
(2000) CriLJ 1159

High Court of Himachal Pradesh

Case No: Cr.M.M.O. No. 492 of 1998

Vijay Singh Mankotia

APPELLANT

Vs

Nehar Singh and
Another

RESPONDENT

Date of Decision: Aug. 13, 1999

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401, 482, 483
- Penal Code, 1860 (IPC) - Section 120B, 323, 324, 394, 397(1)

Citation: (2000) CriLJ 1159

Hon'ble Judges: M.R. Verma, J

Bench: Single Bench

Advocate: O.P. Sharma, for the Appellant; Kuldip Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.R. Verma, J.

This petition u/s 482 read with Sections 397/401 of the Code of Criminal Procedure (hereinafter referred to as "the Code") read with Article 227 of the Constitution of India prays for setting aside the order dated 1-6-1998 passed by the learned Sessions Judge, Shimla and for quashing the complaint No. 32/2 of 1989.

2. Brief facts leading to the presentation of this petition are that respondent Nehar Singh (hereinafter referred to as the "Complainant") filed a complaint against the petitioner-accused (hereinafter referred to as "the accused") and six others under Sections 469, 500, 501, 502 and 120-B of the Indian Penal Code. Case of the complainant as made out in the complaint is that he was born in a respectable family and did graduation and BT and served as a Trained Graduate Teacher for about a year and

then resigned and contested elections from Rohru Constituency for the Territorial Council of Himachal Pradesh in the year 1957 and was duly elected as M.T.C., the position which he occupied till 1962. In the year 1962 he was again elected as a Member of the said Council which was given the status of Legislative Assembly in the year 1963 and the complainant continued to occupy the changed status/position till 1967. In the 1985 Assembly elections he was elected M.L.A. and was a Sitting M.L.A. at the time of filing of the complaint. He had been a member of the Appointment and Promotion Committee while M.T.C. and as a Member of the Assembly had been a Member of the Public Accounts Committee and at the time of filing of the complaint was a Chairman of the Public Accounts Committee. Apart from the aforesaid positions he had been President of H. P. State Co-operative Marketing and Development Federation, President H. P. State Cooperative Bank, Director of National Agriculture Co-operative Federation, Senior Vice Chairman of National Agriculture Co-operative Marketing Federation, had represented India in South East Conference and also thrice in other movements held in West Germany, Bulgaria, Japan and has also been elected to the Board of Directors of the National Co-operative Union and a Member of Central Board for Small Scale Industries and thus possesses and enjoys high reputation, character and integrity in the eyes of right thinking members of the Society. However, accused Jehar Singh and Vijay Singh Mankotia feeling jealous of the status and popularity of the complainant amongst his voters and supporters entered into a conspiracy with accused Prem Kumar, Arun Shorie, N.D. Sharma, Jitender Bajaj and Prabhash Joshi to cause harm to his reputation and with that end in view published two news items in the daily issues of Indian Express and Jansatta dated 17th and 18th of December, 1988, by making most defamatory and damaging imputations against the complainant. Copies of such news items have been annexed with the complaint at Annexures I & II and the defamatory and damaging portions thereof have been marked as I/A & II/A. The case of the complainant further is that these defamatory publications being false, malicious and scandalous have been intended to lower the reputation of the complainant in the estimation of the public at large and all those who are connected with him and these news items have caused immense damage to the reputation of the complainant. The accused were served with notices but except Indian Express none replied thereto. Hence the complaint.

3. Initially the complaint was entertained by a Court having no jurisdiction. Therefore, subsequently it came to be heard by a Court of competent jurisdiction i.e. SDJM (I) Rohru. After recording the preliminary evidence consisting of three witnesses, namely, Nehar Singh, Hem Singh and Devinder Singh the learned Judicial Magistrate found that there are sufficient grounds to proceed against accused Jehar Singh, Vijay Singh Mankotia, Prem Kumar, N. D. Sharma and Jitender Bajaj for the commission of an offence punishable u/s 500, I.P.C. No such case was found against accused Arun Shorie and Prabhash Joshi. Accordingly, the accused against whom the grounds to proceed against were found were ordered to be summoned vide order dated 14-2-1995.

4. Against the aforesaid summoning order accused Vijay Singh Mankotia preferred a Revision Petition u/s 397 of the Code of Criminal Procedure in the Court of the learned Sessions Judge, Shimla who vide his order dated 1-6-1998 dismissed the Revision Petition holding that no fault could be found with the order of the learned Judicial Magistrate summoning the accused and other persons responsible for publishing the defamatory material in two newspapers. Hence, the present petition.

5. The learned counsel for the accused has vehemently argued that the complaint is nothing but a cock and bull story, based on pure and simple political vendetta and complainant and the preliminary evidence recorded by the learned trial Magistrate do not disclose the grounds to proceed against the accused, therefore, the impugned order deserves to be set aside and the complaint to be quashed. In support of his contention the learned counsel has relied on Smt. Juhi v. Laxmi Narain (1992) 3 Cri 84.

6. It has further been contended by the learned counsel for the accused that irrespective of the dismissal of the Revision Petition by the learned Sessions Judge, it is open to the High Court to entertain the present petition under its inherent powers u/s 482 of the Code, therefore, the petition is maintainable. In support of his contention the learned counsel has relied on [Krishnan and another Vs. Krishnaveni and another](#),

7. It is true that a complaint which does not disclose the commission of any offence or where the offence as made out in the complaint is not prima facie made out in the preliminary evidence, order regarding summoning of the accused will be bad in law and the complaint will be liable to be quashed and this is the view taken in case Juhi v. Laxmi Narain (1992 (3) Crimes 84) (supra), wherein the Allahabad High Court has held as follows:--

7. In fact the materials placed on record, coupled with circumstances show that opposite party and his follow men have been on the trail of these dancing girls since some time past, and one after other criminal prosecution by filing complaints was launched but with no success. Both these complaints had been transferred under orders of this Court from Jaunpur to Ghazipur on account of allegations of threat to their security at the hands of the complainants of these cases as well as their accomplice Laxmi Narain the present applicant. Annexure 2 to the first petition also shows that in the year 1978, an application had also been made by the present applicant Juhi Devi to the effect that present opposite party and his accomplice had taken away her daughter Champa Rani who had gone to attend a Barat for dance performance. Viewed in the light of these glaring circumstances, and also in the absence of even prima facie evidence to connect the accused persons with the offences of administering intoxicating drug causing hurt, or robbing the opposite party of his money, there is no escape from the conclusion that the prosecution launched against them is pure and simple vendetta and an abuse of process of Court and the same is liable to be quashed.

8. The principles laid down in [Dhanalakshmi Vs. R. Prasanna Kumar and Others](#), cited by the opposite party do not help him in so far as in the instant case even on the averments in the complaint and the material relied in support thereof, no offence under Sections 323, 334 and 394, I.P.C. was prima facie disclosed.

8. It can also not be disputed that even if a Revision against the summoning order having been preferred before a Sessions Judge has been dismissed the High Court under its inherent powers can set the wrong right by virtue of the provisions of Section 482 of the Code. However, it is equally true that such inherent powers must be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings and this is what the Hon'ble Supreme Court in case *Krishnan v. Krishnaveni* (1997 Cri LJ 519) (supra) has held in terms of the following:--

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person-accused/complainant cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.

9. A few other authorities have also been cited by the learned counsel for the accused in support of his contentions as aforesaid, however, those need not be set-out here in a detail for the reason that the proposition of law propounded therein are the same as already noticed above.

10. On the other hand the learned counsel for the complainant has contended that in this case on the basis of allegations made in the complaint a prima facie case is made out against the accused and such case is prima facie supportable on the basis of the preliminary evidence already recorded by the trial Court, therefore, this Court may not

exercise the jurisdiction to quash the proceedings. In support of his contention the learned counsel has relied on [State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others](#), and [Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another](#),

11. In case [State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others](#), the Hon"ble Supreme Court has held as follows:

23. This Court has consistently taken the view that the Court should not, except in extraordinary circumstance?, exercise its jurisdiction u/s 482, Cr.P.C. so as to quash the prosecution proceedings after they have been launched. In [Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another](#),

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that 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 first information report or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

24. The position of law, in this regard, has been very succinctly stated in the abovesaid case that at the stage of quashing a first information report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. This is precisely what has been done by the learned Judge in the present case. The first information report having been lodged, the Government of Maharashtra having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. It cannot be presumed that there was no application of mind when the first information report was prepared and the sanction of the Government obtained. The allegations as made in the first information report and the order granting sanction, if true, would clearly establish that the respondent was rightly prosecuted and was guilty of criminal misconduct. The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. There was no justification for the High Court to have exercised Its jurisdiction under Article 227 of the Constitution and Section 482 of the Cr.P.C. in quashing the prosecution.

12. In case [Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another](#), while dealing with the powers of the High Court u/s 482, Cr.P.C. the Apex Court held as follows:--

23. We are constrained to say that in making the above observations the High Court has flagrantly disregarded-unwittingly we presume--the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon

an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course as has been pointed out in Bhajan Lal case an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint.

13. It is in view of the above settled law that the present petition requires examination.

14. The contents of the complaint have already been set-out heretofore. Evidently, these contents of the complaints when read with the Newspaper clippings Exts. CW-1 /B and CW-I/C prlma facie disclose the commission of an offence u/s 500 of the I.P.C. by the accused. The contents of the complaint at this stage are supported by the preliminary evidence consisting of the statements of CW-1 Nehar Singh, CW-2 Shamsheer Singh, CW-3 Jawahar Lal and CW-4 Devinder Singh. While passing the summoning order dated 14-2-1995 the learned trial Magistrate has taken into account the contents of the complaint and the statements of the CWs on oath and the documents filed therewith and after due application of mind came to the conclusion that there were sufficient grounds to proceed against the accused-petitioner and four others, namely, Jehar Singh, Prem Kumar, N.D. Sharma and Jitender Bajaj and he did not find sufficient grounds to proceed against the accused Arun Shone and Prabhash Joshi.

15. The learned Sessions Judge has also taken into account all these factors in his impugned order and after due consideration thereof has dismissed the Revision Petition.

16. There is nothing on the record at this stage on the basis of which it may be even inferred that the complaint is motivated by any political vendetta or avers facts which are non-existent or untrue. Further there is nothing on the record which may suggest that lodging of the complaint or the summoning order are gross misuse of the process of the Court which could persuade this Court to interfere in exercise of its inherent powers. Therefore, the impugned order does not call for any interference nor the complaint is liable to be quashed.

17. In view of the above there is no merit and substance in the present petition which merits dismissal.

18. As a result this petition is dismissed. Parties to the petition through their counsel are directed to appear before the learned trial Magistrate on 6-9-1999. The learned trial Magistrate will make efforts to dispose of the case at the earliest.