

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

**CRM-M-29737-2015 (O&M)
Date of decision: 12.03.2020**

Shallu and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. S. Dahiya, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

By way of the present petition, filed under Section 482 Cr.P.C., the petitioners have prayed for quashing of FIR No. 106 dated 27.03.2015, registered under Sections 114, 143, 147, 149, 283 and 341 of the IPC at Police Station Safidon, District Jind (Annexure P-1) along with all the subsequent proceedings arising therefrom.

Learned counsel for the petitioners has submitted that all the petitioners are working as Extension Teachers and fulfill the conditions of eligibility for the post of Assistant Professor. Since the petitioners are working as Extension Teachers and they have to apply every year afresh and had to face interview again and again, on 27.03.2015 at about 12.00 PM, they all gathered to raise a protest in a peaceful manner and on that account, the impugned FIR was registered against them.

For a ready reference, the impugned FIR is reproduced below:

“To, the SHO, P.S Safidon, Jai Hind. Today, I (A.S.I),

along-with HC Mahendra Singh No.833 and HGH Rajesh No.727, was going from old Anaj Mandi Safidon-Railway Road towards City Bridge on foot while doing the patrolling and searching the unsocial elements. At about 12.00 (Noon), I (A.S.I) along-with fellow officials reached near canal bridge, Hansi branch Safidon, where we saw the queue of long line of vehicles at main road towards Jind side and at main road towards city side from the bridge. At there, we found that about 25/30 persons (ladies and gents) were sitting in the middle of road. Out of them, three persons whose names came to know later on as Yoginder Lamba, Sandeep Dhillon and Pardeep Lecturer were instigating those ladies and gents, who were obstructing the traffic. When I talked to them, they replied that they would not clear the jam until the SDM come to the spot. They were also saying that they were extension lecturers from the Government Senior School, Safidon and they would not call off the agitation until their services were not regularized by the Government. Even after my time and again pursuance, the afore-said persons did not clear the jam. Yoginder Lamba, Sandeep Dhillon, Pardeep Lecturer and other about 25/30 persons (ladies and gents) have committed offence(s) under section 114, 143, 147, 149, 283 and 341 IPC by resorting to jam and blocking the traffic at canal bridge constructed at main road of Safidon City and obstructing the general passage of general public. The writing is being sent to the police station through HGH Rajesh 727 for the registration of the case. After registering the case, the number thereof may be intimated. The officers and other investigators may be sent to the spot. I (A.S.I) am busy in making investigation at the spot. Today:- Canal Bridge, Hansi branch Safidon City Sd/- Jaibhagwan, A.S.I, Chowki Mandi Safidon dated 27.03.2015, at 12.50 P.M.

At Police Station:-

On the receipt of above-mentioned writing, a case (F.I.R) No.106 dated 27.03.2014 under section 114, 143, 147, 149, 283 and 341 IPC was registered at P.S Safidon. The copies of F.I.R were prepared. The copies will be sent to the concerned officers through post. The copy of police file together with the original writing will be sent to I/O through incoming HGH at the spot.”

Learned counsel for the petitioners has further submitted that thereafter, the petitioners and others have given various representations to the higher authorities about their wrong implication in the present FIR as well as to the fact that some of the persons, who were arrayed as accused were actually not present at the spot. Learned counsel has relied upon certain affidavits in this regard.

Learned counsel for the petitioners has further submitted that during investigation, the Investigating Officer did not act properly and some of the persons/teachers, who had paid Rs.5,000/- each to the Investigating Officer, were left out.

It is worth noticing that on 11.09.2015, while issuing notice of motion, the following order was passed:

“...Learned counsel submits that even if the allegations are treated to be a truthful version, still no offence is made out.

Notice of motion 30.11.2015.”

Thereafter, on 03.05.2016, the trial Court was directed to adjourn the case beyond the date fixed before this Court and on 30.05.2016, the petitioners, for the first time, raised a plea that some of the accused, who paid a bribe of Rs. 5,000/- each to the Investigating Officer, were left out.

Again on 11.08.2016, on the submissions of learned counsel for the petitioners that out of 34 persons, the name of 13 persons were deleted by taking bribe of Rs.5,000/- each by the Investigating Officer, the petitioners were directed to place on record affidavit of those 13 persons, who had paid such bribe to Investigating Officer, however, no such affidavit was filed.

In the meantime, two affidavits were filed by the DSP, Safidon, in which contradictory stand was taken, therefore, Inspector General of Police, Hisar was directed to file a specific affidavit.

Learned counsel for the petitioners has further argued that the petitioners, well within their right to freedom of speech under Article 19 of the Constitution of India, had gathered for a peaceful protest, for which the police has falsely implicated them in the present FIR.

Learned counsel has next argued that the impugned FIR was registered under Sections 114, 143, 147, 149, 283 and 341 of the IPC, however, from a bare perusal of the FIR, none of the offence is made out. For perusal, the aforesaid Sections are reproduced below:

Section 114 IPC; Abettor present when offence is committed:

Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Section 143 IPC; Punishment for being member of unlawful assembly:

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 147 IPC; Punishment for rioting:

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 149 IPC; Every member of unlawful assembly guilty of offence committed in prosecution of common object:

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 283 IPC; Danger or obstruction in public way of line of navigation:

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Section 341 IPC; Punishment for wrongful restraint:

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Learned counsel has further argued that a bare perusal of the FIR would show that there was a peaceful agitation by the petitioners and the only allegation in the FIR is that the petitioners have obstructed in the ingress or egress of the public by creating a traffic jam on the main road on a bridge along the side of a water channel of the city. Learned counsel has, thus, argued that no offence under Sections 143, 147 and 149 of the IPC is made

out as the petitioners were not the members of an unlawful assembly and they have not committed any offence of rioting.

Learned counsel has further argued that even offence under Section 283 IPC is not made out as there is no allegation of causing any danger or injury to any persons except that there are allegations of obstruction of traffic jam.

Learned counsel further argued that even offence under Section 341 IPC is not made out as there is no allegation in the FIR that any of the petitioners has wrongfully restrained any person from general public.

It is further submitted that even the offence of abetment under Section 114 IPC is not made out from the bare perusal of the FIR and on perusal of the FIR, only the allegation of obstruction as defined under Section 283 IPC could be made out, for which the punishment is of fine of Rs. 200/- only.

Learned State counsel, on instructions from the Investigating Officer and on the basis of the affidavits of the Inspector General of Police, Hisar Range, Hisar, dated 12.09.2017 & 24.10.2017, has submitted that on 23.05.2015, *challan* against 34 persons was prepared, without arresting them and thereafter, ASI Parveen Kumar gave notice under Section 160 Cr.P.C. to all the 34 persons for appearing before the trial Court and the report under Section 173 Cr.P.C. was submitted on 01.06.2015 before the Illaqua Magistrate.

Learned State counsel further submitted that in pursuance to notice under Section 160 Cr.P.C., 13 persons appeared before the Investigating Officer Parveen Kumar, who made inquiries from them and found them innocent and this inquiry was verified by Inspector Dharambir

Singh, SHO, PS-Safidon.

It is further submitted that during investigation, evidence against the petitioners and one Pooja (total 21 persons) had come on record and, therefore, the *challan* was presented against them on 01.06.2015.

It is further stated that on 01.09.2017, an SIT was constituted, which was headed by DSP, Law & Order, Hisar and the SIT further conducted the investigation and found that accused Nisha, Parveen Kumar, Rajiv, Bijender, Gurpreet and Nishu Sharma were rightly given a clean chit by the Investigating Officer, however, accused Pardeep Mann, Kriti, Neha Jain, Shikha and Harsha, who were earlier exonerated, were found to be involved in the commission of offence and petitioner No. 3 Sunil Devi was found to be not present at the spot. It is also stated that investigation qua some of the accused persons are still in progress.

It is also stated in the affidavit that Superintendent of Police, Jind, vide letter dated 10.09.2017, has requested Superintendents of Police, Panipat and Karnal to take disciplinary action against Inspector Dharambir Singh and ASI Parveen Kumar for showing dereliction in duty and negligence in the investigation of the present FIR and pursuance thereof, departmental action has been initiated against them.

It is further stated in the said affidavit that as per the investigation carried out by the SIT and evidence collected so far, it is clear that the accused persons/Extension Teachers blocked the road on 27.03.2015 and the SIT is verifying the role of individuals by collecting the evidence. It is further stated that the allegation of payment of Rs. 5,000/- to the Investigating Officer by some of the accused was not substantiated as no evidence to prove this allegation has come on the file.

Learned State counsel, on instructions from the Investigating Officer, has further submitted that later on, 07 persons namely Rajesh and others, who were not earlier involved in the commission of offence, have now been involved in the present FIR and the *challan* qua them is to be presented under Section 173(8) Cr.P.C.

Learned State counsel has referred to ***2019(1) SCC (Cri) 517, Kodungallur Film Society & another vs. Union of India & others***, wherein Hon'ble Supreme Court, post the violence and disruption of public property after the release of film 'Padmaavat', has issued certain guidelines to the State Governments regarding structural and preventive measures; remedies to minimize, if not extirpate, impending mob violence; liability of person causing violence; responsibility of police officials and compensation to be awarded for the loss of life and damage caused to the public and private properties.

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

(a) A bare perusal of the FIR shows that the Investigating Officer received an information that on the Hansi branch bridge at Safidon, there was a traffic jam and a long queue of vehicles. When he reached on the bridge, he saw that in the middle of the bridge, 25/30 ladies and gents were sitting, some of whom were named in the FIR, and they were instigating for holding a traffic jam. When the Investigating Officer asked them to allow the traffic to pass, they replied that till the SDM comes at the spot, they will not open the traffic jam. It is further alleged in the FIR

that all the persons present at the spot said that they are working as Extension Lecturers in the Govt. High Schools and till the Government regularizes their services, they will continue to hold such type of agitation. Thus, from the bare perusal of the FIR, no offence under Sections 143, 147 and 149 of the IPC is made out as there is no allegation of rioting or creating an unlawful assembly.

(b) A bare perusal of the FIR further shows that there was no wrongful restraint of any person so as to invoke Section 347 IPC as it is the case of the prosecution that the petitioners have held a traffic jam in an open place. The only offence which can be made out is under Section 283 IPC, which is causing obstruction in public way, for which the punishment is of fine of Rs. 200/-.

(c) A perusal of report, submitted under Section 173 Cr.P.C., as shown by learned State counsel, reveals that only three police officials have been cited as witness, who were present at the spot along with ASI Parveen Kumar. Therefore, there was no complaint from the general public that they were being obstructed on account of the traffic jam created by the petitioners.

(d) Even there is no allegation in the FIR, the agitation held by the petitioners was either violent or intended to wrongfully restrain any person including the police officials.

(e) It is worth noticing that the petitioners are the

Extension Teachers and they are facing prosecution since 2015 i.e. for the last five years and as per the affidavit of Inspector General of Police, the case is still at the stage of investigation by the SIT, as directed by the Illaqua Magistrate, vide its order dated 21.08.2017, therefore, the petitioners, who are teachers and were holding a peaceful protest, have already undergone agony of trial for a period of five years.

(f) Though, the petitioners, well within their right, can hold a peaceful agitation, yet, no such agitation can be held on a public passage and, therefore, in view of the judgment in ***Kodungallur Film Society's*** case (supra), the petitioners are liable to pay costs.

(g) Therefore, in view of the judgment of Hon'ble Supreme Court in ***State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) R.C.R. (Criminal) 383*** and from the bare perusal of the impugned FIR, no offence under Sections 114, 143, 147, 149, 283 and 341 of the IPC is made out.

However, considering the fact that petitioners have caused a traffic jam causing inconvenience to general public, they are liable to pay a cost of Rs. 3,000/- each, to be deposited with the District Legal Services Authority, concerned.

Accordingly, the present petition is allowed and FIR No. 106 dated 27.03.2015, registered under Sections 114, 143, 147, 149, 283 and 341 of the IPC at Police Station Safidon, District Jind (Annexure P-1), along with

all the subsequent proceeding arising therefrom, is quashed qua the petitioners herein.

However, this will be subject to the condition that each of the petitioners will deposit an amount of Rs. 3,000/- with the District Legal Services Authority, Jind on or before 13.05.2020, failing which the present petition shall be deemed to be dismissed.

It is made clear that imposition of cost will have no bearing on the service career of the petitioner.

Since the main petition stands allowed, criminal miscellaneous application, if any, shall also stand disposed of.

12.03.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No