

IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH

C. W. P. (**PIL**) No. of 2009

Citizens' Voice

...Petitioner

Versus

State of Punjab and others

...Respondents

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Note :

1. The main law points involved in the present writ petition are contained in para 10 at internal page 8 & 9 of the Civil Writ Petition and page 12 & 13 of the paper book.

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2. Relevant Statute/law : Constitution of India;
Representation of People
Act; Criminal Procedure
Code
3. Similar Cases : Nil
4. Cited Cases : Nil
5. Whether caveat petition : No
has been filed or not ?

Chandigarh

Dated:-23.10.2009

(D.S. Keer) (A. P. S. Shergill)

Advocates

Counsels for the Petitioner

LIST OF DATES & EVENTS

- 08.08.2008 The Hon'ble Supreme Court in Lalita Kumari vs. State of U.P. [Writ Petition (Criminal) No.68 of 2008] has directed all the States and Union Territories besides their Director Generals of Police/Commissioners of Police that if steps are not taken for registration of F.I.Rs immediately and copies thereof are not made over to the complainants, they may move the concerned Magistrates by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the F.I.Rs to the complainants, within twenty four hours of receipt/production of copy of such orders. The Hon'ble Apex Court has also directed that in case F.I.Rs are not registered within the aforementioned time, and/or aforementioned steps are not taken by the police, the concerned Magistrate would be justified in initiating contempt proceedings against such delinquent officers and punish them for violation of its orders.
- October, 2009 Continuing with its practice of following the directions of the Hon'ble Supreme Court, the Amritsar police registered about 100 cases for gambling etc. in Diwali days, as reported in the media (Annexure P-1 to P-3). In line with the directions of this Hon'ble Court in CWP No.7639 of 1995, the Amritsar police also removed

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advertisement hoardings put up by businessmen/
politicians.

20.10.2009 The media reports (Annexure P-1 to P-3) clearly imply that Shri Anil Joshi, the respondent no. 4, an elected Member of the Punjab Legislative Assembly, has been pressurizing the Amritsar police for dropping F.I.Rs and proceedings against his supporters (nearly 100) without following the due lawful course.

23.10.2009 There is no alternative remedy for the situation arising out in the instant case except to approach this Hon'ble Court by way of instant writ petition for the detailed reasons circumstances set out in the present writ petition. Hence, the instant civil writ petition.

Chandigarh

(D.S. Keer) (A.P. S. Shergill)

Dated: 23.10.2009

Advocates

Counsels for the Petitioner

SYNOPSIS

The Amritsar police registered about 100 cases for gambling etc. in Diwali days, as reported in the media (Annexure P-1 to P-3). In line with the directions of this Hon'ble Court in CWP No.7639 of 1995, the Amritsar police also removed advertisement hoardings put up by businessmen/ politicians. The Hon'ble Supreme Court in Lalita Kumari vs. State of U.P. [Writ Petition (Criminal) No.68 of 2008] has directed all the States and Union Territories to take steps for immediate registration of F.I.R.s and in case of failure, the concerned Magistrate would be justified in initiating contempt proceedings against such delinquent officers and punish them for violation of its orders. Perusal of the media reports (Annexure P-1 to P-3) imply that the respondent no.4 who is a member of the Punjab Legislative Assembly has been pressurizing the Amritsar police for dropping F.I.Rs and proceedings against his supporters (nearly 100) without following the due lawful course. Perusal of the video-recording (Annexure P-4) shows that the aforesaid MLA has also threatened the SSP that if he continues to register cases against his supporters, he has to face dire consequences. In the aforesaid video recording, the respondent no. 4 is seen publicly threatening that the SSP would be beaten up ("*sir te chhittar maarange te thudde maarange*") by 10000 people and would send him barefoot back to Bihar. In the CD, it has shockingly been stated that "*Bihar ka bhaiya Bihar jaayega*". Public is directly effected when an elected member of the Punjab Legislative Assembly (Respondent no. 4) prevents enforcement agencies from doing their lawful constitutional duties, even though the MLA is otherwise supposed to abide by the Constitution of India in its letter and spirit and to act in a manner which builds confidence of the general public in the supremacy in the Constitution and in the law of land. Not only

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that, if such nefarious designs are allowed to succeed, no officer would dare to discharge his duties fearlessly. Openly threatening/coercing an officer of the rank of Senior Superintendent of Police in full public show of strength is nothing short of an act of inciting contempt and inciting disaffection towards the Government established by law.

Hence, this petition.

Chandigarh

(D.S. Keer) (A.P. S. Shergill)

Dated: 23.10.2009

Advocates

Counsels for the Petitioner

IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH

C. W. P. (**PIL**) No. _____ of 2009

Citizens' Voice, a registered charitable Non-Profit Trust
through its Trustee Mr. Hemant Goswami S/o Late Sh.
B.M. Goswami, Chandigarh.

.....Petitioner

Versus

1. State of Punjab through its Principal Secretary,
Department of Home Affairs, Punjab Civil
Secretariat, Chandigarh.
2. The Director General of Police, Punjab, Sector 9,
Chandigarh.
3. Punjab Legislative Assembly through Speaker,
Punjab Vidhan Sabha Building, Sector 1,
Chandigarh.
4. Anil Joshi, Member of Legislative Assembly, S/o Sh.
Kishori Lal R/o 11, Medical Enclave, Amritsar.
5. Senior Superintendent of Police, Amritsar City,
Punjab.

...Respondents

Petition under Articles 226/227 of the Constitution of
India (**PIL**), praying for: -

- (i) a writ in the nature of mandamus or any
other appropriate writ, order or direction be

issued directing the respondent no.4 to desist and refrain from interfering in the administration of law and order and/or do any act and/or give statement(s) which are separatist/communal/casteist/ racist in nature or which have the effect of inciting enmity/hatred among different classes of citizens of India;

- (ii) a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondent nos.1, 2 and 5 to adhere to the provisions of the Criminal Procedure Code, the directions of the Hon'ble Courts and the law of the land and not be deterred by illegal threats and pressures;
- (iii) a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondent no.3 to look into the conduct of the respondent no.4 and if found guilty of violating his oath and working against the directions of the Constitution of India, the membership of the member be terminated;
- (iv) a writ in the nature of mandamus, quo warranto or any other appropriate writ, order or direction be issued directing the

respondents no. 1 & 2 to enquire and investigate the matter and take appropriate lawful action under the criminal law against respondent no.4 or any other guilty person for threatening a public servant and for obstructing the public servant from performing his lawful duty, and for spreading hatred among different classes of citizens of India.

- (v) any other writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

RESPECTFULLY SHOWETH:-

1. That the petitioner-organization, Citizens' Voice is a non-governmental organization, registered as a Trust acting through its Trustee, Mr. Hemant Goswami. The petitioner-organization is working for peoples' empowerment through social awakening, good governance, upholding of civil liberties, human rights and human dignity and has made substantial contribution in matters of public interest and is entitled to invoke the extraordinary writ jurisdiction of this Hon'ble Court for enforcing the rule of law and majesty of the Constitution of India. The instant matter pertains to upholding the rule of law and ensuring the supremacy of the Constitution by preventing political functionaries from interfering in maintenance of law and order and administration of justice. Public is directly effected when an elected member of the Punjab Legislative Assembly (Respondent no. 4) prevents enforcement agencies from doing their lawful constitutional duties, even though the MLA is otherwise supposed to

abide by the Constitution of India in its letter and spirit and to act in a manner which builds confidence of the general public in the supremacy in the Constitution and in the law of land. An undisciplined, illegal and unconstitutional act by the member of the legislative assembly has the direct effect of reducing the faith of the people in the rule of law which is likely to have far reaching consequences effecting the public in general. Not only that, if such nefarious designs are allowed to succeed, no officer would dare to discharge his duties fearlessly. Openly threatening/coercing an officer of the rank of Senior Superintendent of Police in full public show of strength is nothing short of an act of inciting contempt and inciting disaffection towards the Government established by law.

2. That the Hon'ble Supreme Court in 2008 in Lalita Kumari vs. State of U.P. [Writ Petition (Criminal) No.68 of 2008] has held as under: -

"In view of the above , we feel that it is high time to give directions to Governments of all the States and Union Territories besides their Director Generals of Police/Commissioners of Police as the case may be to the effect that if steps are not taken for registration of F.I.Rs immediately and copies thereof are not made over to the complainants, they may move the concerned Magistrates by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the F.I.Rs to the complainants, within twenty four hours of receipt/production of copy of such orders. It may further give direction to take immediate steps for apprehending the accused persons and

recovery of kidnapped/abducted persons and properties which were subject matter of theft or dacoity. In case F.I.Rs are not registered within the aforementioned time, and/or aforementioned steps are not taken by the police, the concerned Magistrate would be justified in initiating contempt proceedings against such delinquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishment like sentence of imprisonment against them inasmuch as the Disciplinary Authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same.”

The Hon’ble Apex Court in Criminal Appeal No. 1229 of 2002 titled as Ramesh Kumari Vs. State (NCT of Delhi) and Ors. [AIR 2006 SC 1322] had similarly ordered that police officer is bound to register case under mandatory provision of Section 154 (1) of Cr. P. C.. Similar directions have been issued by the Hon’ble Apex Court in numerous other cases including State of Haryana and others Vs. Bhajan Lal and others in Civil Appeal No. 5412 of 1990 [AIR 1992 SC 604].

3. That Article 144 of the Constitution of India makes it binding on all authorities to act in the aid of Supreme Court. The relevant portion of the Constitution reads: -

“144. Civil and judicial authorities to act in aid of the Supreme Court: -

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.”

4. That in compliance with the order of the Hon’ble Supreme Court and as mandated by the law as laid in the Criminal Procedure Code,

the Senior Superintendent of Police, Amritsar, as has been observed during the past more than two years, does not deny the right to register F.I.R. to any aggrieved member of the public. The SSP has initiated several steps to enable aggrieved persons to lodge F.I.R. including "Lodge Your Own F.I.R." centers irrespective of the jurisdiction and direct email to the SSP. After basic preliminary investigation, F.I.R. is registered as a matter of routine. Not only this, in case any F.I.R. is found to be incorrect, lawful action against the person furnishing false information is also taken to deter the malicious prosecution.

5. That the *goonda* element as well as persons engaged in unlawful activities are presumably not happy with easy access of public to the police agencies as this defeats their nefarious designs. Consequently, these elements use people in the power corridors and political heavyweights to create pressure on the police to not register cases against them. Refusing unlawful favours to such people undoubtedly draws their ire.

6. That according to news items appearing in The Indian Express, Hindustan Times and The Tribune, all dated 20th October 2009(Annexure P-1 to P-3 respectively), the Amritsar police had registered some 100 cases for different offences including gambling and erection of illegal hoardings during Diwali days. It is pertinent to mention that this Hon'ble Court had, in CWP No. 7639 of 1995, directed the municipal authorities to remove all advertisement hoardings in a time bound manner, which the Amritsar Municipal Corporation failed to do. By removing such illegal hoardings, the police was implementing the law of the land as laid down by this Hon'ble Court. The media reports (Annexure P-1 to P-3) clearly imply that Shri Anil Joshi, the respondent

no. 4, an elected Member of the Punjab Legislative Assembly (MLA), has been pressurizing the Amritsar police for dropping F.I.Rs and proceedings against his supporters (nearly 100) without following the due lawful course. Perusal of the video recording (Annexure P-4) clearly shows that the aforesaid MLA has also threatened the SSP that if he continues to register cases against his supporters, he has to face dire consequences.

7. That on refusal of the SSP Amritsar to oblige the MLA, the respondent no. 4 has publicly threatened that the SSP would be beaten up ("*sir te chhittar maarange te thudde maarange*") by 10000 people and would send him barefoot back to Bihar. The video recorded statement of the MLA is annexed as Annexure P-4. In the CD, it has shockingly been stated that "*Bihar ka bhaiya Bihar jaayega*". The promoting of enmity between classes and spreading hatred between different communities/classes between citizens of India is not only an offence under the Representation of People Act, 1951 but also Indian Penal Code, 1860. It may also be mentioned that the Government of India has also signed many related international treaties including "International Convention On The Elimination Of All Forms Of Racial Discrimination, 1966", which also provides for preventing such kind of regional discrimination amongst citizens.

8. That it is pertinent to mention that the MLA vehemently denied that he is involved in gambling business though no F.I.R. has been registered against him for involvement in gambling business; hence the statement was uncalled for and his expression of anger against the SSP can not to be said to be impromptu.

9. That such an action by the MLA (respondent no. 4) is violation of the Constitutional provisions and the oath of allegiance taken by him while assuming office as MLA towards the Constitution and the rule of law in the country. The MLA has acted contrary to the oath taken by him and against the provisions of the Constitution as well as against the direction of the Supreme Court of India and is unlawfully coercing and threatening a police officer from performing his lawful duty. This act is unbecoming of a member of legislative assembly. The oath of MLA, as mentioned in the Third Schedule (Part VII B), reads as under:-

“I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do Swear in the name of God/ Solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.”

10. That the following law points are involved in the present writ petition for adjudication by this Hon'ble Court:-

- (i) Does the mandate of the Member of Legislative Assembly extend to directing the police and other law & order enforcement agencies to stop performing their duties?
- (ii) Is the police and the government machinery bound to follow the instructions of a Member of Legislative Assembly?

- (iii) Whether by registering F.I.R.s and removing advertisement hoardings, the police has acted in an illegal and unlawful manner?
- (iv) By preventing a police officer from performing his duty and by threatening to use violent means against an SSP, who is working to uphold the rule of law; has the MLA acted against the oath he had taken while assuming the office of the Member of Legislative Assembly?
- (v) Would violation of the terms of oath taken while assuming office as MLA be a ground for disqualification of a member of the Legislative assembly from legislative assembly?

11. That the petitioner-organisation is not left with any other alternative remedy of appeal/revision available under the statute governing the service conditions except to approach this Hon'ble High Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India.

12. That the petitioner-organization has not filed any such or similar civil writ petition either in this Hon'ble High Court or in another High Court or of in the Hon'ble Supreme Court of India.

PRAYER

On the grounds submitted above and more to be stated later on, if necessary, it is respectfully prayed that this Hon'ble Court may issue:-

- (i) a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondent no.4 to desist and refrain from interfering in the administration of law and order and/or do any act and/or give statement(s) which are separatist/communal/casteist/ racist in nature or which have the effect of inciting enmity/hatred among different classes of citizens of India;
- (ii) a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondent nos.1, 2 and 5 to adhere to the provisions of the Criminal Procedure Code, the directions of the Hon'ble Courts and the law of the land and not be deterred by illegal threats and pressures;
- (iii) a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondent no.3 to look into the conduct of the respondent no.4 and if found guilty of violating his oath and working against the directions of the Constitution of India, the membership of the member be terminated;
- (vi) a writ in the nature of mandamus, quo warranto or any other appropriate writ, order or direction be issued directing the respondents no. 1 & 2 to enquire and investigate the matter and take appropriate lawful action under the criminal law against respondent no.4 or any other guilty person for threatening a public servant and for obstructing the public servant from

performing his lawful duty, and for spreading hatred among different classes of citizens of India.

- (v) any other writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (vi) to dispense with from filing the certified copies of the Annexures P-1 to P-4;
- (vii) prior notice to the respondents may kindly be dispensed with;
- (viii) cost of the writ petition be awarded in favour of the petitioner.

Chandigarh

Petitioner

Dated: 23.10.2009

Through Counsels:

(D. S. Keer) (A.P. S. Shergill)

Advocates for the Petitioner

VERIFICATION:-

Verified that the contents of para's No. 1 to 9 and para No. 11 & 12 are true and correct to my knowledge, whereas, contents in para 10 are based on information and legal advice which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Chandigarh

Petitioner

Dated: 23.10.2009

Annexure P-1

The Indian Express Chandigarh/Tuesday/October 20 2009

AMRITSAR MLA: SHIFT SSP OR ELSE

EXPRESS NEWS SERVICE

AMRITSAR, OCTOBER 19

AMRITSAR (North) MLA Anil Joshi has demanded the transfer of SSP Kunwar Vijay Pratap Singh after the arrest of over 90 persons on Diwali, who have been booked for fraud. It is believed that many of those arrested are Joshi's supporters, which has angered the MLA. Joshi has threatened to start an indefinite dharna if Singh, a senior IPS officer, is not shifted out of Amritsar.

Earlier too, there have been conflicts between Joshi and Singh over the issue of removal of encroachments and traffic control in the city.

Addressing the media here on Monday, Joshi accused the SSP of highhandedness and said the arrested persons were shopkeepers and vendors who earned a living selling earthen lamps and other decoration items. "Their livelihood depends on the items that they sell during Diwali season. Fraud cases were registered against these people for no fault of theirs," he alleged. He also charged the SSP with tearing down banners and signboards bearing Diwali wishes. "He (the SSP) is playing dirty politics and following the policy of divide and rule to create divisions within the BJP," he said. Though he did not name local BJP MP Navjot Singh Sidhu, Joshi's comments are being seen in the context of Singh's reported closeness with Sidhu. "He also harassed BJP workers on various occasions. He even arrested students who were watching a movie in a cinema hall and booked them under the Immoral Trafficking Act," alleged Joshi.

Defending his actions, SSP Singh said "doing a good deed and enforcing law have become major challenges in the present times".

"We shall continue to apprehend those who violate the law at any point of time in any way," he said. "As far as removing banners and hoardings are concerned, we are only following the directions of the Punjab and Haryana High Court and the state Government," he added.

True Copy

Advocate

Annexure P-2

Hindustan Times, Chandigarh

Tuesday 20 October 2009

Removal of Hoardings

JOSHI: REMOVE AMRITSAR SSP

HT Correspondent

chdnewsdesk@hindustantimes.com

AMRITSAR: Irked at the police's removal of hoardings of political parties, BJP MLA Anii Joshi has demanded the removal of Senior Superintendent of Police Kunwar Vijay Pratap by accusing him of interfering in politics and "harbouring drug peddlers and land-grabbers".

In a press conference, he said he would proceed on a hunger strike on October 26 if his demands were not met.

Accusing the SSP of highhandedness, Joshi said the police have charged 90 people and put them behind bars in 11 cases of cheating.

"The SSP has given a statement that if people don't stop putting signboards, we will continue with filing cases against them. He just wants to remain in the media by making programmes for his benefit," Joshi said.

"On what grounds have the cheating cases been registered? The police are not serious regarding investigation of criminal cases. Even the traffic menace is still the same," Joshi alleged.

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He even said the SSP was creating a rift in the BJP by giving "wrong feedback".

Joshi alleged that "almost all SHOs in the city are corrupt and they have amassed wealth".

POLICE: DRIVE TO CONTINUE

Joining Issue, SSP Kunwar Vijay Pratap Singh strongly refuted the MLA's claims. "We have taken action under the orders of the Punjab and Haryana High Court. Moreover, the Punjab government had also directed us to take action against display of hoardings," he said, adding that the action will continue. The SSP said the rule of law "will be above all people in the city. No Interference will be tolerated... we also have the best officers appointed as SHOs".

True Copy

Advocate

Annexure P-3

The Tribune, Jalandhar, Tuesday, October 20, 2009

MLA, SSP AT LOGGERHEADS

VARINDER SINGH

TRIBUNE News SERVICE

AMRITSAR, OCTOBER 19

BJP MLA from Amritsar (North) constituency Anil Joshi has threatened to go on fast if the police refused to withdraw what he described as "false cases" against 100 residents of his constituency.

However, SSP Kunwar Vijay Partap Singh said over 100 persons detained by the police were either gamblers or were those who indulged in an illegal sale of crackers.

Demanding the transfer of the SSP, the BJP MLA said ' if the state government failed to do so within a week, he would go on fast along with his supporters.

On the other hand, the SSP said nobody was above the law.

He alleged that the MLA had earlier tried to pressurise the area SHO to secure the release of the detained offenders, but got annoyed when the SHO refused to do so. Anil Joshi alleged that he was being harassed by the SSP and 100 residents of his constituency were arrested on basis of false cases.

He further alleged that police commandos had staged a flag march to scare shopkeepers and even signboards put up to congratulate political

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leaders on Diwali were either torn away or removed at the instance of the SSP.

Refuting the allegations, the SSP said hoardings were removed in the light of the 2002 directions of the Punjab and Haryana High Court and on order: of Chief Minister Parkash Singh Badal.

"Nobody will be allowed to go against the law. The persons who were arrested from Vijay Nagar and adjoining areas were involved in gambling and an illegal sale of crackers." the SSP said.

He added that the Chief Minister had directed that even his posters should be removed in case these were against the HC directions.

Meanwhile, social activist Brij Bedi has urged the state government to initiate a movement for the removal of hoardings and billboards that violated the HC orders.

True Copy

Advocate

Citizens' Voice

A Crusade for fair & just system of governance

Administrative Office:
#2334/2, Sector 42-B, Chandigarh

**TRUE COPY OF THE RESOLUTION PASSED IN THE MEETING OF
THE TRUSTEES HELD ON 22nd October 2009 AT H. NO. 2334/2,
SECTOR 42-B, CHANDIGARH.**

Certified that the following resolution was passed unanimously in the meeting of the Trustees of Citizens' Voice for deciding litigation Matters, held on 22nd October 2009 at Chandigarh and has been duly recorded in the Proceedings Book of the Organisation:-

"Resolved that a Civil Writ Petition (PIL) be filed in the Punjab & Haryana High Court at Chandigarh.

Further Resolved that Shri Hemant Goswami, Trustee of the Organisation be and is hereby authorized, to file the Civil Writ Petition (PIL) on behalf of the organisation, to represent the organization in the Hon'ble High Court , to plead the case in person, whenever deemed necessary by him, execute and sign and verify documents including affidavit(s) and indemnity bond(s) and on oath or otherwise, give evidence on oath or otherwise, lead evidence, apply for and obtain copies of orders and any other document, file caveat(s), appeals, review petition(s), execute any decree, deposit fees and seek refund thereof, engage lawyer(s)/advocate(s)/legal advisor(s), appoint attorney's and to do all such acts as are required to be done in the matter."

Place: Chandigarh

Dated: 22.10.2009

Hemant Goswami
Trustee

