

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Misc. No.14548-M of 2006

Date of Decision: 28.1.2008

Devender Kumar Gupta

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.R.A.Sheoran, Advocate,
for the petitioner.

Mr.Vikas Chaudhary, AAG, Haryana.

Vinod K.Sharma, J. (Oral)

This is a petition under section 482 of the Code of Criminal Procedure for quashing of FIR No. 482 dated 19.8.1996 under sections 332/353/186/506/452 IPC registered at Police Station City Hisar. However, on re-investigation the petitioner has been challaned under sections 353/186/506 IPC.

FIR has been registered on the allegation which reads as under:-

“Sir, the facts of the case are that an application has been

received through S.P.Office, Hisar on 19.8.1996 the subject of which is as under: No.Regr/96/1092 dated 19.8.96. To Suptd. Of Police Hisar. Subject: Registration of FIR. Dear Sir, Shri Devender Gupta of Dr.R.N.Gupta Technical Education Society, 318-A, Chirag Delhi, New Delhi-110017 come to my office today at around 12.45 PM demanding affiliation to the Anupama College of Engineering Laxmi Bazar Complex, Gurgaon. Earlier the case of affiliation of this college to the University was rejected by the Vice Chancellor on the basis of the report of the inspection committee carried out on 31.7.96 under the convenorship of Dr.R.P.Jain, Director Principal, C.R.State College of Engineering, Murthal. Shri Devender Gupta demanded that a super inspection committee should visit the site at Gurgaon tomorrow itself as he did not agree with the report dated 31.7.96 of the inspection committee. He also demanded that the members of the inspection committee should be disclosed to him which were not permissible under rules. On being so refused, Sh.Devender Gupta threatened me with dire consequences. He threatened to throw me off my chair if his orders were not complied with. He alleged that he is well connected with the top and he would get me shifted immediately if the super inspection team does not visit the college site by tomorrow. He abused me filthily in an unparliamentary manner on my inability to comply with his illegal orders. He even lifted a chair to hit me bodily but for the

timely intervention of Shri R.K.Yadav, A.R. (General) the situation was saved. The incidence of abusing and threatening me with dire consequences was witnessed by several office staff who gathered near my office door on hearing the loud voices of Shj.Devender Gupta. The signatures of some of the witnesses who witnessed the scene (enclosed) are appended. I request you to register an FIR against Shri Devender Gupta for physical assault, abuse and threatening me at my office which severely affected by official working as Registrar of this University.”

The ground on which the petitioner seeks quashing of the FIR is that the basic allegations against the petitioner are the one under section 186 IPC. The contention of the learned counsel for the petitioner is that other offences are arising out of the main offence that is under section 186 IPC wherein the allegations are that the petitioner had interfered in the functioning in the office of Registrar. Learned counsel for the petitioner states that in view of the bar under section 195 (1) of the Cr.P.C., the police cannot take cognizance of the offence under section 186 IPC, as complaint in writing of public servant concerned or his superior officer is required to be filed in court. Learned counsel contends that the FIR registered in violation of section 195 (1) Cr.P.C. is liable to be quashed. In support of this contention learned counsel for the petitioner placed reliance on the judgment of this Court in the case of **Ram Kumar Vs. The State of Haryana 1998 (1) C.L.R. 633** as well as the judgment of this court in the case of **Balbir Singh Vs. The State of Punjab 1975 C.L.R.423** wherein

this Hon'ble Court has been pleased to lay down as under:-

“7. For the application of the ratio of the authority cited above to the facts of the case in hand, it deserves mention that section 228 Indian Penal Code, provides that “whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months.....”

Shri Sukhdev Singh Magistrate as a public servant was conducting judicial proceedings when the incident occurred. As such, there is no escape from the conclusion that the material facts of this case disclose primarily and essentially an offence for which complaint of the said public servant is required. In this view of the matter, the contention of the learned Assistant Advocate General that since the facts also constitute the commission of Criminal intimidation by Balbir Singh, therefore, his conviction under Section 506, Indian Penal Code be upheld, cannot be accepted, and it is accordingly set aside and he is acquitted of this charge as well. The revision petition is allowed.”

Learned counsel appearing on behalf of the State, however, submits that the petitioner has been declared as proclaimed offender on 15.10.2007 and therefore, he is not entitled to the discretionary relief under section 482 Cr.P.C.

On consideration of the matter, I find no force in the

contentions raised by the learned counsel for the State.

As a matter of fact, this court after issuing notice of motion has passed a specific order that the case was to be adjourned to a date after the date fixed by this court and therefore, there was no occasion for the trial court to have declared the petitioner proclaimed offender. Thus, the order declaring the petitioner as proclaimed offender is prima facie contrary to the orders passed by this court restraining the trial court from passing any order in the case.

In view of the settled law that the FIR for an offence under section 186 and other offences closely inter-woven with said offence can not be registered in view of bar under section 195 (1) Cr.PC, as no complaint has been filed by authorised person in court, the FIR and subsequent proceedings arising therefrom are ordered to be quashed.

Petition allowed.

28.1.2008
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(Vinod K.Sharma)
Judge