

COCP-2490-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-2490-2018 (O&M)
Date of Decision : April 12, 2023

Suresh Kumar SatijaPetitioner
Vs.
Balwinder Singh Touri ...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Sandeep Khunger, Advocate
for the respondent.

Mr. Ayush Sarna, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

This petition is pending since 2018.

The petitioner alleges the violation of order dated 24.9.2008 passed in CWP No.9650 of 2007 as well as the direction dated 27.8.2014 in CWP No.17431 of 2014.

Brief facts of the case are that the petitioner had contested the assembly elections of Abohar constituency and is an active member of Akali Dal. It is stated that in the said election, the candidate of the ruling party lost the election and due to this grudge, FIR No.50 dated 17.6.2018 under Sections 465, 467, 471 IPC and Section 7 of the

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E.C., Act at Police Station Bahawala, District Fazilka (Sections 468, 420, 120-B IPC and E.C. Act added later on) was registered.

It is further stated that the petitioner was arrested by respondent No.1 on 17.6.2018 and was produced before the Court on 18.6.2018 when police remand was given for one day till 19.6.2018.

Counsel for the petitioner further submits that while producing the petitioner in the Court, he was humiliated as he was put in handcuff and was asked to go through the local market and, thus, there is a violation of the aforesaid two orders, wherein it is held that handcuffing of a person is a cruel and degrading act and should not be ordinarily resorted, except in extreme circumstances and exceptional cases.

Reply by way of affidavit of the respondent is on record in which after verifying the facts of the FIR, it is stated that the respondent was posted as Additional SHO, Police Station Bahawala and after the petitioner was arrested, he made a disclosure statement that he can produce the relevant documents by going to the shop i.e Satija Telecom, Amarapur. When the respondent took the petitioner to the shop in village Amarapur, the shop was closed and the petitioner was allowed to talk to his relative using the mobile number i.e. 85588-06488 of the respondent to one number 92566-04912. Thereafter, on the asking of the petitioner, he was taken to Abohar at the shop of the sons of petitioner. There, the sons of the petitioner, who are Advocates were present along with number of his supporters and the respondent apprehended that their intention is to interfering in the investigation, as they stopped the government vehicle to move towards the shop of the son of the complainant. Therefore, as a preventive measure, he was put under handcuffs and all these facts were brought to the notice of the


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senior officers and even the police zimni was recorded on 19.6.2018 in this regard.

It is stated that an enquiry was conducted by a team of senior police officials, which recorded a finding that the Special Investigating Team has come to a conclusion that SI Balwinder Singh handcuffed the accused keeping in view the situation at the spot and has not violated the directions of the Court. It is also stated that the petitioner is involved in as many as 10 FIRs, the details of which is given as under :-

- (i) FIR No.198 dated 28.8.1998 under Sections 353, 186, 506, 34 IPC, Police Station City-1, Abohar- convicted on 18.2.2002.
- (ii) FIR No.3 dated 5.1.2017 under Sections 177, 178, 448, 120-B IPC, Police station City Fazilka- the trial is going in the Court.
- (iii) FIR No.94 dated 12.6.2011 under Sections 447, 511, 506, 34 IPC, Police Station City-1, Abohar (FIR quashed on the basis of compromise between the parties.)
- (iv) FIR No.124 dated 25.7.2018 under Sections 420, 465, 467, 468, 471, 120-B IPC, Police Station City-1, Abohar – the matter is under investigation.
- (v) FIR No.163 dated 22.7.2003 under Section 382 IPC, Police Station City-1, Abohar – the cancellation report prepared on 6.5.2005.

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- (vi) FIR No.185 dated 11.8.2003 under Sections 382, 323, 148, 149 IPC, Police Station City-1, Abohar – declared innocent on 26.7.2005.
 - (vii) FIR No.228 dated 10.9.2003 under Sections 452, 382, 323, 148, 149 IPC, Police Station City-1, Abohar – acquitted on 9.10.2009.
 - (viii) FIR No.138 dated 24.7.2017 under Sections 323, 509, 354, 342, 316, 109, 511, 336, 149 IPC, Police Station City-1, Abohar – the cancellation report prepared on 4.1.2018.
 - (ix) FIR No.117 dated 18.4.2003 under Sections 365, 148, 149 IPC, Police Station Khuian Sarwar;
 - (x) FIR No.12 dated 2.2.2017 under Sections 323, 148, 149 IPC, Police Station City-1, Abohar – the cancellation report prepared on 25.5.2012.

Learned Stated counsel submits that since the petitioner is a habitual offender and there was apprehension that he may escape from the judicial custody and the sons of the petitioner have gathered a huge crowd at the spot and, therefore, as a preventive measure, the petitioner was handcuffed, a fact, which has been proved by the Special Investigating Team constituted under the directions of the Senior Superintendent of Police, Fazilka on 16.1.2019.

In reply, counsel for the petitioner submits that the petitioner does not want any compensation, however, heavy fine be imposed on the respondent for violating the judgment/directions passed by the Hon'ble Supreme Court regarding handcuffing of a prisoner/under trial.

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After hearing learned counsel for the parties, it is apparent on record that the petitioner was handcuffed by the respondent on 19.6.2018 when during the course of investigation he was taken to the shop of his sons at Abohar. It is has also come on record that a number of persons gathered at the spot and, therefore, the respondent decided to handcuff the petitioner so as to prevent him from escaping from the police custody. As per the report of the Special Investigating Team, a finding is recorded that the situation was as such that the respondent had to handcuff the petitioner.

A perusal of the record would show that though the petitioner has alleged political rivalry against the other party against whom he has contested the election. However, in the petition there is no *mala fide* against the respondent to hold that the action of the respondent was intentional or *mala fide*.

In reply, the learned State counsel, on instructions from the respondent, who is present in the Court, submits that he is ready to pay a cost of Rs.1,00,000/- to the petitioner. However, the counsel for the petitioner submits that he has instructions that the petitioner do not want any costs from the respondent and the respondent should be held guilty of the contempt of the directions of the Court.

After hearing learned counsel for the parties, this Court finds that the respondent, considering the situation at the spot, when during investigation, the respondent, being the Investigating Officer had taken the petitioner to the shops of his sons at Abohar where a large number of people gathered and tried to stop the government vehicle from proceeding further, the respondent decided to handcuff the petitioner. Even the report of the Special Investigating Team has exonerated the respondent in this regard and there is nothing on record that the

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petitioner had challenged the Special Investigating Team's report before any higher authority.

However, considering the fact that the petitioner was handcuffed by the respondent, the respondent is directed to pay a cost of Rs.1,00,000/-, which will be deposited in the Punjab and Haryana High Court Employee's Welfare Association. However, it will have no bearing on service carrier of respondent.

The costs is deposited and receipt No.1023 dated 12.4.2023 is attached with the main file.

Accordingly, this petition is disposed of.

April 12, 2023
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**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO