

(1997) 05 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 158 of 1997

Inderjeet

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: May 23, 1997

Acts Referred:

- Constitution of India, 1950 - Article 20(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Haryana Canal and Drainage Act, 1974 - Section 26, 58
- Haryana Canal and Drainage Rules, 1976 - Rule 24
- Northern India Canal and Drainage Act, 1873 - Section 31, 70
- Penal Code, 1860 (IPC) - Section 379, 430
- Pepsu Sirhind Canal and Western Jumna Canal (Enforcement and Validation) Act, 1954 - Section 3, 4
- Pepsu Sirhind Canal and Western Jumna Canal (Enforcement and Validation) Rules, 1954 - Rule 32, 33

Citation: (1998) CriLJ 256 : (1997) 3 RCR(Criminal) 539

Hon'ble Judges: Sarojnei Saksena, J

Bench: Single Bench

Advocate: Rakesh Gupta, for the Appellant; Raman Gour, AAG and Jagdish Manchanda, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sarojnei Saksena, J.

The petitioner-accused has filed this petition u/s 482 of the Code of Criminal Procedure for quashing FIR No. 227/96, registered at Police Station Pehowa u/s 379/430, I.P.C.

2. Brief facts of the case are that on the report of the Sub-Divisional canal Officer, Pehowa, case under Sections 430/379, I.P.C. was registered against the petitioner along with other persons. The Sub-Divisional Canal Officer received information that these persons have stolen canal water by pipe at RD 7475/R Bahli minor on the night of 8/9th August, 1996, and have irrigated their fields unauthorisedly. Pipes were also seized from the possession of the accused persons. The report was lodged against Smt. Mangat Kaur, Nirmal Singh, Inderjeet Singh, Gurinder Singh and Gurdarshan Singh, on the basis of the revenue record. Later on, when it transpired that Mangat Kaur has already died, she was deleted from the array of the accused persons.

3. The petitioner's contention is that this case is lodged against him at the instance of Nishan Singh, earlier Sarpanch, who lost the election of Sarpanch in December 1994, when the petitioner was elected Sarpanch. It is also submitted that if at all the petitioner and other accused persons have taken water from canal illegally, at the most for that, a penalty can be imposed on them under the provisions of the Haryana Canal and Drainage Act, 1974 (in short, Haryana Act) and launching of prosecution against them is against the law. Hence it is prayed that the FIR be quashed.

4. The State filed the reply and denied the allegation that the report is lodged at the instance of ex-Sarpanch with an oblique motive.

5. The petitioner's learned counsel submitted that u/s 26 of the Haryana Act, which is *pari materia* with Section 31 of the Northern India Canal and Drainage Act, 1873 (in short, Drainage Act of 1873), only penalty can be imposed on the petitioner. It does not amount to an offence as is held by this Court in, *Parakash Singh v. State Punjab* 1995 (1) R.C.R. 385.

6. The respondents, learned counsel vehemently argued that the petitioner and his colleagues committed theft of canal water illegally and unauthorisedly and thus they interfered with the flow of water of the canal, which is an offence u/s 58(b) and (c) of the Haryana Act. Therefore, they are liable to be convicted for the said offence. No doubt, Rule 24 of the Haryana Canal and Drainage Rules, 1976, provides that special charges can be recovered for water supplied through a canal used in an unauthorised manner, but that is in addition to the water rate otherwise chargeable and to such penalties as may be imposed u/s 58 of the Haryana Act. Offence u/s 58 is punishable with a fine not exceeding Rs. 1,000/- or to imprisonment not exceeding six months or to-both. Thus, according to him, there is no reason to quash the FIR.

7. So far as the alleged oblique motive is concerned, there is no circumstance on record to even suggest that.

8. From the challan papers it is obvious that on the report of the Sub-Divisional Canal Officer, the offence was registered. During investigation the police examined Raj Pal Singh, Zildar and Gurdeep Singh, Patwari Nehri, who categorically stated

that on the night intervening 8th and 9th August, 1996, during their patrolling, they found that the accused persons were illegally taking water from the aforesaid canal through pipes for irrigating their own fields and they irrigated their fields. Later on during investigation these pipes were recovered from the possession of the accused persons. Thus, the evidence was collected during investigation for the commission of the said offence against the accused persons.

9. Judgment in, Parkash Singh's case (supra) is based on Apex Court's judgment given in, [Jawala Ram Vs. State of Pepsu](#), . The facts of that case were totally different. In that case the Apex Court considered the provisions of Sections 3 and 4 of the Pepsu Sirhind Canal and Western Jamuna Canal Rules (Enforcement and Validation) Act (4 of 1954 as well as Section 31 of the Drainage Act of 1873) and held that unauthorised use of canal water is not an offence. Enhanced water charges under Rules 32 and 33 of the Pepsu Sirhind Canal and Western Jamuna Canal Rules is not a penalty. The question before the Apex Court was whether these provisions infringe Article 20(1) of the Constitution. The Apex Court held that they do not infringe Article 20(1) of the Constitution as recovery of enhanced charge under these rules is not a penalty and unauthorised use of canal water is not an offence. The Apex Court has not considered the provisions of Section 70 of the Drainage Act of 1873. Even in, Parkash Singh's case (supra) the learned single Judge has not considered the provisions of Section 58 of the Haryana Act. Provisions of Section 26 of the Haryana Act are pari materia with provisions of Section 31 of the Drainage Act of 1873.

10. In this case, there is specific case of the prosecution that the accused persons have committed an offence u/s 58 of the Haryana Act, which is pari materia with Section 70 of the Drainage Act of 1873. Rule 24 of the Haryana Canal and Drainage Rules, 1976, Specifically provides that special charges for water supplied through a canal, used in an unauthorised manner in respect of the lands specified in column 2 of the table (given therein) on which water is flowed, shall be as mentioned against each in column 3 thereof. The special charges shall be in addition to the water rate otherwise chargeable and to such penalties as may be imposed u/s 58 of the Haryana Act.

11. Thus, it is obvious that if the accused persons have unauthorisedly used canal water from the aforementioned canal, they are liable to pay special charges for its unauthorised use but they are also liable to the water rate otherwise chargeable as well as to penalty that may be imposed u/s 58 of the Haryana Act. From the evidence collected during investigation, offences under Sections 430/379, I.P.C. are prima facie made out. Hence at this initial stage of the investigation, there is hardly any reason to scuttle the prosecution and to quash the FIR.

12. Hence finding no merit, the petition is hereby dismissed.