

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 1st FEBRUARY, 2013

DECIDED ON : 30th MAY, 2013

+ CRL.M.C.3772/2003 & CRL.M.A.5091/2003

M.P.SINGH SAHNI Petitioner
Through : Mr.M.P.Singh Sahni in person.

versus

STATE & ORS. Respondents
Through : Mr.Harnam Singh in person.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. M.P.Singh Sahni (hereinafter referred as the petitioner or accused) has preferred various petitions CRL.M.C.Nos. 3772/2003, 2444-45/2005, 54/2008, 2790/2000, 3773/2003, 3779/2003, 3781/2003, 3782/2003, 3784/2003, 3193/2005 and 3783/2003 for quashing of the various criminal proceedings initiated against him by Harnam Singh (hereinafter referred as complainant or respondent No.2).

2. Case of the complainant is that he is a highly qualified ex-banker having an experience of seventeen years. He was earlier posted at Senior Executive level in a Nationalized Bank. The petitioner and his wife Narinder Pal Kaur Sahni engaged him to provide professional services in

respect of non-delivery of 40,000 shares of M/s.Essar Gujarat Ltd. and for clearance of 11 FDRs with Kuwait International Finance Company (KIFCO). For that purpose, an agreement dated 22.07.1991 and irrevocable Power of Attorney dated 01.08.1991 were executed. Supplementary agreement dated 09.10.1992 was also executed. Again, an agreement/ memorandum of understanding dated 07.03.1995 and subsequent agreement dated 14.03.1995 were executed along with irrevocable General Power of Attorney (GPA) dated 18.05.1995 in his favour. He filed complaint with the National Consumer Dispute Redressal Commission; Civil Suit bearing No.2436/1996 against M/s.Essar Gujarat Ltd. and incurred expenses from his pocket. Vide notice dated 22.10.1997, the petitioner through his counsel Mr.Arvind Kumar Gupta, Advocate cancelled the GPA dated 18.05.1995. He sent reply to the petitioner on 25.10.1997.

3. Petitioner's case is that he is a Non Resident Indian and is residing in Kuwait for the last 30 years with his family. He is doing business in Kuwait. He had fixed deposits with Bank of Credit and Commerce International (BCCI), Bombay to the tune of US \$8,23,348. The FDRs were pledged with Kuwait Investment Finance Company (KIFCO) against some loan. There were some dispute between him and

KIFCO. To protect his interest, he secured the services of the complainant and agreement dated 22.07.1991 was executed whereby the complainant was to get 5% as professional fee on the amount realized in India. Subsequent agreement was also executed in which the professional fee was increased to 7% for clearance of one FDR No.1798. The respondent No.2 filed suit in 1993 after an inordinate delay. Since the respondent No.2 was unable to protect his interest, he was forced to cancel GPA executed in his favour. Thereafter, the litigation started between the parties.

4. On 01.02.2013, the petitioner opted to address arguments without the assistance of his lawyer. The respondent No.2 also opted to address arguments himself. Common arguments in all the petitions were addressed by both.

5. The petitioner urged that the respondent has implicated him in numerous false and frivolous cases. When he cancelled GPA executed in his favour, the respondent No.2 started lodging false complaints on frivolous grounds. He did not commit any offence. Respondent No.2's only motive to file complaint cases against him was to extract money as he was unable to pursue those cases being an NRI residing in Kuwait. He did not forge any document. He had no intention to defame him any time.

He had reposed confidence in him and had availed his professional services to get clear his FDRs and to get back 40,000 shares. The respondent No.2 did not account for the amount received and illegally retained the shares handed over by M/s. Essar Company.

6. The petitioner filed written synopsis and relied upon the authorities : '*Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited and ors.*' : (2008) 13 SCC 678, '*All Cargo Movers (India) Private Limited and ors. Vs. Dhanesh Badarmal Jain and anr.*' : (2007) 14 SCC 776, '*M/s. Indian Oil Corporation vs. M/s. NEPC India Ltd and ors.*' : AIR 2006 (SC) 2780 & '*Dr.P.Sharma vs. P.S.Popli and anr.*' : 2002 (1) JCC 66.

7. The respondent No.2/ complainant urged that the petitioner is a big fraud and a habitual offender. He concealed the material fact that earlier CrI.M.M. 2207/1999 was filed by him for quashing of the complaint cases. He made false statements and on 01.07.1999, moved two applications before the learned Metropolitan Magistrate for recalling of the summoning order and for exemption of personal appearance. The exemption for appearance was 'allowed' and not 'dismissed' as stated in the petition No.2790/2000. He simultaneously filed Revision 592/1999 (New No.1/2000) before learned Additional Sessions Judge during the

pendency of the petition before this Court and did not disclose the same in his revision. The present petitions for quashing of the cases are not maintainable as the matters are still at initial stage and the petitioner has not appeared in many cases so far. He further argued that petitioner deliberately omitted/ deleted 24 important words from the orders of learned Additional Sessions Judge dated 01.07.2000 and added two words of its own which were not in the order. The petitioner made false statement that ₹ 3.25 lacs were given in cash to him in Kuwait in Petition No.2790/00. No cash payment was ever received by him in Kuwait on 05.07.1997 and no receipt of said cash was executed. The petitioner did not file any such receipt in the Court. Contrary to that, he had given written instructions to Babli, his brother-in-law to issue two cheques from his account. These two cheques were found forged. Charge-sheet have been filed against the petitioner. The petitioner gave false/ contrary statement of non issuance of cheque of ₹ 3.25 lacs which is a disputed fact. The petitioner cheated him by issuing forged cheques for ₹ 3.25 lacs and also misrepresenting him by various means that he had settled the dispute with KIFCO for 3 lacs Kuwait Dinar. He obtained various undertakings by deceitful means to cause wrongful loss to him. He filed suit for Rendition of Accounts in July, 1997. After coming to know about

settlement, he filed complaint under Section 420 IPC in December, 1997 and the said suit was dismissed in default on 28.08.1998. He further argued that General Power of Attorney dated 01.08.1991 was irrevocable and was for valuable consideration. By cancelling the same, the petitioner committed breach of trust. From the judgments passed by District Courts, New York, USA, it reveals that the petitioner committed fraud of approximate 8.60 millions US Dollars i.e. approximately ₹ 50 crores by forgery, cheating etc. He is a part of an international shipping frauds syndicate that runs of shadow operation across the globe, employs numerous shifting identities and dummy corporations and assaults official witnesses, bribes and defrauds Government officials. It was specifically observed that Mohinder (sic petitioner) had not conducted himself in a trustworthy manner. The petitioner falsely claimed that he was not the same Mohinder Singh Sahni named in the original complaint. He attempted to fool Judge Casey as to his identity. He posed himself as Jogender at the April, 2004 meetings. In the present petitions, the petitioner has claimed that he is Mohinder Pal Singh Sahni and not Mohinder Singh Sahni. He is having two passports one in the name of Mohinder Pal Singh Sahni and another in the name of Mohinder Singh Sahni. He further argued that FIR was registered by Crime Branch

Mumbai on the complaint of Bank of Bahrein at Kuwait vide FIR/MCR 2/2001 under Sections 467/420/468/471/120B IPC. He further argued that in Crl.M.M.3193/05, the petitioner used/ filed copies of various medical certificates dated 20.05.1999, 07.06.1999 and 30.06.1999.

8. The respondent /complainant filed supplementary written submissions to state that after the judgments/ orders were reserved, Insp.Satya Pal Singh of PS Tilak Nagar filed status report in the Court of Ms.Navita Bagha, Metropolitan Magistrate and it was stated that the certificates did not carry attestation of the concerned authority and not signed by two doctors and directors of the Hospital as per the ministerial decisions applied therefor.

9. He relied upon the authorities : ‘*State of A.P. and anr. Vs. T.Suryachandra Rao*’ : (2005) 6 SCC 149, ‘*Rajinder Prasad vs. Bashir and ors*’ : AIR 2001 SC 3524, ‘*Satish Khosla vs. Eli Lilly Ranbaxy Ltd.*’ : 1998 (1) JCC (Delhi) 54, ‘*Kuldeep Kapoor vs. Susanta Sengupta*’ : 126 (2006) DLT 149, ‘*Suo Motu Proceedings against Mr.R.Karuppan*’ : 2001 CRI.L.J. 2611 & ‘*Gangawwa vs. State of Mysore*’ : AIR 1969 MYSORE 114.

10. It is also relevant to note that summoning of accused in a criminal case is a serious matter. Hence criminal law cannot be set into

motion as a matter of course. The order of Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case in the law applicable thereto. The Magistrate has to record his satisfaction with regard to existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.

11. In ‘Pepsi Foods Ltd and Anr. v. Special Judicial Magistrate and Ors.’, 1998 SCC 1400, the Supreme Court held :

‘28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.’

12. In ‘*Indian Oil Corporation vs. NEPC India Ltd. and Ors.*’,
AIR 2006 SC 2780, the Supreme Court held :

‘10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which, do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. [State of UP](#) : 2000CriLJ824 , this Court observed:

It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.'

13. The petitions filed by the petitioner are being considered in the light of above facts and law.

14. Present petition under Section 482 Cr.P.C. has been preferred for quashing of complaint case filed by respondent No.2/ complainant under Section 420 IPC in which vide order dated 26.04.1999, he was summoned for committing offence under Section 417 IPC.

15. The respondent No.2 filed complaint case against the petitioner alleging that vide agreement dated 22.07.1991, he was entitled to get 5 % as professional charges for clearance of 11 FDRs lying with Bank of Bahrain and Kuwait, Bombay. The petitioner had told him that against these 11 FDRs, he had taken a total amount of Kuwait Dinar 1,90,000/- as loan from the Kuwait office of the Bank and the same was already paid back to it. The petitioner also executed GPA (irrevocable) on 01.08.1991 in his favour to pursue the matter on his behalf. Vide another agreement dated 09.10.1992, the petitioner enhanced the professional fee to 7% against clearance of FDR No.1798. The complainant alleged that

the petitioner had concealed a material fact that he had also taken a loan/ advance/ amount worth US dollars 2 million in April, 1990 against/for FDR No.1798. Had he disclosed the said material fact, he would not have taken any consequential action seeking clearance of the aforesaid FDR. He would have dissuaded and restrained himself from filing a suit before Delhi High Court seeking Temporary and Permanent injunction against the Bank of Bahrain and Kuwait, Bombay Branch and would not have incurred unnecessary expenses on litigation. He had to spend lot of time, money and energy to pursue the matter with the Bank. The petitioner had earlier claimed in the pleadings that he had not taken any loan/amount/advance in April, 1990 in Kuwait amounting to US dollars 2 millions against the FDR No.1798. However, in suit No.2571/1994 filed by the Bank before a Court in Kuwait, he admitted in the pleading that he had deposited US dollars of 2 million in cash at Bombay Branch of the Bank. When the complainant protested to the accused, he revoked GPA executed in his favour. The petitioner caused substantial harm to the complainant in body, mind and reputation and he was cheated. The complainant examined himself as CW-2 besides examining A.K.Pandey, Deputy Secretary, Special Kuawait Cell, Ministry of External Affairs as CW-1. The Trial Court was, prima facie, of the view that the allegations

made in the complaint and evidence were sufficient to proceed against the accused/ petitioner under Section 417 IPC.

16. Indisputably, professional services of the complainant were taken by the petitioner to get release 11 FDRs lying with Bank of Bahrain and Kuwait, Bombay Branch. Agreement dated 22.07.1991 was executed in that connection and the complainant was entitled to get 5 % as professional charges. Subsequently, vide agreement dated 09.10.1992, the professional fee was raised to 7% qua FDR No.1798. The petitioner also executed general power of attorney in his favour to pursue the matter on his behalf with the authorities concerned. Apparently, the complainant was to act for the clearance of the FDRs as an 'attorney' of the accused and was entitled to get his professional fee. If there was concealment of any material fact regarding the clearance of the FDRs, it was the petitioner who was to suffer. In any situation, the complainant was entitled to the professional fee agreed to in the agreements relied upon by him. The dispute, if any, was for the payment of the professional fee. There was no occasion for the petitioner to conceal raising of loan of US 2 million dollars on the FDR No.1798 from his 'attorney'. This fact must have been revealed by the concerned bank in the proceedings initiated against it. It is unclear as to how the complainant who acted petitioner's attorney and was

entitled to professional payments would have dissuaded himself from instituting the proceedings due to concealment of the alleged facts. There is no cogent proof about the raising of the said loan/amount against the FDR No.1798. The petitioner had filed an affidavit in the proceedings denying any such loan. Again, it was the petitioner who was to suffer for filing false affidavit (if any).

17. Admittedly, the complainant had filed Suit No.216/1997 (New No.S-363/1998) for recovery of his professional fee i.e. Suit for Rendition of Account/ Recovery against the petitioner, SBI Commercial & International Bank and Bank of Bahrain and Kuwait, Bombay Branch in August, 1996. It is admitted that the said suit was dismissed in default on 28.08.1998.

18. Another Suit No.556/1997 was filed by the complainant for Rendition of Accounts in the Court of Sh.S.S.Bal, ADJ. It is relevant to note that when the case was fixed for arguments on the application moved by the accused under Order 7 Rule 11 CPC, the complainant opted to withdraw the said suit by moving application under Section 151 CPC pleading that he had filed a criminal complaint in which the accused was summoned under Section 417 IPC. The said suit was dismissed as withdrawn vide order dated 01.07.1999.

19. Contents of the complaint do not disclose commission of offence under Section 415 IPC punishable under Section 417 IPC. Mere breach of contract (if any) cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, i.e. the time when the offence is said to have been committed. It is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. It is well settled that when the aggrieved party has an alternative remedy in the Civil Courts, the matter should not be allowed to be filed in Criminal Courts. A concealment of facts cannot be said to be dishonest unless the accused was under an obligation to disclose the facts concealed. There was no such obligation to disclose the alleged circumstance/ fact while executing the agreement and appointing the complainant as 'attorney' for clearance of the FDRs in question.

20. The Trial Court without application of mind issued process under Section 417 IPC. The summoning order dated 26.04.1999 cannot be sustained and is set aside. The complaint case and the proceedings arising

out of it are quashed. The petition is allowed. Pending application stands disposed of. Trial Court record (if any) be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 30, 2013

tr