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

CRM-M-9710-2019
Reserved on 15.04.2024
Date of decision: 13.05.2024

Gian Chand Bansal

...Petitioner

Versus

Shindo and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. H.S. Randhawa, Advocate for
Mr. P.S. Ahluwalia, Advocate for the petitioner.

Dr. Sumati Jund, Amicus Curiae though VC.

Mr. Jasjeet Singh Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. Present petition has been filed by the petitioner seeking quashing of criminal complaint No.43 dated 30.5.2008 titled Shindo v. Bibi Mohinder Kaur and others under Sections 323, 427, 452, 504, 506, 341, 120-B, 148, 149 IPC and Sections 3 (1)(v), 3(1)(x), 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) (Annexure P-1) and summoning order dated 19.9.2011 passed by the Court of Chief Judicial Magistrate, Hoshiarpur (Annexure P-2) and all the subsequent proceedings arising thereof.

2. Brief facts of the case are that complaint (Annexure P-1) was filed by respondent No.1 against the petitioner and other accused persons alleging that on 11.6.2007, all the accused persons armed with different weapons along with 20-30 unidentified persons who were having tractor



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trolleys and other vehicles trespassed into the land of father of respondent No.1 by breaking open the main gate with intention to dispossess her. The accused persons gave beating to respondent No.1 and her son and also used derogatory language against her caste and dragged them out of her land. The accused persons also forcibly took away all the household articles and building material lying at the spot. They also uprooted the iron doors and caused financial loss worth Rs.20 lakh to the complainant. The matter was reported to the police but the police failed to take any action against the accused persons including the petitioner. Then respondent No.1 filed CRM-M-42562-2007 which was dismissed by this Court vide order dated 14.8.2007 (Annexure P-7). However, respondent No.1 was given liberty to avail alternative remedy. Subsequently, respondent No.1 filed criminal complaint (Annexure P-1).

3. Respondent No.1 herself appeared in the witness box as CW1 and also examined 6 other witnesses and on completion of preliminary evidence, the trial Court summoned the petitioner and other accused persons vide order Annexure P-2.

4. Counsel for the petitioner has submitted that the petitioner is falsely implicated in the present case along with other accused persons. It is further submitted that no such incident as alleged by respondent No.1 had ever taken place and as per respondent No.1, she lodged complaint (Annexure P-3) against the culprits on the day of occurrence itself. Counsel for the petitioner had further submitted that in the complaint (Annexure P-3), respondent No.1 did not name the petitioner; that in complaint (Annexure P-3), no allegations were made by respondent No.1 that the accused persons



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used offensive language in the name of her caste. It has been further argued that on the very next day of the alleged occurrence i.e. 12.6.2007, Sucha Ram son of respondent No.1 lodged DDR (Annexure P-4) with regard to the same incident with the police wherein only allegations against the present petitioner were that the entire occurrence had taken place on the instigation of the present petitioner who had constructed house (Kothi) near the plot in question and demanded the said plot from the complainant. It has been further submitted that in Annexure P-4, no allegations with regard to offence punishable under the provisions of SC/ST Act were made by son of respondent No.1.

5. Counsel for the petitioner has further argued that respondent No.1 also approached this Court seeking legal action against the accused persons who trespassed into her property at the time of the occurrence. However, this Court did not interfere into the matter and passed order dated 14.8.2007 (Annexure P-7) with liberty to respondent No.1 to avail alternative remedy. He has further argued that subsequently, respondent No.1 filed criminal complaint (Annexure P-1) wherein false allegations were levelled against the petitioner and other accused persons. It has been further argued that the trial Court passed the summoning order (Annexure P-2) without appreciating evidence available on record; that being aggrieved co-accused/Karamjit Singh and others filed similar petition for quashing of the complaint and summoning order in question; that the said petition was contested by respondent No.1-Shindo. The said petition was allowed by this Court vide order dated 18.1.2019 (Annexure P-12). It has been further argued that the case of the petitioner is on better footing than that of



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co-accused/Karamjijt Singh and others.

6. Counsel for the petitioner has further contended that in the given circumstances, pendency of the criminal complaint (Annexure P-1) and summoning order (Annexure P-2) would amount to abuse of the process of the Court and deserves to be quashed.

7. In response to notice of motion, none appeared on behalf of respondent No.1-Shindo and Dr. Sumati Jund, Advocate was appointed as Amicus Curiae to assist the Court in this matter.

8. Amicus Curiae who appeared through video conferencing has fairly admitted that the impugned complaint (Annexure P-1) and summoning order (Annexure P-2) are already set aside qua co-accused/Karamjit Singh and others who were facing similar allegations as are appearing on record against the present petitioner. Even counsel appearing on behalf of the State also argued on the same lines while conceding the fact that the complaint and the summoning order in question are already quashed against similarly situated co-accused/Karamjit Singh and others vide order Annexure P-12.

9. I have considered the submissions made by counsel for the parties.

10. As per respondent no.1/complainant, the incident in question took place on 11.06.2007. On the same very day, complainant lodged complaint in writing Annexure P-3 to the SHO of the police station concerned. In the said complaint dated 11.06.2007, complainant stated that at about 01 PM on 11.06.2007 Mohinder Kaur Josh, MLA Sham Churasi along with about 30 other persons armed with weapons trespassed into her house and they started giving beatings to her and her son and they also took away



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articles lying at the spot by loading them in a vehicle and she made prayer that legal action be taken against the aforesaid persons. As per Annexure P-4, DDR No.66 dated 12.06.2007 was registered on the basis of the statement of Sucha Ram son of the complainant wherein he stated that on 11.06.2007 at about 01 PM Kamaljit Singh @ Bablu son of Mohinder Kaur along with 15/20 other persons came to their house and at that time he and his mother were not present there, but on receiving the information both of them reached the spot and saw aforesaid persons, who immediately attacked both of them. He further stated that the entire occurrence had taken place at the instigation of the present petitioner Gian Chand Bansal. One thing is clear that in Annexure P-3 and Annexure P-4, no allegations were made by the complainant or her son with regard to any offence punishable under SC & ST Act.

11. From the perusal of Annexure P-5, it appears that complainant lodged another complaint dated 16.06.2007 with regard to aforesaid incident dated 11.06.2007 wherein she stated that at the time of occurrence Karamjit Singh @ Bablu, Gurmeet Singh Saini, Petitioner Gian Chand Bansal, Harbhajan Singh along with 10-15 other unidentified persons and gunmen of Mohinder Kaur attacked her house and caused injuries to her and her son Sucha Ram and at that time Karamjit Singh @ Bablu and Gurmeet Singh Saini openly abused by calling her '*Kuttiye Chamariye*' and all of them demolished her house and took away household articles. From the perusal of report Annexure P-6 dated 22.08.2007 submitted by Deputy Superintendent of Police, Hoshiarpur, it appears that police inquired into the matter and found that some hot words were exchanged regarding which DDR No.66



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dated 12.06.2007, under Section 323 IPC was registered.

12. As per Annexure P-7, complainant also moved this Court under Section 482 Cr.P.C. seeking directions to the police authorities to register a case under the provisions of SC & ST Act. The said CRM-42562-M-2007 was dismissed vide order dated 14.08.2007 and the complainant was advised to avail the alternative remedy. Thereafter, complainant filed impugned complaint Annexure P-1 against petitioner, Karamjit Singh @ Bablu and other accused persons wherein summoning order Annexure P-2 was passed by the learned trial Court.

13. It is apparent that in complaint Annexure P-3 lodged on the same very day of occurrence by the complainant, she did not name the present petitioner and also did not allege that some offence under SC & ST Act was also committed by the accused persons. Thereafter, in DDR Annexure P-4, son of the complainant simply stated that the entire occurrence took place at the instance of the present petitioner, but the said DDR was also silent with regard to commission of any offence under SC & ST Act. From the perusal of DDR Annexure P-4, it cannot be made out that petitioner was physically present at the spot when the occurrence in question had taken place.

14. Further, from the perusal of Annexure P-8, it is evident that complainant filed civil suit with regard to property in question wherein Court of Civil Judge (Jr. Division) passed injunction order in her favour but the said order was set aside in an appeal filed by the other party vide order dated 30.10.2001. Finally, the suit filed by complainant was dismissed in default vide order dated 09.02.2011 (Annexure P-10).

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15. The story put forth by complainant in impugned complaint Annexure P-1 is contrary to her initial complaint Annexure P-3 and the version narrated by her son in DDR Annexure P-4. In the given circumstances, the allegations made by the complainant with regard to active participation of the petitioner and further that the petitioner used derogatory language against the caste of the complainant at the time of occurrence seems to be doubtful. Taking into consideration, the afore-stated facts and circumstances of the case, this court has already quashed criminal complaint Annexure P-1 and summoning order Annexure P-2, against Karamjit Singh @ Bablu and other accused persons vide order (Annexure P-12) dated 18.01.2019 in CRM-M-27584-2012 and the said order was never challenged by the complainant. It being so, allowing the proceedings to continue against the present petitioner in the same very complaint Annexure P-1 would be an abuse of the process of Court.

16. In view of the discussion made above, the present petition is allowed. Consequently, criminal complaint No.43 dated 30.5.2008 titled Shindo v. Bibi Mohinder Kaur and others under Sections 323, 427, 452, 504, 506, 341, 120-B, 148, 149 IPC and Sections 3 (1)(v), 3(1)(x), 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) (Annexure P-1) and summoning order dated 19.9.2011 passed by the Court of Chief Judicial Magistrate, Hoshiarpur (Annexure P-2) and all the subsequent proceedings arising thereof qua the present petitioner are quashed.

13.05.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No