

2024:PHHC:155284



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

201

CRM M-18550 of 2014 (O&M)

Date of Decision: 25.11.2024

Gurcharan Singh and others

...Petitioners

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Tarunveer Vashisht, Advocate, for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Ritesh Aggarwal, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the criminal complaint bearing No. 32 dated 30.03.2013 under Sections 323, 506 and 34 IPC and Section 3(x)(ii)(viii) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as '**the SC and ST Act**') Police Station Patran, District Patiala (Annexure P-1), summoning order dated 18.03.2014 (Annexure P-2) and all other consequential proceedings arising therefrom.

2. The complaint in the present case was instituted by respondent No. 2/complainant in the Court of Judicial Magistrate 1st Class, Samana by alleging that he was a resident of village Khang

Tehsil Patran, District Patiala and belonged to Majbhi caste. He was working as a farm labourer with the Balbir Singh. The land of Balbir Singh is adjacent to village Khang of the complainant. In the morning of 17.07.2012, when the respondent No.2/complainant was working in the village of Balbir Singh, Gurcharan Singh, petitioner No. 1, who was the owner of land adjacent to the land of Balbir Singh, came there and threatened the respondent No. 2. The petitioner No. 1 threatened him and asked him not to work there, otherwise, he shall be done to death. On 19.07.2012, when the complainant was working in the fields of Balbir Singh, all the petitioners came there and were carrying sticks in their hands and said to respondent No. 2 “Kutiya-Chuhria, why are you cultivating the land of Balbir Singh, we have enmity with him. Chuhria, we had earlier prohibited you”. Thereafter, all the petitioners had beaten him up and he suffered injuries and was treated at Civil Hospital, Patran. After the said incident, the petitioners/accused colluded with the local police and got one FIR No. 165 dated 20.07.2012 under Sections 324, 326, 341 and 506 of IPC Police Station Patran registered against respondent No. 2 and others. The respondent No. 2 remained in jail from 15.09.2012 to 28.01.2013 in the said case. Even in jail, Sukhwinder Singh, petitioner No. 2 had used caste related abuses against him. The respondent No. 2 was released from jail on 28.01.2013. On 29.01.2013 at about 7/7.30 a.m., when he was going to answer the call of nature, all the accused surrounded him and at that time Ginder Ram

and Kala Singh were passing from there and on seeing the respondent No. 2 surrounded by the accused, they stopped there. In their presence, the accused stated that “Salia Chuhria that earlier you might have been saved from our hands, now we will not leave you and after suffering injuries, we will get registered one more case against you and again will sent you to jail”. After saying this, all the accused ran away as many persons had gathered at the spot. It was alleged that respondent No. 2 had submitted an application on 29.01.2013 to Station House Officer, Patran and two other senior police officers but no action was taken. On 04.03.2013, the respondent No. 2 appeared before the SSP Patiala and he was requested to take action. Thereafter, on 17.03.2013, the officials of the Police Station Patran recorded the statement of respondent No. 2 but no action was taken. Ultimately, he filed a complaint under Sections 323, 506 and 34 IPC and Section 3(x)(ii)(viii) of the SC and ST Act.

3. In the preliminary evidence, CW1 Dr. Prasun Kumar Chaudhary who deposed that on 20.07.2012 he medico legally examined the complainant and tendered his affidavit Ex. CW1/A. He proved on record the MLR Ex. CW1/B, pictorial diagram Ex. CW1/C, police request Ex. CW1/D and bed head ticket of complainant Ex. CW1/E. CW2 HC Bhola Singh, tendered on record copy of FIR registered against the complainant CW2/1. CW3 Satpal Ram, resident village Khang stated that accused persons used abusive language against the complainant, attacked the complainant and caused injuries

to him in his presence. CW4 Billu Ram, resident of village Khang, also deposed that occurrence took place in his presence. CW5 HC Jagat Ram brought on record order of SSP, Patiala Ex. CW5/A, complaint of the complainant Ex. CW5/B and Ex. CW5/D and letter of the complainant Ex. CW5/C. CW6 Vaisakhi Ram complainant reiterated the averments made in complaint and produced his caste certificate Ex. CW6/A.

4. After considering the evidence, vide the impugned order dated 18.03.2014, the petitioners were summoned for the offences under Sections 323 and 34 IPC and Section 3(x)(ii)(viii) of the SC and ST Act.

5. Learned counsel for the petitioners contended that the occurrence in the present case had taken place on 17.07.2012. In the said occurrence, the respondent No. 2 and his accomplices had attacked the petitioners and caused serious injuries to them. As a consequence, FIR No. 165 dated 20.07.2012 under Sections 324, 326, 341 and 506 of IPC Police Station Patran was registered against the respondent No. 2 and his accomplices. Thereafter, the respondent No. 2 and other accused were prosecuted by the Court of Judicial Magistrate 1st Class, Samana and vide the judgment dated 31.08.2017, the respondent No. 2 and his co-accused were convicted for the offence punishable under Sections 326, 324, 341, 506 and 34 IPC and were sentenced to undergo rigorous imprisonment for a period of 02 years. He further contended that after the occurrence, the respondent

No. 2 moved the first complaint to the police on 29.01.2013, i.e., after about 06 months of the occurrence and the present complaint was filed on 30.03.2013, i.e., after 08 months of the FIR, as a counter blast to the FIR registered against them. Learned counsel further contended that even during the pendency of the trial, the respondent No. 2 never moved any application under Section 210 Cr.P.C. and now, the trial arising out of the FIR No. 165/2012 has resulted into conviction of respondent No. 2, it would be inappropriate to order the prosecution of the petitioners. Learned counsel further contended that even the matter was inquired into by the police and it was found during inquiry (Annexure P-4) that the allegations levelled by the respondent No. 2 were false and motivated. He had levelled the allegations against the petitioners at the instigation of Balbir Singh, in whose fields he was working as a farm labourer. Apart from that, even no offence under Section 3(x)(ii)(viii) of the SC and ST Act is made out against the present petitioners as no such occurrence had taken place. Still further, the utterances were not made at a public place and there is no allegation in the complaint that the petitioners had the knowledge that the complainant belonged to schedule caste and all the proceedings are liable to be quashed by this Court.

6. On the other hand, learned counsel appearing on behalf of respondent No. 2 vehemently argued that the occurrence is admitted by the petitioners' side and during the course of preliminary evidence, sufficient evidence was led by respondent No. 2 to prove

the involvement of the petitioners in the alleged crime. Even, respondent No. 2 had examined CW1 Dr. Prasun Kumar Chaudhary, who had produced the MLR, pictorial diagram and the bed head ticket of the respondent No. 2. Still further, the properties of the petitioners and Balbir Singh were adjacent to each other and the petitioners were well aware of the case of the respondent No. 2. Even, when the respondent No. 2 did not obey the commands of the petitioners, they had attacked respondent No. 2 and used caste related abuses against him. Even, the petitioner was in custody from 15.09.2012 to 28.01.2013 and the complaint has been filed on 30.03.2013, after the grant of bail to the respondent No. 2. Thus, there was no delay in registration of the FIR in the present case.

7. I have heard learned counsel for the parties and perused the record.

8. In the present case, the occurrence had taken place in the evening of 17.07.2012. Immediately after the occurrence, the matter was reported by the petitioners to the police and one FIR No. 165 dated 20.07.2012 under Sections 324, 326, 341 and 506 of IPC Police Station Patran was ordered to be registered against the respondent No. 2 and his co-accused. Even, the respondent No. 2 was arrested by the police on 15.09.2012 and was later on released on bail on 28.01.2013. It is admitted case of the complainant that from 20.07.2012 to 15.09.2012, the he neither approached the police nor filed a criminal complaint against the petitioners. Even, as per his

own version, he was released on bail on 28.01.2013. However, he moved a complaint to the SHO on 29.01.2013 and filed the present complaint on 30.03.2013, i.e., after about 08 months of the occurrence. Thus, it is apparent that there is considerable delay in filing the instant complaint before the trial Court, which had not been explained by the prosecution even during the course of preliminary evidence. This delay raises serious concerns with regard to the veracity and purity of the allegations levelled by the complainant and certainly affects the credibility and the evidentiary value of the allegations levelled by the respondent No. 2.

9. Still further, in the present case, the respondent No. 2 has lodged the FIR under Section 3(x)(ii)(viii) of the SC and ST Act by alleging that the petitioners had used caste related derogatory remarks against the respondent No. 2. While narrating this incident, it has nowhere been mentioned in the complaint by the respondent No. 2/complainant that the petitioners were aware that the respondent No. 2 belonged to a scheduled caste. Merely because of the fact that the respondent No. 2 had been employed by Balbir Singh in a nearby fields is no ground to draw an inference in this regard.

10. It is not spelled out from the allegations levelled in the complaint that the petitioners were conscious of the fact that the complainant belonged to a scheduled castes at the time of the alleged incident. Even otherwise, the utterances did not constitute an offence as the alleged incident had not taken place in a public place. Thus, the

prosecution of the petitioners in respect of the offence under Section 3(x)(ii)(viii) of the SC and ST Act, as such, was not warranted from the facts brought on record and the proceedings in this regard cannot be sustained.

11. Still further, the respondent No. 2 and his co-accused were tried by the Court of Judicial Magistrate 1st Class, Samana in a trial arising out of the FIR No. 165 dated 20.07.2012 under Sections 324, 326, 341 and 506 of IPC Police Station Patran and vide the judgment dated 31.08.2017, the respondent No. 2 and his co-accused were convicted for the offences punishable under Sections 326, 324, 34 and 506 IPC and were sentenced to the maximum sentence of 02 years. Now, it is apparent that the trial remained pending for almost 05 years, however, the respondent No. 2 made no efforts for the trial of the present complaint as well as trial in a State case by the same Court. The question whether the proceedings in a criminal case not governed by Section 468 Cr.P.C. could be quashed on the ground of delay has been gone into in several decisions. While it is true that the cases covered by the statutory bar of limitation, may be liable to be quashed without any further inquiry, the cases not covered by the statutory bar can also be quashed on the ground of delay in filing the criminal complaint in appropriate cases. In such cases, the question for consideration is whether there is violation of right of speedy trial, which has been held to be part of Article 21 of the Constitution of

India having regard to the nature of the offences, extent of delay, person responsible for the delay and other attending circumstances.

12. It has been held by the Hon'ble Supreme Court of India in the matter **Vakil Prasad Singh Vs. State of Bihar, 2009(1) RCR (Criminal) 802: 2009(1) Recent Apex Judgments (R.A.J.) 648: (2009) 3 SCC 355** as under:-

*“18. Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in **Maneka Gandhi v. Union of India [(1978) 1 SCC 248]** and in **Hussainara Khatoon (1) v. State of Bihar [(1980) 1 SCC 81]** this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be “reasonable, fair and just”; and therefrom flows, without doubt, the right to speedy trial. It was also observed that: [Hussainara Khatoon (1) case, SCC p. 89, para 5].*

“5. ... No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21.”

The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part

of the fundamental right to life and liberty enshrined in Article 21.

*19. The exposition of Article 21 in Hussainara Khatoon (1) case was exhaustively considered afresh by the Constitution Bench in **Abdul Rehman Antulay v. R.S. Nayak** [(1992(2) RCR (Criminal) 634:(1992) 1 SCC 225]. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.*

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22. Speaking for the majority in P. Ramachandra Rao [200292) RCR (Criminal) 553: (2002) 4 SCC 578, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in A.R. Antulay case as correct and the one which still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of the right to speedy trial, it was held that:

(P. Ramachandra case, SCC p. 603, para 29)

“(3) ... guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied [as] a straitjacket formula. Their applicability would depend on the fact situation of each case [as] [i]t is difficult to foresee all situations and no generalisation can be made.”

23. *It has also been held that: (P. Ramachandra case, SCC p. 603, para 29)*

“(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.”

Nonetheless,

*“(5) the criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 CrPC to effectuate the right to speedy trial. ... In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions”**.*

(emphasis added)

The outer limits or power of limitation expounded in the aforementioned judgments were held to be not in consonance with the legislative intent.

24. *It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.”*

13. Still further, the Hon'ble Supreme Court has held in the matter of ***Sirajul and others Vs. The State of U.P. and another, 2015(9) SCC 201: 2015(3) RCR (Criminal) 661*** as follows:-

“17. It is thus clear from the above observations that mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, quash the proceedings in exercise of jurisdiction under Section 482 Cr.P.C. in the interest of justice and to prevent abuse of process of the Court.

18. In the present case, conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against respondent No.2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No.2 to proceed with a complaint filed 16 years after the incident against the appellants”.

14. In the present case also, the complaint remained pending for several years and no application was filed by respondent No. 2 under Section 210 Cr.P.C. and now no purpose would be served by ordering the prosecution of the petitioners, after a long delay of 14

years, when the respondent No. 2 and his co-accused have already been convicted in a criminal trial, relating to the same occurrence.

15. In view of the above discussion, the instant petition is allowed and the impugned complaint bearing No. 32 dated 30.03.2013 under Sections 323, 506 and 34 IPC and Section 3(x)(ii) (viii) of SC and ST Act, Police Station Patran, District Patiala (Annexure P-1), summoning order dated 18.03.2014 (Annexure P-2) and all other consequential proceedings arising therefrom are liable to be quashed by this Court.

16. CRM 10113 of 2023 stands disposed off accordingly.

25.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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