

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:107456
CRM-M-19902-2017 (O&M)
Reserved on: August 01, 2023
Date of Decision: August 16, 2023

Suresh Sood

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Sunil Kumar, Advocate for the petitioner.
Mr. M.S. Nagra, AAG, Punjab.
Mr. H.C. Arora, Advocate for respondent Nos.3 to 15.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash FIR No.74 dated 29.04.2017 (Annexure P-1), registered under Section 3 of *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* [hereinafter referred as 'the SC & ST Act'], at Police Station Moga City, District Moga, Punjab and all other subsequent proceedings thereof.

2. FIR was lodged on the complaint of Ashok Kumar Safri (*respondent N: 3*), President of Valmiki Sabha, Moga, who along with various other officers/officials of the Municipal Corporation, Moga, came to the police station, alleging that on 16.02.2017 at about 10.30 a.m., in a meeting of officers/official of the M.C. Moga, accused Suresh Sood (petitioner herein) used caste related words by stating that he will take action against *chuhras* and the officers mentioned in the FIRs got registered by him in various police stations and shall teach a lesson to the

*chuhra*s and *bhangis* as to how the duties are performed, thus disturbing the office discipline.

3. (i) It is contended by learned counsel for the petitioner that FIR in question is nothing but a counter blast of various writ petitions, contempt petitions and other petitions filed by the petitioner before this High Court against the officials/officers of the Municipal Corporation, who are the complainant in the present FIR. The FIR has been got registered with malafide intention to pressurize him (petitioner) to withdraw the cases filed by him. Petitioner has given details of various petitions filed by him from time to time against the officials/officers of the Municipal Corporation, Moga. It is contended further that due to filing of the various writ petitions/contempt petitions by him during the period from 2008 to 2015, he was even threatened by the employees of the Municipal Corporation, Moga to withdraw those cases or to face dire consequences, regarding which had made complaint dated 29.08.2015 (Annexure P-8) to the various authorities. On the basis of information provided by the Municipal Corporation, Moga, petitioner had sent representation to the Chief Minister, Punjab, informing that vehicles being used by the Sanitation Branch of Municipal Corporation, Moga are neither registered nor insured nor the same were being driven by the persons having valid driving licence and as the Municipal Corporation employees came to know about the said representation, they went on illegal strike on 20.07.2016 and raised demand to register the FIR against him (petitioner).

(ii) Learned counsel for the petitioner has further drawn attention towards photographs (Annexure P-15 and P-16) by contending

that in a pre-planned manner, the Municipal Corporation employees/complainant party on 21-22.07.2016 dumped huge garbage at the gate of petitioner's shop and house, regarding which representation (Annexure P-19) dated 23.07.2016 was made to the various authorities. On 26.07.2016, petitioner was compelled to approach this Court by filing CWP No.15087 of 2016 to direct the officials of the Municipal Corporation, Moga including the Commissioner to restore liberty and quality of the life of the petitioner by removing the garbage dumped by the striking employees of the Municipal Corporation in front of his residence and shop. Necessary directions were issued by this Court vide order dated 29.07.2016 (Annexure P-20), but as the directions were not complied with, contempt petition bearing COCP No.2108 of 2016 was to be filed by the petitioner on 05.09.2016 for getting removed the dumped garbage and it is only thereafter that the garbage was removed. The petitioner also lodged FIR No.242 dated 16.12.2016 under Section 269 IPC at Police Station City South, regarding the aforesaid incident, but despite giving specific names, police registered the FIR against unknown persons. On coming to know about the registration of FIR No.242 of 2016, the employees of the Municipal Corporation started threatening the petitioner to withdraw the same and other cases, otherwise he shall be implicated in criminal cases of serious nature.

(iii) Counsel for the petitioner further contends that on 16.02.2017 in a pre-planned manner, the petitioner was called in the office of the Municipal Corporation, Moga regarding his earlier representation dated 23.07.2016, in respect of dumping of garbage in front of his shop and house and as he came downstairs after the meeting,

the employees surrounded & detained him badly; snatched his belongings and it is local police, who rescued him from illegal detention of the Municipal Corporation employees. Petitioner got recorded his statement about the aforesaid incident regarding 18.02.2017 (Annexure P-27) to the police. Learned counsel for the petitioner further submits that the police visited the spot, conducted a detailed, independent and secret inquiry in the surrounding areas and found the allegations of the complainant party to be totally false. It was concluded by the police that no caste related words had been used to the employees of the Municipal Corporation and so, police prepared kalandra dated 10.04.2017 (Annexure P-2) to summon both the parties. After presentation of that kalandra, employees went on strike for 15 days and disconnected the water and sewerage pipe lines in the city and thereafter, a second complaint dated 29.04.2017 was made to the police regarding the same incident of 16.02.2017, concealing the factum of earlier complaint and kalandra dated 10.04.2017 and that police without conducting any inquiry, registered the present FIR under pressure.

(iv) Learned counsel for the petitioner further contends that even on bare perusal of the contents of the FIR, no offence under Section 3 of the SC & ST Act is made out, as there is no allegation that there was any intention of insult or intimidation with an intent to humiliate the member of Scheduled Caste and Scheduled Tribes in any public place, so as to attract Section 3(1)(r) of the Act. There is no allegation in the FIR that the petitioner is the member of the non-scheduled caste, or that all the persons of the complainant party are members of the scheduled castes; or that the petitioner had the knowledge of such facts. It is further contended

that the alleged incident did not occur in the public view. Besides there is unexplained delay of 2-1/2 months in lodging the FIR, without there being any explanation for the delay.

(v) Ld. Counsel for the petitioner has referred to *“Krishan Lal Chawla & Ors. v. State of U.P. & Anr.”* 2021(2) RCR (Criminal) 300; *“Babubhai v. State of Gujarat”* 2010(4) RCR (Criminal) 311; *“Kuldip Raj Mahajan v. Hukam Chand”*, 2008(1) RCR (Criminal) 370 and *“Ishwar Pratap Singh v. State of Uttar Pradesh”*, (2018) 13 SCC 612, to support his contentions

(vi) With all these submissions, prayer is made to quash the FIR in question.

4. In the reply filed by the respondent-State, it is submitted that after completion of investigation, challan has already been filed. It is admitted that earlier kalandra under Sections 107/150 Cr.P.C. was prepared vide DDR No.11, dated 10.04.2017 with intention to maintain the law and order. Rest of all the contentions raised by the petitioner are stated to be the matter of record.

5. Respondent Nos.3 to 5, i.e., complainants of the FIR, did not file any reply to the petition. Learned counsel appearing on behalf of these respondents, only submitted that FIR has been rightly registered and that the challan has already been filed and that it is a matter of the trial that any offence is made out or not.

6. I have considered submissions of both the sides and have perused the record carefully.

7. FIR has been lodged by the President of Valmiki Sabha, Moga, who had come to the police station along with various other

officers/officials of the Municipal Corporation, Moga, alleging uttering of the caste related words by the petitioner in a meeting, which had taken place in the office of Municipal Corporation, Moga.

8. Section 3(1)(r) of the SC & ST Act reads as under: -

“(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; --”

9. As it is clear from the abovesaid provision, the basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as

*“1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and
2) in any place within public view”*

10. In **“Hitesh Verma v. State of Uttarakhand”**, 2020(4) RCR (Criminal) 868, it has been held by the Hon’ble Supreme Court that object of the Act is to punish violators, who inflict indignities, humiliations and harassment against the vulnerable section of the society and thus, the Act is intended to punish acts of upper caste against vulnerable section of society for reason that they belong to a particular community. It was further held that:

“The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.”

11. Thus, all the insults or intimidation to person would not be offence under the Act, unless such insults or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe and further

intimidation should be in any place withing public view. In the case before the Hon'ble Supreme Court, the allegations of abusing informant were within four walls of building. There was no other member of public at the time of incident and it was held that the basic ingredient that words were uttered "in any place within public view" were not made out. Charge-sheet to that extent was quashed by the Hon'ble Supreme Court.

12. In *"Gorige Pentaiah v. State of A.P. & others"*, 2008(4) R.C.R. (Criminal) 171, complaint was filed by number of scheduled castes that accused abused him with the name of his caste, without stating as to whether accused was not a member of the scheduled caste or a scheduled tribe or that he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view. Holding that basic ingredients of offence were missing, the complaint was quashed by the Hon'ble Supreme Court. Same view was taken in *"Ishwar Pratap Singh v. State of Uttar Pradesh"*, (2018) 13 SCC 612.

13. In the present case, as noticed earlier that the President of the Valmiki Sabha along with various officials lodged the FIR alleging use of caste related words by the petitioner. However, the FIR does not reveal at all that whether any of the officers/officials or all of them from the complainant party belonged to scheduled caste or schedule tribes. There is no allegation that petitioner was a member of non-scheduled caste or that the petitioner knew that all or any of the officers/officials of the Municipal Corporation, Moga, who are the complainants of the case, belong to scheduled castes or scheduled tribes. Besides, the alleged incident took place within four corners of the Municipal Corporation, Moga in the absence of any public person.

14. Not only above, regarding the same incident, police conducted necessary inquiry and came to the conclusion that no caste related words had been used by the petitioner and so, only the kalandra vide DDR No.11 dated 10.04.2017 was submitted by the police under Section 107/150 Cr.P.C., copy of which is Annexure P-2. Present FIR has been lodged without any reference to the earlier kalandra in respect of same incident.

15. As it is quite manifest from the record that prior to the alleged incident of 16.02.2017, petitioner had filed various writ petitions including contempt petitions against the officers/officials of the Municipal Corporation and he had been threatened by them time and again to withdraw all those cases.

16. In ***“State of Haryana and Ors vs Ch. Bhajan Lal” 1992 AIR 604***, Hon’ble Supreme Court laid down certain guidelines as to when the inherent powers under Section 482 Cr.P.C should be used to quash the FIR. It was held as under: -

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exer- cised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section

156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. In the opinion of this court, the present case falls within the parameters Nos. (a), (c) and (f) referred to above.

18. Apart from above, in ***Salib @ Shalu @ Salim Vs. State of Uttar Pradesh & Ors.*** [Criminal Appeal No. 2344 of 2023 arising out of S.L.P. (Criminal) No. 3152 of 2023] decided on 8th August, 2023, Hon’ble Supreme Court, after taking note of parameters laid down in ***Bhajan Lal’s case (supra)*** for quashing of the FIR or criminal proceedings further held as under:

26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the

Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence.

Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

19. From the entire discussion as above, of the legal as well as factual matrix of the case, it is held that even if the allegations in the FIR are taken at their face value and accepted in their entity, they do not constitute an offence under the provisions of SC & SC Act. The FIR clearly appears to be the result of personal vendetta against the petitioner, who had filed petitions against the officers/officials of the Municipal

Corporation, Moga time and again. Even the contempt petition was filed when garbage dumped in front of his shop and house, as is evident from Annexures P-15 and P-16, was not removed by the officials of the Municipal Corporation, Moga.

20. Resultantly, the present petition is hereby accepted. Accordingly, FIR No.74, dated 29.04.2017 (Annexure P-1), registered under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short hereinafter referred as ‘the SC & ST Act’], at Police Station Moga City, District Moga, Punjab and all other subsequent proceedings thereof, are hereby quashed.

August 16, 2023

Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes