

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
CHANDIGARH

Complaint No. \_\_\_\_\_/2010

**AVTAR SINGH S/O HARMINDER SINGH**

r/o 84, Dew Side Drive,

Brampton, Ontario LER 0X5 CANADA,

At present resident of:-

House No 2012, Phase 10, SAS Nagar Mohali

Punjab INDIA.

. . . **Complainant**

Versus

**UJJAL DOSANJH**

**Vancouver Office**

6408 Fraser Street

Vancouver, B.C. V5W 3A4 CANADA.

. . . **Accused**

Complaint under Section  
500/501 of Indian Penal Code  
against the accused.

Respectfully showeth:-

1. That the complainant is at present aged 25 years old and has completed his education in Chemical Engineering from Sherdian College in the field from Canada. At present

he is living in India at the above address and has returned from Canada after completing his studies in the first week of Nov 2010. The complainant was born on 20<sup>th</sup> July 1985 in Canada, there after he lived in India and studied from 3<sup>rd</sup> to 10<sup>th</sup> Standard and now is permanently living in Canada since the year 2001. At present he has come to India to visit his family and friends and would be returning back on 2<sup>nd</sup> Jan 2011.

2. That the father of the complainant immigrated to Canada in the year 1980 and the family lived in Canada / India. All the family members i.e. the complainant and his two brothers and parents are Canadian citizens.

3. That the complainant is a religious person and is also politically well alive and has deep respect for liberty and equality of all human beings, irrespective of their origin, caste, religion or country.

4. That the petitioner like many members of the Sikh community was deeply hurt, after the then Government of India decided to send in army to attack the holiest of shrines of the

Sikhs i.e. Sri Harmander Sahib, Amritsar, Punjab, India and thereafter the incidents of the violence against the Sikhs in various parts of India and mainly in New Delhi after the assassination of the late Prime Minister of India Smt. Indira Gandhi by her Sikh body guards, who had also felt the pain of the marching of the Indian Army in Darbar Sahib Amritsar. Further non-prosecution of the Congress party leaders and workers who were leading the mobs against the Sikhs and after identifying the houses of the Sikhs, burnt them alive in their houses and open streets of Delhi and the Gurudwaras as well as Guru Granth Sahibs, the holy scripture of the Sikhs, which is considered as a living Guru by the Sikhs, further alienated the Sikhs from the main stream.

5. That it is a historical fact that the Sikhs have been protecting the Indian borders after independence of India most faithfully and 90% of the list of martyrs is filled by Sikhs who laid down their lives for securing independence to India. So the Sikhs feel that if not a special respect and position, the

Sikhs at least deserved an unbiased and equal treatment in independent India.

6. That it is also a matter of history that the Sikhs had their own nation under the rule of Maharaja Ranjit Singh, who once ruled from Ropar to Leh Ladhakh. All the five rivers namely Satluj, Beas, Ravi, Jehlum and Chenab were flowing in the said territory where Maharaja Ranjit Singh ruled. It is also a fact that before the advent of Britishers on the Indian soil, the Sikhs had their own State and ruler.

7. That the other political discrimination with the Sikhs was made by Centre Government by putting the river water under its own control. At present the situation is that when the floods in rivers of Punjab play havoc, the suffering are to be faced by Punjab but the State has to beg for even one unit of electricity from the Centre Government as Bhakra and Beas Management is under the control of Central Government.

8. That the matter does not rest here. It is a matter of common knowledge that the

Chandigarh was built on the land of Punjab with the money of Punjab as Capital of Punjab but under the Punjab Reorganization Act, Chandigarh was made a Union Territory with the result that Punjabis/Sikhs were hurt through a nefarious design to harm the Sikhs interest.

9. That it was due to the abovementioned attitude of the Government of India that the Sikh youth started raising their voice in the eighties against political discrimination against the Sikhs and when the authorities tried to crush the voice of Sikhs by force, the Sikh youth started demanding Sikh homeland as promised by Pt. J.L.Nehru the first Prime Minister of India.

10. That vision of Sikh youth in Canada including the complainant who are second and third generation of Sikh immigrants to Canada is more freedom oriented and they firstly took pains to go to the root of problems of Sikhs in Punjab and when they found that demand for the creation of Sikh homeland, may be under the name of Khalistan, was justified, they started speaking in favour of their demands, but the fact remains that the complainant and his

companions in Canada never propagated the creation of Khalistan by resorting to violent means as having been educated in Canada they know fully well that violence has no place in Canadian polity and also in the Canadian way of life.

11. That the complainant and his companions who are similarly situated are aware of Indian Law and judgments rendered by the Hon'ble Supreme Court of India and various Hon'ble High Courts pronouncing in clear terms that speeches demanding creation of Khalistan by peaceful means do not constitute any offence under the mighty Indian Penal Code.

12. That the accused who is a Member Parliament from South Vancouver has made it a hobby to defame and criticize the Sikhs who demand their own nation, where the Sikhs can protect their religion and culture without any hindrance.

13. That the accused had visited India in the month of September 2010 and in press conference held at Himachal Bhawan, Sector-28, Chandigarh, he gave a statement, which defamed

the Sikh youth of 2<sup>nd</sup> and 3<sup>rd</sup> generation of Sikhs settled in Canada. The news item as reported by the Tribune Senior Correspondent Prabhjot Singh in its edition dated September 12<sup>th</sup>, duly printed and circulated through internet also has put the class of Sikhs who are demanded a nation of the Sikhs, under cloud of suspicion of the general public and the Canadian authorities. It has caused immense loss of reputation to the Sikh youth, living in Canada and abroad, since the news has been widely read by people through internet and print media. The said news in being reproduced verbatim below:-

### **Dosanjh cautions Canada against pro-Khalistanis**

**Prabhjot Singh**

**Tribune News Service**

**Chandigarh, September 11**

**The first Indo-Canadian to be the Premier of British Columbia and now a member of House of Commons of Canada, Ujjal Dosanjh, has a word of caution for the Canadian government about the second and third generation of Sikh immigrants propagating Khalistan.**

**Speaking to a select group of newsmen before the formal release of a 45-minute documentary on his life and achievements, Dosanjh said at times the propaganda was bitter and malicious. It was time the Canadian government acted and took necessary measures to prevent the situation to go beyond control.**



**Ujjal Dosanjh**

The 45-minute documentary has been made by Meera Dewan of Omni Television in Canada and is about the rise of Dosanjh in provincial politics besides tumultuous years in his political career because of his anti-Sikh ultras stance.

Among those present at the screening of the documentary were former Union Minister and Rajya Sabha member Sukhdev Singh Dhindsa, Canadian Consul-General Scot Slessor and senior officials of the Punjab government. Dosanjh's wife Raminder was also present.

**Dosanjh, who has been known for his open stand against Sikh fundamentalists, said those propagating the cause of Khalistan in**

**Canada were doing damage rather than any good to the cause of Sikhs.**

Dosanjh, who was attacked by Sikh ultras in Vancouver when the militancy was at its peak, said he felt greatly relieved when he deposed before the John C. Major Inquiry Commission that looked into failures of the Canadian government in preventing the Kanishka blast.

Dosanjh, who became the first Indo-Canadian to become Attorney-General of British Columbia in 1996 and the Premier in January 2000, has been representing Liberals in the House of Commons after former Prime Minister of Canada, Paul Martin, forced him to come out of retirement and join federal politics.

He remained Health Minister of Canada in the Liberal government led by Paul Martin.

"As long as I am in active politics, I enjoy every moment of it, irrespective of the fact whether I am in the government or in the opposition. In provincial politics, I was always in the ruling New Democratic Party.

"Later, it was at the instance of Paul Martin that I agreed to return and join the much larger political canvas of federal politics," he said.

Dosanjh also wants the India government to intervene and protect Romas (gypsies) who have been living miserable lives in Europe. "They are originally Indians who moved to Central Asia and Europe some centuries ago. Though they are no more Indian nationals but their origin is Indian."

Dosanjh said Canadian Minister Jason Kenney who was in Paris before coming to India to discuss the problem of human trafficking, including probable deporting of Romas from France, may make a statement on the issue on his return."

14. That it is most unfortunate that a responsible Member Parliament of Indian origin, who also has a major portion of his voters belonging to Indian/Sikh origin has indulged into such vilification campaign against the members of Sikh community for the sake publicity. The offence is more graver, since the accused has also worked as Attorney General for the province of British Columbia, Canada and being a person of a legal background has indulged into such a crime.

15. That as to whether the demand of Khalistan would attract a criminal offence



within the provisions of Section 124-A of Indian Penal Code (sedition) and 153-B Indian Penal Code (promoting enmity between different groups on grounds of religion, race place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony) were considered by the Hon'ble Supreme Court in its judgment titled "**Balwant Singh Vs. State of Punjab**" as reported in **AIR 1995 S.C.** page 1785 and the Hon'ble Supreme Court rejected the case of the prosecution for which the allegations were that two persons had raised certain slogans which as per the prosecution fall within the ambit of Sections 124-A and 153-A Indian Penal Code.

16. That the question as to whether such words spoken would come within the ambit of the definition of sedition or not came for decision before the Hon'ble Supreme Court of India in "**Kedar Nath Singh vs State of Bihar**" as reported in **AIR 1962 (S.C)** page 955 and the Hon'ble Supreme Court held as under:-

*"Para 25. It has not been contended before us that if a speech or a writing excites people to violence or have the*

*tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a license for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does*

*not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1) (a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Ss. 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of 1942 FCR 38 : (AIR 1942 FC 22), that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced S. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in cl. (2) of Art. 19 of the Constitution."*

17. That the Sections have been well dealt in a case of quashing of FIR and vide judgment

dated 18.12.1992 passed by the Hon'ble High Court of Punjab and Haryana, in case **Criminal Misc. No. 11926-M of 1991** titled "**Lt.Col.Partap Singh** (Retd) Vs. **U.T.Chandigarh**" it quashed such an FIR in which the allegations were that the petitioner had raised a demand of separate home land for Sikhs by the name of Khalistan and the law was well sorted out in the said judgment and while considering various Supreme Court Rulings, the Hon'ble Court reached to the conclusion that the constitution of the country did allow the Parliament to be empowered to transfer or cede territory of India for a foreign State. The judgment specifically held that in case somebody raises a demand of such a nature, but does not preach violence for achieving such a demand no law of land is violated.

18. That the Hon'ble Punjab and Haryana Court had also quashed the FIRs in similar cases i.e. **Criminal Misc.No.35002-M of 2007** titled "**Simranjit Singh Mann Vs. State of Punjab**" on 22.4.2008 in which charges of Section 124-A has been quashed and the same Hon'ble Court also quashed the similar FIR of charges under Section 124-A and 153-B INDIAN

PENAL CODE in case titled "**Gurjatinder Pal Singh Vs. State of Punjab**" reported in **2009(3) RCR (Cr1) page 224.**

19. That the Hon'ble Punjab and Haryana High Court also quashed the similar charges of Sections 124-A and 153-B of Indian Penal Code in case **Criminal Revision No.1679 of 2009** titled **Kashmir Singh etc** Vs. State of Punjab vide order dated 20.10.2009.

20. That the accused has invited trial and punishment for offence as defined under section 499 of Indian Penal Code and provided with punishment under section 500 of Indian Penal Code. The relevant provisions of Law are reproduced as ready reference for this Hon'ble Court as under:-

**499- Defamation -**

*Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.*

*Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*

***Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.***

*Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

*Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

#### *Illustrations*

- (a) A says-"Z is an honest man; he never stole B's watch", intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.***
- (b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.***
- (c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.***

***First Exception.-Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.***

***Second Exception.-Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.***

**Third Exception.**-Conduct of any person touching any public question. -It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

**Illustration**

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

**Fourth Exception.**-Publication of reports of proceedings of courts- It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

**Explanation.**-A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception.**-Merits of case decided in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

**Illustrations**

- (a) A says-"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith,

*inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.*

- (b) But if A says-"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.*

*Sixth Exception.-Merits of public performance.-It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther.*

*Explanation.-A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.*

#### *Illustrations*

- (a) A person who publishes a book, submits that book to the judgment of the public.*
- (b) A person who makes a speech in public, submits that speech to the judgment of the public.*
- (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.*
- (d) A says of a book published by Z-"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.*
- (e) But if A says-"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.*

*Seventh Exception.-Censure passed in good faith by person having lawful authority over another.-It is not defamation in a person having over another any authority, either conferred by law or arising out of a*



*lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

**Illustrations**

*A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.*

**Eighth Exception.**-*Accusation preferred in good faith to authorised person.-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

**Illustrations**

*If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.*

**Ninth Exception.**-*Imputation made in good faith by person for protection of his or other's interests.-It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.*

**Illustrations**

- (a) *A, a shopkeeper, says to B, who manages his business-"Sell nothing to Z unless he pays you ready*

*money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.*

*(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.*

**Tenth Exception.**-*Caution intended for good of person to whom conveyed or for public good.- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*

**500-Punishment for defamation -**

*Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

21. That since the alleged crime has been committed by the accused through a press conference conducted by him at Chandigarh and circulated through The Tribune printed from Chandigarh and Published from sector 29 Chandigarh. This Hon'ble Court has jurisdiction to try the offence, hence the complaint is being filed at Chandigarh.

It in the light of above given circumstances of the case, it is most humbly prayed that this Hon'ble Court may kindly

summon the accused and try him under Section 500/501 of Indian Penal Code against the accused.

(COMPLAINANT)

T H R O U G H

**(NAVKIRAN SINGH)**

**(TEJINDER SINGH SUDAN)(GURSIMRAN SINGH)(SANJEEV BANGA)**

**NAVKIRAN SINGH AND ASSOCIATES**

CHANDIGARH:

A D V O C A T E S

DATED:27.11.2010 COUNSEL FOR THE COMPLAINANT

**List of witnesses:**

- 1.AVTAR SINGH S/O HARMINDER SINGH, r/o 84, Dew Side Drive, Brampton, Ontario LER 0X5 CANADA, At present resident of:- House No 2012,Phase 10 SAS Nagar Mohali, Punjab INDIA. (Complainant)
- 2.Jatinder Singh Grewal s/o Surjit Singh Grewal, resident of Brampton, Ontario, Canada.
- 3.Prabhjot Singh Senior Correspondent, The Tribune, Sector- , Chandigarh.
- 4.Other witnesses would be produced after seeking due permission of the Hon'ble Court.

**List of documents:**

- 1.News Item dated 12.9.2010, published in The Tribune Chandigarh attached as Annexure C-1.

(COMPLAINANT)

## Annexure C-1

**Dosanjh cautions Canada against pro-Khalistanis**

Prabhjot Singh

Tribune News Service

Chandigarh, September 11



Ujjal Dosanjh

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Advocate