

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32409-2011(O&M)

Date of Decision: February 17, 2016

Pushpa Devi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. Arun Kumar, AAG, Haryana,
for respondent No. 1.

Mr. Sanjeev Pandit, Advocate, and
Mr. Balbir Kumar Saini, Advocate,
for respondent No. 2.

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1. *Whether Reporters of local papers may be allowed to see the judgment? Yes*
2. *To be referred to the Reporters or not? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

NARESH KUMAR SANGHI, J (Oral)

Learned counsel for the State on instructions from Sub Inspector Harpal Singh of Police Station, Barara, District Ambala, submits that after filing of the charge-sheet (report under Section 173, Cr.P.C.), the case before learned Trial Court is fixed for consideration of the charges.

Prayer in this petition filed under Section 482, Cr.P.C., is for quashing of FIR No. 152, dated 14.09.2011 (Annexure P-5), for the offences punishable under Sections 120-B and 170, IPC, registered at Police Station Barara, District Ambala.

The notice of the said petition was issued and in pursuance thereof, State of Haryana as well as Mr. Sanjeev Pandit, Advocate, has appeared for respondent No. 1 and respondent No. 2/informant, respectively.

Mr. Harkesh Manuja, Advocate, learned counsel for the petitioner submits that even if the allegations levelled in the FIR are taken at their face value, then also the basic ingredients of Section 170, IPC, are not attracted qua the petitioner, Pushpa Devi, who is Ex-Sarpanch of Village Adhoya, District Ambala. He further contends that if the son of the petitioner had forged the resolution, then she cannot be booked for the fault of her son. It has also been contended that respondent No. 2/informant was inimical towards the petitioner and, as such, he had filed the wrong complaint before the authorities to book the petitioner in a false case. He further contends that the maximum sentence prescribed for the offence punishable under Section 170, IPC, is two years and, as such, the police had to complete the investigation within three years from the date of passing of the

resolution, which was allegedly forged by the son of the petitioner.

On the other hand, learned counsel for the State submits that after completion of the investigation, the charge-sheet (challan) was presented on 25.11.2014, against eleven persons, including the petitioner. During investigation, Sections 427 and 465 were also added. He further contends that learned counsel for the petitioner, at this stage, cannot embark on the FIR only. After completion of the investigation, the charge-sheet (challan) has been presented, therefore, the material collected during investigation has also to be looked into for consideration of the present petition. He points out that during investigation, it has emerged on record that in connivance with the petitioner, her son had forged not only one resolution, but there are multiple resolutions, which have been signed on behalf of the petitioner by her son. He further contends that the submission of learned counsel for the petitioner that the resolutions were allegedly forged in the year 2008, therefore, limitation as enshrined under Section 468, Cr.P.C., would start from that date, is not tenable. He further contends that the target date for cognizance would start from the day when it came to the notice of the authorities regarding the offences committed by the petitioner and her co-

accused. He also contends that learned Magistrate at the time of taking cognizance may also condone the delay, if any, in filing the charge-sheet (challan) as per provision in Section 473, Cr.P.C., and, hence, the arguments raised by learned counsel for the petitioner are not tenable.

Learned counsel for the informant/respondent No. 2, has also stepped into the shoes of learned counsel for the State and submitted that the whole record of the Gram Panchayat with the connivance of the petitioner was forged by her son and, as such, the ingredients of the offences punishable under Sections 170 read Section 120-B, and Sections 427 and 465, IPC, are clearly made out against her. He further points out that if the petitioner so advised may take recourse before learned Court below as per provisions contained in Section 239, Cr.P.C., since the charge-sheet (challan) has already been presented.

I have heard learned counsel for the parties and with their able assistance have gone through the material available on record.

It is not in dispute that the FIR was registered on 14.09.2011, while the charge-sheet (challan) was presented before learned Area Judicial Magistrate on 25.11.2014. By the time, three years as enshrined under Section 468, Cr.P.C., for

filing of the charge-sheet (challan) had already expired. The arguments of learned counsel for the petitioner was that the alleged resolution was forged in the year 2008, and at the same time, it had come to the notice of the informant/respondent No.2, that it was forged and, as such, the period for taking cognizance should be reckoned from the year 2008.

Learned counsel for the State, assisted by Mr. Sanjeev Pandit, Advocate, learned counsel for informant/respondent No. 2, has argued that it is not only one resolution which has been forged by the son of the petitioner, infact there are several documents of different dates, which were forged and it is not correct that it had come to the notice of the informant/respondent No. 2, on the same date on which the said documents were forged. It is the settled law that for reckoning the period for limitation as enshrined under Section 468, Cr.P.C., is to start from the date when it came to the notice of the authorities. It is apposite to mention here that even if it is assumed to be correct, then also the impugned FIR cannot be quashed, since learned Magistrate will look into the matter and decide as to whether he has to condone the delay in filing of the challan in the present case as per Section 473, Cr.P.C. So far as the argument that the gravamen of the offences punishable under Sections 170, 465 and 468, IPC,

are not attracted, is not tenable in the present case. It has emerged on record not only in the preliminary enquiry conducted by the officials, but during investigation as well that the son of the petitioner with her connivance had forged the record of the Gram Panchayat. The allegations levelled against the petitioner and her co-accused were found to be correct. After thorough investigation, the charge-sheet (challan) has been presented and if so advisable, the petitioner may take recourse before learned Court below as per provisions contained in Section 239, Cr.P.C., for redressal of her grievance. It is also settled law that disputed question of facts cannot be considered by this Court while exercising the jurisdiction under Section 482, Cr.P.C.

In the matter of **State rep. by the Inspector of Police, 'Q' Branch C.I.D., Tirunelveli Range, Tamil Nadu v. Mariya Anton Vijay**, 2015 (3) R.C.R. (Criminal) 576, Hon'ble the Supreme Court held that material/factual questions, which had a bearing over the issues involved in the case, could be answered one way or other on the basis of evidence to be adduced by the parties in the trial but not otherwise. It was further held that the High Court had no jurisdiction to appreciate the materials produced like an appellate court while hearing the petition under

Section 482 of the Code.

In para 10 of the judgment in the case of **Bhaskar Lal Sharma and another vs Monica and others**, 2014(1) RCR (Criminal) 987, while discussing the scope and ambit of the Court's power to quash a criminal proceeding, it was held as under:-

*“10. **The facts, as alleged, therefore will have to be proved which only be done in the course of a regular trial.** It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. **Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it.** This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.” (emphasis*

added)

In the matter of **Minakshi Bala vs Sudhir Kumar and others**, (1994) 4 SCC 142, Hon'ble the Supreme Court held as under:-

“3. Having carefully gone through the impugned order we are constrained to say that the entire approach of the High Court in dealing with the matter is patently wrong and opposed to settled principles of law. As earlier noticed, the petition under Section 482, Cr.P.C. was filed in the High Court at a stage when the police had already submitted charge-sheet on completion of investigation and when the petition came up for hearing a competent court had not only taken cognizance thereupon but framed charges also. In spite thereof, the High Court, surprisingly enough, proceeded to deal with the matter as if it was called upon to decide whether the FIR disclosed any offence and, for that matter, whether investigation should be permitted to continue. This will be evident from the following observations made by the High Court:-

“The principles relating to the quashing of the FIR at its initial stage were considered by

their Lordships of the Supreme Court in State of W.B. Vs Swapan Kumar Guha, (1982) 1 SCC 561. Their Lordships observed therein that once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing.'"

Even the parameters laid by Hon'ble the Supreme Court in the matter of State of Haryana and another v. Bhajan Lal and others AIR, 1992 SC 512, would not lead this Court to quash the impugned FIR.

Dismissed.

(NARESH KUMAR SANGHI)
JUDGE

February 17, 2016
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