IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 27.08.2015

1. CRM-M-17017-2014

Pritam Chand Bangar

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

2. CRM-M-15110-2014

Pritam Chand Bangar

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.K. Girdhar, Advocate
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

Mr. K.B.S. Mann, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

*****

RAMESHWAR SINGH MALIK, J.

These two identical petitions filed by the same petitioner against separate private respondent No.2 in each case, under Section 482 of the Code

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

of Criminal Procedure ('Cr.P.C.' for short), are being decided together vide this common order, as both these petitions are based on similar set of facts. Petitioner, in both these petitions, is invoking the inherent jurisdiction of this Court for quashing of identical complaints (Annexure P-3) in both the cases and also the identical impugned summoning orders of even date i.e. 10.02.2014 (Annexure P-4) in both the cases.

Notice of motion was issued and pursuant thereto, formal reply was filed on behalf of the respondent-State, it being a complaint case. However, no reply has been filed by private respondent No.2 in both the cases, despite having been granted more than three opportunities.

Learned counsel for the petitioner submits that elections of Gram Panchayats in the State of Punjab were held on 26.05.2008. Petitioner was working as Executive Engineer, Water Supply and Sanitation (RWS) Division, Malout and he was appointed as Returning Officer of 14 Panchayats in Block Lambi. Nomination papers were filed w.e.f. 13.05.2008 to 16.05.2008. The date of scrutiny was 17.05.2008 and the date of withdrawal of the nomination papers was fixed as 19.05.2008. There were 14 Panchayats in Block Lambi and 382 candidates filed their nomination papers. Out of 382 candidates, 135 candidates withdrew their nomination papers on 19.05.2008. Complainant, in both the cases, also came to the office of the petitioner for withdrawal of her nomination papers. She was accompanied by Nambardar of the village who identified the complainant in withdrawal Form 4-B. Petitioner was not personally known to all the 382 candidates who were identified either by Nambardar of their respective villages or any other competent authority.

Petitioner allowed the complainant-respondent No.2 to withdraw

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

her nomination papers, following the due procedure and only after she was identified by Tejinder Singh Nambardar of her village. Learned counsel for the petitioner argued that petitioner performed his duty in good faith and allowed the complainant-respondent No.2 to withdraw her nomination papers, that too only after ensuring that she has been duly identified by the Nambardar of her village. Panchayat elections were being held under The Punjab State Election Commission Act, 1994 ('the Act' for short). Petitioner was appointed as Returning Officer by the Election Commission under Section 16 of the Act. He did nothing wrong except to perform his duties as the Returning Officer, which were performed by him strictly in accordance with law. He further submits that allegations against the petitioner by respondent No.2 that she never withdrew her nomination papers and it was wrongly shown to have been withdrawn by the petitioner, in connivance with accused No.2 namely Tejinder Singh Nambardar of their village, are not only factually incorrect but misleading also. In the impugned complaint, complainant did not implead even the returned candidates nor she filed any election petition which was the only remedy available to her, because alleged illegal rejection of nomination papers was also to be challenged only by way of election petition. He concluded by submitting that since the impugned complaint is a motivated one and the impugned summoning order is patently illegal, continuation thereof would amount to abuse of process of Court. He prays for quashing of the impugned complaint (Annexure P-3) and impugned summoning orders (Annexure P-4) in each case, as well as the consequential proceedings arising therefrom, by allowing both these petitions.

On the other hand, learned counsel for the complainant-

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

respondent No.2 submits that petitioner intentionally and with a malafide intention shown the nomination papers of complainant to have been withdrawn, whereas the complainant never withdrew her nomination papers. He further submits that petitioner by acting without jurisdiction, caused serious prejudice to the complainant. Similarly, while supporting the impugned summoning order, he submits that the learned Magistrate was well within the jurisdiction, while passing the summoning order which deserves to be sustained. He prays for dismissal of both the petitions. However, learned counsel for the State submits that since it is a complaint case, these petitions may be disposed of, by passing appropriate orders.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, both these petitions have been found to be the fit cases warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. Both the petitions deserve to be allowed, for the following more than one reasons.

It is a matter of record that petitioner was appointed as Returning Officer by the competent authority under the relevant provisions of the Act. It is also not in dispute that the petitioner and private respondents were not known to each other. It has also been found to be a matter of record that Sh. Tejinder Singh identified both the complainants in these two cases in the prescribed Form 4-B, at the time of withdrawal of nomination papers and he was Nambardar of the village of the complainants.

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

After withdrawal of their nomination papers, complainants approached this Court by way of CWP-9066-2008, which was disposed of vide order dated 23.05.2008 passed by a Division Bench of this Court. In compliance of the order dated 23.05.2008 passed by the Division Bench of this Court, an inquiry was got conducted from Sub Divisional Magistrate ('SDM' for short), Malout. During the course of inquiry, statements of all the concerned persons were recorded and after perusal of the records, SDM, Malout came to the conclusion that nomination papers were withdrawn by the complainants as per Rules. He submitted his detailed inquiry report dated 24.05.2008 (Annexure P-2).

Complainant did not challenge the inquiry report (Annexure P-2), submitted by SDM, Malout and the same has become final in favour of the petitioner. Complainants also did not challenge the result of election by way of an election petition, as provided under the Act, for the reasons best known to her. Having said that, this Court feels no hesitation to conclude that the impugned complaint filed by the complainant clearly amounts to misuse of process of Court and the same cannot be sustained.

Coming to the impugned summoning order, a bare perusal of the same would show that the learned Magistrate has failed to consider the abovesaid factual as well as legal aspect of the matter, while passing the impugned summoning order. Once the complainant did not challenge the inquiry report (Annexure P-2) nor she filed any election petition, the impugned complaint, under these circumstances, was not even maintainable and in such a situation, there was no scope of issuing the impugned summoning order.

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Learned Magistrate also failed to appreciate the scheme and object of the Act. Action of the petitioner, while performing his duties in good faith, as Returning Officer, is clearly saved under Section 128 of the Act. Again, in such a situation, Section 197 Cr.P.C. would also come to the rescue of the petitioner, because there was no sanction granted by the competent authority to prosecute the petitioner, he being the public servant. Since the learned Magistrate did not even refer to these material aspects of the matter, while passing the impugned summoning order, the same cannot be sustained.

In fact, the learned Magistrate was not competent to take cognizance of the impugned complaint for more than one reasons, referred to hereinabove. In this regard, the impugned summoning order has also been found running counter to the law laid down by the Hon'ble Supreme Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate, 1998 AIR (SC) 128** and its later judgments in **M/s GHCL Employees Stock Option Trust Vs. M/s India Infoline Limited, 2013 (4) SCC 505** and **Everest Advertising Pvt. Ltd. Vs. State, Govt. of NCT of Delhi and ors., 2007 (2) RCR (Crl.) 575.**

Reverting back to the facts of the present cases and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that continuation of the impugned criminal proceedings arising out of the impugned complaint and impugned summoning orders, would certainly amount to further abuse of process of Court. Thus, with a view to prevent the abuse of process of Court as well as to secure the ends of justice, the impugned complaint as well as the impugned summoning orders cannot be sustained.

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these petitions deserve to be allowed. Consequently, the impugned complaint dated 10.06.2008 (Annexure P-3) and impugned summoning orders (Annexure P-4) in both the cases, as well as the consequential criminal proceedings arising therefrom, are hereby quashed.

Resultantly, with the abovesaid observations made, both these petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.08.2015
vishnu

VISHNU
2015.09.16 09:48
I attest to the accuracy and
integrity of this document
High Court Chandigarh