

2024:PHHC:109786



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

276

**CWP-17938-2023 (O&M).
Date of Decision: 22.08.2024.**

AMANPREET SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. J.S. Thind, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab,
for respondents No.1 to 6.

Ms. Gurmeet Kaur Gill, Advocate,
for respondent No.7.

None for respondent No.8.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside the order dated 25.07.2023 (Annexure P-11) passed by respondent No.3- Deputy Commissioner, Gurdaspur issuing direction in compliance of the order dated 04.07.2023 passed by

2024:PHHC:109786



respondent No.7-National Commission for Scheduled Castes, instructing the respondent-State to add sections under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the petitioner as well as directing the investigation to be conducted by an officer of the rank of Deputy Superintendent of Police.

2 Briefly summarized facts of the case are that respondent No.8-Gurmeet Singh got lodged FIR No. 0041 dated 25.05.2018 against the petitioner under Section 420 IPC at P.S. Rangar Nangal Batala District Gurdaspur which itself shows that no derogatory language has ever been used by petitioner. He further submits that he is an agriculturist-cum-tutor by profession and not a travel agent as alleged in the FIR. According to respondent No.8's version, the petitioner came to his village Sadarang on 02.01.2015. However, the petitioner said that he had gone to Judicial Courts Complex, Batala for filing a complaint under Section 138 of the Negotiable Instruments Act, 1881 against one Yadwinder Singh Butter s/o Pirthi Pal Singh Butter in the court of JMIC, Batala and after filing the complaint, he returned to his village Chhapiawali. It is averred that respondent No.8-Gurmeet Singh and said Yadwinder Singh Butter were both workers of a political party and belonged to the same area i.e. Batala. On 16.08.2017, Yadwinder Singh Butter was convicted and sentenced for three years in a case that had been filed by the petitioner. When he was released on parole from 05.01.2018 to 16.01.2018, he allegedly went on to hatch a conspiracy with respondent No.8 and thus, an FIR was got registered against the petitioner. This prompted the petitioner to approach this Court through

2024:PHHC:109786



CRM-M-30954-2018 and this Court vide its order dated 10.10.2018, allowed the anticipatory bail application of the petitioner in the following terms:-

“Petitioner has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.0041 dated 25.05.2018 under Section 420 IPC, registered at Police Station Rangar Nangal, District Gurdaspur.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record. From the record, I find that the allegation against the present petitioner in the FIR is that he had taken ₹8 lakhs on the pretext of sending the complainant to America but he failed to do so and when the money was demanded back, then the accused stated to complainant that he will provide Government job to him as he has links with senior leaders of Akali Dal. There is also allegation in the FIR that accused has also used derogatory words qua complainant's caste.

Learned counsel for the petitioner argued that the petitioner has enmity with one Yadwinder Singh as he had filed a complaint against Yadwinder Singh, who is BJP's office bearer. The present false complaint has been got registered by the complainant Gurpreet Singh at the instance of Yadwinder Singh. No such transaction took place. He further argued that earlier also, one FIR was got registered by Yadwinder Singh through one Mukhtiar Singh on similar allegations, which was later on cancelled.

2024:PHHC:109786



The petitioner has already joined the investigation. He is not required for investigation or custodial interrogation. No useful purpose will be served by sending the petitioner to custody.

Keeping in view the facts and circumstances of the case and without discussing the facts of the case in minute details and without expressing any opinion on the merits of the case, I find it a fit case, where the petitioner is entitled to benefit of anticipatory bail. Therefore, the present petition is accepted and the order dated 27.07.2018 granting interim bail to the petitioner, is made absolute.”

3 The petitioner had also filed CRM-M-52034-2018 under Section 482 Cr.P.C. for seeking quashing of FIR No. 41 dated 25.05.2018 and this Court disposed of the petition vide order dated 27.11.2018 with the following directions:

“Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.41 dated 25.05.2018, registered at Police Station Rangar Nangal, District Batala, under Section 420 of the Indian Penal Code and for issuance of direction to respondent No.2-Director General of Police, Punjab that proper inquiry/investigation be got conducted by some higher officials posted in other districts than Batala.

At the very outset, learned counsel for the petitioner submits that representation (Annexure P-4) submitted by petitioner-Amanpreet Singh to respondent No.2-Director General of Police, Punjab is still pending and respondent No.2 may be directed to consider the same expeditiously. He does not press the other relief asked in this petition.

Notice of motion.

2024:PHHC:109786



On the asking of Court, Ms. Monika Jalota, DAG, Punjab accepts notice on behalf of the respondent-State. A complete copy of paperbook be supplied to learned State counsel.

Learned State counsel submits that she has no objection, if the representation given by the petitioner be decided in accordance with law.

Heard.

In view of the above, respondent No.2-Director General of Police, Punjab is directed to look into the aforesaid representation dated 12.06.2018 (Annexure P-4) in accordance with law at the earliest, preferably within six months from the date of receipt of certified copy of this order. It is made clear that respondent No.2 shall look into the representation independently without being influenced in any way by this order.

With aforesaid directions, this petition stands disposed of.”

4 Since, the directions of this Court were not complied with, the petitioner filed COCP-2173-2020 which was disposed of by this Court vide order dated 16.10.2020 in the following terms:

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of pandemic Covid-19.

2. Prayer in the petition under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, is for initiating action against the respondents for intentional and willful defiance of order of this Court Annexure P/7 dated 27.11.2018, in CRM-M-52034-2018.

2024:PHHC:109786



3. Notice to the respondents to show cause as to why proceedings under the Contempt of Courts Act, 1971 be not initiated against them for noncompliance with the orders of this Court Annexure P/7 dated 27.11.2018.

4. Mr. Navdeep Chhabra, DAG, Punjab, accepts notice on behalf of the respondents and on instructions from SI, Balraj Singh, Incharge Litigation Branch O/o SSP, Batala, states that in compliance with the orders of this Court dated 27.11.2018, inquiry was conducted and the petitioner found innocent, consequentially a decision has been taken to submit cancellation report and in case two weeks time is granted, cancellation report would be submitted before the competent Court.

5. The same satisfies learned counsel for the petitioner, who states that in view of the assurance to submit cancellation report within three weeks he does not press the Contempt Petition.

6. Accordingly, in view of the statement of learned counsel for the parties, the Contempt Petition is disposed of as not calling for any orders except directing respondent No.2 to submit cancellation report before the competent Court within three weeks from today as per assurance by learned Deputy Advocate General. Needless to mention, in case the needful is not done within the stipulated period of time, the petitioner would be at liberty to move an application for revival of the Contempt Petition.”

5 As per the direction of this Court vide order dated 27.11.2018, investigation was conducted by the Assistant Inspector General, Investigation-1, Bureau of Investigation and the AIG concluded his

2024:PHHC:109786



investigation by observing that respondent No.8-Gurmeet Singh did not produce any solid proof/witness to prove that he had given Rs. 8 lakhs to the petitioner and accordingly, sent a recommendation to respondent No.4-Senior Superintendent of Police, Batala vide Memo No.8038 for submitting a cancellation report in FIR No.41 dated 25.05.2018 under Section 420 IPC at P.S. Rangar Nangal. Subsequently, respondent No.6-SHO, P.S. Rangar Nangal filed a cancellation report under Section 173 Cr.P.C. in the court of Sub Divisional Judicial Magistrate, Batala dated 03.10.2020, wherein details of the investigation report and its acceptance by the Director, Bureau of Investigation were mentioned. On the basis of order dated 09.03.2022 passed by Sub Divisional Judicial Magistrate, Batala, re-investigation was conducted, however, respondent/ complainant did not mention any reason for not agreeing with the cancellation report. A fresh cancellation report was submitted yet again. Before the final decision could be taken on the same, summons were received from the National Commission for Scheduled Castes.

6 The complainant, however, approached the National Commission for Scheduled Castes. Eventually, Deputy Commissioner sent order dated 25.07.2023 to Senior Superintendent of Police, Batala in reference of an earlier order passed by National Commission for Scheduled Castes dated 04.07.2023 wherein respondent-State was instructed to include offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in the FIR.

7 Hence, the present petition.

2024:PHHC:109786



8 Short reply by way of affidavit of Rajesh Kakkar PPS, Deputy Superintendent of Police, Sub Division Sri Hargobindpur, Police District Batala, on behalf of respondents No.1 to 6 was filed on 08.01.2024, wherein a prayer for dismissal of the present petition was made as the respondent/complainant did not agree with the earlier cancellation report filed by the respondents-State.

9 Learned counsel appearing for the respective parties have reiterated the submissions noticed above and no other argument has been raised.

10 I have heard the contentions made by learned Counsel for the parties and have gone through the documents appended along with the present petition.

11 The moot point that comes up for consideration before this Court is as to whether the National Commission for Scheduled Castes ('NCSC') has the power to direct the course of investigation in a criminal case in a particular manner and issue addition of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, more-so when cancellation report has already been filed before the Illaqua Magistrate.

12 This Court dealt with a similar legal issue in the matter of **Kamaljit Singh Sidhu and Another vs State of Punjab and others in CWP No. 22343 of 2017 decided on 15.03.2023**. This Court, while allowing the petition, recorded as under:-

2024:PHHC:109786



“It is evident from perusal of the provisions of Article 338 of Constitution of India that the National Commission for Scheduled Castes is conferred with the power to monitor/protect the interests of the members belonging to Scheduled Caste and to make a recommendation for protection of their rights guaranteed under the Constitution of India. The power, however, does not extend to interference in the investigation process and/or to issue any such direction(s) to the Investigating Agency to act or conduct the investigation in defined manner. Consequently, any such direction issued by the National Commission for Scheduled Castes would be beyond the powers conferred upon it by the Constitution of India. It is evident from the perusal of the impugned order dated 18.08.2017 that the National Commission for Scheduled Castes directed the police to put up challan for trial in the Court of competent jurisdiction on the basis of recommendations made in the enquiry conducted by the A.I.G. of the Commission and also directed that as per the advice of the Legal Department of the Crime Wing of Punjab Police Headquarters, no further enquiry be conducted and the challan be presented to the Court of Competent jurisdiction for trial.

*The scope of the authority to be exercised by the Commission has been examined by the Hon’ble Supreme Court in the matter of “**All India Indian Overseas Bank SC & ST Employees' Association Vs. Union of India** reported as (1996) 6 SCC 606. The relevant extract of the same is reproduced hereinafter below:*

“10. Interestingly, here, in clause 8 of Article 138, the words used are "the Commission shall.... have all the powers of the Civil Court trying a suit.

2024:PHHC:109786



"But the words "all the powers of a Civil Court" have to be exercised" while investigating any matter referred to it in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5." All the procedural powers of a Civil Court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such power be inferred or derived from a reading of Clause 8 of Article 138 of the Constitution.

11. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated March 4, 1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs."

*Further, the Hon'ble Supreme Court held in the matter of **'Collector Bilaspur Vs. Ajit P.K. Jogi and others' reported as (2011) 10 SCC 357** as under:*

"17. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to Scheduled Castes and Scheduled Tribes by ensuring:

- (i) anti-discrimination,*
- (ii) affirmative action by way of reservation and empowerment, and*

2024:PHHC:109786



(iii) redressal of grievances.

The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate.

*Having regard to sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or the State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of the Scheduled Tribes. This power to enquire into "deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in *Madhuri Patil v. Commr., Tribal Development* directed constitution of scrutiny committees.*

18 to 21 XXX XXXXXXXXXX

22. It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of

2024:PHHC:109786



any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case.

23. The contention that there was sufficient material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338-A(which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16-10-2001.”

The authoritative pronouncement of the Hon'ble Supreme Court recognize the powers of the Commission to enquire into denial of constitutional safeguards but not to enquire/investigate matters and to return binding findings or steer investigation. Such powers can be exercised by only the Courts and in relation to Criminal matters only sparingly.

2024:PHHC:109786



Commission has been held to be not vested with such plenary powers and to direct investigating agency or the investigation.

*It is hence well settled that any such direction contained in the order passed by the National Commission for Scheduled Castes amounts to exercise of powers of a Constitutional Court. The issuance of any such directions by the National Commission for Scheduled Castes, despite having not been conferred with any such power, is sans the authority of law. The position in this regard stands re-affirmed by a Division Bench Judgment of this Court in the matter of **Jatt Ram (supra)**. The National Commission for Scheduled Castes would thus have no power to order filing of any challan and/or cancellation of FIR nor can it entertain the complaints on the allegations that the FIR against a person has been wrongly recorded or is not being properly investigated. The said issue is to be examined by a Court of competent jurisdiction i.e. either Civil or Criminal. The National Commission for Scheduled Castes has no jurisdiction to initiate the parallel proceedings and/or to make recommendations that are likely to prejudice the on-going proceedings.”*

13 As can be gleaned from the observations of this Court in the matter of **Kamaljit Singh (supra)**, the impugned order dated 25.07.2023 (Annexure P-11) passed by respondent No.3- Deputy Commissioner, Gurdaspur, in compliance of the order dated 04.07.2023 passed by respondent No.7-National Commission for Scheduled Castes, is unsustainable in the eyes of law and thus, deserves to be set aside along

2024:PHHC:109786



with the order dated 04.07.2023 passed by the National Commission for Scheduled Castes.

14 Once a cancellation report has already been filed, the competent Court seized of the matter alone is empowered to pass an order. The National Commission for Scheduled Castes does not exercise control over such investigation or steer the same and/or to decide what charges ought to be added or deleted. The same is an exclusive prerogative of the Investigating Agency. Any such direction amounts to over-reaching the Court and taking cognizance of a final report and ordering it to be unacceptable. The National Commission for Scheduled Castes thus travelled beyond the powers conferred upon it. The orders thus suffer from an illegality.

15 The present writ petition is accordingly allowed and the impugned order dated 25.07.2023 (Annexure P-11) passed by respondent No.3-Deputy Commissioner, Gurdaspur as well as the older order dated 04.07.2023 passed by respondent No.7-National Commission for Scheduled Castes are set aside.

August 22, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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