

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

CRM-M-5174-2017

Date of Decision:-17.01.2023

Om Parkash.

.....**Petitioner.**

Versus

Gurmail Singh & Ors.

.....**Respondents.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. K.L.Saini, Advocate for the Petitioner.

Mr. Aarav Gupta, Advocate for the Respondents.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.PC is for quashing of the order dated 05.09.2013 passed by JMIC, Pehowa (Annexure P-1) and the order dated 26.10.2016 passed by Additional Sessions Judge, Kurukshetra (Annexure P-2)

2. The brief facts of the case are that a complaint came to be filed at the instance of the petitioner against 11 accused including the private respondents under Sections 268, 269, 270, 323, 452, 506, 148, 149, 120-B, 217, 218, 109 IPC on the allegations that the accused were neighbours of the complainant. The accused no.1 to 3 (respondent nos.1 to 3 herein) tethered their cattle in the *gali/street* just in front of the main gate of the house of the complainant and dung generally remained lying in the open. The said place was being used as a *rasta* by the inhabitants of the village. However, due to the negligent Act of the accused nos.1 to 3 there was a possibility of the spread of infectious diseases which could be dangerous to the life of the complainant as well as family members, villagers etc. The other accused were close to accused no.1 to 3 and were helping them. The

complainant had requested the accused nos.1 to 3 to remove their pegs and not to tie their animals in the open street but the accused gathered at the spot with *dandas, lathies and gandasies* and threatened the complainant and his family members not to raise any such objection regarding tethering of animals in the street otherwise they would face dire consequences. Despite having moved various applications to the police and other parties, no action was taken. However, a resolution was passed on the directions of BDPO Shahbad, for initiating proceedings for removing the tethering of the cattle in the street. The Sarpanch of the village had also sent notices to the accused but the notices were not accepted. Thereafter the BDPO had written a letter to DC, Kurukshetra requesting for providing of police help but even then no action had been initiated against the accused persons. ASI Ram Dia visited the spot and assured the complainant to take action against the accused. He took signatures of the complainant on blank papers along with a sum of Rs.6500/- and submit a false report to high authorities in collusion with the accused. ASI Ram Dia had visited the spot and had openly instigated the accused persons to cause injuries to the complainant and directed the accused to file an application against the complainant in the police station so that the police could challan the complainant party.

3. In preliminary evidence the complainant got examined 07 witnesses and also tendered some documents in evidence. On the basis of the preliminary evidence of the complainant, accused no.1 to 3 (respondent nos.1 to 3) were summoned to face trial for the offences under Sections 268, 269, 270 and 34 IPC vide order dated 20.10.2010. The other accused were however not ordered to be summoned.

4. Thereafter on appearance of the accused the complainant was given an opportunity to lead pre-charge evidence vide order dated 08.10.2011. During his pre-charge evidence, the complainant got examined Harinder Kumar, Clerk, Office of DC, Kurukshetra as CW-1 who proved on record the copy of letter no.14574-79/M.A. Dated 28.12.2009 as Ex.C-1, copy of letter no.4262 as Ex.C-2, copy of letter no.4909 dated 17.12.2009 as Ex.C-3, letter dated 13.7.2009 as Ex.C-5, letter dated 20.07.2009 as Ex.C-6 and letter dated 27.07.2009 as Ex.C-7.

The complainant also got examined Gurmeet Singh, Secretary, Gram Panchayat as CW-2 who brought on record letter dated 5.8.2009 as

Ex.C-4, copy of notice dated 13.7.2009 as Ex.C-5, copy of notice dated 20.07.2009 as Ex.C-6 and copy of court notice dated 27.07.2009 as Ex.C-7.

The complainant also got examined HC Mahinder Pal as CW-3 who brought on record Ex.CW-3/A application dated 19.12.2009.

The Complainant Om Parkash himself stepped into the witness box as CW-4 and reiterated the version of the complaint. He also got examined Roshni Devi as CW-5 and Kavita as CW-6 who corroborated the version of the complainant.

Thereafter the pre-charge evidence of the complainant was closed.

5. On the application moved by the accused no.1 to 3 for discharge, the court of JMIC, Pehowa vide order dated 5.10.2013 came to the conclusion that no offence under Sections 268, 269, 270 and 34 IPC was made out. The complainant had failed to prove on record as to how the act of the accused had caused public nuisance and no independent witness of the village was examined to corroborate the version of the complainant. Similarly the complainant had failed to prove on record injury, danger or annoyance caused to the public in general. No offence was made out under Section 269, 270 IPC as well because the complainant had failed to prove on record the basic ingredients of those offences.

6. As against the aforementioned order of discharge, the petitioner/complainant filed a revision petition before the court of Additional Sessions Judge, Kurukshetra. After examining the case file, the court came to the conclusion that the witnesses had failed to prove the negligence on the part of the accused and they had not been able to prove that the accused were tethering their cattle in front of the house of the complainant thereby causing public nuisance. Similarly, the complainant could not prove on record any injury or nuisance caused to the public in general. It was the categorical finding of the court that the accused were keeping their animals inside their *bara* and there was no bar in keeping the animals in that place. The accused had not done any act which might spread any disease which was dangerous to life or would pollute the environment. Thus the revisional court came to the conclusion that since no other person from the village had come in support of the complainant's version and there were no photographs showing that the animals were tethered outside the

house of the accused, the trial Court had rightly discharged the accused and therefore, dismissed the revision petition.

7. Both the aforementioned orders are under challenge before this Court.

8. The Counsel for the petitioner has reiterated the contents of the complaint. He argues that despite having moved various applications to the investigating agency, no action was taken by them when it was found that the street had been encroached upon by the accused by way of tethering of the cattle. In fact, the ASI had got the signatures of the petitioner/complainant on some blank papers stating that he would initiate proceedings against the accused but no action was taken. It is his contention that despite having led cogent evidence before the Trial Court, the accused came to be discharged and the said discharge order had been wrongly upheld by the Sessions Court.

9. The Counsel for the respondents on the other hand contends that the respondents/accused have rightly been discharged. No independent witness has been examined to substantiate the version of the complainant. It has been found that the animals were being tethered inside the house of the accused. No public nuisance was being caused and nor was there any danger of spreading of any disease. He thus prays that the present petition for quashing be dismissed.

10. I have heard learned Counsel for the parties and have gone through the record.

11. The entire case of the petitioner/complainant is based on his statement and that of his relatives. No person from the village has been examined to substantiate his version as set out in the complaint. The witnesses who had appeared to prove the allegation levelled have not been able to prove that the accused had tethered the animals in front of the house of the petitioner/complainant, thereby causing public nuisance. The complainant has not been able to prove on record any common injury or annoyance having been caused to the public in general. The accused were keeping their animals inside their *bara* and there was no bar in keeping the animals within their premises. Therefore, the Act of the accused would not lead to the spread of any disease which was dangerous to life. In fact there were photographs available on the file which would show that the street in

front of the house of the complainant was wide and there was no dirt or cow dung in front of his house.

12. In view of the categoric findings of the courts below as also the discussion hereinabove, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

January 17, 2023
Vinay

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