

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

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**CRM-M-32475-2019 (O&M)
Date of decision: 15.02.2023**

RAM SINGH

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Karamveer Singh Banyana, Advocate for the petitioner

Ms. Aditi Girdhar, AAG Haryana

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the order dated 05.02.2016 passed by learned Judicial Magistrate 1st Class, Kurukshetra whereby the complaint No.978 of 2013, dated 12.07.2011 filed by the petitioner under Sections 192, 193, 196, 199, 200, 211, 219, 500, 120-B of IPC and Sections 3(1)(vii)(ix)(x), 3(2)(ii)(vii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was dismissed, and judgment dated 26.02.2018 passed by learned Sessions Judge, Kurukshetra vide which the revision petition filed by the petitioner has been dismissed.

Briefly put, the facts of the present case are that when the petitioner was posted as Station House Officer, Sadar Thanesar, FIR No.344 dated 10.10.2006 was registered under Sections 279 and 304A IPC. After investigation, an untrace report was submitted, which was accepted by the trial Court on 05.05.2010. In the meantime, on an application filed by the father of deceased Pawan Kumar, an enquiry was conducted by respondent

No.2-SI Tejinder Kumar, State Vigilance Bureau Unit, Kurukshetra. The petitioner alleged that he was humiliated by the said officer in his office in the presence of other officials. Respondent No.3 also gave false statement and the concerned police officials, who were on duty on 10.10.2006 and 11.10.2006, were not joined in the enquiry. In this way, respondent No.2 instituted false, malicious criminal proceedings intentionally to humiliate, insult and defame the petitioner as also submitted false, frivolous and fabricated documents based report, upon which, FIR no.17 dated 22.05.2008 under Sections 201 and 120-B IPC was registered against the petitioner, ASI Shingara Ram and HC Subhash Chand. The said FIR was investigated by the State Vigilance Bureau and the allegations levelled therein were found to be false and cancellation report was submitted and accepted by learned Judicial Magistrate, 1st Class, Kurukshetra vide order dated 29.01.2011. In the joint departmental enquiry also they were exonerated of the charge. The instant complaint was filed against respondent Nos. 2 and 3, on the allegations that they malafidely and willfully got a false FIR registered against him and others to harm and damage their reputation.

The preliminary evidence was led and accused-respondent Nos.2 and 3 were ordered to be summoned for the commission of offence punishable under Sections 193, 196, 199, 200, 211, 219, 500 and 120-B IPC vide order dated 23.05.2012 passed by Ms. Kavita Kamboj, learned JMIC, Kurukshetra.

In order to prove the case, the complainant in pre-charge evidence examined as many as 11 witnesses. Thereafter, closed his pre-charge evidence vide separate statement recorded on 05.12.2015. After evaluation of the evidence on record, the trial Court discharged the accused

vide order dated 05.02.2016. The said order was challenged by the petitioner by way of filing a revision, which was also dismissed by the learned Sessions Judge vide order dated 26.02.2018.

Learned counsel for the petitioner submits that the Courts below have committed grave error while acquitted the accused-respondents by ignoring the evidence led by the petitioner. SI Tejinder Singh knew that the petitioner was not the investigating officer of the case. Still further, the investigation conducted by the concerned officials was correct, despite that a wrong declaration was made of the same being false. All the witnesses examined by the petitioner during pre-charge evidence, had categorically admitted the acts and conduct of the accused-respondents and their malafide intention to humiliate the petitioner and others.

Heard and perused.

It is apposite to make a reference to the order passed by the trial Court, which reads thus:

“8. The foremost requirement of any case is that there must be presence of two factors i.e. mens rea or actus reus. Mens rea is the intention and actus reus is the actual act. Here, some facts are admitted that the accident occurred on 10.10.2006 and complainant was posted as SHO, Police Station, Thanesar. The matter was enquired by ASI Singara Ram but the SHO was complainant and regarding the offending vehicle there was some investigation made by Ram Singh, complainant. All the CWs have been examined in order to show that the FIR was lodged against the complainant on the reference of accused No.1 and in that FIR the matter was investigated. Cancellation report was filed as there was no evidence and even, departmental proceedings were initiated and he was exonerated from the departmental proceedings. Here, what is mala fide on the part of accused No.2 has not been shown because complainant had tried to allege that he got the information of the matter on 11.10.2006 not 10.10.2006 whereas in the case file, it is the complaint referred by accused No.1 to State

Vigilance Commission. There is a proper procedure of initiating any legal proceedings against police officials as the matter is to be referred to State Vigilance and after the approval of Secretary, FIR is being lodged. Here, first of all even if any mala fide was found by accused No.1 in the functioning of Ram Singh then they just made a reference to State Vigilance and it was ordered by State Vigilance Commission and Chief Secretary that action need to be taken. Had there been no such fact then the reference would have been rejected by Vigilance itself. Moreover, the slip which has been placed on record as Mark-D and Mark-E has not been signed by Gurbachan Singh as there is no date written on that document.

9. It is pertinent to mention here that the main matter is regarding accident occurred on 10.10.2006 and the number of offending vehicle was supplied to complainant Ram Singh for investigation and was asked to visit Dhaba wherein the car was informed to be parked. First of all, the duty officer was Singara Ram on 10.10.2006 but the SHO of P.S. Sadar Thanesar was Ram Singh. Complainant has admitted that the car No.HR-51V-7547 when crossed toll plaza was not enquired by him and he did not get the information on the same date but he has failed to produce the zimni of the police station. Further, he visited Dhaba of Suresh wherein car was not found and the matter was asked from Suresh and he disclosed two phone numbers and when complainant called on one phone number it was stated to be wrong one and the other was switched off but admittedly complainant has not enquired about the registered IDs of those phone numbers. However, ASI Singara Ram was sent to Faridabad for investigation regarding the car owner and admittedly, he did not visit registration authority. Although he just enquired it from SDM Office.

10. Complainant has tried to show he was very much bona fide in his act as he was on duty on 10.10.2006 somewhere else but he has not brought the log book on car on file to show his visit in the station. However, it is admitted that cancellation was filed by this complainant which was accepted also officials but father of deceased in the accident case filed a complaint and mentioned therein that SHO Ram Singh has not enquired the matter properly, so he prayed for re-investigation. Therefore, in his own complaint, the reference was made by accused No.1 in pursuance of his duty which was further referred to State Vigilance and the matter was thoroughly enquired by them. All the CWs, who have been

examined were not aware about the actual matter. They have just produced the copies of some orders and investigation of the matter. ASI Singara Ram was interested witness but he also admitted that for any matter in State Vigilance, the matter is being referred to Chief Secretary and then after sanction, the FIR is being registered, so if the matter has transferred so many authorities and then it was taken up. In these circumstances, the mala fide on the part of accused cannot be presumed as the action was taken under bona fide belief and in pursuance of their duty. The animus cannot be carved through any corner as there is no enmity proved by the complainant against the accused which would have led the accused to taken any such action. Regarding the submission of false evidence by accused No.2 that he gave slips on 10.10.2006, the fact was not doubted by State Vigilance, Superintendent as he recorded during the investigation that at around 5.00 p.m. On 10.10.2006, the information was supplied to SI Ram Singh so any false evidence cannot be presumed to be present there. What accused No.1 and 2 has done was all in pursuance of their duties as the cancellation was filed and they accepted it as it was admitted by complainant that he did not enquire the phone number of car driver as well as no zimini of same day was produced. Even, the details of toll plaza and video was not taken up which was later on found that the car crossed the toll plaza at 3.21 p.m. on 10.10.2006 so this prima facie creates suspicion in act of complainant in the minds of accused so they referred for proper action and FIR was lodged and investigation was pursued. Thereafter, when he was found innocent, the cancellation was accepted by accused No.1. Had there been any such mala fide in the minds of the accused then they would have been filed the protest petition and would have been taken the matter to higher level but no action has been taken which shows that there act was bone fide and was in the pursuance of their public duty. Therefore, these is no merits in the complaint and no default has been created by accused.”

Further, the aforesaid order was challenged in revision, which was also dismissed by the Revisional Court by observing as under:

“19. In the instant case, allegations of the complainant are that he submitted untraced report in FIR No.344 dated 10.10.2006, under sections 279, 304-A IPC, which was accepted by the court of learned Additional Chief Judicial Magistrate, Kurukshetra on 5.5.2010 but on application of father of deceased, enquiry was conducted

by accused No.1 Tejinder Kumar, SI in S.V.B. Unit, Kurukshetra. In that enquiry, accused No.2 made false statement and both accused, in conspiracy and in collusion with each other, submitted false report that complainant did not reach the spot despite information of the accident and the vehicle and driver could not be traced due to negligence of ASI Shingara Ram and HC Subhash Chand. Accused No.1 submitted a report that complainant committed offences under sections 201 and 120-B IPC.

20. The act of accused No.2 making statement before the Enquiry Officer i.e. accused No.1 and the act of the accused No.1 submitting a report that offences under sections 201 and 120-B IPC were made out against the complainant and others, was in the course of discharge of official duties as it was directly and reasonably connected with official duties of accused. Therefore, case of sanction under section 197 Cr.P.C. is prima facie made out. The acts complained of had reasonable nexus with the official duties of both accused, therefore, accused are entitled to immunity from criminal prosecution without sanction provided under section 197 Cr.P.C. Accused were rightly discharged in the case, though on grounds other than sanction under section 197 Cr.P.C.”

Learned trial Court while dismissing the complaint has specifically recorded that the witnesses examined during preliminary hearing were not actually aware of the facts of the matter. Moreover, if there had been any enmity between the accused and the complainant, they would have filed a protest petition to the cancellation report filed in the FIR.

Hon’ble The Supreme Court in **State of Madhya Pradesh Vs. Sheetala Sahai & Ors.**, 2009 (8) SCC 617, has held that “If upon the perusal of the entire material on record the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the Court shall not put the accused to harassment by asking him to face a trial.”

Learned counsel for the petitioner has not been able to point out any infirmity or illegality in the impugned orders.

In view of the foregoing discussion, no intervention is called by this Court in the well reasoned judgments passed by the Courts below. As such, the present petition is hereby dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

February 15, 2023
M.Kamra

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