

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

CRM-M-5500-2023 (O&M)
CRM-5166-2023
Date of Decision: 02.02.2023

ARVINDER DHULL

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Himanshu Raj, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, seeking quashing of FIR No.0144 dated 27.05.2022, registered under Section 506 of the Indian Penal Code read with Section 3(1)(C) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) and challan dated 05.08.2022 (Annexure P-2) filed under Section 3(1)(C) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989(Amendment 2015) read with Section 506 IPC and 120-B of the Indian Penal Code, 1860.

Brief facts of the case are that respondent No.2/complainant-Naveen Kumar got lodged the above-said FIR No.0144 dated 27.05.2022 against the present petitioner namely, Arvinder Dhull, District Town Planner, Jind along with two others i.e. Amit Malik, Assistant Officer,

District Town Planner Jind and Krishna Chandra, Assistant Draftsman (Retd.) by stating that he is working as a Junior Engineer in the District Town Planner's Office, Jind and belongs to 'Dhanak' caste, which comes in the scheduled caste. It is further submitted that he has been performing his duties with full devotion, sincerity and honesty, which is not liked by the above-said three officers, who are alleged by him to be corrupt. It is stated in the complaint that the complainant was repeatedly pressurized to do wrong deeds and on his refusal, he was mentally tortured by them and was being treated like a second class. It is further alleged in the complaint that the above said persons used to abuse him in the terms of his caste and he was also beaten up during his field inspection.

A perusal of the complaint would suggest that the complainant has referred to various instances on which he was insulted and threatened. Even specific allegations have been made against the petitioner and two other accused, some of which, read thus :

“ When Krishan Chandra and Amit Malik were forbidden to interfere in my field inspection, then both of them addressed me by abusing me casteistly, where they said both of them have spoken to the District Town Planner Arvinder Dhull and they are like “Chaudhar of Deadho like you, will not allow. Many Deadho like you have come, stay as a JE don't show off.” On 15.04.2021, when I reported to the District Town Planner about the illegal colony flourishing behind the new bus stand Jind in the middle of the wheat crop, on road network along with the related documents like photo of the spot, map of the illegal colony, etc. then the District Town Planner changed my workspace. I was given the charge of Safido vide letter number 1936 dated 15.04.2021 and issued an explanation against me in the headquarter so that the illegal colony growing behind the bus stand jail could be

hidden (related documents are available with me, I can present if needed). After that when I was handed over the charge of Safido area, on which the officer Amit Malik threatened him that don't fly too much or else he will cut my wings and get me chased in the field (audio recording of which is available with me) and Amit Malik also threatened me not to take any action in Safido area and constantly interfered in my work, when I and Ravi Datt Patwari, stopped the ongoing construction in the illegal colony growing in Rampura Revenue Area, then the next day as soon as I reached the office in the morning, I was threatened by the Assistant Amit Malik stating that an affidavit will be given against me to the District Town Planner regarding asking for money from the property dealer and at the same time, started abusing me in term of caste and said that "dedha ab tere seengh todne padenge." About which I gave a written complaint to the District Town Planner, Jind but no action was taken on it by the District Town Planner, Jind.

...When I took my father to Gurgaon Maidanta The Medicity Hospital, I informed the District Town Planner, Jind on telephonically, and through Whatsapp (Screenshot of which is available with me) and when I was taking my father again to Gurgaon for checkup, during this time I got the casual leave written through Sandeep Khalasi working in the office under the telephone message, but despite the message being kept in the postal pad, the District Town Planner, Jind without any notice marked my absence for a day and cut off one day's salary, when I went to the District Town Planner, Jind and prayed, the District Town Planner, Jind said, 'I hardly got an opportunity to mark a red entry in your service book and threatened to take the job citing the probation period and during this time Arvinder Dhull, District Town Planner also called to my wife repeatedly. My wife received the call and said that Mr. Naveen is in

your office itself then why are you call on my phone and cut the call. Even after this, District Town Planner continuously called my wife and when she didn't answer the call, he video call her through google duo (screenshot of which is available and can be shown if necessary).

...Now I have got the work area of Jind under the letter JD/DTP-P/6665 dated 21.10.2021. After perusing the file of M.A restaurant, it was found that the District Town Planner, Jind rejected my report and got the report done from other employee in which the area of M.A restaurant is shown empty. When I mailed the Town Planner, Jind on 04.12.2021, he called me to his cabin and said that be like JE, don't try to be more Choudhary, our people are sitting from bottom to top. Go as far as you can. You can go up to the Supreme Court, if the money is less, then take the donation from me. About which, I had complained to the Deputy Commissioner, Jind, Senior Town Planner, Chief Town Planner, IT Chief Town Planner Haryana, Director General Town and Country Planning who forwarded my complaint to the Assistant Superintendent of Police, Narwana and was marked for investigation, on which I was called to join the investigation on 24.12.2021, after I appeared and presented my side, he kept calling me but accused number one Arvinder Dhull did not allow me to leave the office and I was not allowed to join the investigation after which the police took unilateral action and filed the complaint, after this both of the above became more and more excited, even in the office, instead of calling me by my name and post, they started addressing me with words like 'dedh-kamin'. In order to appear in the investigation in the said case, I have requested the District Town Planner, Jind in oral and written form, which I can present if required, but I was not allowed to participate in the investigation.

...in February 2022, I was given the charge of Julana area, in which show cause notice to Bittu Kittu Dhaba

was issued by the JE before me. When the same was marked to me, I made my inquiry report and submitted it to the District Town Planner, Jind on 21.02.2022. The District Town Planner Arvinder Dhull put mental pressure on me to make this report in favour of that dhabawala but I presented the actual report on which the District Town Planner Arvinder Dhull got furious and started telling me that you have been explained many times that I know how to use red pen ('Mann Lal Kalam Phernia avhai').

Apart from the above, other allegations regarding corruption etc. have also been made.

On the basis of said complaint, FIR No.0144 dated 27.05.2022 was registered under Section 506 of the Indian Penal Code read with Section 3(1)(c)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Civil Lines, Jind. Thereafter, it appears that the report under Section 173 of the Code of Criminal Procedure (Annexure P-2) was also submitted and in the meanwhile, the petitioner had sought bail in the afore-said FIR and it was granted to him vide order dated 20.07.2022 passed by the Additional Sessions Judge, Jind.

The petitioner has filed the instant petition seeking quashing of the FIR, challan etc., primarily on the ground that he has been falsely implicated and the same is a counter-blast to the show cause notices and explanations called upon by him from respondent No.2-complainant.

Learned counsel for the petitioner has referred to Annexures P-9, P-11, P-12, P-12/A, P-17, P-17/A, P-17/C, P-17/D, P-17/E, P-17/F, P-21, P-21/A, which are the letters/office orders issued by the present

petitioner to respondent No.2-complainant. The brief of which is as under :-

<i>Sr. No.</i>	<i>Annexure</i>	<i>Letter/Office order date</i>	<i>Remarks</i>
01	P-9	19.04.2021	Calling upon the complainant to give his explanation within two days.
02	P-11	31.05.2021	Directed the complainant to explain his position within two days.
03	P-12	01.06.2021	Direction to the complainant to explain his position within two days.
04	P-12/A	14.06.2021	Reply of the clarification sought from the complainant within two days.
05	P-17	12.11.2021	Show Cause Notice to the complainant to submit his reply within a day.
06	P-17/A	23.11.2021	Calling upon the complainant to submit his reply within two days.
07	P-17/C	30.11.2021	Show Cause Notice regarding submission of reply within two days.
08	P-17/D	02.12.2021	Show Cause Notice to the complainant to submit his reply within two days.
09	P-17/E	06.12.2021	Calling upon the complainant to submit his reply within two days.
10	P-17/F	16.12.2021	Directed the complainant to submit his reply within two days.
11	P-21	24.12.2021	Directions to submit the report within two days.
12	P-21/A	28.12.2021	Calling upon the complainant to submit his reply within two days.

Learned counsel for the petitioner, while referring to Annexure P-25, which is stated to be a transcript of the audio recording of some conversation between petitioner-Arvinder Dhull, one DTP Lalit and respondent No.2-complainant (Naveen Kumar), contends that respondent No.2-complainant is using his caste as an instrument to blackmail and for settling his personal vendetta, whereas, in the said audio transcript, respondent No.2 has admitted that no offending words were spoken by the petitioner. Learned counsel for the petitioner has also referred to Annexures P-15/A, P-15/B, P-15/C, P-15/D, which are the affidavits of Rajesh Kumar S/o late Shri Tarachand, Shamsher Singh S/o Shri Harcharan Singh, Naresh Kumar S/o late Shri Balwant Singh and Sandeep Kumar

S/o Shri Tarachand, respectively. In the said affidavits, the affiants have stated that they were working in the Office of District Town Planner, Jind and have come to know from the newspaper dated 29.05.2022 that Scheduled Caste and Scheduled Tribes Act has been registered against the DTP and two employees by one Naveen Kumar, J.E. Sandeep Kumar, in his affidavit, has stated that no foul/offending language has been used against any employee by DTP Arvinder Dhull, Amit Malik, Assistant or Krishan Chandra (Retd.).

While referring to the first page of the FIR (Annexure P-1), learned counsel for the petitioner has submitted that the FIR has been registered under Section 506 of the Indian Penal Code, 1860 and Section 3(1)(c) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989 (Amendment 2015), whereas, the said offences are not made out against the petitioner. Accordingly, the petitioner has prayed for quashing of FIR No.0144 dated 27.05.2022.

I have heard learned counsel for the petitioner and have gone through the paper-book with his able assistance.

Before considering the submissions of learned counsel for the petitioner, it is pertinent to refer to the Statement of Objects and Reasons appended to the SC/ST Act which is as under :-

“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons...

2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes, has therefore, become necessary.

3. The term 'atrocities' has not been defined so far. It is considered necessary that not only the term 'atrocities' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoin on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimized and

where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.”

A perusal of above extracted statement of Object and Reasons would manifest that the Parliament acknowledged that the Scheduled Castes and Scheduled Tribes were subject to various offences, indignities, humiliations and harassments perpetually and considering the fact that there was an increase in the disturbing trend of commission of atrocities against the Scheduled Castes and Scheduled Tribes, the Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The Preamble to the Act reads as under :-

"An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

The 1989 Act enlarges the scope of criminal liability by including several acts or omissions of atrocities which were not covered by the Indian Penal Code or the Protection of Civil Rights Act, 1955. The object of the Act is to provide for prevention and punitive measures to protect the members of Scheduled Castes and Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them. Besides, it is a measure to preserve their self respect and honour. The 1989 Act provides protection to the Scheduled Castes and Scheduled Tribes from various atrocities affecting social disabilities, properties, malicious prosecution, political rights and economic exploitation. The 1989 Act also provides for enhanced punishment for

commission of offences against the Scheduled Castes and Scheduled Tribes.

Here, it would be apposite to refer to the observations of Hon'ble the Apex Court in ***Manju Devi vs Onkarjit Singh Ahluwalia @ Omkarjeet Singh and others 2017(2) RCR (Criminal) 421***; which reads as under :-

“14. ... The use of the word ‘Harijan’ ‘Dhobi’ etc. is often used by people belonging to the so-called upper castes as a word of insult, abuse and derision. Calling a person by these names is nowadays an abusive language and is offensive. It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone. We, as a citizen of this country, should always keep one thing in our mind and heart that no people or community should be today insulted or looked down upon, and nobody’s feelings should be hurt.

15. Though the Constitution of India abolishes ‘untouchability’ but in view of the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the SC/ST Act. The offences which are enumerated under section 3 of the SC/ST Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences

constitute a separate class and cannot be compared with offences under the Penal Code.”

In the above context; a reading of the FIR would *prima facie* show that specific allegations regarding casteist abuse, remarks, harassment, corruption etc. have been made against the petitioner.

From the submissions of counsel for the petitioner and also from the perusal of the paper-book, it is manifest that the petitioner had tried to explain and controvert the allegations made by respondent No.2-complainant by placing reliance upon various annexures, affidavits of various persons including Annexure P-25, which is stated to be a transcript of the audio recording between the petitioner, respondent No.2-complainant and one DTP Lalit. However, I am of the considered view that the said Annexures/affidavits/audio transcript cannot be considered as evidence at this stage as the same would be required to be proved and established as per law before the trial court by leading evidence. In this regard, reference can be made to the judgment rendered by Hon'ble Apex Court in ***State of Madhya Pradesh v. Awadh Kishore Gupta 2004(1) RCR (Criminal) 233***, wherein, it has been held as under :-

“ While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. JawaharLal and Ors. (1992(3) SCC 317: 1992(3) RCR (Criminal) 534 (SC)), it

was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No.116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the mention further.”

Further, as regard the submission of learned counsel for the petitioner that the FIR is stated to have been registered only under Section 506 of the Indian Penal Code and Section 3(1)(C) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which are not made out against the petitioner; suffice it to say that in the FIR itself, on the concluding page, it has been written as under :-

“ On receipt of the complaint, Section 506 R/w 3(1)(c)(r)(s) of the SC ST Act are being found. FIR No.144 dated 27.05.2022 under Section 506 R/W Section 3(1)(c)(r)(s) SC ST Act, Police Station Civil Line, Jind registered and copies were prepared by computer and special report Bajaria Mail Id Area Magistrate, Superintendent of Police Jind and Deputy Superintendent of Police, Law and Order Jind in service is sent and the duplicate complaint is being sent to Sepoy Lakhwinder Singh, 1190, Mr. Rohtash Kumar, Deputy Superintendent of Police, Law and Order, Jind.”

Apart from the above, a perusal of bail order dated 20.07.2022 (Annexure P-28) shows that FIR No.144 dated 27.05.2022, has been registered under Sections 506 of the Indian Penal Code and 3(1)(c)(r)(s) of

Scheduled Castes and Scheduled Tribes Act at Police Station Civil Line, Jind. Even otherwise, a wrong application of a particular section cannot be the ground for quashing of the FIR. Moreover, there are certain disputed questions of facts, which can be thrashed out only during trial of the case.

At this stage, it is not possible for this Court to weigh the materials and then come to the conclusion one way or the other. The principles of law in the matter of scope of interference by the Court as laid down in *M/s Neeharika Infrastructure Pvt. Ltd. (AIR 2021 SC 1918)* are :-

*“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of **King Emperor vs. Khawaja Nazir Ahmad (AIR 1945 PC 18)**, the following principles of law emerge:*

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR”.

In view of the afore-mentioned facts and circumstances, I do not find any merit in the instant petition and the same is accordingly dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case in accordance with law and on its own merits and on the

basis of the evidence to be led and without being influenced by any of the observations made here-in-above.

Pending application/s, if any, shall also stand disposed of.

February 02, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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