

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

237

CRM-M-40542-2013 (O&M)

Reserved on: 14.07.2023

Pronounced on :- 20.07.2023

NARESH KUMAR

... Petitioner

Versus

RAMESH JINDAL AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Paras Jain, Advocate for
Mr. Pankaj Gupta, Advocate
for the petitioner.

Mr. SS Rangi, Advocate
for the respondents.

HARNARESH SINGH GILL, J. (ORAL)

Petition under Section 482 of the Code of Criminal Procedure for quashing the judgment dated 06.12.2011 (Annexure P-5) passed by the learned Judicial Magistrate, 1st Class, Barnala, vide which the respondents were discharged and the order dated 06.06.2013 (Annexure P-6) passed by the learned Additional Sessions Judge, Barnala, vide which the revision preferred against the judgment dated 06.12.2011, was dismissed.

Learned counsel for the petitioner submits that while discharging the respondents of their culpability, the learned Courts below did not take into consideration the material on record; that the petitioner is a proprietor of M/s Mohan Lal Naresh Kumar, which was being run from Shop No.21, New Grain Market, Barnala; that on the said address

another firm, namely, M/s Sant Ram Jiwan Kumar was also operating; that on 17.12.2004, the respondents raided the premises of M/s Sant Ram Jiwan Kumar, under the provisions of Punjab Agricultural Produce Markets Act, 1961; that on the day of the raid, the petitioner withdrew a sum of Rs.4,90,000/- from the current account of his firm, being maintained in State Bank of India, Rampura Phul branch; that the said amount of Rs.4,90,000/- was kept in a bag in the drawer of the the table and that out of the said amount, a sum of Rs.50,000/- was paid by the petitioner and the remaining was kept in the same bag. He further submits that at the time of the raid, the respondents were accompanied by three police officials and some officials of the Market Committee; that the respondents started checking the record of the petitioner's firm and thereafter, took the same into their possession; that, after enquiring about the drawer of the table, respondent No.1 asked respondents No.2 and 3 to break open the lock of the drawer and after taking into possession cash amount of Rs.4,40,000/- along with cheques, respondents No.2 and 3 slapped the petitioner and started hurling abuses (despite the repeated resistance by the petitioner) and that the said incident was witnessed by Murli Dhar son of Ganpat Ram and Bhushan Lal Singla son of Lachhman Dass, both residents of Barnala.

Still further, it is submitted that the respondents were only authorized to check the account books, registers and other documents regarding the sale and purchase of the petitioner's firm; that the said act on the part of the respondents was beyond their jurisdiction and they have misused their official position and thus, they are liable to be prosecuted

under Section 33-A of the Punjab Agricultural Produce Markets Act, 1961.

Learned counsel for the petitioner further submits that the petitioner requested the Secretary, Market Committee, to return the amount and other documents, but the same were not returned, at any stage. He further submits that aggrieved against the said inaction on the part of the respondents, the petitioner filed a complaint before the Sub-Divisional, Magistrate, Barnala and also gave a complaint to the local Police Station Kotwali, Barnala, but no action was taken on his request. Still further, it is submitted that, having been left with no alternative remedy, the petitioner moved the complaint in question before the learned Judicial Magistrate.

Learned counsel for the petitioner still further submits that the learned Additional Sessions Judge, Barnala, has wrongly drawn a conclusion that, in order to prosecute the respondents, sanction of the competent authority under Section 197 Cr.P.C. was not obtained, whereas the act of the respondents in slapping the petitioner and taking away his cash, was beyond their jurisdiction and in contravention of Section 323 IPC and therefore, no sanction was required to prosecute the respondents.

In order to substantiate his arguments, learned counsel for the petitioner has drawn the attention of this Court to the cross-examination of Bhushan Lal-CW/2 (Annexure P-4). He further relies upon the judgment dated 25.04.2016 delivered by the Hon'ble Supreme Court in Devinder Singh and others vs State of Punjab through CBI,

(2016) 12 Supreme Court Cases 87, to argue that the sanction is required only in a case where the act is done in discharge of the official duty, which is not the case herein.

On the other hand, learned counsel for the respondents submits that there was no ground to frame charges against the respondents and that the Courts below have rightly taken into consideration the material and evidence on record and accordingly, discharged the accused. While laying emphasizes on the cross-examination of CW-2/Bhushan Lal (the sole witness examined by the complainant), learned counsel for the respondents submits that the said witness has not supported the petitioner's version and stated that at the time of the alleged raid, neither he nor petitioner, namely, Naresh Kumar, was present at the spot and thus, the question of slapping the petitioner by the respondents, does not hold substance.

Learned counsel for the respondents further submits that the raid was conducted on 17.12.2004; that the officials of the raiding party got lodged FIR No.391 dated 17.12.2004 under Sections 420, 465, 467, 468 and 471 IPC, at Police Station Barnala (Kotwali) against Mohan Lal (father of the petitioner) proprietor of firm, namely, Sant Ram Jiwan Ram; that complaint in question was filed on 03.04.2006 i.e. much after the registration of the aforesaid FIR and thus, the complaint filed was nothing but a counter-blast to the said FIR. He further submits that the complainant has tried to explain the said delay of about one and a half year by projecting that he kept approaching various authorities to get

back the cash amount, but no action was taken.

In support of his contentions, learned counsel for the respondents relies upon the orders dated 04.02.2011 and 01.02.2019 passed by Coordinate Benches of this Court in CRM-M-24999-2009 titled as Telu Ram Vs State of Haryana and CRM-M-48225-2014 titled as Lila Ram vs State of Haryana and another. While relying upon the aforesaid orders, learned counsel for the respondents submits that for framing the charges, only a prima facie case is required to be seen and that once the revision filed against order framing charge stands dismissed, petition under Section 482 Cr.PC. (being second revision) without falling under any exception, is not maintainable.

I have heard the learned counsel for the parties.

The petitioner, being the proprietor, is running a firm in the name and style of M/s Mohan Lal Naresh Kumar, in Shop No.21, New Grain Market, Barnala and from the said address another firm, namely, M/s Sant Ram Jiwan Kumar is also operating, of which Mohan Lal (father of the petitioner), is a proprietor. On 17.12.2004, the respondents, being officials of the Market Committee, entered the premises of the firm of the petitioner and conducted a raid for checking the documents. The allegations against the respondents are that they forcibly took into possession the documents of the firm along the cash amount of Rs.4,40,000/-, which was kept in a bag in a drawer of the table, by breaking open the same and also slapped the petitioner. On the said date itself, the respondents got lodged FIR No.391 dated 17.12.2004 under Sections 420, 465, 467, 468 and 471 IPC, at Police Station Barnala

(Kotwali) against Mohan Lal (father of the petitioner). The complaint in question was filed on 03.04.2006 i.e. after a delay of about one and a half year of the alleged occurrence, which seems to be an afterthought.

The sole witness, namely, CW-2/Bhushan Lal, examined by the complainant, in his cross-examination specifically stated that at the time of the raid on 17.12.2004, neither he nor the petitioner had been present at the spot. He did not support the petitioner's version. In his cross-examination, CW-2 further stated that he had no knowledge about the raid, having been conducted by the respondents at the petitioner's firm.

In view of the above, no ground is made out to interfere with the well reason orders passed by the Courts below.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

20.07.2023

Aman Jain

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No