IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM No.16578-M of 2005 (O&M)

Captain D.S.Giare

...Petitioner

Versus

R.N.Saxena and another

...Respondents

(2) CRM No.M-15809 of 2014 (O&M)

Capt. R.N.Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

(3) CRM No.M-27208 of 2015 (O&M)

Capt. A.S.Malli

...Petitioner

Versus

The State of Haryana and another

...Respondents

Date of Decision: October 04, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikas Singh, Advocate
for the petitioners (in CRM No.16578-M of 2005 and in CRM No.M-15809 of 2014).

Mr.Maninderjit Singh, Advocate for
Mr.K.S.Khehar, Advocate
for the petitioner (in CRM No.M-27208 of 2015).

Mr.Vikramjit Singh, Addl. Advocate General, Haryana for the respondent-State.

Mr.N.S.Shekhawat, Advocate
for the private respondent.

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INDERJIT SINGH, J.

All the above-mentioned cases are taken up together as the same have been arisen from same complaint.

Petitioners have filed these petitions under Section 482 Cr.P.C. respondents State of Haryana and R.N.Saxena, for quashing of criminal complaint No.445 of 2003 titled as 'R.N.Saxena vs. Capt. D.S.Giare and others' and summoning order dated 25.10.2004 passed by learned Judicial Magistrate Ist Class, Gurgaon.

Notice of motion was issued in all the cases. Learned State counsel as well as learned counsel for private respondent appeared and contested all the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that R.N.Saxena filed a complaint against Capt. D.S.Giarre, Capt. R.N.Singh, Capt. A.S.Malli, Capt. D.V.Singh, Capt. S.C. Tripahty, Capt. S.K.Anand, Capt. B.S.Phool and Sh.Brij Lal Arora, Accountant under Sections 406, 420, 463, 464, 468, 471, 477-A, 34 and 120-B IPC. As per complainant's version, he was working as Director, Finance in Indian Airlines Ltd. at New Delhi and retired in July 2002. He is the Member of Indian Airlines Pilots Coop. House Building Society, which was formed for providing plots to its members. After raising funds/money from its members including the complainant, the society purchased approximately 47.5 acres of land. It is also stated that as per inspection report dated 25.06.1987 as well as Audit reports of 1987-88, it was clear that out of 47.5 acres of land, only 38.5 acres of land was free from any dispute and was in possession of the society. The accused No.1 to 7 were the office bearers and accused No.8 was the accountant.

It is the allegation that complainant asked for some document, which these office bearers have not provided. The main allegation is that accused No.1 to 8 with their common intention to cheat the members of the society and to dupe them, illegally and fraudulently, misappropriated the accounts and relevant documents of the society for their personal gains by showing wrong figures. A chart was given showing the persons from whom the properties were purchased and as per the audit report, difference was shown in total of ₹4,54,416/-.

The perusal of the complaint shows that mainly it is based on some audit report where the difference has been found by showing actual sale deed amount as well as amount shown in the record. First of all, the audit report is of the year 1987-88 and the complaint has been filed in the year 2003 i.e. after delay of 15 years and this long delay of 15 years has not been explained in the complaint in any way, as to why the complainant remained silent for 15 years after the audit report has come in the year 1987-88. Secondly, I find that in some of the cases, sale deed was executed by Member of the Managing Committee Capt. S.S.Panesar but he has not been made accused. The accused-petitioners have relied upon the record by showing that along with sale proceeds, amount has been paid to the owners for tubewell etc. and in some of the cases, where sale deed was not executed on the date fixed, the interest has also been given to the sellers. The details of all these amounts have been shown in the petition, which is duly supported by the documents placed on the record.

It is stated that in case of Kanwar Lal, a sum of ₹12,71,025/- was paid for the purchase of 40 kanal 7 marla land and ₹1,58,940/- was also paid as per Annexure P-10 and the total amount comes to ₹14,29,965/-. It is further stated that in case of Balwant Singh and Narain Singh, they were paid cost of land as ₹11,00,925/- and ₹20,000/- has been paid over and above the sale consideration as a cost of Tubewell as per sale agreement dated 03.07.1984. The stamp papers used for the purpose of registration amounting ₹1,37,625/- and additional ₹20,000/- for tubewell comes to ₹1,57,625/- and the total amount is ₹12,58,550/-.

Learned counsel for the petitioner, at the time of arguments, showed the copies of the agreement to sell wherein it is specifically mentioned that tubewell charges are to be extra and if the sale deed was not executed on time, then the interest is to be paid extra. All these documents have been placed on the record. Otherwise also, as per the complainant, he has taken the entries from the audit report and nowhere in the complain, has stated as to what is the conclusion of the audit report, whether the amount has been embezzled. Nothing has been mentioned, whether audit report has been prepared after checking the other account books, ledgers etc. As per the complainant, entries are only qua the sale consideration shown in the sale deed and not for the total amount spent by the committee for purchase of the land. There is no mention regarding the stamp duty, which was purchased by the committee, regarding the amount paid extra to the tubewell owners and also qua interest etc. In the audit report, whatever pleaded in the complaint, there is also no mention regarding the agreements to sell and its conditions.

The motive to file the complain in question, as argued, is that the complainant's membership was terminated which was later on restored. The complainant retired in the year 2002 and after retirement, he filed this complaint because of the motive as the documents i.e. MoU, agreements, etc. have not been supplied to him by the committee.

The perusal of the complaint shows that this complaint has been filed by the complainant with the ulterior motive to harass the accused including present petitioners and filing of complaint is nothing but abuse of process of law and amounts to miscarriage of justice. The complainant has not relied upon the accounts maintained by the accused/committee to show any misappropriation. He has only relied upon the report which nowhere is discussing the records nor giving any finding that record is forged or fabricated.

In view of the above discussion, I find merit in all the petitions and the same are allowed. The criminal complaint No.445 of 2003 titled as 'R.N.Saxena vs. Capt. D.S.Giare and others', summoning order dated 25.10.2004 passed by learned JMIC, Gurgaon and all subsequent proceedings arising therefrom, are hereby quashed.

October 04, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**