon personal liberty of the petitioner in violation of Articles 14, 21 and 22 of the Constitution of India by summoning and questioning him without following provisions of the Cr.P.C. The petitioner has accordingly prayed that the respondent be directed to provide security to the petitioner.

3. I have heard learned Counsel for the petitioner and perused the record.

4. Mr. S.C. Arora, learned Counsel for the petitioner has argued that the petitioner, who is carrying on Cable TV net-work business in his village, has no concern with his menial labour Gagandeep Singh after he left his job about two months back but the police is harassing the petitioner by summoning and illegally detaining him at Police Station Sadar, Sri Muktsar Sahib without following provisions of the Cr.P.C. and in violation of Articles 14, 21 and 22 of the Constitution of India for questioning him about said Gagandeep Singh. In view of the police harassment, the respondent may be directed to provide security to the petitioner.

5. In the present case, admittedly the petitioner was called at Police Station Sadar Sri Muktsar Sahib on 30.10.2019 and was questioned about his ex-employee Gagandeep Singh who was wanted for commission of some heinous crime regarding which FIR has been

registered against him at the said Police Station. Section 160 of the Cr.P.C. empowers police officer making an investigation under Chapter XII of the Cr.P.C. to require by order in writing the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required. However, the proviso to Section 160(1) of the Cr.P.C. mandates that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides. Section 161 of the Cr.P.C. empowers police officer making an investigation under Chapter XII of the Cr.P.C, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, to examine orally any person supposed to be acquainted with the facts and circumstances of the case.

6. The grievance of the petitioner is that the police is acting in contravention of the statutory provisions and is infringing upon personal liberty of the petitioner in violation of Articles 14, 21 and 22 of the Constitution of India.

7. Every police officer, being a member of uniformed disciplined force and a public servant, is duty bound to ensure that he acts in strict conformity with the Constitution of India and the laws. In the administrative hierarchy of the police administration, every superior police officer is duty bound to ensure that his subordinate does not

breach the law and acts only in strict conformity with the Constitution of India and the laws and to attend to any complaint of harassment or other unlawful act by any member of the police force subordinate to him.

8. The Indian Penal Code, 1860 contains sufficient penal provisions to protect the life and liberty of citizens against police harassment. Section 166-A of the Indian Penal Code, 1860 provides as under:-

“166-A Public servant disobeying, direction under law.

- Whoever, being a public servant, -

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326-A, section 326-B, section 354, section 354-B, section 370, section 370-A, section 376, section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB, section 376-E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.”

9. The offence punishable under Section 166-A of the IPC is cognizable, bailable and triable by the Judicial Magistrate Ist Class.

10. Section 197(1) of the Cr.P.C. which deals with the matter of prosecution of Judges and public servants provides as under:-

“197. Prosecution of Judges and public servants. -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while

acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB, or section 509 of the Indian Penal Code.”

11. A bare reading of Section 197(1) of the Cr.P.C. shows that no sanction is required for prosecution of a public servant accused of having committed offence punishable under section 166A of the IPC.

12. Equally efficacious remedy of making complaint to the superior police officer and filing of complaint before the Judicial Magistrate Ist Class having territorial jurisdiction are available to any person complaining of police harassment or unlawful act or omission on the part of any police Officer/Official. In view of availability of the aforesaid equally efficacious remedies, the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India or its inherent jurisdiction under Section 482 of the Code of Criminal

Procedure, 1973 cannot be invoked by the aggrieved person and

exercised by the High court in routine manner and can be so invoked and exercised only in exceptional circumstances of grave and imminent danger to the person applying for such relief where it is shown to the satisfaction of the High Court that the above referred alternative remedies were resorted to but remained ineffective or turned futile. It may also be observed here that a good number of criminal writ petitions are filed in this Court on allegations of "police harassment" but many of them turn out to be merely matters impeding due process of law and interfering with legitimate mechanisms. No blanket order in vague terms of providing protection can be passed in such cases.

13. The petitioner has got equally efficacious remedy of making a representation to the Senior Superintendent of Police, Sri Muktsar Sahib to look into his grievances and take appropriate action in accordance with law or to file complaint before Judicial Magistrate Ist Class having territorial jurisdiction for redressal of his grievances and punishing the defaulting police officers/officials.

14. In view of the above, the present petition is dismissed as being not maintainable due to availability of equally efficacious alternative remedies.

(ARUN KUMAR TYAGI)
JUDGE

20.12.2019
Kothiyal

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