

THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR
(Single Bench – Rajendra Mahajan J.)

MCRC No. 1148 of 2017

Santosh Singh Rathod S/o Shri Ramdulare
Singh aged 63 years R/o Army Ki Bajariya
Kampoo Lashkar Gwalior (M.P.)

Petitioner

with

MCRC No. 1149 of 2017

Ku. Sikha Singh Chauhan D/o Shri Yaspal
Singh Chauhan aged 26 years R/o 13,
Prithviraj Road Morar Gwalior (M.P.)

Petitioner

with

MCRC No. 1151 of 2017

Smt. Usha Chauhan W/o Shri Yaspal Singh
Chauhan aged 56 years R/o 13, Prithviraj
Road Morar Gwalior (M.P.)

Petitioner

Versus

1. State of M.P. through Station House
Officer Police Station Morar
Gwalior (M.P.)
2. Ravindra Singh Gurjar S/o Mahesh Singh
Gurjar aged 36 years Inspector Police
Station Morar Gwalior (M.P.).

Respondents

For petitioners	:- Shri Prashant Singh, learned Senior Counsel, with Shri Vijay Sundaram, learned counsel.
For respondent No.1/State	:- Shri Rajesh Pathak, learned Public Prosecutor.
For respondent No.2	:- Shri Sandeep Singh Bhadoriya, learned counsel.

ORDER

(Passed on the 11th day of October 2017)

The petitioners have filed the petitions under Section 482 of the CrPC seeking reliefs namely to quash the FIR registered against them at Crime No. 597/2016 at Police Station Morar Gwalior for the offences punishable under Sections 294, 353, 332, 506 and 34 of the IPC and to direct respondent No. 1 not to launch the prosecution against them in the Court.

2. Since the petitions involve common questions of facts and law, they are being decided by this common order.

3. The core facts required to be noticed for adjudication of the petitions are that in Writ Petition No. 5449/2016 case title Arvind Singh Chauhan V. State of M.P. and Ors., the High Court of Madhya Pradesh Bench Gwalior passed a short order dated 24/8/2016 upon an interlocutory application of petitioner Arvind Singh Chauhan of said writ-petition directing the CSP Morar to clear the blockage caused on the road due to parking of a Tata Indica car mentioned in the application. The CSP

Morar, in turn, directed respondent No. 2 Ravindra Singh Gurjar, the SHO of Police Station Morar Gwalior, to execute the said order. On 27/8/2016 at about 3:50 p.m, he along with the Police Force comprising S.I Surendra Singh Somvanshi, S.I Triveni Rajawat, A.S.I Tula Ram, Head Constable Ranveer Singh Sankhwar, Constable Bharti and Photographer Bhoop Singh reached Municipal House No. 13 situated at Prithviraj Road Gwalior, where said Arvind Singh Chauhan resides. There, he saw one Indica car bearing Registration No. MP07 CC 0511 (for short "the car") is kept chained to the main gate of the house with chain-lock blocking the entrance of the passage of the house. He got the parking-position of the car and the surroundings of it video-graphed by the photographer. Thereafter, he got the chain-lock broken and the car tied with a tractor for towing it to Police Station Morar. Seeing that, Indrabhan Singh, Santosh Singh, Smt. Usha Chauhan, Jyoti and Sikha Chauhan, who are the daughter-in-law and the nieces of Indrabhan Singh respectively, got agitated and stood before the car.

They hurled filthy abuses and taunts at him and the Police Force. Smt. Usha Chauhan, Kumari Sikha Chauhan and Jyoti Chauhan caught braids/plaits of women police personnel namely Triveni Rajawat and Bharti and assaulted them with kicks and fists as a result they sustained injuries. As such, the serious law and order situation arose on the spot. Thereupon, respondent Ravindra Singh Gurjar apprised the CSP Morar about the ground situation on wire-less set and requisitioned the Police Force of Police Stations namely Morar and Sirol. Later, in the presence of the CSP Morar and the reinforcements, the car was brought to Police Station Morar by towing with the tractor. Thus, the aforesaid persons prevented respondent Ravindra Singh Gurjar and the Police Force from discharging their official duties exerting physical force against them. On the same day at about 9:35 p.m. respondent Ravindra Singh Gurjar lodged the FIR against Indrabhan Singh, Santosh Singh, Smt. Usha Chauhan, Ku. Jyoti and Ku. Sikha Chauhan. The FIR is registered at Crime No. 597/2016 against

them for the offences punishable under Sections 294, 353, 332, 506 and 34 IPC and the injured police personnel were sent for medico-legal examination. Feeling aggrieved by the registration of the FIR, Santosh Singh, Ku. Sikha Chauhan and Smt. Usha Chauhan have filed the petitions under Section 482 CrPC seeking reliefs as mentioned in para 1 of this order.

4. Learned Senior Counsel for the petitioners having referred to the orders of the Revenue Courts submitted that there is a civil dispute over the ancestral property between Digvijay Singh, the father of petitioner Arvind Singh Chauhan of Writ Petition No. 5449/2016, and Indrabhan Singh and others. After referring to the petition filed by Arvind Singh Chauhan in Writ Petition No. 6559/2013, the order dated 10/10/2013 passed therein, the petition of Contempt Case (Cri) No. 343/2015, the order dated 28/7/2016 passed therein and the petition of Writ Petition No. 5449/2016 wherein the order dated 24/8/2016 is passed, he submitted that Arvind Singh Chauhan had not impleaded Indrabhan

Singh and others as party-respondents and that he had suppressed the facts that a civil dispute regarding the ancestral property is going on between his father Digvijay Singh on the one side and Indrabhan Singh and others on the other. Thus, he filed said writ petitions including contempt petition malafidely. Since Indrabhan Singh and others were not made parties in the said writ petitions and contempt petition, they could not put up their case regarding the car before the High Court Bench Gwalior. After referring to the order dated 20/9/2016 passed by the High Court Bench Gwalior in Writ Petition No. 6613/2016, he submitted that the High Court has directed the Superintendent of Police Gwalior to take note of the complaint of Indrabhan Singh in which he has mentioned the high-handedness and atrocities committed upon him and his family members by respondent Ravindra Singh Gurjar and the Police Force at the time of removal of the car. The High Court has also directed him to proceed upon his complaint in the light of the judgment of the Supreme Court rendered in Lalita

Kumari V. Government of U.P., 2013 (5) MPHT 336 SC and to investigate himself the case registered against the petitioners of the petition and others or get the case investigated by an independent Police Officer to be authorized by him. After drawing the attention of this Court on some of the photographs of the incident available on record, he showed the high-handedness of the Police at the time of incident. He submitted that respondent Ravindra Singh Gurjar has in fact registered the FIR in question with an ulterior motive and mala fide intention against the petitioners and others to preempt an enquiry to be initiated in future upon the complaint of the petitioners to the higher authorities. He submitted that in State of Haryana V. Bhajan Lal, 1992 AIR 604 SC, the Supreme Court in para 102 of the decision had laid down the parameters for quashing an FIR and the subsequent criminal proceedings emanating therefrom by the High Court in exercise of inherent powers under Section 482 CrPC. In the present case parameter 7 is relevant. Upon these submissions, he prayed to allow the

petitions by quashing the F.I.R in question and directing respondent No. 1 not to launch the prosecution against them.

5. In reply, learned counsel for respondent No. 2 Ravindra Singh Gurjar submitted that not only the petitioners put hindrance in the execution of order dated 24/8/2016 of the High Court, but also they assaulted two women members of the Police Force namely Triveni Rajawat and Bharti as a result they sustained injuries. Therefore, respondent Ravindra Singh Gurjar had to lodge the FIR against the petitioners and others mentioning the details of the incident. He submitted that learned Senior Counsel for the petitioners had argued without any cogent evidence that respondent Ravindra Singh Gurjar lodged the FIR malafidely. He submitted that respondent Ravindra Singh Gurjar received the copy of the order dated 24/8/2016 of the High Court without knowing the background facts that a civil litigation is going on between Arvind Singh Chauhan's father Digvijay Singh on one side and Indrabhan Singh and

others on the other. Moreover, it was the responsibility of respondent Ravindra Singh Gurjar to give effect to the order in question of the High Court otherwise he had to face the contempt proceedings for non-compliance of the order. He submitted that upon the order dated 20/9/2016 passed by the High Court in Writ Petition No. 6613/2016 G.D. Sharma, the Sub-Divisional Police Officer Shivpuri, had carried out the investigation in the case. He had not found any evidence of involvement of Indrabhan Singh and Ku. Jyoti, against them FIR was also registered, in the incident. Therefore, the charge-sheet had been filed only against the petitioners in the Court of competent jurisdiction on 30/1/2017. He submitted that it is proved thereby that the investigation was done impartially and there is a ring of truth in the incident which is also proved by the photographs submitted by the petitioners themselves. He submitted that the case is presently at the stage of arguments over the charge(s), therefore, the petitioners have an occasion to put up their case before the trial Court. He

submitted that the order dated 20/9/2016 passed in Writ Petition No. 6613/2016 has nothing to do with the present case. Upon these submissions, he prayed that the petitions filed by the petitioners lack merits and substance, therefore, the petitions are liable to be dismissed. Be it noted that learned Public Prosecutor for respondent No.1 supported the arguments in substance canvassed by learned counsel for respondent No.2.

6. I have earnestly considered the rival submissions made by learned counsel for the parties at the Bar and perused entire material on record.

7. First, it will be seen as to how, when and where the High Court should exercise inherent powers under Section 482 CrPC for quashing an FIR or a complaint and subsequent criminal proceedings emanating therefrom.

8. In Mrs. Rupan Deol Bajaj and Anr. V. Kanwar Pal Singh Gill, AIR 1996 SC 309, the Supreme Court observed thus:-

“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. 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 extra-ordinary or inherent powers do not confer on arbitrary jurisdiction on the Court to act according to its whim or caprice.”

Similar views were expressed by the Supreme Court in Indermohan Goswami and Anr. V. State of Uttranchal and Ors., (2007) 12 SCC 1, which read thus:-

“Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this Section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in the absence

of specific provisions in the Statute.”

9. In State of Haryana V. Bhajan Lal (supra), the Supreme Court has laid down the parameters in para 102 of the decision for exercising all the extra-ordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC having considered the principles of law propounded by it in a series of earlier decisions. These parameters are given below:-

1. 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.
2. Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156 (1) CrPC except under an order of a Magistrate within the purview of S. 155 (2)

CrPC.

3. 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.
4. Where the allegations in the F.I.R. 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 S. 155 (2) CrPC.
5. 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.
6. Where there is an express legal bar engrafted in any of the provisions of the CrPC (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 CrPC or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. 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.

10. In Amit Kapoor V. Ramesh Chander, (2012) 9 SCC 460, in para 19 of the decision the Supreme Court has expanded the said parameters by adding a few more. The guidelines given in that case were approved by the Supreme Court in Taramani Parakh V. State of M.P. and Ors., (2015) 11 SCC 260,. It is also pertinent to mention herein that in Prashant Bharti V. State of NCT of Delhi, AIR 2013 SC 275, the Supreme Court in para 23 of the judgment has delineated the four steps to be followed in quashing an F.I.R of a criminal complaint in exercise of the powers vested in the High Court under Section 482 CrPC.

11. In State of Maharashtra V. Ishwar Piraji Kalpatri, AIR 1996 SC 722, the Supreme Court has observed in para 22 of the decision that when the commission of the crime is proved in the course of investigation and the charge-sheet has been filed, then the High Court has no power under Section 482 CrPC to examine the prosecution case from the angle whether the allegations are mala fide. The relevant para is quoted below.

“If the complaint which is made is correct and an offence had been committed which will have to be established in a Court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the

complainant is guilty of mala fides would be no ground for quashing the prosecution.”

Similar view was also earlier taken by the Supreme Court in State of Bihar and another V. P.P. Sharma and another, 1992 Supp (1) SCC 222.

12. In view of the aforestated legal positions of law, I will proceed to decide the petitions.

13. The uncontroverted facts of the case are that the incident occurred in the execution of order dated 24/8/2016 passed by this Court in Writ Petition No. 5449/2016. There is no cogent material/evidence on record that respondent Ravindra Singh Gurjar had personal knowledge prior to the incident that a civil litigation over the ancestral properties is going on between the father of said Arvind Singh Chauhan and Indrabhan Singh and others. For the sake of arguments even if he had the knowledge of said litigation prior to the incident even then he had no authority to question the legality and correctness of the said order. He had to comply with the order as it stood. Thus, no mala fides or

ulterior motives could be attributed to him personally in compliance with the said order. Upon the perusal of the charge-sheet, it appears that the case was investigated by G.D. Sharma, the SDO(P) Shivpuri, and that he had found the petitioners committing the alleged offence exonerating Indrabhan Singh and Ku. Jyoti against whom the FIR was also lodged. This fact shows that G.D. Sharma had done the investigation in the case without being influenced by the fact that the complainant of the case is none other than the SHO of Police Station Morar Gwalior Ravindra Singh Gurjar, respondent No. 2 herein, and the injured are police personnel. On the basis of the photographs of the incident which are placed on record by the petitioners themselves, it can be said that there had been violence at the time of execution of the said order between the Police Force and the petitioners. Therefore it cannot be said that there is an element of malus animus on the part of the complainant/respondent Ravindra Singh Gurjar in the lodgement of the F.I.R against the petitioners. In exercise of power under

Section 482 CrPC, this Court cannot consider which party is responsible for the said violence erupted in the course of the execution of the said order because this Court cannot enter into the factual arena [see State of Punjab through Secretary Home V. Subhash Kumar and Ors., (2004) 13 SCC 437]. Since the charge-sheet has already been filed in the case, it is now the matter rests with the trial Court to decide the said point. It is true that in the order dated 20/9/2016 passed in Writ Petition No. 6613/2016, this Court has expressed its displeasure in the strong words over the incident occurred at the time of compliance of its order dated 24/8/2016, but on that basis itself, the FIR cannot be quashed against the petitioners. From the aforesaid-discussions, I hold that the existence of parameter 7 as laid down in the case of State of Haryana V. Bhajan Lal (supra) is not made out by the petitioners in the case.

14. For the foregoing reasons and discussions, I hold in the end that the petitions lack merits and substance, therefore, I dismiss them.

15. As per the material on record, the charge-sheet had been filed against the petitioners in the Court of competent jurisdiction and the case is at the stage of hearing arguments on the charge(s). Therefore, it is made clear that the trial Court shall not be influenced by any observation made in this order either overtly or covertly and the petitioners will have liberty to file revision in case the charge/charges is/are framed against them.

16. The copies of this order be retained in MCRC Nos. 1149/2016 and 1151/2017.

**(Rajendra Mahajan)
Judge**