

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

**CRM-M No.20893 of 2013
Decided on: 12.09.2017**

Satinder Kaur Verma

....Petitioner

Versus

Indu Gupta

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. O.P. Gupta, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the criminal complaint No.579/I/08.11.2006 (Annexure P7) dated 08.11.2006 as well as the summoning order dated 27.11.2008 passed by the Additional Chief Judicial Magistrate, Faridabad whereby the petitioner has been summoned to face trial under Sections 465, 466, 468 and 472 of the Indian Penal Code, 1860 (in short 'IPC') and setting-aside the impugned order dated 28.01.2009 (Annexure P9) whereby the revision petition filed against the order dated 27.11.2008 has been dismissed by the Revisional Court.

It is submitted on behalf of the petitioner that the petitioner was working as a Lecturer in Hindi subject in Government Senior Secondary School, Rohtak and the respondent/complainant was also serving in the same school on the post of the Lecturer in Chemistry

subject. On 21.07.2003, the respondent/complainant filed a civil suit for declaration with consequential relief of mandatory injunction against the State Government alleging that she is senior to the petitioner and, therefore, she is entitled for appointment to the post of Principal prior to appointment of the petitioner on the said post. The civil suit was dismissed by the trial Court vide judgment and decree dated 30.10.2005 and later on, the petitioner was promoted as a Principal.

Subsequently, on 12.02.2004, a complaint was filed by the respondent/complainant against the petitioner under Sections 420, 468, 471, 469, 500, 109, 120, 166, 167, 170, 463 and 464 IPC and the same was sent to the police under Section 156(3) Cr.P.C. for registration of a criminal case vide order dated 12.02.2004. Thereafter, an FIR No.90 dated 08.03.2004 at Police Station Sector 7, Faridabad was registered against the petitioner. During the investigation of the said FIR, a cancellation report was prepared by the investigating agency and the same was submitted on 20.04.2004 (Annexure P3) and after the same was submitted before the trial Court, the respondent/complainant filed a protest petition which was treated as a complaint. The learned Judicial Magistrate vide its order dated 18.11.2009 after allowing the parties to lead their evidence in the shape of oral as well as documentary dismissed the said complaint vide its judgment dated 18.11.2009 (Annexure P5). Thereafter, the respondent preferred an appeal before the Lower Appellate Court which was dismissed by the Sessions Judge vide its order dated 21.01.2011. It is an admitted fact between the parties that this order became final *inter se* parties as no appeal or revision was filed before this Court challenging the same.

It is only, thereafter, the petitioner filed another criminal complaint i.e. the impugned complaint No.579/I dated 08.11.2006 before the trial Court. A perusal of the complaint dated 08.11.2006 (Annexure P7) show that the respondent/complainant has not disclosed the fact that on an earlier occasion on her complaint, the petitioner was booked in FIR No.90 dated 08.03.2004. It is also not disclosed that on investigation, the FIR was cancelled on 20.04.2004 and the protest petition filed by the respondent/complainant was also dismissed by the trial Court vide its judgment dated 18.11.2009.

Pursuant to filing of the complaint, the respondent/complainant appeared as a witness and submitted certain documents. After filing of the complaint, the respondent/complainant herself examined as CW1 and reiterated the allegations levelled in the complaint, she also examined CW2 – Moti Ram, a Clerk in the office of District Education Office, Faridabad, CW3 – Bhushan Kumar Ahuja and Virender Swaroop, Assistant in the D.E.O. office who produced the relevant record relating to the earned leave and service book of the petitioner.

The trial Court on the basis of the evidence lead by the respondent/complainant summoned the petitioner vide impugned order dated 27.11.2008.

The petitioner challenged the said order before the Revisional Court and the Revisional Court while dismissing the same vide order dated 29.01.2009 has held that while passing a summoning order, the trial Court is not required to look into the submissions made by the petitioner/accused as per the provisions of Section 210 Cr.P.C.,

however, the Revisional Court did not consider the fact that the protest petition filed by the respondent was already dismissed after holding a full length trial and the appeal filed against the same was also dismissed by the Court of Sessions.

Counsel for the petitioner has submitted that in fact it is a dispute regarding the *inter se* seniority between the petitioner and the respondent/complainant which has been given colour of criminal litigation and the petitioner is facing the agony of said criminal litigation since 2004 for the last about 13 years. In support of his arguments, counsel for the petitioner has referred to the judgments passed by the Hon'ble Supreme Court of India "**Anju Chaudhary vs State of U.P. and another**", 2013(1) RCR (Criminal) 686, "**Jatinder Singh vs Ranjit Kaur**", 2001(1) RCR (Criminal) 692, "**Pramatha Nath Talukdar vs Saroj Ranjan Sarkar**", 1962 AIR (SC) 876 and "**Shiv Singh and others vs Surbir Singh**", 2000(2) AICLR 809 to argue that the second complaint is not maintainable.

On the other hand, counsel for the respondent/complainant has submitted that the Revisional Court has rightly dismissed the revision preferred by the petitioner while observing that the complaint is maintainable in view of the provisions of Section 210 Cr.P.C. and, therefore, the present petition may be dismissed.

After hearing counsel for the parties, I find merit in the arguments advanced by counsel for the petitioner. Admittedly, when FIR No.90 dated 08.04.2004 was got registered by the respondent/complainant, the same was cancelled by the police by holding a detailed enquiry. Later on, the respondent filed a protest

petition which was treated as a complaint by the trial Court and after holding a full length trial and granting opportunity of leading evidence to the respective parties, the trial Court dismissed the complaint. This order was upheld by the Revisional Court and no further revision or appeal was filed before this Court and, therefore, the said litigation attained finality. It is a matter of record that while filing the second complaint, the respondent has intentionally and deliberately concealed the factum of earlier FIR, filing of the protest petition and especially the fact that the said protest petition was dismissed by the trial Court. In the complaint, no explanation has been given for filing the second complaint and no permission of the Court was taken in this regard. Even while leading the evidence, the respondent/complainant has not showed her *bona fide* by producing the copy of the FIR in the earlier case, the protest petition, the judgments passed by the trial Court as well as the Court of Sessions which could have enabled the trial Court in this case to *prima facie* hold whether evidence which has come on record is sufficient to summon the petitioner or not. Even, the Revisional Court while dismissing the revision filed by the petitioner vide impugned judgment dated 28.01.2009 has only observed that it was well within the right of the complainant to file a protest petition but has failed to take notice that in fact the protest petition was dismissed by the trial Court.

For the foregoing reasons and in view of the judgments cited by counsel for the petitioner, this petition is allowed, the criminal complaint No.579/I/08.11.2006 (Annexure P7) dated 08.11.2006, the summoning order dated 27.11.2008 and the impugned order dated

28.01.2009 (Annexure P9) are set-aside.

12.09.2017
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No