

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-44287 of 2014

Date of Decision: December 24, 2015

Jassa Singh

.....Petitioner

Vs.

Darshan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Mayank Mathur, Advocate
for the petitioner.

None for the respondent.

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M.M.S. BEDI, J. (ORAL)

The petitioner had been arraigned as accused No.11 in complainant annexure P-2 filed by the respondent. The petitioner seeks quashing of the complaint as well as the summoning order qua him claiming that the launching of criminal proceedings against him is an abuse of the process of the Court and that no offence is made out against the petitioner even if the allegations as mentioned in the complaint are presumed to be correct.

Respondent did not appear despite service.

In order to appreciate the allegations in the complaint against 10 accused persons besides the petitioner and one Ramesh Kumar, a perusal of the complaint is necessary with emphasis on the specific allegations against the petitioner. The complaint reads as follows:-

“IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS RAJPURA
Darshan Singh S/o Shri Teja Singh
R/o Vill: Tofapur, Tehsil Derabassi, Dist. Patiala, (at present residing at Vill:
Alipur Wazirsahibwala, Tehsil and Distt. Patiala)

..... Complainant

Versus

1. R.K.Sayal, Managing Director, Golden Forest India Ltd., 834, Mani Majra, U.T.Chandigarh.
2. Vinod Viyogi S/o Dr. Leela Dhar Viyogi, R/o Kothi No. G-21, Dyal Bagh Mahesh Nagar, Ambala Cantt.
3. Ram Kumar S/o Dyal Ram R/o Charamgarh, Teh. Rajpura, Distt: Patiala.
4. M.S.Madan, S/o Gurdass Mal, R/o H.No. 2858/2, Friends Colony, Ambala City.
5. Tarsem Singh, Numberdar Lalru, Teh. Rajpura.
6. Ashok Madan, R/o 2858/2, Friends Colony, Ambala City.
7. Maghe Singh S/o Nihal Singh, R/o Vill: Aggarpur.
8. Sunil Kumar, Deed Writer, Derabassi, Teh: Derabassi, Distt. Patiala.
9. Rajpal Singh S/o Mangal Singh, R/o Vill: Tofapur, Tehsil Derabasi, Dist. Patiala.
10. Lachhman Singh, resident of village Banur, Tehsil Rajpura, Distt: Patiala.
11. Jassa Singh, the then S.H.O., P.S. Lalru, Distt. Patiala.
12. Ramesh Kumar, the then ASI, P.S. Lalru, Distt. Patiala.

..... Accused

Complaint under Section 420, 423, 467, 468, 471, 120-B, 384, 409, 196 IPC

Respectfully showed,

1. That the complainant and Grumeet Singh are the real brothers and were owners in possession of the land 31 Bighas-5 Biswas out of the land measuring 57 bighas-6 biswas comprised in khasra Nos. 33//12/2(2-1), 13/2(2-0), 14/2(2-0), 18(4-0), 23(4-0), 19(4-0), 21(4-0), 22(4-0), 9/2(2-0) 34//18/1(0-8), 37//10 min (0-14), 1(4-0), 33//12/2(2-1), 13/2(2-0), 14/2(18-0), 19(4-0), 22(4-0), 34//1822/2(0-2), 36//2(0-7), 31/7(3-15), 8(0-13), 14(2-1) situated in the revenue estate of village Tofapur, Tehsil Derabassi, Distt. Patiala.
2. That by concealing true facts from the complainant and his brother Gurmeet Singh, one Vinod Viyogi, accused No. 2 induced the complainant and his brother Gurmeet Singh to execute Powers of Attorney in his favour and pursuant to the said inducement and deception, the said Vinod Viyogi succeeded in getting two General Powers of attorney on 30.3.95 and 20.4.95 executed in his favour and further succeeded in getting possession of the said powers of attorney. Prior to the act of deceiving the complainant and his brother Gurmeet Singh, accused No. 2 obtained thumb impressions of Darshan Singh and Gurmeet Singh on stamp paper which was then blank and acting in connivance with Ram Kumar and Rajpal Singh accused Nos. 3 and 9 forged and fabricated a so-called 'agreement' dated 21.3.95 further in connivance with H.S.Madan Accused No. 4, setting him up as the purchaser of the land measuring 24 bighas-10 biswas and thereby showed the amount of Rs. 6.00 lacs to have been paid to Darshan Singh and Gurmeet Singh, whereas Darshan Singh and Gurmeet Singh had never received any amount from Vinod Viyogi. In this way, the agreement dated 3.4.95 had been forged and fabricated by the accused in connivance with Rajpal Singh in which amount of Rs. 10,71,785/- was shown to have been received by Darshan Singh and Gurmeet Singh. The receipt dated 30.03.1995 was forged and fabricated on which Ashok Madan had put his signatures pursuant to the conspiracy hatched for the purpose of grabbing the property of Darshan Singh and Gurmeet Singh. The amount shown in the agreement dated 03.04.1995 had never been received by Darshan Singh and Gurmeet Singh. The Power of Attorney dated 20.04.1995 had been forged and fabricated by the accused Rajpal

Singh, Bahadur Singh and Vinod Viyogi. The so-called agreement dated 03.04.1995 is a forged and fabricated document which has been prepared by accused No. 1 to 10 in connivance with each other with intent to cause damage and injury to the complainant and his brother Gurmeet Singh and these documents have been shown for valuable consideration for the purpose of intending that these documents shall be used for the purpose of cheating the complainant and his brother Gurmeet Singh and with intent to grab their property.

3. That pursuant to power of attorneys dated 30.03.1995 and 20.04.1995 the land measuring 4 bighas comprising in khasra No. 32//22/4 had been shown to have been sold in favour of Golden Forest India Ltd. of which accused No. 1 R.K. Sayal was the Managing Director for a sale consideration of Rs. 1,75,000/- on 16.5.95 vide vasika No. 637, whereas no power of attorney regarding khasra No. 32//22 (4-0) had ever been executed by Darshan Singh and /or Gurmeet Singh in favour of Vinod Viyogi accused No.2 or by the so-called purchaser. In this manner, vide vasika No. 699 the land comprising in khasra No. 33/21(4-0) had been shown to have been sold by Vinod Viyogi in favour of Golden Forest India Ltd. of which accused No. 1 was the Managing Director for a sale consideration of Rs. 1,75,000/- on 16.5.95, and vide vasika No. 1104 dated 08.06.1995, land measuring 4 bighas- 2 biswas, out of land 24 bighas- 10 biswas had been shown to have been sold by Vinod Viyogi, being the power of attorney holder, in favour of Golden Forest India Ltd., of which R.K. Sayal was the Managing Director, for a sale consideration of Rs. 1,78,500/-, and vide vasika No. 1158 of 13.6.95 the land measuring 4 bighas – 1 biswas had been shown to have been sold by Vinod Viyogi being the power of attorney, out of land 24 bighas- 10 biswas, for a sale consideration of Rs. 1,78,500/-, and vide vasika No. 1163 of 13.6.95 the land measuring 4 bighas-2 biswas out of land measuring 24 bighas- 10 biswas had been shown to have been sold by Vinod Viyogi in favour of Golden Forest India Ltd. for a sale consideration of Rs. 1,79,285/- of which R.K. Sayal was the Managing Director, and the land measuring 4 bighas – 1 biswas had been shown to have been sold by Vinod Viyogi in favour of Golden Forest India Ltd. of which R.K. Sayal was the Managing Director for a sale

consideration of Rs. 1,78,500/- vide vasika No. 1102 of 8.6.95 and land measuring 4 bighas-2 biswas had been shown to have been sold by Vinod Viyogi in favour of Golden Forest India Ltd. of which R.K. Sayal was the Managing Director for a sale consideration of Rs. 1,78,500/-, vide vasika No. 1159 the land measuring 4 bighas-1 biswas had been shown to have been sold by Vinod Viyogi in favour of Golden Forest India Ltd. of which R.K. Sayal was the Managing Director for a sale consideration of Rs. 1,78,500/- . In this way, the accused No. 1 to 10 have not only forged and fabricated the agreements dated 21.3.95, 3.4.95, 30.03.95, 20.4.95 but with intent to show a genuine deal, accused No. 2 had executed the sale deeds in favour of Golden Forest India Ltd. in connivance with respective witnesses of the documents, whereas no money had been received by Darshan Singh and Gurmeet Singh either from Golden Forest India Ltd. or from accused No. 2 Vinod Viyogi or from persons mentioned in the body of agreements. The sale deeds are without consideration and are papers and sham transaction and the possession of land under alleged sale deeds was never delivered by Darshan Singh and Gurmeet Singh to the so-called purchasers and the land remained under the physical and cultivating possession of Darshan Singh and Gurmeet Singh.

4. That Darshan Singh and Gurmeet Singh filed a civil suit No. 501 of 18.7.95 for declaration to the effect that the sale deeds executed by Vinod Viyogi accused No. 2 in favour of Golden Forest India Ltd. are liable to be set aside having been void ab-initio and the suit for permanent injunction restraining Vinod Viyogi and Golden Forest India Ltd. through its Managing Director for taking forcible possession of the land measuring 31 bighas- 5 biswas on the basis of sale deeds was also filed in which Vinod Viyogi and Golden Forest India Ltd. resisted their claim on the basis of forged and fabricated documents. As such, the facts of cheating and forgery and fabrication of documents came to the knowledge of complainant along with his brother Gurmeet Singh on 24.6.95, and an application for production of documents was submitted and as and as when the documents were produced by Vinod Viyogi and the Golden Forest India Ltd. and were placed on record on 4.10.96. The complainant filed a complaint No. 30 on 17.10.96, against R.K.Sayal, Managing Director Golden Forest India Ltd.,

Vinod Viyogi, Ram Kumar, M.S. Madan, Tarsem Singh Namberdar, Ashok Madan, Manghe Singh and Sunil Kumar in which vide order dated 21.1.98 all the accused arrayed in the complaint No. 30 of 7.10.96 were summoned and thereby accused in the complaint filed their respective bail applications under Section 438 Cr.P.C. and accused Vinod Viyogi and Ashok Madan filed a Criminal Misc. No. 34166-M of 1998 in the Hon'ble Punjab and Haryana High Court under Section 438 Cr.P.C. praying for grant of anticipatory bail. The Hon'ble Mr. Justice M.L. Single, while disposing of Criminal Misc. No. 3416-M of 1998 passed the following order:

“Looking into the facts and circumstances of the case, I feel that anticipatory bail should be allowed to the petitioners but before they are allowed anticipatory bail, they should be put to some conditions. It is, therefore, ordered that they shall deposit Rs. 10,71,785/- in the court of Sub-Divisional Judicial Magistrate Rajpura in the name of that court till 31.7.99 which shall remain fixed deposited for a period of three years and beyond also if these criminal complaints remain pending before the learned Magistrate. If these directions remain uncomplied with, the Magistrate shall be free to send them to jail but after 31.7.99. If these directions are complied with, the learned Magistrate call upon them to furnish bail bonds to his satisfaction.”

5. That the accused Vinod Viyogi and Ashok Madan, in consultation with other accused started negotiating with Darshan Singh and Gurmeet Singh with intent to get rid of the criminal action which were initiated to be taken against the accused arrayed in the complaint, on the complaint of Darshan Singh. As such, with the intervention of respectable persons, a compromise was effected and the civil suit No. 501 of 19.1.95 filed by Darshan Singh and Gurmeet Singh was withdrawn having been compromised and the complaint was also dismissed in default by Smt. Harpreet Kaur, the then J.M.I.C. on 12.7.99, but vide explanation to section 300 Cr.P.C. the dismissal of complaint or discharge of the accused is not acquittal for the purpose of this section. The offence committed by accused Nos. 1 to 10 was complete in all respect

when the complaint was filed and the accused were summoned by this Hon'ble Court. Therefore, by entering into compromise in civil suit or dismissal of the complaint in default did not absolve the accused of their criminal liability. Rajpal Singh in complaint No. 30 of 7.10.96 appeared as P.W.-5 and made the statement on oath in the court.

6. That now on the application of Vinod Viyogi, the police of P.S. Lalru registered a case vide FIR No. 351 of 17.10.2000 under Sections 420, 467, 468, 471 IPC against Darshan Singh and Gurmeet Singh in which Gurmeet Singh was arrested and was produced and he was released under Section 430 Cr.P.C., whereas Darshan Singh was released vide order dated 7th February, 2001 passed by Shri Birender Singh, the then Additional Sessions Judge, Patiala. Gurmeet Singh was arrested on 27.12.2000 and was produced before the court on 28.12.2000 and was remanded to police custody till 10.12.2000 and during the police custody the jamatilashi of Gurmeet Singh was taken in police station in the presence of Nirmal Singh and from the custody of Gurmeet Singh, a golden bangle weighing 25 grams, citizen wrist watch, Rs. 5000/- and purse containing driving licence of the Gurmeet Singh was taken into possession by the police at the time of jamatilashi of Gurmeet Singh. Shri Jassa Singh was the S.H.O. at P.S. Lalru at the relevant time and Ramesh Kumar ASI was the Investigating Officer of the case. Gurmeet Singh was released on bail and when Gurmeet Singh asked for the return of articles taken from his possession on one pretext or the other, he was put off. Gurmeet Singh had been believing the statement of Jassa Singh, SHO and Ramesh Kumar ASI, I.O. in the case to be correct. As such, Gurmeet Singh along with Darshan Singh and Nirmal Singh had gone many a times to P.S. Lalru and requested Jassa Singh, S.H.O. and Ramesh Kumar, ASI for the return of articles taken from the custody of Gurmeet Singh at the time of jamatilashi. When all the efforts of Darshan Singh, Gurmeet Singh and Nirmal Singh failed, then Gurmeet Singh filed an application on 7.11.2002 before this Hon'ble Court for issuance of directions to the S.H.O., P.S. Lalru to return the articles i.e. golden bangle weighing 25 grams, citizen wrist watch, Rs. 5000/- and purse containing driving licence of the Gurmeet Singh, but till date no report has yet been received from the police. When Gurmeet Singh was in police custody, he

was tortured and third degree method was used on the person of Gurmeet Singh by giving electric shocks with the sole aim of extorting money from Gurmeet Singh and Darshan Singh, but Gurmeet Singh and Darshan Singh could not meet with unlawful, illegal and unwarranted demand of Jassa Singh, the then SHO P.S. Lalru and Ramesh Kumar ASI, I.O. Darshan Singh and Gurmeet Singh requested the S.H.O. that as to why payment of Rs. 3.0 lacs is being demanded when they have committed no crime. F.I.R. was registered at the instance of Vinod Viyogi with intent to extort money from Darshan Singh and Gurmeet Singh, and Rajpal Singh who had made the statement before the court supporting the claim of the claimant, but Rajpal Singh also resiled and supported the illegal acts of S.H.O. Jassa Singh, Ramesh Kumar ASI and Vinod Viyogi with intent to have a booty in the money which would have been looted from Darshan Singh and Gurmeet Singh by putting them under the fear of injury of body, mind, reputation, health and property. This was not the end of the matter, Rajpal Singh had sworn an affidavit to the effect that his statement was not recorded in the court, whereas his statement was recorded in the court and he swore a wrong, false and frivolous affidavit with intent to create evidence for the purpose of being used in judicial proceedings in F.I.R. No. 351 of 17.10.2000. Lachhman Singh accused was the tout of accused No. 1 and 2 and he also intended to get the booty in the looted property, as such, all the accused had conspired with each other with intent to cause loss to Darshan Singh and Gurmeet Singh with the sole aim of grabbing the property of Darshan Singh and Gurmeet Singh.

7. That the police, P.S. Lalru has presented the challan against Gurmeet Singh and Darshan Singh in this Hon'ble Court and the notice of the challan came in the knowledge of Gurmeet Singh on 29.3.2003 when he appeared in the case and the case was fixed for 15.4.2003. Copies of the challan were given to the accused Gurmeet Singh and after perusing the challan, it was revealed that only four hundreded currency notes had been shown to have been recovered from the custody Gurmeet Singh at the time of his jamatalashi, whereas a sum of Rs. 4,600/- and a golden bangle weighing 25 grams, purse containing driving licence of the Gurmeet Singh were not shown to have been recovered from the custody of Gurmeet Singh at the time of his jamatalashi whereas a

golden bangle weighing 25 grams, Rs. 5000/-, citizen wrist watch and purse entrusted to accused Jassa Singh and Ramesh Kumar and they had dominion over the property in their capacity of a public servant and thereby they have misappropriated the property recovered from the custody of Gurmeet Singh. Accused No.1 to 10 have not only forged and fabricated the documents but have used the same to be genuine one and till date they are keeping possession of forged and fabricated documents with intent to use the same as genuine one and they are resisting their claim on the basis of forged and fabricated documents in connivance with accused Jassa Singh, S.H.O. and Ramesh Kumar ASI in F.I.R. No.351 of 17.10.2000, P.S. Lalru.

8. That the complainant is an illiterate person and by presenting the police challan registered vide F.I.R. No.351 of 17.10.2000 under Sections 420, 465, 467, 468, 471, 474 IPC against Darshan Singh and Gurmeet Singh. The police had tried in connivance with all the accused to make Darshan Singh complainant and Gurmeet Singh, witness of the case to be accused, whereas neither Darshan Singh nor Gurmeet Singh have committed any offence. Rather, the offence punishable under Sections 420, 423, 467, 468, 471, 120-B, 384, 409, 193 I.P.C. have been committed by all the accused in connivance with each other with intent to grab the property of Darshan Singh and Gurmeet Singh. As such, the accused are liable to be prosecuted for the commission of offences punishable under Sections 420, 423, 467, 468, 471, 120-B, 384, 409, 193 I.P.C.
9. That the police stations are means for doing justice with the people and with the common man, but the police station Lalru is police station where offence itself has been committed by the police officials in connivance with other accused. Therefore, the complaint is being filed within the jurisdiction of this Hon'ble Court, as such, this Hon'ble court has jurisdiction to try the present complaint of the complainant for the commission of offences punishable under sections 420, 423, 467, 468, 471, 120-B, 384, 409, 193 I.P.C.

It is, therefore, prayed that all the accused be summoned, tried and punished for the commission of offences punishable under sections 420, 423, 467, 468, 471, 120-B, 384, 409, 193 I.P.C..

Submitted By

Dated: _____/4/2003 Darshan Singh s/o Teja Singh, Vill: Alipur
Wazirsahibwala, Tehsil and Distt. Patiala.

(Complainant)

Through counsel

(Ch. Gurmukh

Dass)

Advocate Rajpura.

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS
RAJPURA.

Darshan Singh Vs. R.K. Sayal & Others.

Complaint under section 420, 423, 467, 468, 471, 120-B, 384, 409,
193 I.P.C.

List of Witnesses

1. Complainant
2. Gurmeet Singh s/o Teja Singh, R/o Vill: Tofapur, Tehsil Dera
Bassi, Distt. Patiala
3. Nirmal Singh S/o Surjit Singh, R/o Udha P.S. Julka
4. Ahlmad, Record Room Patiala, Alongwith Civil Suit No.501 of
18-7-95 and complaint No.30 dt. 17-10-96
5. Criminal Ahmad alongwith FIR No.351 of 17-10-2000 pending
for 30-5-2003
6. Any other witness with permission of hon'ble Court."

A perusal of the above said complaint indicates that the grievance of the complainant- respondent is that he alongwith his brother Gurmeet Singh was owner of land situated in Dera Bassi but accused No.2 Vinod Viyogi induced them to execute power of attorneys in his favour and by inducement and deception on the basis of two general power of attorneys executed in his favour agreement of sale dated March 21, 1995 was fabricated and property was sold without their being any sale consideration by fabricating the receipt in conspiracy with accused 3 to 10. The agreement dated April 3, 1995 was also alleged to be forced and fabricated with an intention to cause damage and injury to the complainant and his brother Gurmeet Singh. On the basis of fabricated agreements of sale dated March 21, 1995, April 3, 1995, March 30, 1995 and April 20, 1995, the sale deeds were executed in favour of Golden Forest India Limited. A civil suit was filed by complainant Darshan Singh and his brother Gurmeet Singh challenging the sale deeds. An application for production of documents was filed in the civil suit. When the documents were placed on record in the Court on October 4, 1996, a complaint was filed in which Vinod Viyogi and others had been granted concession of pre-arrest bail. Thereafter Vinod Viyogi and Ashok Madan in consultation with other accused started negotiations with complainant and Gurmeet Singh and a compromise was effected and the complaint was got dismissed in default in the Court of Judicial Magistrate Ist Class. Thereafter Vinod Viyogi has got an FIR No. 351 of October 17, 2000 registered against complainant and Gurmeet Singh

under Sections 420, 467, 468, 471 IPC in which Gurmeet Singh was arrested and was released on February 7, 2001. After having been produced in the Court on October 27, 2000, he was remanded in police custody on December 10, 2000. During police custody, Gurmeet Singh was taken in police station in presence of Nirmal Singh and from the custody of Gurmeet Singh, a golden bangle weighting 25 grams, citizen writ watch, Rs.5000/- and purse containing driving licence were taken in possession by the police at the time of his jamatalashi. The allegation against the petitioner is only that he was SHO of Police Station Lalru at that relevant time whereas Ramesh Kumar ASI was the investigating officer. Gurmeet Singh after being released on bail asked for return of the articles but he was put off. Complainant Darshan Singh alongwith Gurmeet Singh and Nirmal Singh had filed an application on November 7, 2002 for a direction to SHO, PS, Lalru to return the above said articles but no report was received from the police. Gurmeet Singh while in custody was tortured for extorting money from him and complainant. It is mentioned in the complaint that they were kept in custody as they could not meet the unlawful, illegal and unwarranted demand of Jassa Singh- petitioner and Ramesh Kumar, ASI, the investigating officer.

It is admitted that petitioner was not an investigating officer and that the detention was in accordance with law. The allegations of torture are vague against the petitioner. The day, date and time of any demand is not mentioned. It is an admitted fact that complainant's brother

had been arrested in a criminal case. Application for release of jamatalashi had been filed. Result of the said application has not been disclosed. All the allegations against accused No.1 and 2 have been alleged to be in connivance with the petitioner and the investigating officer Ramesh Kumar. There is no allegation indicating the conspiracy of the petitioner with the other accused. The petitioner being SHO of Police Station has been involved in the case because the investigating officer had arrested the brother of the complainant. No complaint has been filed by the brother of the complainant. The complaint is an hearsay as he himself had never been detained and no specific day, date and time of demand had been mentioned by him. Even if the allegations are believed to be true, the acts alleged against the petitioner would fall within the ambit of performance of his official duties in a criminal case but it has to be appreciated that the petitioner himself has not been attributed any specific role.

I have considered the allegations against the petitioner in the light of judgment in case *State of Haryana and anr. Vs. Ch. Bhajan Lal and others, AIR 1992 SC 551*, wherein parameters for quashing of criminal complaint or proceedings to prevent abuse of the process of any Court or otherwise to secure the ends of justice have been laid down as follows: -

“1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima

facie constitute any offence or make out a case against the accused;

2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party;

7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

As discussed hereinabove the complaint does not contain any specific allegations against the petitioner except that the petitioner was deputed as SHO of Police Station, Lalru, when Gurmeet Singh was taken in Police Station from whom the recovery of articles of jamatalashi had been made. The incident is of 10.12.2000 whereas the complaint was filed on 25.4.2003. It is not averred in the complaint that the articles taken in possession by the police in jamatalashi were not depicted in the jamatalashi memo. Even if it is presumed that the articles of jamatlashi were not returned it was always open to the complainant to file an application for release of the articles of jamatalashi by moving an application before the trial Magistrate. The complainant is vague and silent about the said aspect. The allegations in the complaint even if they are taken on their face value and accepted in their entirety qua the petitioner prima facie no offence is made out and the complaint does not justify launching of the prosecution against the petitioner. The allegations also appear to be so absurd and

inherently improbable on the basis of which no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the petitioner. There is specific legal bar under Section 197 Cr.P.C., for institution and continuance of proceedings as the act of arrest of Gurmeet Singh, preparation of his jamatalashi memo are the acts performed in the discharge of official duty by the Investigating Officer. Section 197 (1) Cr.P.C. prohibits any Court to take cognizance of offence except with the previous sanction of the State Government with whom the petitioner was employed in connection with the affairs of the State. While issuing summoning order, the trial Court has not referred to any evidence admissible under Section 10 of the Evidence Act indicating the conspiracy of the petitioner with the Investigating Officer.

There is no evidence produced on the record regarding any money having been passed to the petitioner. Offence of extortion under Section 384 IPC is, thus, not made out.

So far as the offence under Section 409 IPC is concerned, the petitioner had never been entrusted with property as per the allegations in the complaint. Even the petitioner had not conducted jamatalashi. Launching of prosecution against the petitioner under Section 193 IPC is governed by the provisions of Section 195 Cr.P.C. In case any false evidence has been created, the provisions of Section 195 Cr.P.C., would prevent taking of cognizance of offence of 193 IPC without complaint in

writing by a Public Servant or some other Public Servant to whom the petitioner was administratively subordinate.

In view of above circumstances, the criminal complaint qua the petitioner deserves to be quashed as per the parametres of law laid down in *State of Haryana and anr. Vs. Ch. Bhajan Lal and others, AIR 1992 SC 551*, mentioned hereinabove.

The petition is allowed. The criminal complaint, Annexure P2, summoning order and the proceedings emanating therefrom against the petitioner only are hereby quashed being an abuse of process of the law.

December 24, 2015
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(M.M.S.BEDI)
JUDGE