

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

**CRM-M-24554 of 2010 (O&M)
Date of Decision: January 10, 2017**

Jaswinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikas Bahl, Senior Advocate
with Mr. Manbir S. Batth, Advocate
for the petitioner.

Mr. Gurvir Sidhu, AAG, Punjab.

Mr. Sarju Puri, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

This is a petition preferred under Section 482 Cr.P.C. whereby, petitioner Jaswinder Kaur has sought to invoke the inherent jurisdiction of this Court, whereby she has sought quashing of FIR No.89 dated 26.06.2009 under Sections 420,467,468,471 and 120-B IPC registered at Police Station, City S.B.S. Nagar, District SBS Nagar and all subsequent proceedings arising therefrom.

Heard learned counsel for the parties and perused the records of the case. A complaint was made in writing by respondent No.2- Kapoor Singh addressed to the Director General of Police, Chandigarh which is well detailed in Annexure P/1. The brief allegations are that a civil suit was pending between parties in a judicial Court at Nawanshahar which was decided in favour of the present petitioner and subsequently the present complainant challenged the decree, wherein, findings of fraud was given by

the Court as to the land worth lacs of rupees. The appeal of the present petitioner against that very findings stood dismissed. The allegations as per the submissions of the two sides as well as records which needs to be highlighted are that Kapoor Singh-respondent No.2 claims to be owner of land measuring 19-20 acres situated in village Khurdan, Tehsil and District Nawanshahar and during the proceedings it is alleged that the present petitioner had produced some person who impersonated as Kapoor Singh, father of the petitioner and got a decree in her favour. Thus, from this all the two sides do not dither over the fact that it was during a judicial proceedings and during the trial of the civil suit this impersonation is alleged to have taken place in the Court of Law, whereby, Kapoor Singh is alleged to have been impersonated and statement favourable to the present petitioner was made. Section 195 of the Code of Criminal procedure (in short, 'the Code') deals with prosecution for contempt of lawful authority of public servants, especially, pertaining to offences against public justice relating to giving of evidence in a Court of law. The same is reproduced as follows:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

[\(ii\)](#) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, 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, or

[\(iii\)](#) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

[\(2\)](#) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

[\(3\)](#) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

[\(4\)](#) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

[\(a\)](#) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

[\(b\)](#) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

The very wording of these statutory provisions bars the Courts from taking cognizance of any such offences detailed therein which includes present offence as well except on the complaint in writing of that

Court or by such officer of the Court as the Court may authorise or some other Court to which the Court is subordinate and the definition assigned to the term 'Court' means a Civil/Revenue or Criminal Court and includes tribunal as well and it has been laid to rest by the Hon'ble Apex Court in the case of *C. Maniappan vs. State of Tamil Nadu AIR 2010 SC 3718* that the provisions of Section 195 of the Code are mandatory and for it procedure has been well enshrined by way of Section 340 of the Code. The same ensures the manner in which after holding preliminary enquiry the Court is to proceed with in such an eventuality and, thus, is more by way of mandatory characteristic and the very purpose and object is to bar taking cognizance of private complaint in regard to offence referred to in Section 195 of the Code and, therefore, cognizance of offences mentioned in Section 195 of the Code without a proper complaint is certainly is an illegality not curable even by resort to provisions of Section 465 of the Code. Though, learned State counsel with all fairness has conceded to at bar this proposition of law, however, learned counsel for respondent No.2 has sought to offer much resistance. Learned counsel for the petitioner has placed reliance on the law laid down in ratios *1992(3) RCR (Criminal) 545 Sardul Singh vs. State of Haryana; (2001) 9 SCC 742 B.K. Gupta vs. Damodar H. Bajaj and others 1983 (1) C.L.R.89 Jagdish Chander Singh vs. The State of Haryana;1983 (1) C.L.R. 91 Latkan Singh and another vs. The State of Punjab and others; 1999 (4) RCR (Criminal) 718 ;2006(3) R.C.R (Criminal) 308 Ram Biraji Devi and another vs. Umesh Kumar Singh and another;2006(3) RCR (Criminal) 793; 2006(1) RCR (Criminal) 162.UIB.* Thus, the manner in which the petitioner has been put

to trial by the Police on the complaint of respondent No.2 shows how the statutory provisions of law have been bypassed to attain a sinister design and for a motivated cause. No doubt, father and the daughter are fighting over property which the father claims was never bestowed upon the daughter, who claims to be otherwise. Though, it is well entrenched proposition of law and none from the two sides could show disagreement to the same that High Court should sparingly exercise its inherent powers only in exceptional circumstances to quash an FIR for such a proceedings but where the Court finds it expedient in the interest of justice it can certainly resort to such a provisions of law. Though, learned counsel for respondent No.2 has sought to place reliance on 2005(2) RCR (Criminal) 178 Iqbal Singh Marwah and another vs. Meenakshi Marwah and another; 2014(4) RCR (Criminal) 501 George Bhaktan vs. Rabindra Lele and others; 2014 (2) Law Herald 1180 Kishorebhai Gandubhai Pethani vs. State of Gujarat and another, however, the factual situation in the cited ratios is at disparity from the case before this Court as in the cited ratios it was a forged document which was forged outside the Court and tendered as evidence before the Court and which led to holding by the Larger Bench of the Hon'ble Supreme Court that if a document is forged and, thereafter, produced before the Court then an aggrieved party can file a case and bar of Section 195 Cr.P.C. does not come into play. However, it needs to be reiterated here that prima facie allegations in this case bear out that it was right in the Court the petitioner had produced a person who by impersonating as respondent No.2 had made a statement on oath before the Court of law and, thus, not much benefit can be derived out of the cited

ratios by the respondent side. Thus, in the totality of what has been detailed and discussed above it leads to one and the only conclusion that the only recourse available to the aggrieved party is to move the concerned Court praying initiation of proceedings and cannot have resort to directly lodging of an FIR as has come about in the present case.

In the light of the same, FIR No.89 dated 26.06.2009 under Sections 420,467,468,471 and 120-B IPC registered at Police Station, City S.B.S. Nagar, District SBS Nagar and all subsequent proceedings arising therefrom are hereby quashed. However, complainant-respondent No.2 is at liberty to move the concerned Court to have recourse under Sections 195/340 Cr.P.C, if so advised.

(FATEH DEEP SINGH)
JUDGE

January 10, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No