

was present that the petitioners had not been doing so, but when asked for an affidavit in support of this, no affidavit was filed for reasons best known to the petitioners.

I would therefore dismiss these petitions and discharge the rules. Counsel fee Rs. 100 in each case.

FALSHAW, J.—I agree.

CRIMINAL WRIT.

Before Harnam Singh, J.

S. GURDIT SINGH,—Petitioner.

versus

THE DISTRICT MAGISTRATE, JULLUNDUR DISTRICT,
—Respondent.

Criminal Writ No. 5 of 1953.

Constitution of India—Article 226—Mandamus, writ of—When to issue—Remedy in the applicant's own hand but not availed of—Whether the Court will enforce the law of the land by a writ of mandamus.

Held, that in order to found an application for mandamus there ought to be a specific legal right, as well as the want of a specific legal remedy. In the present case the remedy is in applicant's own hand for if the applicant makes a complaint of facts which constitute the offence, the District Magistrate would be bound to receive the complaint and deal with that complaint according to law. That being the position of matters, I refuse to enforce the law of the land by the extraordinary remedy of a writ of mandamus.

In re : *Laxminarayan v. Timmanna Karki* (1), distinguished and held not applicable.

Petition under Article 226 of the Constitution of India, praying that a Writ, order or direction in the nature of mandamus may be issued to the respondent calling upon him to do his duty enjoined upon him by law, to order the registration of a case under Section 302 I.P.C. against the Police Officials, as suggested by the inquest report of S. Bakhshish Singh, Magistrate, Jullundur, and to order that both the cases i.e. (i) the case under Sections 307/392, I.P.C. against the petitioner and (ii) the case under section 302, I.P.C., against the police officials, relating to the same incident, may be tried by the same Court. Any other order may be passed which may be just and expedient in the circumstances of the case.

H. S. GUJRAL, for Petitioner.

N. L. SALOOJA, for Respondent.

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M/s. Kandhari
Oil Mills
and others
v.

The Excise
and Taxation
Commissioner,
Punjab and
another

Kapur, J.

Falshaw, J.

1953

April, 30th

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Singh

ORDER.

v.
The District under Article 226 of the Constitution of India for
Magistrate, the issuance of writ of mandamus ordering the
Jullundur District Magistrate, Jullundur District, to prose-
cute Head Constable, Charan Das and Foot Const-
ables Chanan Singh, Jagat Singh and Dharm
Singh for causing the death of Banta Singh.
Harnam Singh,
J.

Briefly summarised, the facts are these. In August, 1951, criminal case No. 576/1 of 1951, was put in Court against Gurdit Singh and Balla Singh under sections 393 and 397 of the Indian Penal Code, hereinafter referred to as the Code, on the basis of the report made by Head Constable on the 15th of February, 1951. On the 14th of July, 1952, *Sardar* Jaspal Singh, Section 30 Magistrate, Jullundur, charged Gurdit Singh and Balla Singh under section 394, read with section 398 of the Code. That charge reads—

“That you, on or about the night between 15th/16th February, 1951, on the Nako-dar-Mehatpur Road, near Village Malowal along with Banta Singh deceased attempted to commit robbery of the property of P.W. Charan Das and his companions and that as such you or Banta Singh deceased voluntarily caused hurt to Charan Das and Chanan Singh P.Ws. and that at the time of the attempt at robbery Banta Singh was armed with a pistol, Balla Singh with a spear and Gurdit Singh with a *lathi* and thereby committed an offence punishable under section 394/398 of the Indian Penal Code, and within my cognizance.”

In paragraph Nos. 1, 2 and 3 of the application under Article 226 of the Constitution, Gurdit Singh maintains that Head Constable Charan Das and Foot Constables, Chanan Singh, Jagat Singh and Dharam Singh, caused the death of Banta Singh, on the night between the 15th and

16th of February, 1951, that the post-mortem examination on the body of Banta Singh, disclosed that the injuries suffered by Banta Singh were sufficient in the ordinary course of nature to cause his death and that criminal case, No. 576/1 of 1951, was put up against the applicant and Balla Singh to screen the offenders, who caused the death of Banta Singh.

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Sardar Bakhshish Singh, Magistrate Ist Class, Jullundur, was ordered by the District Magistrate, Jullundur, to hold enquiry under section 176 of the Code of Criminal Procedure into the cause of the death of Banta Singh. In the concluding portion of the order passed on the 18th of June, 1951, the Magistrate said:

“From the evidence produced before me I find that Charan Das Head Constable, Jagat Singh Foot Constable, Dharam Singh Foot Constable and Chanan Singh Foot Constable are liable for committing culpable homicide not amounting to murder as they had caused such bodily injuries to the deceased Banta Singh as were likely in pursuance to their common intention to cause his death. There is a *prima facie* case under section 304, Part I of the Indian Penal Code, made out against all of these. I, therefore, order that Charan Das, Head Constable, Jagat Singh Foot Constable, Dharam Singh Foot Constable and Chanan Singh Foot Constable be charged under Section 304 Part I, read with section 34 of the Indian Penal Code to stand their trial.”

In dealing with the order passed by the Magistrate under section 176 of the Code of Criminal Procedure, the District Magistrate said on the 6th of March, 1952:

“In view of the fact that the Magistrate cannot order the police to charge-sheet any person, particularly in a case like

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this, where the police had already investigated the case and sent up a challan to the Court for trial proceedings, the proper procedure, therefore, appears to be that the Magistrate should take action himself by taking cognizance of the case if he finds the same necessary. The report of the *Ilaqa* Magistrate should, therefore, be returned to him with the direction that as under the law the police cannot be directed to charge-sheet any person he should take whatever action he deems necessary on the report and as is allowed under the law."

No complaint has so far been put in Court stating the facts which constitute the offence.

Section 190(1) of the Code of Criminal Procedure provides—

"Section 190(1). Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence ;
- (b) upon a report in writing of such facts made by any police officer ;
- (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed."

In order to found an application for mandamus there ought to be a specific legal right, as well as the want of a specific legal remedy. In the present case the remedy is in applicant's own hand for if the applicant makes a complaint of facts which constitute the offence, the District

Magistrate would be bound to receive the complaint and deal with that complaint according to law. That being the position of matters, I refuse to enforce the law of the land by the extraordinary remedy of a writ of mandamus.

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Basing himself on *In re: Laxminarayan v. Timmanna Karki* (1), *Sardar Harbans Singh* urges that the remedy by way of writ of mandamus is the proper remedy in such cases.

Harnam Singh,
J.

In A.I.R. 1928 Bom. 390 the facts were these. Mr. Karki, Second Class Magistrate, was holding an enquiry into the cause of death of one Rama when the Collector of Kanara instituted a departmental enquiry into the circumstances connected with the exhumation of the dead body of Rama under the orders of the Magistrate and into the propriety of acts done by the Magistrate in connection therewith. The result of the departmental enquiry was that the enquiry under section 176 of the Code of Criminal Procedure was stopped and Mr. Karki was required to be present during the departmental enquiry. In dealing with the matter Mirza, J., said—

“We direct, therefore, that the District Magistrate may be requested as far as possible himself to complete this enquiry under section 176 read with section 174, take all possible steps to ascertain who the probable offenders in respect of Rama’s death and nose cutting may be, and bring as far as possible such offenders to justice.”

In agreeing with the order proposed by Mirza, J., Patkar, J., said—

“We think that it is necessary and desirable that the inquiry which has been instituted by Mr. L. T. Karki as a Second Class Magistrate, under section 176 should be completed, though, no doubt, the delay

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caused by the interference of the Collector, by his departmental order might result in prejudicially affecting the result of that enquiry. We think, however, that in the interests of justice, this enquiry should be completed as soon as possible by the District Magistrate himself."

In my judgment A.I.R. 1928 Bom. 390, does not support the point that arises for decision. In that case enquiry under section 176 of the Code of Criminal Procedure was interrupted by departmental order passed by the Collector and the High Court ordered that that enquiry should be completed.

For the reasons given above, I see no justification for the issuance of writ of mandamus sought in Criminal Writ No. 5 of 1953.

In the result, I dismiss Criminal Writ No. 5 of 1953.

No order as to costs in these proceedings.

CIVIL WRIT.

Before Falshaw and Kapur, JJ.

HARBANS LAL,—Petitioner.

versus

THE PUNJAB STATE,—Respondent.

Civil Writ No. 16 of 1953.

East Punjab General Sales Tax Act (No. XLVI of 1948)—Section 6—Schedule under—Item (i)—wheat flour—Whether includes maida—Constitution of India—Article 226—Writ of Certiorari—Whether can issue when revision pending before the Excise and Taxation Commissioner under the Act and not decided.

The petitioner was assessed to sales tax on his sales of maida. He filed an appeal on the ground that maida was included in the word wheat flour and was not liable to tax under item (i) of the schedule under section 6 of the Act. The appeal was dismissed. The petitioner filed a revision

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April, 28th