

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

CRM-M-14758-2014

Reserved on: 01.04.2024

Pronounced on: 04.04.2024

2024:PHHC: 045822

MEENA @ GORKHA AND OTHERS

. . . . Petitioners

Vs.

STATE OF PUNJAB

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Damanjit Singh Sandhu, Advocate,
for the petitioners.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioners have prayed to set aside impugned order dated 18.03.2014 (*Annexure P2*), passed by Id. Additional Sessions Judge, Ludhiana, in not allowing the revision filed by them against the order dated 05.12.2013 (*Annexure P1*) passed by Id. JMIC, Ludhiana, for setting aside the charge framed against the petitioners under Section 353 read with Section 34 IPC (*wrongly mentioned as Section 363 read with Section 34 IPC*).

2.1 Perusal of the paper-book would reveal that FIR No.53 dated 06.06.2013 was registered against the petitioners at Police Station Haibowal, Ludhiana under Sections 353 and 186 read with Section 34 IPC, on the complaint of Rajinder Sharma, Assistant Town Planner, as per which on 06.06.2013, he along with police officials namely lady Constables Kiranjit Kaur and Asha Rani were performing their duty as public servant in the area of Haibowal Kalan, when the accused (*petitioners herein*) obstructed them in

performing their official duties. Not only this, the accused- *petitioners* also used criminal force against Rajinder Sharma and others in furtherance of their common intention, so as to obstruct them from performing their official duty.

2.2 Necessary investigation was conducted and after completion thereof, final report under Section 173 CrPC was filed. Ld. Magistrate vide his order dated 05.12.2013 (Annexure P1) charge sheeted the accused- *petitioners* under Section 186/353/34 IPC. Revision was filed against that order. Ld. Additional Sessions Judge, Ludhiana vide impugned order dated 18.03.2014, held that that accused could not be prosecuted under Section 186/34 IPC in view of the bar contained in Section 195 CrPC. However, the Revisional Court refused to set aside the charge under Section 353/34 IPC, by holding that ingredients to constitute said offence were distinct from the offence under Section 186 IPC and that there was no requirement to comply with the provisions of Section 195 CrPC, for prosecuting the accused under Section 353/34 IPC.

3.1 Assailing the aforesaid order of the Revisional Court, this petition is filed. It is contended by ld. counsel that offence under Section 353 IPC is merely an aggravated form of the offence under Section 186 IPC and therefore, ld. Magistrate could not have taken cognizance of any of the offences in view of the Bar created under Section 195 CrPC, as per which it is only the complaint, which could have been lodged by the concerned public servant.

3.2 Ld. counsel has referred to a decision of this Court rendered in ***Bhagat Ram Vs. State of Punjab, 1991(1) RCR (Criminal) 192***. Ld. counsel

further contends that the ratio of the judgments tilted as *Durgacharan Naik and others Vs. State of Orissa, AIR 1966 SC 1775* and *Satish Chandra Chakravarti Vs. Ram Dayal De (24 Cal WN 982)*, relied upon by the Revisional Court, is not applicable to the facts of the present case. He prayed for setting aside the impugned order; and to set aside the charge framed against them even under Section 353/34 IPC (*wrongly mentioned as Section 363 read with Section 34 IPC*).

4. Ld. State counsel strongly opposed the petition by submitting that ingredients to constitute the offence under Section 186 and 353 IPC are clearly distinct; and therefore, Revisional Court rightly held that there was no requirement to make compliance of Section 195 CrPC for prosecuting the accused for the offence under Section 353 IPC.

5. I have considered submissions of both the sides and have appraised the paper-book.

6. Section 186 IPC reads as under:

“Obstructing public servant in discharge of public functions- Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

7. Thus, to make out an offence under this Section 186 IPC, following essentials are necessary—

- i) Voluntary obstruction to a public servant.
- ii) Such obstruction must be in the discharge of public functions of such public servant.

8. Section 353 IPC reads as under:

“Assault or criminal force to deter public servant from discharge of his duty -Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Thus, to make out an offence under this Section 353 IPC, following essentials are necessary -

1. That the accused assaulted, or used criminal force against the victim.
2. that the person assaulted or against whom criminal force was used, was a public servant.
3. That when the accused assaulted or used criminal force,
 - a. the victim was acting, in the execution of his duty as such public servant; or
 - b. such assault, etc., was committed with intent to prevent or deter the public servant from discharging his duty, as such; or
 - c. such assault was committed in consequence of something done, or attempted to be done, by such public servant in the lawful discharge of his duty.

10. Section 195(1) CrPC reads as under: -

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or
- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

11. Perusal of the aforesaid provisions would clearly make out that ingredients of the two offences i.e. under Sections 186 and 356 IPC are quite

distinct. Though, the Court cannot take cognizance of an offence committed under Section 186 IPC without there being a complaint made by the concerned public servant as per Section 195 CrPC, but there is no such requirement for offence under Section 353 CrPC.

12. Explaining the distinction between Section 186 & 353 IPC and the requirement for compliance of Section 195 CrPC for offence under Section 186 IPC, Hon'ble Supreme Court has held in the case of ***Durgacharan Naik and others (supra)*** as under: -

“We pass on to consider the next contention of the appellants that the conviction of the appellants under S.353, Indian Penal Code is illegal because there is a contravention of s.195(1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the A.S.I. It was submitted that the charge under s. 353, Indian Penal Code is based upon the same facts as the charge under s. 186, Indian Penal Code and no cognizance could be taken of the offence under S. 186, Indian Penal Code unless there was a complaint in writing as required by s. 195(1) of the Criminal Procedure Code. It was argued that the conviction under s. 353, Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the requirement of s. 195(1) of the Criminal Procedure Code and the conviction of the appellants under S. 353, Indian Penal Code by the High Court was, therefore, vitiated in law.

We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under s. 353, Indian Penal Code is based are the same as those constituting the charge under s. 186, Indian Penal Code but it cannot be ignored that ss. 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under s. 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the

lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well-established that s. 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section.”

[Bold portion emphasized by this court]

13. The legal position as enunciated by Hon’ble Supreme Court as above would make it quite clear that the ingredients of the two offences i.e. under Sections 186 and 356 IPC are quite distinct, inasmuch as Section 353 IPC is a cognizable offence, whereas Section 186 IPC is not so. Section 186 IPC is applicable, where accused voluntarily obstructs the public servant in discharge of his public functions; whereas for an offence under Section 353 IPC, ingredients of assault or use of criminal force is necessary when the public servant is doing his duty. The quality of the two offences is also different, inasmuch as [Section 186](#) IPC occurs in Chapter X of the IPC dealing with contempts of the lawful authority of public servants, while [Section 353](#) IPC occurs in Chapter XVI dealing with offence affecting the human body. It has also been clarified that [Section 195](#) CrPC is not a bar for trial of an accused person for a distinct offence, even if disclosed by the same set of facts, but which is not within the ambit of said section.

14. In view of the legal position explained by Hon’ble Supreme Court as above, the contrary view taken by this Court in the case of *Bhagat Ram (supra)*, cited by ld. counsel for the revisionists, cannot give any advantage to them.

15. In the present case, there are allegations against the petitioners, which prima facie make out offences under Section 186 IPC as well as well

Section 353 IPC, which are quite distinct. Section 195 Cr. PC does not bar the trial of the accused person for a distinct offence, disclosed by the same set of facts but which is not within the ambit of that section.

16. Having regard to the aforesaid facts and circumstances, this Court finds no merit in the present petition.

Dismissed.

Pending application(s), if any, stand disposed of.

04.04.2024

Vivek

Whether speaking/reasoned?

Whether reportable?

(DEEPAK GUPTA)

JUDGE

Yes

No