

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

CRM-M-5673-2015 (O&M)
DATE OF DECISION: April 21, 2015.

Tula Ram and another

....Petitioners.

VERSUS

State of Haryana and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. B.S. Tewatia, Advocate for the petitioners.

SNEH PRASHAR, J.

This was a petition filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") for quashing of the summoning order dated 02.08.2013 passed by Judicial Magistrate Ist Class, Hodal, vide which the petitioners alongwith two other accused were summoned for commission of offence under Sections 120-B, 406, 420, 467 and 471 of the Indian Penal Code (in short, "I.P.C."). The order dated 05.12.2014 passed by learned Additional Sessions Judge, Palwal, dismissing the revision petition filed by the petitioners against the summoning order dated 02.08.2013, has also been assailed by way of the present petition.

2. The backdrop of the instant petition is that a complaint was

filed by Satpal son of Karan Singh, resident of village Karman, Tehsil Hodal, District Palwal, alleging that the petitioners had altered, forged and prepared false records/documents of village Panchayat with intention to deceive the public and cause wrongful loss to the village Panchayat. They had made alterations in dates and amount mentioned in the bills and had got prepared fake bills showing work done by JCB machine on payment whereas the machine had never been used. They were also adopting illegal practice in leasing out the village pond (Johar) and the agricultural land of the Panchayat.

Four witnesses were examined by the complainant to support his version and to prove the authenticity of the documents tendered in evidence in which subsequently alteration in dates and amount etc. had been made. Report of B.D.P.O., Hodal, sought under Section 202 Cr.P.C. also showing irregularities and illegalities in record of the village Panchayat made by the petitioners in the year 2010-2011 was also tendered.

3. The submissions made by Mr. B.S. Tewatia, learned counsel representing the petitioners have been considered.

4. Learned counsel for the petitioners argued that the entire allegations levelled against the petitioners were false. The complaint was an outcome of party faction in the village. In order to settle scores on some matter, the complainant had filed the instant complaint. Learned counsel also contended that the petitioners were not joined in inquiry held by the B.D.P.O. Since no notice was given and also no opportunity was given to the petitioners to state their part of the story, the inquiry report could not be

used as evidence against them.

5. There appears to be no force in the arguments of learned counsel for the petitioners. Bare perusal of the impugned orders passed by learned Magistrate and by learned Additional Sessions Judge, Palwal reveals that the complainant had led sufficient ocular as well as documentary evidence to prima facie prove commission of offence by the petitioners under Sections 120-B, 406, 420, 467 and 471 I.P.C. as alleged by him. Scrutinizing the evidence/material available, the findings of learned Additional Sessions Judge, Palwal are as under:-

“Complainant Satpal while appearing as CW4 has specifically deposed about the illegal practice being carried by the revisionist/accused Tula Ram being husband of revisionist/accused Smt. Sondei, Sarpanch of village Karman alongwith other accused in village Panchayat records during the period from 2010-2011. It has specifically been stated that all the accused persons after hatching a conspiracy have done cuttings in the dates and amount on the bills and have forged some bills. He has also stated that there is cutting in the goswaras. It is also stated that no work has been done in the village with the help of JCB machine where as there is bill regarding the work done with the help of JCB machine. It is stated that village Panchayat Karman had purchased a Chain Kuppi on 12.06.2011 for Rs.3,300/- whereas in the bill after making the cutting, the amount has been altered as Rs.8,800/-. There are also illegal practice in the leasing out the village pond and lease of agricultural land. This witness has specifically deposed about the mal practice adopted by the accused persons while doing the panchayat work. CW1 has deposed about the cuttings of documents Ex. CW1/A and Ex. CW1/B. CW2 has deposed about the cuttings on Ex. CW2/A. PW5 has deposed that the firm Sunil Building Material Supplier and Bachhu Building Material Supplier and Shiv Bihari Building Material Supplier have not been registered. PW6 Sh. Madan Pal, BDPO has deposed about the cuttings on Ex. CW6/A and he has also deposed about the cuttings/irregularities in the panchayat record during the relevant period. So, there is sufficient ground for proceeding against the accused and to summon them for the offences under Sections 120-B, 406, 420, 467, 468 and 471 of The

Indian Penal Code, 1860 because at the stage of summoning, the Magistrate has to see whether there is sufficient ground for proceeding against the accused. He is not required to weigh the evidence so meticulously as he is required to do during the course of trial of main case. The standard to be adopted by the Magistrate in scrutinizing the evidence for summoning the accused is not the same as is to be kept in view at the stage of framing charges. Reliance can be placed in this regard from Sanwar Mall Agarwalla Vs. M/s Grasim Industries Limited, 2012(2) Criminal Court Judgments -735 (P&H).”

6. Learned counsel for the petitioners failed to demonstrate any illegality or perversity in the above findings of learned Additional Sessions Judge arising out of misappreciation or misreading of the evidence on record. For the purpose of Section 204 Cr.P.C., it is the satisfaction of the Magistrate based on the material produced before him, that is required for forming an opinion that there is sufficient ground for proceeding against the person accused of committing an offence. The material placed is not to be scrutinized so meticulously that it should be sufficient for conviction of the accused. Only a prima facie case is to be seen and when the evidence shows sufficient ground for proceeding, the Magistrate is bound to issue process.

As far as the inquiry report submitted by the B.D.P.O., Hodal is concerned, that was called for by the Magistrate under Section 202 Cr.P.C. and therefore, was an important piece of evidence. In any case it was not the only material available before learned Magistrate for summoning the petitioner. In addition to it, the complainant had substantiated allegations with ocular and documentary evidence.

7. Another argument raised by learned counsel for the petitioners was that Section 204 of the Haryana Panchayati Raj Act, 1994 (in short, “the Act of 1994”) bars initiation of any suit or legal proceeding in a Civil

or Criminal Court against any Panch, Sarpanch, Member, Chairman, Vice Chairman, President and Vice President of the village Panchayat, in respect of any act done in good faith. Learned counsel contended that respondent No.2 was the Sarpanch of the village at the relevant time and therefore, no criminal complaint could be filed against her in respect of the acts done by her in discharge of her duties.

Apparently, protection under the said provision can be claimed only when an act is done by a person holding the office mentioned therein in good faith and under the Act. By no stretch of imagination, an act of fraud, forgery and embezzlement would come within the ambit of an act done under the Act or in good faith.

Thus, in the aforesaid facts and circumstances and finding no ground for intervention in the order dated 02.08.2013 passed by learned Judicial Magistrate Ist Class, Hodal and order dated 05.12.2014 passed by learned Additional Sessions Judge, Palwal, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

April 21, 2015
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