

2024:PHHC:142641



118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52626-2021
DECIDED ON: 10.07.2024

SUNITA YADAV

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manish Soni, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J

1. Relief sought:

The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking quashing of FIR No. 64, dated 09.03.2021 (Annexure P-4), under Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015, registered at Police Station Dharuhera, District Rewari along-with all subsequent proceedings arising therefrom.

2. *Facts:*

The facts as narrated in the FIR reads as under:-

"The complaint No.271-PSP dated 09.03.2021 was received from the office of Superintendent of Police, Rewari at the Police Station through post. To the Block Education Officer Rewari. Subject:-Complaint against Smt. Sunita Yadav, Headmistress, Government High School, Nikhri regarding irregularities, discrepancies, financial corruption and

while dividing on the basis of caste (with the students), discriminately using caste indicative words with the > children of Scheduled Caste and taking out the jersey of a student publicly during the prayer meeting and hurting his dignity by lifting the inside torn clothes with stick and application for taking necessary legal action. Sir, it is requested that I am working on the post of Mathematics Teacher in Government High School, Nikhri and want to present the facts regarding irregularities of School Headmistress, so that the environment of school can improve in the future. Regarding this, I want to present following facts so that it can be inquired timely and can arrive at reality, which are as follows:- 1. On 05.01.2016, I had given a complaint regarding irregularities, discrepancies and financial corruption of aforesaid teacher to District Education Officer, on which the action is still pending, the copy of which is attached at Sr. No.1. 2. The aforesaid Headmistress usually treats the students with caste discrimination. On 19.12.2015, during the prayer meeting the aforesaid Headmistress gave physical punishment to some of the students of school while separately taking out in the presence of staff and by saying caste indicative words to Scheduled Caste children while demeaning the dignity the post of Headmistress and while expressing the grants received from the Government as favour, got removed the sweater of a student and while showing the inside torn clothes publicly has made joke of her poverty, the entire occurrence of which has already been viral on SOCIAL MEDIA WHATSAPP. Revealed from the known sources that regarding this a complaint has been given by a Scheduled Caste Advocate Sh. Ranbir Singh of Rohtak on 07.01.2016 to the DC Rewari, a copy of which is attached at serial No.2 for necessary action. The video of entire incident is attached at Sr. No.3. When the video of aforesaid incident was brought into the knowledge of President of SMS GHS NIKHRI Sh. Raju and Villagers and on 18.01.2016, came to the school for inquiry and expressed their protest, after that as a manner of protest, our memorandum along with a copy of complaint was given to District Education Officer, Deputy Commissioner and Superintendent of Police. Meanwhile, the media persons also came there. In front of villagers and media persons, aforesaid Headmistress accepted the occurrence happened on 19.12.2015, which was broadcasted for around two days on local TV Channels such as Dish TV, E-TV, Doordarshan Haryana etc. Various newspapers such as Dainik Jagran, The Tribune, Amar Jawala, Dainik Bhaskar etc. has also published the aforesaid incident, few cuttings of which are attached at Sr. No.4. While bringing into your notice, it is requested that on 05.01.2016, I had made complaint regarding irregularities, discrepancies and financial corruption in the school by Headmistress. In response to which, using her influence at the District Level, Headmistress Smt. Sunita Yadav has got my internal adjustment

at Government Sr. Sec. School, Akera. Despite the complaint regarding irregularities, discrepancies and financial corruption, the transfer should have been of headmistress Smt. Sunita Yadav, so that she cannot influence the inquiry in any manner, but on the contrary on raising voice against corruption, I was punished by internally transferring 15 KM away from my present school which was 28 KM away from my residence. I request to you to dismiss her, copy of work discharge report is at Sr. No.5. Therefore, it is requested to you that before making inquiry on the aforesaid points, firstly the transfer of Headmistress is necessary so that inquiry could not be influenced in any manner and the environment of the school can be saved from becoming more polluted in future. Yours obedience. Enclosures as aforesaid. Sd/- Faithfully Ramesh 01.02.2016. Ramesh Kumar Mathematics Teacher, GHS, Nikhri Rewari, presently internally transferred GSSS, Akera (Rewari).”

3. Submissions:-
On behalf of petitioner:

Learned counsel for the petitioner has contended that the present FIR is not legally sustainable, as the alleged incident occurred on 19.12.2015 i.e. prior to the existence of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as ‘JJ Act, 2015), which came into force on 15.01.2016. It is further contended that the basic ingredient of Section 75 of JJ Act, 2015 is missing, as no complaint whatsoever has been filed with regard to the alleged incident of 19.12.2015 either by the child/student or parent. It is submitted by learned counsel for the petitioner that the complainant has misused the legal process to settle his personal scores. Moreover, there is an inordinate delay of more than 5 years in reporting the matter to the police, as the alleged occurrence took place on 19.12.2015 and the present FIR stands registered on 09.03.2021.

On behalf of respondent-State:

Learned State counsel has argued that the law was set into motion in response to a complaint wherein allegations against the accused-petitioner was with regard to financial corruption, irregularities, and disparities, as well as of

discriminating against children of scheduled castes by using caste-indicative language and removing a student's jersey in public during a prayer meeting and degrading his dignity by using a stick to lift the torn clothing. It was discovered during the investigation that the petitioner had physically harassed the pupil at the prayer meet, even asking them about their caste. The entire incident was captured on a CD. Additionally, a challan stands presented after the conclusion of the investigation, wherein, six prosecutions have been cited.

Heard learned counsel for the respective parties.

4. Analysis

In the exercise of the extra-ordinary jurisdiction, the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines myriad kinds of cases wherein such powers should be exercised as has been held by the Hon'ble Supreme Court in "Hridaya Ranjan Pd. Verma & Ors. vs. State of Bihar and Anr.", 2000(2) R.C.R.

(Criminal) 484:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the FIR. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable Offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The main allegation disclosed in the instant FIR is that the petitioner during morning prayer meet has physically harassed the students and asked about their caste and therefore, the petitioner has committed the above-said offence as per Section 75 of JJ Act, 2015.

In catena of judgments, it is already held that under the doctrine of 'Loco Parentis', teachers are impliedly authorized by parents to maintain discipline, including reasonable physical correction, when done in good faith and for the student's welfare.

It would be appropriate to reproduce Section 75 of JJ, Act, 2015, which reads thus:-

“75. Punishment for cruelty to child:- Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

The present FIR appears to be a malicious retaliation by a defaulting teacher namely Ramesh Kumar against the Headmistress who scrutinized his attendance. The complainant's motives seem driven by vengeance, exploiting the legal process to harass the petitioner. Following a visit to the school, the Haryana State Chamar Mahasabha, complainant Raju, and its officials filed a complaint about the aforementioned incident. After concluding that Headmistress Sunita Yadav's actions were general, they withdrew their complaint, even though the

complainant had submitted it in writing. However, at the request of teacher Ramesh, the complainant Raju has expressed dissatisfaction with this. After reviewing the information from the CD and the investigation, it was discovered that Headmistress Sunita Yadav-petitioner had physically harassed the students during the prayer meet. When asked about the children's caste, the Headmistress claimed to have harassed children of other castes and not just those of any particular caste. According to the report presented by Chamar Mahasabha and the statements of parents and other respected members of the village and school staff, the headmistress seems to have taken this action in order to maintain discipline in the school. No other parents or individuals have complained about this, with the exception of complainant Raju. The parents and villagers must have filed the complaint if they had any concerns about the petitioner's actions. It seems that Raju, the complainant, filed the case with the goal of exerting pressure on the petitioner.

This Court is of the considered view after having discussion as made hereinabove and on examination of record on the case file that the complainant has maliciously instituted the criminal proceedings against the petitioner with an ulterior motive for wreaking vengeance on the petitioner.

There is no doubt that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection in the rarest of rare cases and the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. It is also to be borne in mind that extraordinary and inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice, however, at the same time, if the allegations do not constitute any offence as alleged and appear to be patently improbable, the Court should not hesitate to quash the complaint. The test is whether the allegations in the complaint disclose a criminal

offence or not, which in present case fails, as no criminal offence is made out at first instance.

5. **Decision:-**

In view of the discussions made hereinabove and the case law, the present petition is allowed and FIR No. 64, dated 09.03.2021 (Annexure P-4), under Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015, registration at Police Station Dharuhera, District Rewari along-with all subsequent proceedings arising therefrom is quashed qua the petitioner.

10.07.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>