

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

RESERVED ON : 1st FEBRUARY, 2013

DECIDED ON : 30th MAY, 2013

+ CRL.M.C. 3779/2003 & CRL.M.A.5100/2003

M.P.SINGH SAHNI

.... Petitioner

Through : Petitioner in person.

versus

STATE & ORS.

..... Respondents

Through : Mr.Harnam Singh in person.

AND

+ CRL.M.C.54/2008 & CRL.M.A.199/2008

MOHINDER PAL SINGH SAHNI

....Petitioner

Through : Petitioner in person.

versus

HARNAM SINGH

....Respondent

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).

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 filed suit in 1993 after an inordinate delay. Since the respondent 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 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 started lodging false complaints on frivolous grounds. He did not commit any offence. Respondent'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 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/ complainant urged that the petitioner is a big fraud and a habitual offender. He concealed the material fact that earlier

Crl.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 CrI.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* CRL.M.C.Nos.3779/2003 & 54/2008

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. The petitioner has preferred the petition under Section 482 Cr.P.C. vide Crl.M.C.3779/2003 for quashing of summoning order dated 02.05.2003 under Section 500 IPC. The respondent filed complaint case on 15.10.2001. He alleged that the petitioner was summoned in the complaint case instituted under Section 138 Negotiable Instruments Act vide order dated 04.06.1998. The Review Petition against the summoning order was dismissed on 18.09.1999. The petitioner thereafter, filed Crl.Revision No.582/1999 (New No.124/1999). In para (f) at page 8, he

falsely alleged that he (the petitioner) was not the signatory of the cheques and the respondent was fully aware of it. He falsely alleged that the cheques were forged by Harnam Singh (respondent) as he was in possession of his papers and various documents as attorney. The cheque book came in his possession and he misused it. These allegations were deliberately made by the petitioner for the first time with an intention to tarnish his image and to lower his reputation in the eyes of his friends, neighbours and relatives. By the impugned order dated 02.05.2003, the petitioner was summoned under Section 500 IPC.

15. The petitioner has also preferred Crl.M.C.No.54/2008 under Section 482 Cr.P.C. for quashing of the order dated 29.09.2005 in complaint case No.583/2001 of 2004, Harnam Singh vs. M.P.Singh by which he was summoned for committing offence punishable under Section 500 IPC. The complainant alleged in the complaint that suit (Suit No.49/1998, New No.148/2004), Mohinder Pal Singh and anr. Vs. Harnam Singh was listed for evidence on 24.03.2004 in the Court of Sh. V.K.Jain, the then learned ADJ. Despite knowing that the charge-sheet had already been filed against him by the police regarding forgery of cheques No.221803 & 221804, in his cross-examination, the petitioner leveled defamatory and false imputations against him as :

“..... I did not write any letter to Harnam Singh that he was blackmailing me. No notice was sent to defendant in this regard. No FIR was lodged by me against Harnam Singh. It is wrong to suggest that I had made a false and defamatory allegation against Harnam Singh in the plaint.....,”

16. The petitioner was aware that the aforesaid statement/ averments were false and defamatory and would harm the reputation and respect of the complainant. The averments were made with an intention to defame him by all means. The said complaint was filed on 08.09.2004 and by the impugned order dated 29.09.2005 the petitioner was summoned under Section 500 IPC.

17. I have heard the petitioner and respondent in person, and have examined the Trial Court record. It reveals that Civil Suit No.49/1998 for Mandatory Injunction and Damages was filed by Mohinder Pal Singh Sahni and Narinder Pal Kaur Sahni against the respondent Harnam Singh before this Court. In para No.9 of the plaint, it was mentioned that the respondent with the mala-fide intention never gave status of the issuance of shares from M/s. Essar Gujarat Ltd. and started blackmailing them. In the written statement, the respondent denied the allegations and pleaded that the plaintiffs were fully informed of the status and development from time to time including the factum of DUD/ non saleable/ duplicate share certificates given by M/s. Essar Gujarat Ltd. He

further pleaded that the allegations were scandalous and defamatory. The petitioner filed evidence by way of affidavit dated 23.03.2004 and reiterated the assertions. Aggrieved by the allegations, the respondent thereafter filed complaint case on 08.09.2004 under Section 500 IPC alleging that the allegations in para No.9 of the plaint of Suit No.49/1998 were scandalous and defamatory. The petitioner falsely alleged payment of ₹ 8.75 lacs to the respondent for incurring expenses and other charges. The petitioner had given letter dated 06.07.1997 addressed to his brother-in-law Mr.Babli @ Mahinder Pal Singh Anand directing him to issue two cheques for a total sum of ₹ 3.25 lacs. These two cheques were found forged. A criminal case was registered for issuing the forged cheques at Police Station Tilak Marg. The charge-sheets have been filed in the said cases. The respondent examined himself as CW-4 besides producing CW-1 (Narinder Kumar), CW-2 and CW-3 (Harish Kumar) in support of his complaint. Vide impugned order dated 29.09.2005, the petitioner was summoned under Section 500 IPC.

18. The petitioner urged that the complaint cases do not disclose any cause of action. There was no defamatory imputation against the respondent. The respondent vehemently argued that the petitioner in the pleading in the civil suit as well as in the affidavit in the form of evidence

deliberately imputed scandalous and defamatory allegations that he was blackmailed by him or the payment of ₹ 8.75 lacs was made. The assertions were false to the knowledge of the petitioner as he was never blackmailed by him. Contrary to that, the petitioner wrote a letter in his presence directing his brother-in-law Babli to pay ₹ 3.75 lacs to him by issuing two cheques. Those cheques were issued by Mr.Babli, when the cheques were presented in the bank, they were dishonoured. The cheques in question were forged with the connivance of the petitioner as it did not contain his signatures. The petitioner did not lodge any complaint against Babli for forging or fabricating his cheque book.

19. There are numerous litigations between the parties. Admittedly, the suit for Mandatory Injunction and Damages was filed by the petitioner and his wife Narinder Pal Kaur Sahni against the respondent and it was contested by him. The petitioner adduced evidence by way of affidavit dated 23.03.2004. The said case has not yet been decided. None of the parties has placed on record any final verdict of the Civil Court in the said suit. The said civil suit was filed in January, 1998. The respondent however, did not file any complaint case alleging defamation. After an inordinate delay of about six years, the respondent filed the complaint case in question on 08.09.2004. He has not offered any explanation for

delay in filing the complaint case. Nothing has come on record to show if during this period due to the assertions in the suit, the reputation of the complainant was affected in any manner whatsoever. No application was ever moved by the respondent in the said civil suit for striking of the alleged defamatory or scandalous pleadings. The Civil Court did not record any findings that the contents of the pleadings were defamatory in nature. Without waiting for the findings of the Civil Court, the respondent filed the complaint cases under Section 500 IPC. In my considered view, the contents of the pleadings and the affidavit do not disclose commission of any offence under Section 500 IPC even if taken on their face value. The allegations made in the complaints are inherently improbable and no conclusion can be reached that there was sufficient ground to proceed against the petitioner. It appears that the criminal proceedings were initiated with mala-fide ulterior object with a view to harass the petitioner due to private and personal grudge. The use of word 'blackmailing' and the assertion that payment of ₹ 8.75 lacs was made and the cheques were forged cannot be considered defamatory statements. These are the assertions of the petitioner which he was required to substantiate by leading evidence before the Court. A defamatory statement is one, which has a tendency to injure the reputation of the person to whom it refers;

which tends that is to say, to lower him in the estimation of right-thinking members of the society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of the society. In the instant case, it cannot be inferred that due to the assertions in the pleading/ evidence referred above, the complainant was lowered in the estimation of right-thinking member of the society generally.

20. In '*Bhagat Singh Sethi & Ors. Vs. Zinda Lal*', AIR 1966 J&K 106 (6), relied upon in '*Girisii Kakkar and Anr. Vs. Dhakwanti & Ors.*', 1991 Crl.L.J.5, this Court held :

'(16) In Bhagat Singh Sethi & Ors. Vs. Zinda Lal Air 1966 J&K 106(6), on review of case law, while holding that if defamatory statement is made in pleadings absolute privilege is not applicable to cases under the Penal Code in India but qualified privilege applies the learned Judge expressed the opinion that if in a pleading of a party certain matters are alleged which may not strictly be correct but are made in good faith and are made to protect the interest of the maker they are privileged and the person making them cannot be prosecuted or convicted for defamation. In that case the defamatory statements were alleged to have been made in application seeking an order of attachment before judgment and issue of temporary injunction. The court held that the allegations were made in good faith to protect the interest of the maker in the suit. It was also noticed that no express malice has been pleaded or alleged in the complaint or in the statement of the witnesses before

the trial Magistrate. In the present case, like the case before the J&K Court, no express malice has been pleaded or alleged in the complaint or the statement of the complainant before the trial Magistrate. The Criminal proceedings in Bhagat Singh Sethi's case were quashed.'

21. In '*Dr.P.Sharma vs. P.S.Popli & Another*', 2002 (1) JCC 66, the respondent had filed a complaint under Sections 420/336/338 IPC against the petitioner who was summoned as an accused. Against the summoning order, the petitioner went to the Supreme Court and the proceedings were ordered to be quashed. In SLP filed before the Supreme Court, the petitioner pleaded that the complaint filed by the respondent was mischievous and intended to 'blackmail him'. The respondent filed a complaint case under Section 500 IPC on the basis of the allegations in SLP. This Court held :

'10. Admittedly, copy of the complaint along with other connected documents were filed by the petitioner. The whole emphasis in the Special Leave Petition with the Special Leave Petition was to get the complaint quashed. It is apparent that the imputation was preferred in good faith by the petitioner to get the order of summoning quashed. This imputation cannot be said to have been made with the intention or knowledge to cause harm to the reputation of petitioner. The accusations were made before the Supreme Court which undoubtedly had authority over the subject matter in dispute. Thus, even if the allegations made in the complaint are taken to be true, in my view, no offence of defamation is made out.'

22. In the light of above discussion, the impugned orders 02.05.2003 and 29.09.2005 cannot be sustained and are set aside. The Complaint Cases, and the proceedings emanating from it are quashed. Petitions are accordingly allowed.

23. Pending applications also stand disposed of. Trial Court record (if any) be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 30, 2013/*tr*