

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

CRM-M-37370-2021

Reserved on:-18.01.2023

Date of Pronouncement:- 31.01.2023

Gagandeep Singla

...Petitioner

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.S. Waraich, Advocate for the petitioner

Mr. R.K. Ambavta, A.A.G. Haryana.

HARKESH MANUJA, J.

By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has prayed for quashing of FIR No. 903 dated 16.09.2017 under Section 147, 149, 188 & 283 of IPC, registered at Police Station Gurgaon Sadar and all subsequent proceedings arising therefrom.

For convenience, relevant extract of FIR No. 903 dated 16.09.2017 registered on complaint of ASI PS- Sadar is being reproduced herein:

"The SHO PS- Gurgaon Sadar Jai hind Sir it is requested that I along with LASI Kailash Rani, Constable Amarjit 2156 in PCR No17 were on round at Sector 38, on phone we received information that some people have blocked the traffic movement on Subhash chowk, when I along with other police officers reached Subhash Chowk we saw that around 10-15 persons had blocked traffic movement on road from Sohna to Gurgaon side and were raising slogan that, "we will block the traffic until the builder returns our money" Then I ASI asked them many times to clear the road but nobody listened so I along with other police officers controlled the 10 men and 2 women involved in the blocking of road and on asking they told their names i.e. Satyapriya

Srivastava S/o Agam Swaroop R/o 502 kendriya Vihar Sector 56 Gurgaon, Nitesh Kumar s/o Arun Kumar R/o S-49/18 GF DLF PH-3 GGN, Rajeev Goyal S/o Jagdev Goyal r/o 1256 urban estate Jind, Ajay S/o Trilok Nath R/o 4038/11 Shanti Nagar Hisar, Jitender s/o sukhdev R/o 327 2nd floor Sushant lok Sector-57 Gurgaon, Ritesh S/o Manohar Lal R/o D-7024 Devender Vihar Sector 56 Gurgaon, vanish s/o Vasudev R/o E- 103/43 silver Oaks DLF Gurgaon, Sanjay S/o Mehrbaan singh R/o C-1915 sushant Lok 1 Gurgaon, Ganan Deep s/o Ramesh R/o 405 Golden apartments sector 47 Gurgaon, Suraj s/o Govind Ram R/o A-868 Sushant Lok-1 Gurgaon, Pearl Khan D/o Rafi Khan R/o 103/43 silver Oaks Apartments DLF Phase-1 Gurgaon and Meena Bist W/o Sanjay Bist R/o C-1915 Sushant lok phase -1 Gurgaon. that the above mentioned persons have disobeyed orders of senior police officer and blocked the traffic on road and hence are arraigned U/s 147/149/283/188 IPC.”

Explaining the brief background of the case, learned counsel for the petitioner submits that petitioner including other accused persons booked a flat on 07.05.2012 with “Today Homes and Infrastructure Private Limited” in project T-5/ Today Callidora Project against the total sale price of Rs. 84 lakh to be paid in installments and possession was to be delivered in 36 months (3 years). He further submits that at the time of registration of FIR against the petitioner and others, i.e. till 16.09.2017, despite expiry of more than 5 years, possession was not delivered while petitioner and others had paid more than 80% of due amount (approximately Rs 73 Laks) till then. Petitioner and others have been pursuing the matter regarding delay in delivery of their flats with authorities including police officials so as to take action against the builder and register a case of cheating/ fraud against him. It was for this purpose that they visited P.S. Gurgaon Sadar in the morning, though they waited till afternoon, but the SHO

did not register any complaint or FIR and rather treated them very rudely. In these circumstances, two of the aggrieved persons had a verbal altercation with the SHO, on which he got angry and registered the present FIR by concocting the story of roadblock against the petitioner and 11 other persons u/s 147, 149, 188 & 283 IPC.

On merits, learned counsel for the petitioner submits that though the case registered against the petitioner and other persons is completely false case, however, even if it's content are taken on face value, no offence is made out under the relevant sections. He further contends that aggrieved persons have a right to peaceful protest against the public authorities including police officials and their actions are protected under Article 19 of the Constitution of India and in that eventuality, the provisions of IPC under which present FIR has been registered has to be given a narrow scope. Drawing attention of this court towards arbitrariness of the action of the police, learned counsel submits that two persons who actually had a verbal altercation with the SHO, have been discharged in the final report filed under Section 173 of Cr.P.C. without specifying any reason that on what account the actions of other accused persons in the FIR were different from these two persons.

On the other hand, learned State counsel submits that if petitioner and other persons had a genuine grievance, they should have approached the authorities for its redressal, including filing complaint under Section 156(3) of Cr.P.C. before the Court, but to block the road and take law in their own hands is not acceptable and consequences in accordance with law has to follow.

I have heard learned counsel for both the parties and gone through the paper book of the case. It is the admitted fact that primary grievance of the petitioner and other persons was against the builder and they were exorting/ protesting before the police officials to take action against him. In that eventuality, it cannot be denied that petitioner and other persons have a right to protest against the police officials, which is protected under Article 19. Therefore, for the balancing of rights, while determining whether the actions of the petitioner and other persons fall within the ambit of the offences mentioned in the FIR, in the facts of the present case, provisions of IPC have to be given narrow interpretation. Secondly, ingredients of alleged offences shall come forth from the narration of events rather than leaving it to the imagination of judicial mind. At the same time, it has also to be kept in mind that as the complainant in this case is State itself, this obligation is even higher. Allegations against the accused persons including petitioner are required to be discussed in view of the above mentioned legal/ factual matrix.

Allegation qua sections 147 & 149 of IPC:

Section 147 and 149 relates to punishment of rioting (defined u/s 146) and unlawful assembly (defined u/s 141) which are reproduced below:

“146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.”

Necessary ingredients for the offence of rioting are use of “force” or “violence” by an “unlawful assembly”. “Unlawful assembly” is defined u/s 141 of IPC which is being reproduced below:

“141. Unlawful assembly.—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, 12[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or Third.—To commit any mischief or criminal trespass, or other offence; or Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

In order to attract the provision of Section 146 or 147, basic ingredients of these offences which are force/ violence/ Criminal force/ resistance have to be explicit from the description of events in the FIR, so as to prima facie constitute the offence. But neither, violence or any kind of use of force/ resistance, on part of the protesting persons, has been alleged even in FIR, nor has it been shown that in what manner

any force/ Criminal force/ resistance was used by the accused persons. When there is not even an iota of suggestion regarding use of violence/force by accused persons, mere averment to the effect that they blocked the road will not suffice to construe the use of force or violence as the same is required to be portrayed from the description of events in FIR itself. There is no doubt that FIR cannot be the encyclopedia of all the events of the case, but at the same time, there must be description of basic actions of accused persons from which it can be prime facie construed that alleged offences were committed by the petitioner and accused person. Thus, from the bare perusal of the FIR, no offence under Sections 147 and 149 of the IPC is made out there being no allegation of rioting or creating an unlawful assembly.

Allegation qua Section 188 of IPC:

Bare perusal of section 188 of IPC shows that in order to constitute this offence, there must be disobedience of an order promulgated by a public servant. Moreover, mandatory provision of Section 195 of Cr.P.C. prescribes pre-requisites for taking cognizance of an offence u/s 188 IPC which mandates the Court to take cognizance of this offence only on a complaint filed by the concerned public servant. In the present case, neither there was any mention of promulgated order issued by any public servant; nor any such complaint was filed at its instance, thus, applicability of Section 188 in the present case is itself erroneous.

Allegations of Section 283 of IPC:

Section 283 of IPC is defined as below:

“283. Danger or obstruction in public way of line of navigation: Whoever, by doing any act, or by omitting to take order with any property in his possession or

under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.”

From a perusal of FIR, only this offence could be made out, which is punishable with fine of Rs. 200/-. However, applicability of this provision requires causation of danger, obstruction or injury to any person in any public way. Present case has been instituted entirely on the basis of version of police official, but neither in the FIR; nor in the final report submitted u/s 173 Cr.P.C., not even a single statement of any aggrieved person has been recorded with respect to act of accused persons which could show fulfillment of aforesaid ingredients. Though, in Challan, statement of one eye-witness Govind has been recorded and referred to but interestingly, his statement is almost similar to the version of official witnesses and no videography or photographs of alleged blockage has been brought on record. This has to be coupled with the argument by the learned counsel for the petitioner that it was not possible for a 80 feet road to be blocked by 10-12 persons, and thus, in my view, vague allegations regarding blocking of road, in the absence of any basic minimum details, does not lead to prima facie satisfaction for constituting offence u/s 283 of IPC.

The conduct of the investigating officer is also not beyond reproach, as no basis has been provided in the investigation report for exonerating two persons while accusations were same for all. Some eye-witnesses have been referred, but again, without specifying any detail which smacks of biasness and arbitrariness. If such weak and random explanations are allowed to continue on part of State police

officials to justify their actions, criminal legal system will collapse and the concerned citizen will lose hope in the efficiency and efficacy of the judicial system.

Criminal Offences vis a vis fundamental right to protest

There is another aspect in this case as well. Petitioner and other persons belonged to working class citizens in their respective areas and they were allegedly protesting to take action against the builder, faced with the circumstance that they lost their entire savings in search of a home for their family. They have not got the promised flat till date and contrarily they have been facing the agony of criminal trial from last around 5 years. Neither there are any criminal antecedents of the accused persons; nor can it be said that they had any criminal intention to commit any offence; rather they were victim of circumstances and facing apathy from the authorities. Caught in the extreme circumstances, a peaceful protest in fact is part of fundamental right. Even if it is assumed that there has been any road blockage at the instance of petitioner and others, they being only 10-12 persons could easily be dispersed by the police authorities and the matter should have ended there; rather than dragging them into criminal trial. This on one hand escalated the agony of the petitioner and other persons but on the other hand, it added more pressure to the already burdened criminal legal system. Coercive action like this even created a “chilling effect” on manifestation of these rights in real life.

Just because the petitioner and other accused persons could avail their remedy before the Trial Court u/s 156(3) of Cr.P.C., they could not be left in lurch to face the agony of criminal trial while exercising their fundamental right to protest. Apart from that, this fact

also needs to be taken into consideration that since beginning, the proceedings have been moving at a snail pace and even after 5 years, charges have not been framed yet. Learned State Counsel submits that proceedings were stayed by this Court, but it is not even half the truth. Proceedings were stayed by this court vide order dated 16.11.2021 and even at that time more than 4 years have already expired.

Therefore, considering the parameters laid by Hon'ble Supreme Court in “**State of Haryana and others vs. Ch.Bhajan Lal and others**”, reported as 1991 (1) R.C.R. (Criminal) 383, in my considered opinion, present petition satisfies the criteria specified u/s 482 of Cr.P.C., i.e. to meet the ends of justice and also to prevent the abuse of the process of Court, to invoke its powers for quashing of the FIR as present case is duly covered under the following specified conditions in **Ch.Bhajan Lal's** case (supra), which are reproduced hereunder:-

- “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;....*
- (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;.....*
- (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;.....”*

At this stage, it would be appropriate to take note of the judgment of the Hon'ble Apex Court in **State of UP Vs. R.K. Srivastava**, reported as (1989) 4 SCC 59; wherein it was observed to the effect that if allegations are same against all the accused and after perusing the FIR, no offence is made out, then FIR needs to be quashed not only qua the accused who has approached the Court; but also qua the other accused who have not approached the Court; but are similarly situated.

In view of the discussion held above, petition is allowed. FIR No. 903 dated 16.09.2017 registered under Sections 147, 149, 188 & 293 IPC at Police Station Gurgaon Sadar and all the subsequent proceedings arising therefrom are hereby quashed. It is further clarified that as allegations are same against all the accused persons, FIR No. 903 dated 16.09.2017 is quashed not only qua the present petitioner; but for all other accused persons as well.

31.01.2023
anil

(HARKESH MANUJA)
JUDGE

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