

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

**Reserved on 15th of December, 2022
Pronounced on 3rd February, 2023**

CRM-M No.17402 of 2015

Dass Singh and others

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunny K. Singla, Advocate
for the petitioners.

Mr. Sarabjit Singh Cheema, Dy. Advocate General, Punjab.

PANKAJ JAIN, J.

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.32 dated 11th of June, 2014 registered for the offences punishable under Sections 353, 186, 506, 341, 323, 34 IPC, at Police Station GRPS, Patiala and all proceedings subsequent thereto.

2. The FIR impugned in the present petition reads as under :-

“To, The SHO, Govt. Railway Police, Nabha. Subject: Regarding beatings at the time of official duty. Respected Sir, it is hereby submitted that today on dated 11.6.2014, I was loading the paddy in the boggy of Train No. 486 at Railway Station Nabha (Rail Hall, Nabha) as I was working as a Assistant Grade-1 (Depot) in the department of FCI, Nabha. As per the Rail Head, the Gag No. 15 was also loading. In which there were near about 10 persons, who were trying to steel, then I tried to stop them, then in sudden anger, they encircled me and started beating me. Out of which three persons are namely Kartar Singh, Dass Singh himself and

his son and seven persons whose name I do not know, but I will recognize them, if they come in front of me. The time was near about 4.15 PM, I raised the shouting of Marta-Marta and after hearing my shouting. Hans Raj, Assistant Grade-1 (Depot) came at the spot and he rescued me from them by raising the shouting, as Sh. Hans Raj was also on special duty of loading at Station. If Sh. Hans Raj would not come, then the above said persons would give more injuries to me. Regarding that, I have given the written complaint to the officer of my department. The above said persons have also gave me life threat. The copy of the complaint alongwith the copies of the MLR No. D.K./14/14 dated 11.6.2014 of Civil Hospital, Nabha has been presented to you. The legal action be taken against the above said persons. Yours, Tarsem Singh, Assistant Grade-1, Depot, son of Sh. Avtar Singh, FCI/FSD, Nabha (District Patiala). Dated 11.6.2014 at about 8.00 PM, Mobile No. 94176-35533. Police Inquiry: I, ASI alongwith PPHL Dharam Singh 101 GRP and PHG Ajaib Singh and other officials and PHG Gurmeet Singh 18063 were present at Musa Majri for checking, then Sh. Tarsem Singh S/o Avtar Singh, FCI/FSD, Assistant Grade-1, Nabha, District Patiala has submitted one complaint alongwith MLR No. D.K./14/14 dated 11.6.2014 of Civil Hospital, Nabha The complaint alongwith MLR for registering the case U/s 353/341/323/506/148/149/186 IPC against Kartar Singh, Dass Singh and his son and other seven unknown persons was sent to police station GRPF, Patiala after putting endorsement by handing over to PHG Ajaib Singh 17980. I, ASI alongwith police officials and complainant were proceeded towards the spot. The FIR be registered and the number be informed. Sd/- Dilbagh Singh ASI, PS GRP Nabha dated 11.6.2014. Police Investigation:- As per Rapat Rojnamcha No. 18, Police Station Railway Police, a written complaint in Punjabi from Tarsem Singh S/o Avtar Singh, Assistant Grade-1, Depot, FCI/FSD, Nabha (District Patiala) and endorsement from ASI Dilbagh Singh 1069 GRP, Nabha for registering case against Kartar Singh, Dass Singh and his son and seven unknown

persons was received by hand through Ajaib Singh 17980. From the above statement and endorsement, the case U/s 323, 353, 341, 506, 148, 149 IPC was registered and the copy of FIR through PHG Ajaib Singh 17980 was sent to ASI Dilbagh Singh, Nabha.”

3. The solitary argument raised by counsel for the petitioners is that the petitioners have been booked for offence punishable under Section 186 IPC and the Trial Court framed charges vide order dated 27th of April, 2015 against the petitioners for offences punishable under Sections 341, 353, 186, 332, 506, 34 IPC. However, keeping in view the provisions as contained in Section 195(1) Cr.P.C. no Court can take cognizance of offence punishable under Sections 172 to 188 IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is not administratively subordinate. Thus, the precise contention is that the FIR having been registered in violation of provisions contained in Section 195(1) Cr.P.C., the proceedings cannot be sustained. Counsel for the petitioners places reliance upon the various orders passed by the Co-ordinate Benches of this Court in **Nirbhai Singh vs. State of Punjab and another, 2009(4) R.C.R.(Criminal) 614, Bhagat Ram vs. State of Punjab, 1991(1) R.C.R.(Criminal) 192 and Ram Kumar vs. State of Haryana, 1998(1) C.L.R. 633** as also by the Madhya Pradesh High Court in **Criminal Revision No.136 of 1983** titled as **Ashok Kumar and others vs. The State.**

4. Per contra, State Counsel has submitted that the FIR was registered on the written complaint made by respondent No.2 and it's not a

matter wherein the petitioners are being prosecuted only for offence punishable under Section 186 IPC. Thus, it cannot be said that the bar of Section 195(1) Cr.P.C. will be attracted even for offences punishable under Sections 353, 341, 332 read with Section 34 IPC and Section 506 IPC. Ld. State Counsel places reliance upon law laid down by Apex Court in case of **Pankaj Aggarwal and others vs. State of Delhi and another, 2001(5) JT 233** to submit that even if bar of Section 195 Cr.P.C. is to be taken into consideration the same would hit at the most charge under Section 186 IPC and not those framed under the rest of the provisions.

5. I have heard counsel for the parties and have gone through the records of the case.

6. Chapter XIV of the Code deals with conditions requisite for initiation of proceedings. Section 190 of the Cr.P.C. reads as under :-

“190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

7. Section 190 deals with cognizance of offence by the Magistrate. The provision explicitly provides that the cognizance is subject to the provisions of this Chapter i.e. Chapter XIV. Chapter XIV includes Section 195 Cr.P.C. The same reads as under :-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

8. Thus, it is evident that bar provided under Section 195 read with Section 190 Cr.P.C. is a condition requisite for initiation of proceedings and cognizance of offence punishable under Sections 172 to 188 IPC both inclusive cannot be taken except on the complaint in writing by the person as prescribed under Section 195 Cr.P.C. The enabling provision under Section 155(4) relates to taking of cognizance by the police whereas bar under Chapter XIV relates to cognizance by the Court. Consequently, addition of other offences cannot have an effect of diluting bar as contained in Section 195 *qua* offence punishable under Section 186.

9. While dealing with similar proposition, Apex Court in **Pankaj Aggarwal's** case *ibid* held as under :

“It is contended on behalf of the respondents that though cognizance could not have been taken under S.186 IPC in view of the provisions contained in section 195(1)(a)(i), but there is no infirmity with the order taking cognizance under Section 332 IPC inasmuch as the ingredients of offence under Sections 332 and 186 IPC are distinct and the Magistrate did not commit any error in taking cognizance of the offence under Sections 332/34 IPC Mr. Jain in course of his arguments relied upon three decisions of different High Courts 1996 Current Criminal Reports 257 of Delhi High Court, 1991 (1) Recent Criminal Report 192 of Punjab High Court as well as 1975 CCR 575 of the Patna High Court. In the Punjab High Court judgment, the provisions of Sections 186 and 332 IPC have been analysed and the judgment undoubtedly supports the contentions of Mr. Jain. But in view of the judgment of this court in AIR 1966 SC 1775 where the court has analysed the provisions of Section 353, IPC and 186 IPC and held that the two are distinct offences and the quality of the

offence is also different, we are of the opinion that judgment of the Punjab High Court is not correct in law and has taken a view contrary to the law laid down by this Court. What has been stated earlier in the aforesaid case in relation to the provisions of Section 353 IPC, would equally apply to the provisions of Section 332 of the IPC. This being the position, we are unable to accept the contention of Mr. Jain that the provisions of Section 195(1)(a)(i) bars taking cognizance of Section 332/34 IPC. We, however agree with Mr. Jain that the order taking cognizance of Section 186 of the IPC is bad in law and attracts the mischief of Section 195. In the aforesaid premises, we quash the criminal proceedings so far as the charge under Section 186 IPC is concerned and direct that the criminal proceedings would continue so far as the charge under Section 332/34 IPC is concerned.”

10. In view of the aforesaid position of law and as interpreted by the Apex Court in **Pankaj Aggarwal's** case (supra), this Court finds that the prosecution of the petitioners *qua* offence punishable under Section 186 IPC cannot be sustained having been carried out in the teeth of provisions as contained in Section 195 Cr.P.C. However, *qua* rest of the offences i.e. under Sections 341, 353, 332, 506, 34 IPC, the proceedings shall continue.

11. Disposed off accordingly.

February 03, 2023

Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No