

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56305-2018 (O&M)

Date of decision : 24.11.2023

JITENDRA PAL & OTHERS

... Petitioners

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Jap Sehaj Singh, Advocate
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana
for respondent No.1.

Mr. Pawan Girdhar, Advocate with
Ms. Manju Goyal, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.206 dated 20.04.2017 (Annexure P-1) registered under Section 379 IPC and 3 of PDPACT, 1984 at Police Station Pehowa, District Kurukshetra and all consequential proceedings arising therefrom.

2. The brief facts of the case are that the present FIR came to be registered at the instance of Narender Kumar Dhawan who stated that the petitioners had dismantled/destroyed the watercourse constructed by the Department and after stealing the bricks had constructed their own watercourse for their personal use after changing its alignment. The petitioner No.1 was the President and petitioner Nos.2 and 3 were the Secretary and Cashier respectively of the Water User Association and had thus misused their position.

3. The learned counsel for the petitioners contends that there is no evidence of the theft of bricks. No statement under Section 161 Cr.P.C. of the manufacturer of the bricks has been recorded to the effect that the said bricks had been supplied to the Government Department only and not to the petitioners. No recovery of any bricks was effected from the petitioners. The Prevention of Damage to Public Property Act, 1984 would apply only in cases where damage was caused on account of vandalism during riots and public commotion and not to the present situation. In fact, the Haryana Canal and Drainage Act, 1974 would apply in the present case which was a special Act governing the field and Section 58 of the Haryana Canal and Drainage Act, 1974 deals with offences and penalties for acts of omission and commission under the Act. Two Inquiry Reports dated 18.02.2015 (Annexure P-2) and 12.04.2016 (Annexure P-3) had found that no offence whatsoever was made out. He thus, prays that the FIR in question and all consequential proceedings arising therefrom were liable to be quashed and the proceedings if any were to be initiated only under the Haryana Canal and Drainage Act, 1974.

4. The learned counsel for respondent No.1-State while referring to the reply dated 06.03.2019 contends that petitioner No.1 was the President of the Water User Association of the watercourse whereas petitioner Nos.2 and 3 were Secretary and Cashier respectively of the said Association. The functional grant of the watercourse had been deposited in the account of the Water User Association and this account was being operated by petitioner Nos.2 and 3. The grant had been released only after completion of the watercourse. The petitioner No.2

had recorded remarks in the logbook from 23.10.2010 to 03.11.2010 regarding good quality material having been used. The contention of the petitioners that the watercourse had been constructed by them for their personal use was incorrect as the bricks used in the construction of the watercourse are of the same mark as those used by the Department. Thus, it was apparent that the petitioners had committed the offence in question.

5. The learned counsel for respondent No.2 while referring to the reply dated 14.01.2020 contends that the offence had been established beyond reasonable doubt. The petitioners and other farmers had formed a Water User Association and had requested that the canal may be made Pakka. The said watercourse was running through the land of the petitioners and was constructed in 2010 as per records. However, the petitioners had dismantled the same in 2014 and the bricks had been used by the petitioners for constructing a godown and then a sheller on the watercourse by filling soil in the said watercourse. Therefore, the petitioners were guilty of dismantling the watercourse belonging to CADA.

6. I have heard the learned counsel for the parties.

7. Before proceeding further in the matter, it would be apposite to refer to the provisions of the Haryana Canal and Drainage Act, 1974.

Section 58 of the Act, reads as under:-

*“58. Offences under the Act.- Whoever, without proper authority, does any of the following acts:-
(a) damages, alters, enlarges or constructs any canal or drainage work;*

(b) interferes with, increases or diminishes the supply of water in or the flow of water from, through, over or under any canal or drainage work;

(c) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or renders less useful any canal or drainage work;

(d) being responsible for the maintenance of a watercourse, or using a watercourse neglects to take proper precautions for the prevention of waste of a water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in any unauthorized manner;

(e) causes any vessel to enter or navigate any Canal contrary to the rules for the time being prescribed by the State Government for entering or navigating such canal;

(f) while navigating on any canal neglects to take proper precautions for the safety of the canal and of vessel thereon;

(g) corrupts or fouls the water of any canal;

(h) destroys or moves any level mark or watergauge fixed by the authority of a public servant;

(i) Passes or causes animals or vehicles to pass on or across any of the works, banks or channels of a canal or drainage work contrary to rules made under this Act, after he has been desired to desist therefrom;

(j) disobeys any order passed under section 55.

[(k) discharges any sewage or trade effluent into a Canal]

[Shall, in respect of offences under clauses (a), (b) (c), (g) and (k) above, be liable on conviction to a fine not exceeding five thousand rupees or imprisonment not exceeding six months or both and in case of continuing offence/contravention, with an additional fine which may extend to five hundred

rupees for every subsequent day. In respect of other offences, the offender shall be liable on conviction to a fine not exceeding one thousand rupees or imprisonment not exceeding one month or to both].”

8. A perusal of Section 58 (supra) would show that for damaging altering, enlarging or constructing any canal or interfering with the flow of the water etc. the penalty has been provided under the Act itself. In the instant case, the allegations are firstly of dismantling of the canal constructed by the Department and thereafter using the bricks in the construction of another canal and/or in the construction of a sheller. As regards the dismantling of the canal is concerned, the offence, if any would be under Section 58 of the Act which also provides of penalties.

As regards the usage of the bricks after committing theft, it may be pointed that Section 379 IPC cannot be made out in the instant case. There is no statement of the manufacturer of the bricks recorded under Section 161 Cr.P.C. that those bricks had been sold to the Department and not to the petitioners. In the absence of any such statement by no stretch of imagination can it be held that the petitioners had committed the offence of theft of bricks.

As has already been discussed above, no offence under the Prevention of Damage to Public Property Act, 1984 is made out as the offences, if any would invite proceedings under Section 58 of the Act at best.

9. In view of the aforementioned discussion, the continuance of the proceedings arising out of FIR No.206 dated 20.04.2017 (Annexure P-1) registered under Section 379 IPC and 3 of PDPACT,

1984 at Police Station Pehowa, District Kurukshetra are nothing but an abuse of the process of the Court and therefore, the FIR No.206 dated 20.04.2017 (Annexure P-1) registered under Section 379 IPC and 3 of PDPACT, 1984 at Police Station Pehowa, District Kurukshetra and all consequential proceedings arising therefrom stands quashed.

(JASJIT SINGH BEDI)
JUDGE

24.11.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No