

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA No.S-2615-SB of 2014(O&M)

Date of decision: 23.02.2015

Capt. Parveen Vij

.....Appellant

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr. P.S.Ahluwalia, Advocate for the appellant
Mr.Vivek Rattan, Advocate for respondent Nos.2 and 3

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Impugned in the present appeal is the order dated 10.2.2014, passed by the learned Sessions/ Special Judge, Sangrur, whereby an application filed by the appellant under Section 340 read with Section 195 of Cr.P.C. for conducting an inquiry against the accused/ respondent Nos.2 and 3 under Sections 182, 193, 196, 211, 500, 506 read with Section 34 IPC has been dismissed as premature.

Brief facts of the case are that the present appellant who is an ex-army officer and retired as Captain, after having qualified in Punjab Civil Services (Executive Branch) Examination was appointed as District Food and Supplies Officer and was posted at Sangrur.

Respondent/ accused Ajay Kumar moved an application

(complaint) under Section 156(3) of the Code of Criminal Procedure before Special Judge, Sangrur for registration of case against the present appellant under the Prevention of Corruption Act, 1988 (in short, 'the Act'). It was alleged that the appellant has wrongly declared the mills pertaining to the respondent/ accused as defaulter as they had not paid the illegal gratification to the officer posted in the office of the District Food and Supplies Controller, Sangrur. The said application/ complaint was filed on 31.10.2007. The learned Special Judge, Sangrur, vide order dated 6.11.2007, referred the matter for inquiry to Incharge, Vigilance Bureau, Patiala. The Vigilance Bureau conducted the inquiry and found that the allegations levelled against the appellant and others are patently false. Accordingly, after examining the report and material available on record, the learned Special Judge, Sangrur held that no case is made out for proceeding against the appellant under Sections 7 and 13 of the Prevention of Corruption Act, 1988. The complaint was accordingly dismissed on 14.6.2008 (Annexure P/2).

Thereafter, on 25.3.2010 the appellant moved an application under Section 340 read with Section 195 Cr.P.C. for initiating the proceedings against the respondent/accused for deliberately filing false complaint. After recording the preliminary evidence, the Court observed that prima-facie it seems that process of the Court was abused and show cause notice was issued to the respondent vide order dated 24.1.2012.

However, vide the impugned order dated 10.2.2014, the complaint has been dismissed as pre-mature on the ground that the

second complaint on the basis of same facts is pending for adjudication.

It is stated that the second complaint was filed on 6.4.2010 after the appellant moved an application under Section 340 read with Section 195 Cr.P.C. on 26.3.2010. The complaint was filed to frustrate the application of the appellant under Section 340 read with Section 195 Cr.P.C.

I have heard learned counsel for the parties and have also carefully gone through the file.

A perusal of the impugned order shows that the Special Judge, Sangrur dismissed the complaint as pre-mature on the ground that the second complaint is pending based upon the same facts with regard to which earlier complaint was dismissed by the Special Judge. Therefore, the application under Section 340 read with Section 195 Cr.P.C. is pre-mature, as the Court has not finally come to the conclusion with regard to the falsehood of the allegations contained in the application filed by the accused. It was further observed that no doubt, second complaint is maintainable only in exceptional circumstances. Copy of the previous complaint filed by the respondent Ajay Kumar is Annexure P1. Order which dismissed the complaint is Annexure P2. The application under Section 340 read with Section 195 Cr.P.C. (Annexure P4) was filed on 25.3.2010. It comes out that thereafter the complainant filed the same complaint before the Court.

I am of the view that the learned Special Judge, Sangrur gravely erred in dismissing the application. The complaint filed by

Ajay Kumar levelling allegations of corruption against the present appellant and others on account of blacklisting their mills was dismissed by passing a speaking order. That order has now become final. It being so, the second complaint on the basis of same facts is nothing but misuse of process of Court and appears to have been filed after filing of the application by the appellant under Section 340 read with Section 195 Cr.P.C. to thwart the decision on the said application. It is strange that the said complaint is pending before the concerned Court since 6.4.2010. Now nearly five years are going to lapse. But the said complaint has not been finally disposed of.

In any case, the present application Section 340 read with Section 195 Cr.P.C. was based on account of filing of the first complaint, levelling false allegations. The speaking order dismissing first complaint has become final. Therefore, the learned Special Judge, Sangrur should have decided the said application one or the other way and should not have dismissed the same as pre-mature. The learned Special Judge, Sangrur has also noticed that the respondents has preferred CRM No.21120-M of 2008 for registration of FIR against the accused/ appellant but the petition was dismissed by the High Court on 27.1.2010. In the said order, there is no mention that the petitioner therein is entitled to file second complaint on the basis of same facts. Now the respondents/ accused have moved second complaint. Therefore, on the basis of fresh allegations levelled in the second complaint, fresh offence will be made out.

It is to be noted that unscrupulous people do harass the

public servants when an order is passed against their interest. Such trend is on increase. The filing of criminal complaint against the present appellant and other employees was nothing but an attempt to blackmail them so as to get favourable order by twisting their arms. If one of the officer has taken a courage to take the matter to its logical conclusion, it should have been appreciated by the trial Court. The agony of an upright officer with criminal prosecution staring at him should be well appreciated by Courts.

Authoriteis produced by the learned counsel for the respondent in the cases titled as State of Punjab v. Brij Lal Palta, 1969 PLR 381, Vishal Singla v. State of Haryana and others, 2012(3) R.C.R. (Criminal) 354 and Jarnail Singh v. The State of Punjab and another, 1983(1) R.C.R. (Criminal) 540 are of no help in the facts of the present case.

This Court has already refused to exercise inherent jurisdiction to issue direction for re-investigating the matter and registration of case under Sections 7 and 13 of the Prevention of Corruption Act, 1988 against the appellant and others on the complaint of the present respondents/accused.

Vide order dated 27.1.2010, this Court dismissed the petition filed by the present respondent without prejudice to the rights of the petitioner therein (respondent herein) to avail any other legal remedy available to him in accordance with law. This Court never meant that the petitioner shall be entitled to file second complaint on the basis of the same facts, which has been dismissed earlier by passing speaking order.

In any case, the impugned order is not sustainable in the eyes of law and, therefore, the same is set aside. The learned Special Judge, Sangrur is directed to pass a speaking order on the application on merits after considering the entire facts and while ignoring the pendency of the second complaint.

A direction is also issued to the learned Sessions Judge, Sangrur that he shall ensure that the second complaint is also transferrred to the same Court (Shri Virinder Aggarwal, learned Additional Sessions Judge/ Special Judge, Sangrur) if the same is not pending in his Court and if it is pending in his Court, a direction is issued to the said Court to dispose of the same within one month.

Both the parties are directed to put in appearance before the learned Additional Sessions Judge/ Special Judge, Sangrur on 11.3.2015 at 10.00 A.M.

23.02.2015
gk

(Kuldip Singh)
Judge