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

CRM-M-23636-2022

Date of Decision:24.09.2024

Angrej Singh @ Angrez Singh Butter

...Petitioner

Vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. G.S. Aulakh, Advocate
for the petitioner.

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

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash FIR No.199, dated 11.11.2019, under Section 188 of IPC, registered at Police Station Gidderbaha, District Sri Muktsar Sahib (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the FIR in the present case was registered against the petitioner on the basis of the complaint moved by the ASI Baj Singh and the same has been reproduced below:-

“To the SHO, Gidderbaha, Today I ASI Baj Singh No.412/SMS alongwith Constable Daljinder Singh No. 1377/SMS, PHG Makhan Singh No. 11947, through private car for checking regarding suspected people on the road from Gurusar to Ghagga and one and Half kilometer from Gurusar on the right hand side about 5 acres land paddy stubble was on fire and ASI Baj Singh asked while stopping some on the way and the same on the condition of keeping his name secret disclosed that Angrej Singh S/o Guradita Singh R/o Village Gurusar is owner of land, where paddy stubble is set on fire.



Angrej Singh abovesaid has set on fire the abovesaid stubble of paddy and polluted the environment and disobeyed the orders bearing No. 116/MA/2019 of the Hon'ble Deputy Commissioner, Sri Muktsar sahib and committed the offence under section 188 IPC, so the ruqa is being sent to the Police Station through the PHG Makhan Singh 11947. After registration of the FIR, number of FIR should be informed. PCR/SMS is being informed. I am busy in investigation at the spot Correct/- Baj Singh ASI PS Gidderbaha dated 11-11-2019 with the jurisdiction of Village Gurusar at 6:40 PM, after receiving a ruqa at police station, FIR is being registered under abovesaid section against abovesaid accused, copy of FIR is being sent with the file and original ruqa through PHG to the ASI at the spot busy in investigation. I/C PCR Shri Muktsar Sahib is being informed through W/M."

3. Learned counsel further submits that after the investigation, the challan was presented against the petitioner in the abovementioned FIR (Annexure P-1), without following the due process of law. Even he moved an application (Annexure P-2) for discharging him as the mandatory provisions of Section 195(1) Cr.P.C were not complied by the prosecution and the Trial Court was not competent to take cognizance of the offence prescribed under Section 188 of the IPC. Further, vide the impugned order dated 08.04.2022 (Annexure P-4), the application for discharging the petitioner was ordered to be dismissed and he was granted liberty to take up the objection at a later stage. Learned counsel further contends that even in view of the Section 468 Cr.P.C., the FIR is liable to be quashed by this Court.

4. Pursuant to the notice, learned State counsel had filed a status report by way of an affidavit of Deputy Superintendent of Police, Sub Division Gidderbaha, District Sri Muktsar Sahib and the same was taken on record.



Learned State counsel submitted that in the present case, the FIR was lodged on 11.11.2019 and the challan was filed before the Competent Court on 10.11.2020. Ultimately, charge was ordered to be framed against the petitioner on 01.06.2022 and now the case was listed for prosecution evidence. Thus, the present petition deserves to be dismissed by this Court.

5. I have heard the learned counsel for the parties and perused the record carefully with their able assistance.

6. As per the provisions of Section 468 Cr. PC, there is a bar to take cognizance after the expiry of the period of limitation and the same has been reproduced below:-

468. Bar to taking cognizance after lapse of the period of limitation:-

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.



7. The Hon'ble Supreme Court has held in the matter of **Vakil**

Prasad Singh Vs. State of Bihar 2009 (3) SCC 355, as follows:-

18. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Cr.P.C. (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 Vs. Union of India & Anr.* (1978) 1 SCC 248, in *Hussainara Khatoon & Ors. Vs. Home Secretary, 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 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 (1978) 1 SCC 248 (1980) 1 SCC 81 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's* case (supra) was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.* (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. For the sake of



brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on--what is called, (1992) 1 SCC 225 the systemic delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors--'balancing test' or 'balancing process'--and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal



proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions 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.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

26. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case appellant's constitutional right recognised under Article 21 of the Constitution



stands violated.'

8. It has also been held by the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Sarwan Singh, 1981, 3 SCC, 34** as follows:-

(3) xxxxxx

In the instant case as the charge-sheet clearly mentions that the offence was committed on August, 22, 1972, the bar of limitation contained in Section 468 (2) Cr.PC clearly applies and the prosecution, therefore, is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would be so according to charge-sheet on January 5, 1973, the date when the audit report was made, Even if this extreme position is accepted, the prosecution would still be barred by limitation under Section 469 (1) (b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab, was unable to assail the point of law delivered by the High Court regarding the interpretation of Section 468. The object of criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions must abide by the letter of law or take the risk of the prosecution falling on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India, it is therefore, of the utmost importance that any prosecution, whether by the State or a private complainant as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non



est. applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds.

9. In the present case also, the FIR was ordered to be registered against the petitioner on 11.11.2019 and ultimately, it was concluded during the investigation that the petitioner had committed the offence under Section 188 of the IPC, which was punishable with imprisonment, which may extend to six months or with fine or with both. The challan was presented on 10.11.2020 and while framing the charges on 01.06.2022, the Trial Court had taken cognizance of the offence on 01.06.2022. Consequently, in view of the provisions contained in Section 468 Cr.P.C., the period of limitation for taking cognizance by the Trial Court was one year with effect from 11.11.2019 and the prosecution was hopelessly time barred.

10. Still further, in the FIR itself, it has been alleged that the petitioner had violated the order bearing No.116/MA/2019 of Deputy Commissioner, Sri Muktsar Sahib and had committed the offence under Section 188 of the IPC. Even it is apparent from the FIR (Annexure P-1), that the FIR was got registered by ASI Baj Singh of Police Station Gidderbaha, District Sri Muktsar Sahib. The law is well settled that the proceedings under Section 188 of the IPC could be initiated by the concerned public servant i.e the Deputy Commissioner and or any superior officer and that too by way of filing a complaint before the competent Court of law.

11. The facts in the present case are not disputed. The language of



Section 195(1) Cr.P.C. does not leave any scope for ambiguity and the provisions of this section have to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence, the provisions of Cr.P.C. or Penal laws have to be strictly construed so as to be given meaning except what is intended by the legislature in the language used itself. The intention appears to be clear that where an offence is committed under Section 188 IPC, it is obligatory for the public servant concerned or any superior officer to file a complaint before the Competent Court of law. Even the case is covered by the judgments passed by this Court in ***“Jiwan Kumar Vs. State of Punjab and others”***, 2009(1) RCR (Criminal) 415; ***“Jagdish Vs. State of Haryana”***, 2015 (4) RCR Criminal, 694; ***“Karan Sharma Vs. State of Punjab and another”*** in CRM-M-11547 of 2017 and CRM-M-47378 of 2022, decided on 29.11.2022, titled as ***“Shubham @ Shubham Saini Vs. State of Haryana”***.

12. Reliance can also be placed on ***Jagtar Singh Vs. Union Territory, Chandigarh***, 1966 (1) RCR 669, wherein this Court held as under:-

"These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure Code or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate." The intention appears to be clear that where an offence is committed under Section 188 Indian Penal Code, the



Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

The counsel for the petitioner has relied upon Sawaran Singh v. The State of Punjab, 1994(3) Recent CR 352 and Bhagat Ram v. The State of Punjab, 1991(1) Recent CR 192. In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."

It is, thus, clear that the proceedings against the petitioner under Section 188 Indian Penal Code have been initiated on the basis of the F.I.R. and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration of F.I.R. and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.

13. In view of the above discussion, the present petition is allowed and the FIR No.199, dated 11.11.2019, under Section 188 of IPC, registered at Police Station Gidderbaha, District Sri Muktsar Sahib (Annexure P-1) and all subsequent proceedings arising therefrom are hereby ordered to be quashed.

(N.S.SHEKHAWAT)
JUDGE

24.09.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No