

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-38753 of 2011 (O&M)
Date of Decision:13.05.2015**

SHIV INDER SINGH AND ANOTHER Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D. P. Singh, Advocate
for the petitioners.

Mr. Arshdeep Singh Kler, DAG, Punjab.

Mr. D. S. Patwalia, Sr. Advocate with
Mr. Salil Sabhlok, Advocate
for respondent No.5.

RAJ MOHAN SINGH J. (ORAL)

- 1) Petitioners pray issuance of directions to respondents No.1 to 4 to register FIR against respondent No.5 for the offences under Sections 171-G, 181, 193, 420, 468, 471, 477-A of IPC and under Section 17 of Citizenship Act in Police Station City Sangrur and also to constitute a Special Investigation Team (SIT) headed by Senior Police Officers to investigate the offence under monitoring of this Court.
- 2) Petitioners alleged that respondent No.5 had contested Assembly Election of Punjab in 2002 and also remained MLA from Sangrur Assembly Constituency. He also contested Parliament Election in 2004 from Sangrur Parliamentary Constituency claiming himself to be an Indian citizen.

- 3) Petitioners alleged that in fact respondent No.5 is one of the Directors along with his father and brothers in Leaderwick Ltd. Pearl Insurance House 319, Ballardslane, North Finchley, London, N-128LY, showing his nationality as British citizen. Respondent No.5 is also shown to be Director in another company in the name and style of Halycon Hotel Corporation Limited which was incorporated in 1985 and also a Director in another British company in the name of Clanmorgan Limited. Filing of nomination for election in India on the basis of false affidavit, document and taking oath of allegiance are pleaded to be an incriminating Act, warranting penal action against respondent No.5. Number of other instances have also been pleaded in the petition alleging respondent No.5 to be British National.
- 4) Learned counsel for the petitioners moves written complaint to respondent No.2 for registration of criminal case against respondent No.5 for the aforesaid offences alleging him to be a British National and at the time of contesting election, respondent No.5 gave false information to the concerned quarter. When no action was taken by the official respondents, the petitioners have filed the present petition.
- 5) Learned counsel for the petitioners relies upon Section 154 Cr.P.C. to contend that when information regarding commission of cognizable offence is given to officer In-charge of the police

station, then the officer is required to reduce it into writing and thereafter register the case in the manner as prescribed under law and then proceed to investigate the same. In support of aforesaid contention, learned counsel relied upon 2011 Vol 1 RCR (Crl) 327 “*State of Maharashtra and others Vs. S. Sarangdharsingh Shivdasssingh Chavan and another*”, AIR 1992 SC 604 “*State of Haryana and others Vs. Ch. Bhajan Lal and others*”, AIR 2006 Supreme Court 1322 “*Ramesh Kumari Vs. State (NCT of Delhi) and others*”, AIR 2006 Supreme Court 3376 “*Lallan Chaudhary and others Vs. State of Bihar and another*”, AIR 2000 Supreme Court 3381 “*K. Karunakaran Vs. State of Kerala and another*”, 1992 Crl. L. J. 1558 “*Munna Lal Vs. State of H.P. and others*” and 2005 (4) RCR (Crl.) 788 “*Sushma Vs. State of Haryana and others*”. It is true that the duty of the officer in-charge of the police station has no option but to register a case in case the case registered under cognizable offence is laid before him. The disclosure of cognizable offence is *sine qua non* for registering First Information Report. Section 154 Cr.P.C. is mandatory the police officer cannot embark upon an inquiry as to whether the information laid by the complainant is genuine or not, the mandate of provision in terms of Section 154 Cr.P.C. has discussed by the Apex Court in Lallan Chaudhary case (supra) is that the officer cannot refuse to register a case on the ground

that information is not creditable. In a way the reliability, genuineness and credibility of the information are not the condition precedent for registration of case under Section 154 Cr.P.C.

- 6) The Hon'ble Supreme Court in Writ Petition (Criminal) No.68 of 2008 decided on 12.11.2013 titled "***Lalita Kumari Vs. Govt. of UP and others***" issued the following directions;

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the

veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the

decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

- 7) In the event of finding commission of cognizable offence, then Police is bound to register a case. At the same time as per direction No.2 if the information does not disclose an cognizable offence, but indicates necessity for an inquiry in order to ascertain whether cognizable offence is made out or not, then also Police is bound to inform complainant in the event of finding non-disclosure of cognizable offence within a week as per direction No.3.
- 8) The interpretation of Section 154 Cr.P.C. made by the Hon'ble Apex Court in aforesaid precedents is not disputed in any manner. The question which arises for consideration is the disclosure of cognizable offence. Section 9 of the Citizenship Act, 1955 reads as under;

“Termination of citizenship.—

(1) Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India.

Provided that nothing in this sub-section shall apply to a citizen of India who during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until

the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.”

- 9) Under the aforesaid Act of 1955 and under Section 9(2) of the said Act, Central Government has framed rules to decide question of voluntarily acquisition of citizenship of a foreign country and consequent determination of the citizenship of India. Central Government is appointed as the authority to decide such questions. Section 9(2) of the Citizenship Act 1955 is a ***non-obstante*** clause which ousts the applicability of any other law for the time being prevailing on the issue in question.
- 10) If a dispute arises as to whether any citizen has acquired the citizenship of foreign country, then the issue is exclusively under the domain of the Central Government i.e. the authority appointed in this behalf to determine in such manner and having regard to such rules of evidence as may be prescribed in that behalf. It has to be determined by such authority only. The effect of Section 9(2) of the Citizenship Act, 1955 and rules framed thereunder make the Central Government or his delegatee to be appropriate authority to deal with this question. This particular question cannot be tried in any other Court. It implies that the issue is not cognizable by any other authority

except the Central Government or its delegatee who will be the appropriate authority in the present context. In ***State of Madhya Pradesh Vs. Peer Mohd 1963 (SUP1) SCR 429***, the Hon'ble Apex Court in a Constitution Bench observed in the aforesaid context.

- 11) Similarly, in ***State of Uttar Pradesh and others Vs. Shah Muhammad and another (1969) 3 SCR 1006***, the Apex Court tested the magnitude Section 9 of the Citizenship Act, 1955 and held that when an Indian citizen acquires citizenship of foreign country voluntarily after commencement of the constitution, then he has to be dealt with in accordance with provisions of the Citizenship Act. The aforesaid view from ***State of Madhya Pradesh Vs. Peer Mohd. (supra)*** was consistently followed and it was subsequently followed in ***1986(4) SCC 78 Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi***.
- 12) The interpretation of law as it exists is that when the issue falls under the domain of Section 9(2) of the Citizenship Act, 1955, then all other provisions of law are excluded. The competent authority prescribed under the Act of 1955 alone is competent to decide questions arising under Section 9(2) of the Act and the rules framed thereunder. The Central Government by virtue of powers conferred on it by Section 9(2) of the Citizenship Act has an exclusive power to determine in accordance with the rules of evidence provided for the purpose whether a person has

acquired the citizen of another country? It follows that once a person is admitted or held to be a citizen of India, unless there is a decision of the Central Government under Section 9(2) of the Citizenship Act, 1955 that he has acquired the citizen of a foreign country, he should be presumed to be an Indian citizen. Section 9 of the aforesaid Act is a complete code as regards determination of issue of Indian citizen on the acquisition of the Citizenship of a foreign country.

- 13) The principle and policy behind Section 9(2) of the Citizenship Act, 1955 is to prevent exposure of said person in all forums of litigation in the country. It appears that right of citizenship of a person who is an Indian Citizen should not be exposed to criticism or attack by anyone in all other forums of litigation in the country but should be confined to one authority in accordance with provisions of Section 9 of the Citizenship Act and rules framed thereunder. Every other Court or authority would have to act only on the basis of the decision given by the prescribed authority. This being the mandate of law makes the aforesaid provision as ***non-obstante*** clause so as to exclude other laws on the issue.
- 14) Therefore, there is no doubt that all the cases where action is proposed to be taken against a person on the ground of his being acquired foreign citizenship loses significance. Such question should be first considered by the Central Government and the

Central Government would give effect to the situation and the status of a person while deciding the case of which any further action can be taken in accordance with law.

- 15) Learned counsel for the respondent on the strength of aforesaid legal position submitted that no such direction can be issued unless and until the issue is determined by the Central Government under Section 9(2) of the Citizenship Act, 1955.
- 16) Learned counsel further cites order dated 13.10.2011 passed in CWP No.13493 of 2011 titled Simranjit Singh Mann Vs. Union of Indian and others. The aforesaid decision rendered in a Public Interest Litigation shows that the allegations were made against the present respondent No.5 on the ground of his being a British National and as such he could not have contested the election in India. The Litigation in the forum of Public Interest was not held maintainable for settling political scores. The element of personal interest cannot be utilized in Public Interest Litigation and therefore, the petition was dismissed by observing that the same is not maintainable and also there is nothing on record to suggest that the respondent is a British citizen except some indirect evidence therein.
- 17) Learned counsel for respondent No.5 stressed upon the word indirect evidence used in the context of documents attached by the petitioner which cannot be taken to be on their face value unless and until these documents are verified by the competent

authority i.e. Central Government in exercise of powers in terms of Section 9(2) of the Citizenship Act, 1955 and rules framed thereunder. On this issue, learned counsel for the respondents also relies upon Annexures R5/1 to R5/6 to contend that even the UK authorities had admitted their mistake in record which was not corrected even after dissolution of the companies. Annexure R5/4 is in context of such communication wherein apology was tendered by the company in a letter specifically addressed to respondent No.5.

- 18) The other documents attached by respondent No.5 are being relied upon to show respondent No.5 to be an Indian citizen. As against this, learned counsel for the petitioner also cites decision dated 03.01.2011 rendered in CWP No.31 of 2012 titled "*Ajay Kumar Sehgal Vs. Union of Indian and Others*" wherein the writ petition was disposed of by directing completion of inquiry against the respondent within stipulated period as the inquiry was initiated against respondent No.4 and the same was required to be brought to its logical conclusion. In that context it was observed that if the said prayer is granted, no prejudice would be caused to any of the parties before the Court.
- 19) In the present case, the issue is whether petitioners can seek direction for registration of criminal case against respondent No.5 and seek investigation by SIT under monitoring of this

Court. The mandate of Section 154 Cr.P.C. is applicable only in cognizable offences where information to that effect is brought to the knowledge of the Incharge Police Station. The officer cannot embark upon an inquiry in case information is cognizable in nature except to the extent as envisaged in direction No.II & III of *Lalita Kumari's case* (supra). In the present case by virtue of Section 9(2) of the Citizenship Act, 1955, the issue is beyond comprehension of any other Court or authority as has been held in number of precedents cited in preceding parts of the judgment and at last in *Bhagwati Prasad Dixit 'Ghorewala' case* (supra), section 9(2) serves as *non-obstante* clause, thereby excluding the jurisdiction of any other authority and Court.

- 20) Firstly the issue has to be deliberated before the authority/Central Government in terms of Section 9(2) of the Act and Rules framed thereunder. Till such decision is made by the Competent Authority, mandate of law is that such a person should not be exposed to criticism or attack in any other Forum in the Country.
- 21) Petitioners seek invoking of final provisions against respondent No.5 even in the absence of any decision rendered by the Competent Authority/Central Government, which is not permissible in view of mandate of Section 9(2) of the Citizenship Act 1955.

- 22) The decision rendered in CWP No.31 of 2002 is in respect of ongoing inquiry before registration of the case.
- 23) Such a course is not applicable in the present case because nature of information whether cognizable or not has to be decided at the threshold of mandate arising out of Section 9(2) of the Citizenship Act, 1955.
- 24) Having considered the matter in the light of aforesaid facts and precedents, this Court is of the view that the prayer made by the petitioners cannot be granted. Petitioners would be at liberty to seek redressal of their grievances before the Central Government/Competent Authority in terms of Section 9(2) of the Citizenship Act, 1955.

With the aforesaid observation, the petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

13.05.2015
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