

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

CRM-M No.38066 of 2015
Date of decision: 4th August, 2016

Ram Saran and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Salil Bali, Advocate for the petitioners.

FATEH DEEP SINGH, J

Through this petition by virtue of Section 482 Cr.P.C., the accused petitioners Ram Saran and Bhoop Singh who both happen to be Process Servers, have sought quashment of FIR No.96 dated 04.03.2015 under Sections 193/420/467/468/471/120-B IPC pertaining to Police Station Civil Line, Rohtak (Annexure P1) and all subsequent proceedings arising out of it.

Precise facts that are germane and which are necessitated to be highlighted are that a complaint was lodged by Sh.Shushil Kumar Gupta, learned District Judge, Rohtak wherein it was alleged that in HMA Case bearing No.4 of 2012; date of institution 07.04.2012; date of order 09.02.2015, one Amit of Rohtak who was the petitioner has sought dissolution of his marriage with respondent wife Saroj alias Geeta, the latter residing at Delhi. The petition for divorce was under Section 13 of

the Hindu Marriage Act. It was during the course of proceedings an ex-parte judgment and decree dated 03.10.2012 was passed. It was subsequent thereto an application under Order IX Rule 13 read with Section 151 CPC was moved by the wife seeking to set aside this ex-parte order against her, which was passed by the then Court of learned District Judge, Rohtak. It was during the course of earlier proceedings, notice of the petition was issued to the respondents for 16.07.2012 and which was taken by the petitioner dasti and it was returned back to the Court with the report of refusal made by Constable Ram Bhaj of Delhi police. Thereafter, fresh notice was issued by the Court for 21.08.2012 and subsequent thereto again two summons were taken dasti by the petitioner for effecting service upon the wife on which accused petitioner No.2 Bhoop Singh who was then working as Process Server in District Courts Dwarka, Delhi made report Ex.R5 and on which identification was made and the Civil Court during the course of hearing came to a conclusion that the petitioner in HMA case knowingly obtained dasti summons from the Nazarat Branch, District Court Dwarka, where entry No.730 dated 21.07.2012 Ex.R4 was made and which summons were entrusted to Bhoop Singh Process Server and in connivance with his co-accused Ram Saran Process Server, the accused made manipulation upon the process where the date was written in fact as 08.08.2012 on which the party was supposed to appear but after this

manipulation had made it as the date to be 21.08.2012 which was undertaken by Ram Saran co-accused petitioner No.1 and the latter having accepted it so during the course of proceedings in the Civil Court. The Court arrived at a conclusion that because of this connivance, fraud and fabrication, these two officials of the Court have connived with petitioner side and to facilitate passing of an ex-parte judgment and decree in favour of the husband petitioner and had knowingly fabricated record to facilitate passing of an ex-parte judgment and decree and thus, ordered registration of the present case.

After hearing learned counsel for the petitioner Mr.Salil Bali, Advocate and on perusal of the records.

Contentions of Mr.Salil Bali are that both the petitioners in the present case are Government officials being Process Servers and without due sanction in terms of Section 197 Cr.P.C. such a prosecution cannot be launched and the Court cannot take cognizance of the same without due sanction of the competent authority.

The Hon'ble Supreme Court appreciating the ambit of Section 482 Cr.P.C. in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, has laid down the following eventualities:

- (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.

Learned counsel for the petitioner could not convince this Court by any means how such a forgery and fabrication which has been done knowingly and intentionally and undertaken by these two Process Servers who are officials of the Court after entering into an arrangement with petitioner husband to facilitate wrongly passing of an ex-parte judgment and decree of divorce and which is done outside the Court and not when the document was before the Court are certainly a matter of serious consequence and undermining administration of justice as well.

While dealing with a similar situation in the case of **'Mahesh Chand Sharma v. State of UP and others' 2009(15) SCC**

519, their Lordships of Hon'ble the Supreme Court have considered the ambit of Section 195 Cr.P.C. and have drawn conclusion that the scheme of the two clauses of Section 195 the one that the offence should be such which has direct bearing and affects the functioning of discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a Court of justice; have given interpretation of the words to the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in Section 195 Cr.P.C. to be normally meaning commission of such an offence **after document has actually been produced or given in evidence in the Court and where the offence so enumerated has already been committed earlier and later-on the document is produced or given in evidence in Court**, does not appear to be in consonance with the scheme of Section 195 Cr.P.C. and therefore, it is in respect of a document subsequent to its production or giving in evidence in a proceeding in Court. But in the present case, the document was forged and fabricated outside the Court much more prior in point of time to its production before the Court and thus, applicability of Section 195 Cr.P.C. does not arise.

Looking from another angle, since the act so alleged to have been committed by these two public servants has no direct and immediate nexus with the conduct of official duty even the provisions of

Section 197 Cr.P.C. for prior sanction does not stand attracted as, such an illegality does not form part of the official duties. In the light of the same, no ground is made out for showing indulgence by this Court and the instant petition being wholly meritless stands dismissed in limine. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

August 4, 2016

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No