

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

RESERVED ON : 1st FEBRUARY, 2013

DECIDED ON : 30th MAY, 2013

+ CRL.M.C. 3781/2003 & CRL.M.A.Nos.4381/2005, 8307/2008 & 5104/2003

M.P.SINGH SAHNI Petitioner

Through : Mr.M.P.Singh Sahni in person.

versus

STATE & ORS. Respondents

Through : Mr.Harnam Singh in person.

+ CRL.M.C. 3782/2003 & CRL.M.A.Nos.5106/2003, 8306/2008 & 5962/2008

M.P.SINGH SAHNI Petitioner

Through : Mr.M.P.Singh Sahni in person.

versus

STATE & ORS. Respondents

Through : Mr.Harnam Singh in person.

AND

+ CRL.M.C. 3783/2003 & CRL.M.A.Nos.5108/2003, 8305/2008 & 5950/2008

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 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 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. Complaint case under Section 138 Negotiation Instruments Act was filed by M/s. Guru Exports International through its Managing Partner Harnam Singh on 03.09.1997. It was mentioned that pursuant to the petitioner (M.P.Singh Sahni)'s written letter dated 06.07.1997 his co-brother Babli handed over two cheques one for ₹ 1,50,000/- dated 20.07.1997 and another for ₹ 1,75,000/- dated 30.07.1997 drawn on Standard Chartard Bank, Parliament Street. Both these cheques were issued from petitioner's saving bank account No.015/03/38860. On presentation, the cheques were returned unpaid with the memo 'funds insufficient'. The complainant sent demand notice dated 31.07.1997 by registered post to the petitioner. However, he did not make the payment. The petitioner was summoned in the complaint case. Petitioner's application for discharge was dismissed. However, revision petition against that order was allowed and the matter was remanded for reconsideration before the Metropolitan Magistrate. The accused (petitioner in this Court) took the defence that the cheques in question were not signed by him; the complainant was aware of it and these were forged by him. The petitioner filed copy of certificate dated 15.10.1998 whereby Standard Chartard Bank stated that the signatures on the two

cheques were not original signatures of the account holder i.e. of the petitioner.

15. The respondent No.2 filed three separate complaint cases under Section 156 (3) Cr.P.C. alleging that the petitioner had filed forged and fabricated certificate/ letter dated 15.10.1998 in the Court of learned Metropolitan Magistrate, Sessions Court and High Court. FIR No.19/2001, FIR No.139/2001 and FIR No.140/2001 under Section 420/468/471 IPC at P.S.Tilak Nagar were registered. Being aggrieved, the petitioner has preferred the above petitions for quashing of the FIRs.

16. I have considered the arguments and have gone through the written submissions placed on record by the parties. The complainant/ respondent No.2 urged that three separate complaints were lodged as these pertain to independent cause of action when the petitioner used false/ forged certificate dated 15.10.1998 in various Courts. These FIRs were registered pursuant to the orders of the learned Magistrates under Section 156 (3) Cr.P.C. The petitions are not maintainable as charge-sheets have already been filed in all the three FIRs. The charge-sheet is based upon CFSL opinion and other documents and it was found that there was cheating, conspiracy and forgery on the part of the petitioner with his co-brother Babli. Certificate dated 15.10.1998 was got by the petitioner

fraudulently and the concerned manager confirmed it by her letter dated 05.04.2000. The petitioner has no locus standi to file petitions. After filing the charge-sheet, learned Metropolitan Magistrate has already taken cognizance. The Crime Branch has also filed an application dated 01.12.2004 in that Court for further investigation of the matter.

17. FIR Nos. 19/2001, 139/2001 and 140/2001 were registered when complaints under Section 156 (3) Cr.P.C. filed by the respondent No.2 were assigned to SHO, PS Tilak Marg for investigation. The basis to register the FIRs was that the petitioner forged and fabricated certificate dated 15.10.1998 issued by Standard Chartard Bank, Parliament Street and it was used by him in the Court of Metropolitan Magistrate, Sessions Court and Delhi High Court in various judicial proceedings. In my considered view, there was no occasion for the respondent No.2 to file separate complaint cases under Section 156 (3) Cr.P.C. for use of forged certificate in Sessions Court or before this Court when on similar issue/ cause of action, FIR No. 19/2001 was already under investigation. It appears that the learned Metropolitan Magistrates without application of mind and ignoring the registration of earlier FIR No. 19/2001 at PS Tilak Marg assigned the subsequent investigation to the same Police Station Tilak Marg. There were no reasons to register additional/ separate FIRs on

the same issue merely because the alleged forged certificates were used in judicial proceedings at different forums. The police even arrested the petitioner in case FIR No. 19/2001 and he was later on admitted to bail. For the similar offences, there was no justification to register FIR Nos. 139/2001 and 140/2001. In ‘*Babubhai vs. State of Gujarat and ors.*’, 2010 (12) SCC 254, the Supreme Court held :

“13. In T.T. Antony v. State of Kerala and Ors. : (2001) 6 SCC 181, this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the Investigating Officer has to file one or more reports under Section 173 Cr.P.C. Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. In case the officer

receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C.”

18. It is significant to note that the police filed combined charge-sheet in all the FIR Nos. 19/2001, 139/2001 and 140/2001. Registration of subsequent FIRs 139/2001 and 140/2001 was clear abuse of the process of the Court to implicate the petitioner in multiple criminal cases and require to be quashed.

19. Regarding FIR No.19/2001, it reveals that charge-sheet has already been filed by the police. During investigation, it was found that petitioner's cheque-book used to remain in the custody of his co-brother Babli. The two cheques in question and other five cheques were in the Babli's handwriting. The cheques in question with the specimen signatures of the petitioner were sent to CFSL, Hyderabad for expert opinion. It was reported that the cheques in question did not contain the petitioner's signature. Babli has been put in column No.2. The Court has jurisdiction to take cognizance against him for commission of the offence (if any). Genuineness of the certificate dated 15.10.1998 was also verified from the concerned officers of the Standard Chartard Bank, Parliament

Street and it was found genuine and issued by the concerned bank. Apparently, the petitioner had not forged the certificate for which the FIRs were registered on the respondent No.2's complaint at PS Tilak Marg. It fortified petitioner's contention in the proceedings under Section 138 Negotiable Instruments Act that the cheques in question did not contain his signatures. It is relevant to note that the respondent No.2 opted to withdraw the complaint case under Section 138 Negotiable Instruments Act. No useful purpose will be served to continue the investigation/ trial of the FIR Nos. 19/2001, 139/2001 and 140/2001 qua the petitioner. The respondent No.2 himself has stated that the Crime Branch has moved an application for further investigation.

20. In the light of above discussion CrI.M.C.Nos.3781/2003, 3782/2003 and 3783/2003 are allowed and the FIR Nos. 19/2001, 139/2001 and 140/2001 and proceedings arising from it qua the petitioner are quashed.

21. All pending applications stand disposed of. Trial Court record (if any) be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 30, 2013/tr

CRL.M.C.Nos.3781-3783/2003

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