

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-35347 of 2013

.....

Date of decision:4.2.2015

Rajesh Moza and others

.....Petitioners

v.

Hardial Singh Mann

.....Respondent

....

Present: Mr. A.D.S. Sukhija, Advocate for the petitioners.

Mr. Navin Saini, Advocate for the respondent.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of complaint case bearing No.RT No.52/12/3/2011 (Annexure-P.1) titled as “Hardial Singh Mann Versus Rajesh Moza and others” pending before learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali), along with summoning order dated 17.8.2013 (Annexure-P.2) passed thereon, vide which the petitioners have been summoned as accused to face trial for the offences under Sections 420, 468, 471 and 506 read with Sections 34 and 120-B IPC and all subsequent proceedings arising therefrom.

Notice of motion has been issued in this case.

Mr. Navin Saini, learned Advocate has appeared on behalf of the respondent and contested this petition.

I have heard learned counsel for the petitioners and learned

counsel for the respondent and have gone through the record.

From the record, I find that Hardial Singh Mann-complainant (respondent herein) filed a complaint against Rajesh Moza etc. (13 accused persons) for the offences under Sections 191, 192, 193, 194, 195-A, 196, 198, 199, 200, 201, 202, 467, 468, 471, 500, 506, 120-B and 34 IPC, Police Station Phase-8, S.A.S. Nagar (Mohali). As per the allegations in the complaint, the complainant was President of Pancham Co-operative House Building Society, Sector 68, S.A.S. Nagar (Mohali) (hereinafter referred to as 'the Society'). There were 448 flats which were constructed by the above Society, by purchasing/allotted the land by the PUDA/GMADA, S.A.S. Nagar (Mohali). There are 448 members of the Society, who had been allotted the flats as per their membership. The flats were also allotted to accused No.1 and 2 etc. As per the allegations in the complaint, the accused Nos.1 and 2 with conspiracy of accused Nos.3 to 13, got filed Civil Writ Petition No.13917 of 2009, in spite of having the knowledge that the aforesaid amount is due against them, but filed false affidavit along with the writ petition stating that they were not having knowledge of the aforesaid dues against them and accused Nos. 1 and 2 further wrongly pleaded that they have paid all the dues to the Society. It is stated that these facts have been concealed by accused Nos.1 and 2 with conspiracy with all the accused and narrated the wrong facts in their writ petition. It is also the allegation that the accused persons with their criminal conspiracy firstly forged and fabricated unregistered Pancham Residents Welfare Association, Office at House No.4949, Block-D,

Pancham Housing Complex, Sector 68, S.A.S. Nagar (Mohali) even though all the accused are members of the Pancham Co-operative House Building Society. They forged and fabricated the resolution dated 3.8.2009 by holding meeting on 2.8.2009 to file the Civil Writ Petition against the complainant impleading him as a respondent No.7 and also in the capacity of the President of Pancham Co-operative House Building Society, Sector 68, S.A.S. Nagar (Mohali).

The allegations in the complaint, which is detailed one, are mainly that firstly accused No.1 and 2 in conspiracy with accused No.3 to 13 have filed a civil writ petition concealing material facts by stating in the writ petition that there is no due pending regarding allotment of flats and secondly they in connivance with other members forged the resolution by making an unregistered Association.

At the time of arguments, it is admitted that the writ petition filed by the accused have been disposed of by this Court without giving notice to the present complainant with some directions. It is admitted fact that no proceedings have been filed before the High Court bringing to its notice that some facts have been concealed though they have the knowledge. No order has been passed by the High Court in any proceedings that any material facts have been knowingly concealed by the present petitioners in that writ petition. Otherwise also, the Judicial Magistrate Ist Class, Mohali, while passing the summoning order dated 17.8.2013 has summoned the accused only for the offences under Sections 420, 468, 471 and 506 read with Sections 34 and 120-B IPC.

A perusal of the complaint no where shows the ingredients of the offence under Section 420 IPC. If some of the members have formed a separate Welfare Association and has passed the resolution to file the writ petition in the High Court and that Association is unregistered, it, in no way, amounts to cheating nor, in any way, it can be held that the resolution by an unregistered Association will amount to forged documents. There is no allegation that any signatures of the present complainant have been forged on the resolution. Therefore, from the perusal of the complaint itself, it is clear that no offence is made out against the present petitioners. The complaint and the proceedings against the present petitioners is nothing, but an abuse of the process of the law. The dispute between the parties is regarding forming of another Association with some of the members, which has not been registered so far, but forming of an unregistered Association, in no way, amounts to an offence. In no way, it can be held that the petitioners have gained by inducement and the complainant was put to loss etc.

Therefore, from the above discussion, I find that the complaint filed by complainant-respondent No.2 is nothing, but an abuse of the process of the law.

Finding merit in the petition, the same is allowed. The complaint case bearing No.RT No.52/12/3/2011 (Annexure-P.1) titled as “Hardial Singh Mann Versus Rajesh Moza and others” pending before learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali), along with summoning order dated 17.8.2013 (Annexure-P.2) passed thereon, vide

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which the petitioners have been summoned as accused to face trial for the offences under Sections 420, 468, 471, 506, 34 and 120-B IPC and all other subsequent proceedings arising out of the same are hereby quashed.

February 4, 2015.

(Inderjit Singh)
Judge

hsp