

CRM-M No.13502 of 2020

Amarjit Singh Vs. State of Punjab

Present: Mr. Atul Nanda, Advocate General, Punjab, with
Mr. Suveer Sheokhand, Additional Advocate General, Punjab.

Issue of “referring to an African national in the government and other documents”

1. At the very outset, Mr. Atul Nanda, learned Advocate General, Punjab while referring to the Circular No.07/Case-Law/2019 dated 06.05.2019 issued by the office of the Director General of Police, Punjab, Chandigarh informs me that in the FIR format, the Punjab Government has removed reference to “caste” in compliance of the earlier judgment rendered by this Court in CRA-D No.610-DB of 2017 titled ‘Rakesh Kumar & others Vs. State of Haryana’ and the order dated 11.04.2019 passed in CWP-PIL No.3189 of 2017 titled ‘H.C.Arora, Advocate Vs. State of Punjab & others’.

The relevant extract of the said Circular reads as follows:

“Circular No.07/Case-Law/2019

No.4126/CR-LA-5/
Dated: 6.5.2019

Subject: Judgment dated 25.3.2019 in CRA-D No.610-DB of 2017 titled as Rakesh Kumar and others versus State of Haryana and Order dated 11.4.2019 passed in CWP-PIL No.3189 of 2017, titled as H.C. Arora, Advocate versus State of Punjab and Others.

Enclosed please find herewith a copies of Judgment dated 25.3.2019 in CRA-D No.610-DB of 2017 titled as Rakesh Kumar and others versus State of Haryana and Order dated 11.4.2019 passed in CWP-PIL No.3189 of 2017, titled as H.C.Arora, Advocate versus State of Punjab and Others.

2. While disposing of the abovesaid CRA-D No.610-DB of 2017, titled as ‘Rakesh Kumar and others versus State of Haryana’, Hon’ble High Court has been pleased to direct as under:

“38. Accordingly, we direct the Secretaries (Home) to the Governments of Punjab, Haryana and Union Territory, Chandigarh, to issue instructions to all the Investigating Officers not to state/mention the caste of the accused, victims or witnesses in recovery memos, FIR’s, seizure memos, inquest papers and other forms prescribed under the Code of Criminal Procedure, 1973 and Punjab Police Rules. The Registrar General of this Court is also directed to issue instructions to all the Judicial Officers to follow the aforesaid directions while dealing with cases. We should, as a public policy, shun the caste system.”

3. CWP-PIL No.3189 of 2017, titled as H.C.Arora, Advocate versus State of Punjab and Others has been disposed of by the Hon’ble High Court in terms of the abovesaid directions contained in judgment dated 25.3.2019 passed in CRA-D No.610-DB of 2017, titled as Rakesh Kumar and others versus State of Haryana.

4. In view of the directions of the Hon’ble High Court, it is directed that the caste of the accused, victims or witnesses shall not be mentioned in recovery memos, FIR’s, seizure memos, inquest papers and other forms prescribed under the Code of Criminal Procedure, 1973 and Punjab Police Rules.

It is further directed that above directions be brought to the notice of all Investigating officers working under your jurisdictions.”

2. Thereafter, pursuant to the recent order dated 12.06.2020, Mr. Nanda draws attention to the Circular/Memorandum dated 16.06.2020 issued by the Director General of Police, Punjab, Chandigarh on the issue of “using appropriate terms of reference for addressing persons from various nationalities in all official documents”. The relevant extract of the said Circular reads as follows:

“Circular Memorandum No.05/2020

No.5576/CR-LA-5/
Dated: 16.6.2020

Subject: CRM-M No.13502 of 2020, titled as 'Amarjit Singh Vs. State of Punjab – using appropriate terms of reference for addressing persons from various nationalities in all official documents.

While adjudicating on the regular bail application of Amarjit Singh, an accused in a criminal case of Jalandhar (Rural) Police district, Hon'ble Punjab and Haryana High Court has taken a very serious view of use of word 'Nigro' or 'Negro' in the official records of investigation. The Hon'ble Court has issued directions, vide its Order dated 12.6.2020, to the Director General of Police, Punjab, to immediately issue instructions to stop use of this word or any such word for referring to persons of African origin/descent in any of the official records, including in challans or anywhere else on case papers, including in investigation reports, and further sensitise all officers/officials to ensure that this word 'Nigro' or 'Negro' is not mentioned in any of the official documents while referring to any person of African descent.

2. In view of the observations/directions of the Hon'ble High Court, it is hereby directed that:

- (i) The word 'Nigro' or 'Negro' or any such words, including 'Kala' or any such 'racist' words having any racist connotations whatsoever, shall not be used in any of the official records, including FIR, Police Report(s) under Section 173 Cr.P.C. or any Seizure Memo/Panchnama prepared by the Police.
- (ii) All heads of the offices/wings of Punjab Police as well as all Commissioners of Police and Senior Superintendents of Police in Punjab are directed to sensitise all the SHOs and Investigating Officers to refrain from using word 'Nigro' or 'Negro' or any such 'racist' words in the official records.
- (iii) All CPs & SSPs, IGP/DIG Ranges shall ensure that all police officers/officials are sensitized about the racist connotations of the abovesaid word or any such like word 'Kala' etc.
- (iv) ADGP HRD and Director PPA Phillaur will ensure that the same shall be made part of the training

programme undertaken at Punjab Police Academy, Phillaur; Police Recruits Training Centre, Jahankhelan and District Police Training Schools.

- (iv) Any act of omission or commission on part of the police officers/officials with regard to the above shall be taken very seriously and would amount to misconduct under the applicable Disciplinary rules.
- (v) It shall be responsibility of all the Heads of Offices/field units to ensure meticulous compliance of the above directions of Hon'ble High Court in order dated 12.6.2020.

3. It is hereby directed that meticulous compliance of the abovesaid directions of the Hon'ble High Court shall be ensured by all concerned and any default by any officer/official shall be taken very seriously. All police personnel are to ensure strict compliance of the following instructions in view of the directions passed by the Hon'ble Punjab and Haryana High Court in CRM-M-13502-2020 Amarjit Singh vs. State of Punjab.

- (i) All Indian as well foreign nationals shall be treated with respect and dignity in all kinds of dealings and their safety and security must be given due regard throughout the State of Punjab.
- (ii) Reference to a foreign national in any official documentation (First Information Report, Challan papers under Section 173 Cr.P.C. etc.) must be made with respect to her/his country of origin alone. For example: American Citizen, Spanish Citizen, South African Citizen etc.
- (iii) usage of any racial/racially-coloured term of reference for any foreign national is completely forbidden and such an act will invite stringent action against the concerned personnel as it goes against the ideals & values of mutual respect, peaceful co-existence and the spirit of universal common brotherhood.
- (iv) It is specifically directed that usage of terms like 'Nigro'/'Negro' for referring to any foreign national in case papers or for addressing them at any time is

completely prohibited. This tantamount to stigmatization of an entire class of people based upon their skin colour, which is abhorrent to the very principles of equality in a civilized society.”

3. The Court welcomes the prompt steps taken by the Government of Punjab in the proper direction to expunge pejorative racial words used against foreigners visiting India for work or pleasure from future police record, which reform initiative, when realized fully, will enhance the image of India and keep away situations like the one encountered in the present case and that such slurs are avoided and desisted from by the keepers of law; which was only one example amongst many humiliations and insults regularly faced on the street and in the market place by foreigners and Africans in particular.

4. When the new dispensation filters down to the mind of each constable on patrolling duty and to every police station, backed by State sanction in the Circular, it will greatly help in inculcating a sense of pious duty in the lower executive authorities and keep them in check by disciplinary action and at the same time foster a sense of security among foreigners travelling to and in India, which is now backed with the State assurance in the present guidelines that they will not be discriminated against or insulted on the basis of skin colour. The Circular is laudable in its sanctions and wins the appreciation of the Court and the common man. Punjab and its people are well known throughout the world for their hospitality, warmth, a spirit of sharing and community service.

5 On point of fact, Mr. Nanda has pointed out that the offensive term occurred in the challan papers pursuant to the disclosure statement of Amarjit Singh (Annex R-2/'I') made during interrogation by ASI Surjit

Singh, when Amarjit Singh stated that “*today I alongwith William @ Billu S/o Manohar Singh resident of Ahmedpur, PS Sadar Kapurthala has together purchased and brought 500 grams of Heroin from Delhi from a Negro by travelling in Innova Car...*”. Having recorded the submission of the learned Advocate General in mitigation of impropriety of that word and that the statement was not made by any agent of the State, I also record that my order was generic in nature of a social malady and xenophobic response in a changed world, which was the subject matter and a diatribe against police attitudes; and my response was more than just being case specific. The comments were not “...limited to the legal field or officialdom...” leading to “social introspection” as a learned commentator and diplomat observed in his editorial which I read in the newspaper “Greater Kashmir” (June 20, 2020 issue) captioned ‘Times Change the Acceptability of Words’. Thus the order is within but beyond confines of the law. With a photo copy of the disclosure statement produced by the State I see that the word was not put in inverted commas, the word was misspelt in the typed copy with an “i” as I read the original statement appended with the petition in the text now presented as Annex R 2/T with the affidavit of Surjit Singh, Sub Inspector, CIA Staff, Jalandhar. Documents apart, I re-emphasize that the derogatory term is not only unprintable but is unspeakable in the present times, in public or in private dealings between African/foreigner and the police personnel and equally in social circles in our Court’s territory as elsewhere.

6. If a witness or an accused uses that derogatory racial term dealt with, he should be taken to task. It is the attitude of the police which requires reform and if the process of change comes about, ushered by the Circular Memorandum, only then can we truly achieve meaningful and proactive

colour blindness against social and biological prejudice and the typification of a class of persons as inferior or superior. After all, the mind has no skin. May I ask, what colour is God's skin, and is there is any God, if anyone knows. Let us stamp out any thought process on unfair social or racial discrimination based on caste, creed, skin, nation and race, on the equator or off it, on a whim of suspicion in an anticipated criminal investigation. It is counselling of the policemen on a regular basis through sensitization workshops, with a drop of liberal education added to the programme that might make that crucial difference in the desired approach in dealing with Africans in India without personal comments and insults. It is one of the duties enshrined in Article 51 A (h) of the Constitution "To develop a scientific temper, humanism and the spirit of inquiry and reform." The key word is "humanism" which is the brotherhood of man. While Article 51A (h) lays down the duty of the citizens, there is Article 14 of the Constitution which imposes a positive duty on the State to ensure equality before law and gives equal protection of law to all persons, irrespective of their nationality, within the territory of India. The use of racially coloured terms is an issue much deeper than it appears to be, it shows the stereotypical mindset of the Police authorities which fractures their ability to provide "equality before law and equal protection of law". This unfortunate ideology creates alterity which has strongly infiltrated the law enforcement agencies and which is exactly the vice Article 14 provides protection against.

7. While on the subject, it may be reminded that India has a special codified law in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. This provision of law should, I think, parallel in principle and precept, extend in its chain of thought processes to

all foreigners in India that they should be not called by any derogatory name while dealing with them. The significant words relevant to the present context in the Act are: “intentionally insults or intimidates with intent to humiliate”. Needless to say, with the Circular Memorandum now placed on record and the assurances held out therein will bring a positive change in the attitude of the police set-up. And of the significance and usage of unprintable and unspeakable pronouns, words and terms which are universally offensive in nature, tone and culture stand rejected in the civilized world. With this, the chapter is presently closed with hope that amends will continue to be made and Africans are dealt with in a fair and just manner without rebukes and insults. Crime or suspicion of commission of crime is to be dealt with in accordance with law and there is nothing personal about it for any policeman, as the offence is against the State and the laws must be enforced in a reasonable manner and by the procedure established by law.

8. The main petition already stands disposed of on 18.06.2020 and the remainder for which orders were reserved are pronounced today.

01.07.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE