

## Darshan Singh Saini Vs Sohan Singh and Others

**Court:** Supreme Court of India

**Date of Decision:** July 23, 2015

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) - Section 216, 468, 482  
Penal Code, 1860 (IPC) - Section 323, 34, 341, 506

**Citation:** (2016) 92 ALLCC 929 : (2015) 3 CCR 341 : (2015) 4 Crimes 76 : (2015) 4 JCC 2561 : (2015) 3 MLJ(Cri) 754 : (2015) 3 NCC 1 : (2015) 3 RCR(Criminal) 952

**Hon'ble Judges:** J.S. Khehar, J; A.K. Goel, J

**Bench:** Division Bench

**Advocate:** Ravi Bakshi and Yash Pal Dhingra, for the Appellant; Minakshi Vij, Advocates for the Respondent

**Final Decision:** Dismissed

### Judgement

J.S. Khehar, J.

Criminal Appeal No. 1833/2011

1. The Respondent Sohan Singh was an employee of the Appellant-Darshan Singh Saini. According to Sohan Singh, he was engaged by the

Appellant in hotel Geetanjali Guest House, which the Appellant owned at Baddi, in the State of Himachal Pradesh. Based on the services rendered

by the Respondent, certain emoluments which were due to the Respondent, were allegedly not paid to Sohan Singh by the Appellant. It was also

asserted at the behest of the Respondent, that on occasions, when he demanded the arrears of salary payable to him, he was threatened by

Darshan Singh Saini, that in case the Appellant ever set eyes on the Respondent-Sohan Singh, he will be killed.

2. The Respondent is stated to have made a complaint in respect of the threatening conduct of the Appellant-Darshan Singh Saini (and his father-

Beli Ram). On coming to know about the complaint made by the Respondent, it is the assertion of Sohan Singh, that the Appellant-Darshan Singh

Saini, abused him in the name of his mother and sister on 15.1.2008, as also on account of the fact, that he belonged to the scheduled caste.

Besides being abused, it was also sought to be asserted by Sohan Singh, that the Appellant-Darshan Singh Saini slapped the Respondent, and

gave him fist-blows, after holding his neck, and pushing him to the ground. It was also the contention of the Respondent-Sohan Singh, that in the

aforesaid incident, the father of the Appellant - Beli Ram supported Darshan Singh Saini. According to the Respondent-complainant, the

Respondent could be saved in the above abusing and assaulting incident, only on account of the intervention of Bhagat Ram and Chet Ram.

3. It was also sought to be asserted, that the animosity between the parties is based on the fact, that the Appellant and his father believed, that the

Respondent-Sohan Singh, did not support them during the State Assembly elections, in 2007.

4. It is also apparent from the pleadings of this case, that according to the Respondent, the police did not interfere, when the Respondent

repeatedly visited the police station, to lodge his complaint. It is therefore, that the Respondent - Sohan Singh lodged a written complaint on 24-

01-2008, before the Learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, Himachal Pradesh.

5. The Appellant-Darshan Singh Saini, approached the High Court Under Section 482 of the Code of Criminal Procedure, when he was

summoned by the Judicial Magistrate, First Class, Nalagarh, District Solan, Himachal Pradesh through an order dated 06-02-2009. A perusal of

order dated 06-02-2009 reveals, that the Appellant was summoned Under Sections 341 and 506, read with Section 34 of the Indian Penal Code.

6. The High Court, by the impugned order dated 08-04-2010, while partly accepting the prayer of the Appellant, quashed the proceedings

initiated against the Appellant Under Sections 341 and 506 of the Indian Penal Code, but arrived at the conclusion, that there was reasonable

ground to proceed against the Appellant Under Section 323 of the Indian Penal Code.

7. It was the vehement contention of the learned Counsel for the Appellant, that the impugned order passed by the High Court is not acceptable in

law, on account of the fact, that cognizance in the matter could not have been taken against the Appellant, on account of the period of limitation

depicted Under Section 468 of the Code of Criminal Procedure. In this behalf, it was the pointed contention of the learned Counsel for the

Appellant, that whilst the instant incident was of 15-01-2008, cognizance thereof was taken on 06.02.2009. This contention of the learned

Counsel for the Appellant was premised on the fact, that though the complaint had been made on 24-01-2008, cognizance thereof was taken

beyond a period of limitation of one year (on 06-02-2009).

8. We have considered the aforesaid contention advanced at the hands of the learned Counsel for the Appellant. It is apparent from the

submissions advanced by the learned Counsel for the Appellant, that he is calculating limitation by extending the same to the order passed by the

Judicial Magistrate, First Class, Nalagarh, on 06.02.2009. The instant contention is wholly misconceived on account of the legal position declared

by a Constitution Bench of this Court in Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and

Others, (2013) 12 AD 1 : AIR 2014 SC 448 : (2014) CriLJ 586 : (2013) 15 JT 97 : (2014) 1 RCR(Criminal) 590 : (2013) 14 SCALE 404 :

(2014) 2 SCC 62 , wherein in para 51, this Court has held as under:

51. In view of the above, we hold that for the purpose of computing the period of limitation Under Section 468 Code of Criminal Procedure the

relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes

cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted

to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of

limitation Under Section 468 Code of Criminal Procedure.

9. In the above view of the matter, we are satisfied, that keeping in mind the allegations levelled against the Appellant by the Respondent, the date

of limitation had to be determined with reference to the date of incident and the date when the complaint was filed by the Respondent. Since the

complaint was filed by the Respondent on 24-01-2008, with reference to an incident of 15.01.2008, we are of the view, that Section 468 of the

Code of Criminal Procedure would not stand in the way of the Respondent, in prosecuting the complaint filed by him.

10. The second contention advanced at the hands of the learned Counsel for the Appellant was based on the fact, that no cognizance was taken by

the Judicial Magistrate, First Class, Nalagarh, against the Appellant Under Section 323 of the Indian Penal Code, and as such, it was not

permissible for the High Court to have initiated proceedings against the Appellant, Under Section 323 of the Indian Penal Code, whilst accepting

the contention of the Appellant to set aside the proceedings initiated by the Judicial Magistrate, First Class, Nalagarh Under Sections 341 and 506

of the Indian Penal Code read with Section 34 thereof (vide order dated 6.2.2009).

11. It is not possible for us to accept the instant contention, principally on the basis of Section 216 of the Code of Criminal Procedure, which

postulates that it is open to "any court" to alter or add to any charge, at any time before the judgment is pronounced.

12. In the above view of the matter, we find no merit in this appeal, and the same is accordingly dismissed.

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13. Insofar as the connected appeal filed by the Respondent-Sohan Singh is concerned, who claims that charges be framed against Darshan Singh

Saini and his father Beli Ram, under the provisions of the Scheduled Castes and Scheduled Tribes (Atrocities and Prevention) Act, we are of the

view that the High Court was fully justified in rejecting the aforesaid prayer, on account of the fact that Sohan Singh did not indicate in his

complaint dated 24-01-2008, and also in the statement made by him, before the Judicial Magistrate, First Class, Nalagarh, that the Appellant

Darshan Singh Saini belongs to an upper caste. We, therefore, find no justification in interfering with the impugned order, on this score also.

14. The instant appeal is accordingly dismissed.