

March 13, 2013

1. Sh. Shivraj Patil
Administrator, Chandigarh Administration
UT Secretariat, Sector 9
Chandigarh – 160 009
2. Sh. Anil Kumar
Home Secretary, Chandigarh Administration
UT Secretariat, Sector 9
Chandigarh – 160 009

Representation: Request to appeal in the SC against 'Public Interest Litigation' C.W.P. No. 4964 of 2013 decided on 11.03.2013

Sir,

This refers to the order passed by Hon'ble first DB of 'Punjab and Haryana High Court' in C.W.P. No. 4964 of 2013 which was instituted on 07.03.2013 and finally decided (within four days) on 11.03.2013. The copy of the order dated 07.03.2013 and 11.03.2013 are annexed as A-1 and A-2 respectively.

The undersigned approached the High Court to be impleaded as an intervenor so-as-to represent the public and present the other point-of-view as well, to bring to the notice of the Court some important issues related to the matter. However the Honble Court decided not to give a hearing to the undersigned. The undersigned had duly moved the intervention application in advance and served advance copies to all the respondents. The copy of the application (which was not entertained) is annexed as A-3.

After going through the final order, the undersigned is of the opinion that it's not a good order, and not in public interest, and therefore it should be challenged and appealed against in the Supreme Court by the Chandigarh Administration; else a not-so-good precedence would be set. There is a growing resentment among a large section of the public too; who see it as a violation of the fundamental right of equality, as guaranteed under Article 14 of the Constitution. There's also an opinion that judicial powers should not have been used to handle administrative problems.

Besides on other grounds, in my opinion, the order is liable to be challenged on the following legal grounds;

ON TAKING SUO-MOTO COGNIZANCE AND INQUIRY

1. It was not correct for the High Court to intervene in a criminal matter by way of a suo -moto Public Interest Litigation within two days of registration of an FIR, and stay lawful investigation into the matter (under the provisions of Cr.P.C.), especially when High Court Advocates (who are considered as officers of the Court) were themselves allegedly involved in the criminal act within the High Court premises and were thereafter shouting slogans and protesting within the High Court premises and right outside the office of the Hon'ble Chief Justice..
2. It was not correct for the Hon'ble Court to deal with an alleged serious criminal matter as a suo-moto 'Public Interest Litigation' when a 'First Information Report' was already registered and lawful investigation initiated.
3. That there were no reasons for the Hon'ble Court to assign the inquiry to the Registrar of the High Court on 07.03.2013. Furthermore, it is unlikely that such a serious matter can

be properly inquired into in one day, i.e. on 08.03.2013 (As 9th and 10th March 2013 were holidays) and therefore a report submitted on 11.03.2013. Cr.P.C. does not provide for any procedure to be adopted and no such compelling circumstances existed to first stay the investigation and thereafter assign it to the Registrar of the High Court. Such an order is bad in law and not in public interest.

W.R.T. ALLEGED AGREEMENT/ COMPROMISE BETWEEN VICTIM/ INFORMANT AND ONE OF THE ACCUSED

4. It's a well established law that the statement/agreement of witnesses/ informant/ victim has to be out of their free-will/ consent and not under duress and/or pressure and/or under adverse circumstances which are not a part of a lawful procedure. In the present matter, the constable was already under suspension, severely injured, under extreme pressure from all quarters and thereafter made to appear before the Registrar-Vigilance of the High Court. His free will is only presumptive.
5. The order mentions that the Registrar-Vigilance met both the parties, i.e Mr. Ramesh Chand, Head Constable and Mr. Rupinder Khosla, Advocate. This cannot be said to be an inquiry as in the unfortunate criminal act, the number of people involved were seventeen (or so) and not two. There were also many other witnesses who could throw light on the actual happening relating to the unfortunate happenings. Statements of all concerned is necessary for any fair investigation.
6. The offence committed, as mentioned in FIR No.40 dated 4.3.2013 falls under sections 147/149/186/332/353/341 of the Indian Penal Code. Section 147, 149, 186, 332 and 353 are non compoundable offences as per the provisions of Section 320 of the Cr.P.C even with the permission of the court. So no compromise can be entered w.r.t. these offences by any set of accused/ victim/ informant.
7. Assuming that the victim and one of the accused reached an agreement (of their own free-will), still it's no ground for quashing an FIR in which there are other accused person. A compromise, if any, should have been between all the accuseds and victims. A compromise/agreement between one/two person can never be a sufficient ground for quashing the FIR, that too without investigation and without recording their statements in a lawful court of competent jurisdiction.
8. The offences committed are alleged to be of serious criminal nature like rioting, attacking a public servant, etc. Such offences are against the State in general and affect the administration of law-and-order in the entire State. Such heinous crimes can not be settled among themselves by two person. The State has all the right to proceed in such criminal acts especially when there's sufficient evidence in the form of recorded CCTV footage, independent witnesses, etc. which in all probability would have resulted in conviction of the guilty; and thereby would have served the ends of justice.
9. Offences against the State and Public servants can not be settled by such a compromise.
10. That neither the victim Ramesh Chand was present, nor had he engaged any counsel to represent him in the Court either on March 7 or March 11, 2013. No summons were also sent to him to be present in the court. The counsel for the State of UT, who did not have the power-of-attorney (as per record) and authority to represent Ramesh Chand, could not appear on his behalf, especially without any instructions from him. It's not correct for the Hon'ble Court to quash the FIR without even giving an opportunity of being heard to the victim and without even verifying about the fact if the statement attributed to the victim was given out of free-will.

ON THE REFERRED LAW

11. The Hon'ble Court referred to two case laws, i.e. (I) B.S. Joshi and others v. State of Haryana and another, 2003(2) RCR (Criminal) 888 & (II) Kulwinder Singh and others v. State of Punjab and another, 2007(3) RCR (Criminal) 1052. Both the cases are not applicable to the matter dealt by the Hon'ble Court by way of suo-moto PIL.
12. Both cases deal with petition filed under Section 482 of Cr.P.C. by compromising parties

and are not applicable to suo-moto PIL wherein there's no compromise/ agreement on the day when the writ was instituted and wherein the named party has himself not prayed for quashing at-all. In the present matter, the circumstances and offences were absolutely different and not-similar to any of the previous cases reported. The referred law can not be applied to FIR No. 40 of 2013 (Sector 3, Chandigarh).

13. That the B.S. Joshi case was a matrimonial dispute and the compromise in non-compoundable case was allowed on the ground that, "Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case." The ratio of this case is not applicable to the matter dealt by the Hon'ble Court.
14. That the Hon'ble Court did not appreciate the judgement of Gian Singh vs State Of Punjab & Anr. (SLP Crl. 8989 of 2010) delivered by the three judge bench of the Supreme Court on 24 September, 2012 which clarifies as to in what kind of cases, and under what circumstances, FIR's in non-compoundable cases can be quashed. It's the latest law on the subject-matter. This case was not referred by the Hon'ble High Court. In Gian Singh vs State Of Punjab & Anr, Supreme Court held that,

"No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated."

In para 57 of the said reference judgement, the SC further observed;

"Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences.

But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

15. It is evident that the latest law laid down by the Supreme Court in Gian Singh case points that only offences with Civil flavour may be allowed to be compromised when petition under Section 482 of Cr.P.C. is filed. Offences against the State which have wider ramifications should not be allowed to be compromised. The present matter (In FIR 40 of 2013) related to an offence belonging to the latter category. Further investigation and trial in the matter would have surely resulted in conviction of those guilty of offences against the State. Moreover there was no petition under Sec 482 of Cr.P.C.
16. In all matters, the State is the complainant and criminal proceedings are carried in the name of the State; the question that whether compromise between two private person also forces the State to bow-down has not been answered in any of the judgements. Even though the procedure to be adopted is only in matters wherein proceedings under Section 482 of Cr.P.C. are brought before the Court; but even in such cases what's the role of the State and how important is the objection of the State; these all question are still to be pondered upon.

ON THE QUESTION ABOUT THE RIGHT OF THE PUBLIC TO INTERVENE IN PUBLIC INTEREST MATTER

17. That all PIL's are primarily brought in the name of 'Public,' meaning thereby that any person who has anything to say, or is likely to be affected in any manner has a fundamental right to intervene and present his side. For this there has to be sufficient time for the public to intervene and participate in the litigation carried-on in the name of public. In the present matter the High Court did not allow any such intervention which thereby restricted any independent opinion to be expressed w.r.t. the matter dealt by in C.W.P. No. 4964 of 2013.
18. That when no Advocate was willing to oppose (as all were interested party), members of the public, who so desired, should have been allowed to present their point of view. The court erred in not allowing the desirous members of the public to intervene in an issue which was said to be of extreme public importance.

EQUALITY BEFORE THE LAW

19. Article 14 of the Constitution provides for equality before the law; it is not correct to treat a section of people engaged in the legal profession differently. Such action results in inequality in the Society and may not further the objective of enhancing the faith of the public in the legal system of justice.

In the matter of quashing of FIR in CWP 4964/ 2013 it does not appear that the quashing secures the ends of justice or prevents abuse of the process of any Court; neither is the dispute

of private nature, thereby, the quashing of the FIR, as ordered by the Hon'ble Court must be challenged in the superior court. Quashing of the FIR does not serve any public interest objective. The above mentioned points are some of the grounds which have emerged after critical analysis of the final order of the Hon'ble Court in C.W.P. No. 4964 of 2013.

It is mostly humbly requested that since the above matter is likely to set a precedence; and since large sections of the public, in whose name the said "Public Interest Litigation" was instituted are not satisfied with the above order, the Chandigarh Administration and Chandigarh Police, who were the named respondents in the case should move the Supreme Court against the order in the larger interest of the public and to serve the interest of Justice, Equity and Fair Play.

Yours Cordially



Hemant Goswami
House No. 1726, Sector 33-D, Chandigarh
Tel: +91-9417868044
E-Mail: hemant@citizenrights.info.

C/c: IG – Chandigarh Police
 SSP – Chandigarh Police

CWP No. 4964 of 2013

Court on its own motion vs. U.T. Chandigarh and others

Suo Moto proceedings

It is a matter of common knowledge that an untoward incident happened in the court premises on 26th February 2013 which led to some altercation between a police officer and some Members of the Bar. On the complaint of said police official, the police has registered FIR No. 40 dated 4.3.2013 at Police Station Sector-3, Chandigarh after a gap of almost a week. The Punjab & Haryana High Court Bar Association has passed a resolution on March 05, 2013, condemning the registration of the FIR. They have made a request for taking cognizance of the matter, as the far feels that the said FIR is registered on one-sided version of the police officials and the version and viewpoint of the Bar Members was not even inquired into or gone into.

As the matter has wider implications and the functioning of the Court/judicial system is involved, we are of the view that the issue involved is of vital public importance and, therefore, in the interest of Justice, the Court is required to intervene.

After going through the FIR, we feel that an independent inquiry by an independent person is needed. Thus we issue notice of motion to (I) U.T., Chandigarh Administration through the Home Secretary; (ii) Inspector General of Police, U.T. Chandigarh; (iii) Senior Superintendent of Police, Chandigarh; and (iv) Punjab and Haryana Bar Association through its President and Secretary, returnable on March 11, 2013.

In the meantime, Mr. Shekhar Kumar Dhawan, Registrar Vigilance of this court would carry out a fact-finding inquiry after hearing the parties, in particular, Mr. Ramesh Chand, Head Constable and Mr. Rupinder Khosla, Advocate. He shall endeavour to submit his report by the next date.

Till the next date of hearing, investigation into the aforesaid FIR by the police authorities shall remain stayed.

Registry is directed to assign number to the instant petition.

Sd/-

(A. K. SIKRI)
CHIEF JUSTICE

Sd/-

(RAKESH KUMAR JAIN)
JUDGE

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.4964 of 2013
Date of Decision:11.03.2013**

Court on its own motion

.....Petitioner

Vs.

U.T., Chandigarh and others

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE A.K. SIKRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. R.S. Rai, Senior Advocate with Mr. Sanjay Kaushal and
Mr. J.S. Toor, Advocates for U.T., Chandigarh Administration,
Chandigarh.

Mr. R.S. Cheema, Senior Advocate with Mr. Jaiveer Yadav,
for Punjab and Haryana High Court Bar Association.

Mr. J.S. Toor, Advocate also for Mr. Ramesh Chand,
Head Constable.

A.K. SIKRI, C.J.(Oral)

Vide order dated March 07, 2013, the matter was entrusted to Registrar Vigilance of this Court to carry out a fact-finding inquiry into the incident after hearing the concerned parties, in particular, Mr. Ramesh Chand, Head Constable and Mr. Rupinder Khosla, Advocate.

The Registrar Vigilance conducted an inquiry and he has submitted his report in a sealed cover, which is opened in the Court today. As per this report, when the parties appeared before the Registrar Vigilance, both sides stated that in the larger interest of the society and for maintaining harmony and strengthening of the machinery of the administration of justice, they have mutually decided not to proceed further in the matter and

they wish that this chapter be closed and no action be taken against anybody.

Since the matter stands settled and it is also specifically recorded in the report that if such a matter proceeds further in any Court of law, there is no likelihood of any success and this exercise would prove to be in futility. Accepting the said report, in exercise of our inherent jurisdiction, we quash the FIR No.40 dated 4.3.2013 registered under Sections 147/149/186/332/353/341 IPC at Police Station Sector-3, Chandigarh.

Counsel for the parties, who are present in the Court, agreed with the aforesaid course of action. Even otherwise, our order is as per the judgment of Hon'ble the Supreme Court in **B.S. Joshi and others v. State of Haryana and another, 2003(2) RCR (Criminal) 888** followed by Five Judges Bench judgment of this Court in **Kulwinder Singh and others v. State of Punjab and another, 2007(3) RCR (Criminal) 1052.**

Petition stands disposed of.

(A.K. SIKRI)
CHIEF JUSTICE

March 11, 2013
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(RAKESH KUMAR JAIN)
JUDGE

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Misc. No. _____ of 2013
In
CWP No. 4964 of 2013

Court on its own motion

.....Court-own-motion /Petitioner

versus

1. U.T. Of Chandigarh through the Home Secretary, UT Secretariat, Sector 9, Chandigarh
2. Inspector General of Police, U.T. Chandigarh, Sector 9, Police Headquarters, Chandigarh
3. Senior Superintendent of Police, Chandigarh, Sector 9, Police Headquarters, Chandigarh
4. Punjab and Haryana Bar Association through its President and Secretary, High Court, Chandigarh

.....Respondents

5. Hemant Goswami S/o B. M. Goswami, aged 41 years, House No. 1726, Sector 33-D, Chandigarh – 160 020 (E-Mail: hemant@goswami.info - Telephone: +91-9417868044)

..... Proposed Respondent/ Intervenor



Chandigarh
Dated: 09-03-2013

Hemant Goswami
Applicant/Intervener in-person

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Misc. No. _____ of 2013

in
CWP No. 4964 of 2013

Court on its Own Motion

.... Court-own-motion/ Petitioner

Vs.

U.T, Chandigarh Administration & others

.... Respondents

Application under Order 1 Rule 10 CPC read with Section 151 CPC for permitting the applicant-respondent to be impleaded as Respondent No. 5 in the instant writ petition.

RESPECTFULLY SHOWETH:

1. That the applicant-intervener/proposed respondent is a citizen of India.
2. That the applicant and many other members of the general public have been reading about the unfortunate incidence which took place on February 26, 2013 between a group of lawyers and a police constable with-regard-to which an FIR No. 40 dated 04.03.2013 was registered at police station Sector 3, Chandigarh.
3. That the subsequent strike-of-work by the lawyers and demonstration inside the High Court compound and on-the-roads has been widely reported, commented and talked-about and has become a public issue. The general public, including the applicant have been following the matter on day-to-day basis.
4. That the applicant and many other members of the public are concerned about the impression of "Special Status" for lawyers; and an impression that, 'the lawyers are above the law to whom the normal procedure of law, including that of trial and

investigation by prescribed state-machinery does not apply,' has been created.

5. That Advocates Act gives no special privileges to Advocates, over-and-above-the-law under the Advocates Act; rather they have greater responsibilities under the rules and codes prescribed under the said legislation.
6. That Article 14 of the Constitution of India provides for equality before law and Article 21 of the Constitution provides for protection of life and liberty of all person.
7. That the applicant believes that collective might and power of a group of people, who are collectively registered as a separate "Juristic person" should not be allowed to brow-beat the system by putting extraneous pressure and by forceful imposition of their collective bargaining power.
8. That such an impression is detrimental to the interest of "Soverinity of the State" and is against the interest of "Democracy," the "State" and "Just rule of Law."
9. That the applicant and the members of the public are also concerned about the conduct of the officers of the court, i.e Advocates and the Code of Ethics and Rules governing conduct of lawyers who demonstrated within the High Court premises and on-the-roads while wearing their uniforms; and uttered words undermining the Courts and Administration of Justice.
10. That many offences allegedly to have been committed during the unfortunate incident (and thereafter), and as reported, comes within the category of "Rioting," "Disobedience of Lawful Order," etc. and are triable as offences against the State, and are therefore not compoundable as per the provisions contained in the 'Criminal Procedure Code.'
11. That the applicant believes that special procedure should not be evolved to deal with this unfortunate incidence and the procedure and system followed of investigation and trial, as in all other cases, should be followed in this matter too.
12. That the procedure, as prescribed under the law must be followed . However, if there is merit in the argument about registration of a cross-FIR (as stated in the

newspaper reports), and if the same is prayed for, the Hon'ble court is sure to decide the same on merit.

13. That the investigation and trial may be fast (as the Hon'ble Court has ordered in many other matters) and the alleged accuseds may be acquitted if they have done no wrong or illegality; but procedure, as prescribed under the law must be followed.
14. That the matter is of extremely serious nature and is likely to affect the opinion about lawyers and judiciary, and therefore it requires appreciation from all dimensions; since no lawyer is appearing before this court to present the other point-of-view; and since the matter has wider implications and the functioning of the Court/Judicial system is involved which makes it of vital public importance, therefore the applicant as an affected member of the public seeks the permission of this Hon'ble Court to appear as an intervener-in-person in the interest of justice.
15. That the applicant prays to be impleaded as an intervener-respondent in the above matter.

It is therefore, respectfully prayed that applicant/ intervener may kindly be allowed to intervene in the matter as prayed above by being impleaded as respondent number 5 for proper and fair adjudication of the matter in hand in the interest of equity and fair play.

Chandigarh
Dated: 09-03-2013


Hemant Goswami
Applicant/Intervener in-person

PUNJAB & HARYANA HIGH COURT
CASE STATUS INFORMATION SYSTEM

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Case Status : DISPOSED

Status of CIVIL WRIT PETITION 4964 of 2013

COURT ON ITS OWN MOTION Vs. UT CHD AND ORS

Pet's Adv. : BY ORDER

Date of Disposal : Monday, March 11, 2013

Last Listed On : Monday, March 11, 2013

Bench for Last Hearing Dt : NO BENCH MENTIONED

Bench for Next Hearing Dt : NO BENCH MENTIONED

List Type : Ordinary

FIR No. : NO FIR DETAILS AVAILABLE / NOT A CRIMINAL CASE

Category : PIL (PUBLIC INTEREST LITIGATION)

CONNECTED APPLICATION (S)

CM 4068-CWP of 2013

CONNECTED MATTER (S)

No Connected Cases.

Case Updated on: Monday, March 11, 2013

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