IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.25093 of 2014
Decided on: 05.09.2017

Ashok Mittal

....Petitioner

Versus

Bharat Singh and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Amit Kumar Jain, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the order dated 12.07.2012 (Annexure P2) passed by the trial Court vide which the criminal complaint No.130/1 of 2012 was dismissed as well as the order dated 13.11.2013 passed by the Revisional Court dismissing the revision filed against the order dated 12.07.2012.

It is submitted on behalf of the petitioner that the petitioner filed the aforesaid complaint under Sections 167, 170, 219, 387, 420, 473, 474 and 120-B of the Indian Penal Code (in short 'IPC') against the respondents/accused with the allegation that the complainant has a business dealings with accused No.2 for the sale and purchase of the tractors and on account of that business dispute a complaint under Section 138 of the Negotiable Instruments Act was filed but accused No.2 as a counter-blast to the said complaint also filed a criminal complaint under Sections 379, 420, 467, 468, 471 and 120-B IPC against the complainant with the allegations that two of his cheques were stolen. During the pendency of the said proceedings on

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

26.06.2005, accused No.3 who is a police official came to the house of the complainant and served him a notice under Section 160 of the Code of Criminal Procedure (in short 'Cr.P.C.'). On the notice, complaint number and date of appearance was not mentioned. It is further submitted that some illegal gratification was demanded from the complainant for settling the complaint with accused No.2. It is further submitted that subsequently, on registration of the FIR No.173 dated 18.06.2005 under Sections 379, 420, 467, 468, 471 and 120-B IPC, Police Station Shahabad, District Kurukshetra, the petitioner was arrested and accused Nos.1 to 3 in criminal conspiracy and in order to cheat the complainant and extract money prepared the aforesaid notice under Section 160 Cr.P.C. and, thus, have committed the offence. The complainant in support of his evidence appeared as CW1 and tendered the documents i.e. copy of notice as Ex.CW1/1, Telegram as Ex.CW1/2, letter to S.P. written by complainant as Ex.CW1/3 and a complaint made against one of the accused as Ex.CW1/4 apart from the copies of the FIR and the order vide which the bail was granted and closed the preliminary evidence. The learned trial Court vide its judgment dated 12.07.2012 dismissed the complaint and acquitted the respondents/accused. The petitioner thereafter, filed the revision before the Revisional Court which was also dismissed vide order dated 13.11.2013 and, thereafter, the present revision has been filed before this Court.

It is submitted that the petitioner was falsely implicated in FIR No.173 dated 18.06.2005 which stands quashed by this Court vide order dated 30.08.2011 and the respondents/accused in criminal

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

conspiracy with each other have prepared a bogus notice under Section 160 Cr.P.C. without giving any date and time served the same on the petitioner/complainant in order to extract money. It is further submitted that on account of registration of the FIR and not properly serving the notice, the petitioner was arrested and later on, granted bail.

The Revisional Court has made the following observations while dismissing the revision:-

> ***"8.*** *The contention of learned counsel for the revisionist-complainant that offence under Sections 167 and 170 IPC were made out from the statement of the complainant as well as the documents on record, is completely devoid of any merits, because a perusal of the trial Court record shows that the respondent-accused No.1 acted in compliance with the order passed by the learned Illaqua Magistrate, Kurukshetra, who by invoking the provisions of Section 156(3) Cr.P.C. had directed the Police of Police Station, Sahabad to register a case on the complaint of accused No.2 and to investigate the matter and accordingly a case bearing FIR No.173 dated 18.06.2005 was registered under Sections 379, 420, 467, 468, 471 and 120-B IPC against the revisionist-complainant. A perusal of photocopy of notice Ex.CW1/1 reveals that no doubt it was issued to the complainant-revisionist and his wife in connection with investigation of the aforesaid criminal case bearing FIR No.173 dated 18.06.2005 and there is a blank space for mentioning the date of their appearance, but with naked eye it is quite evident that some paper was put on the date mentioned in the notice and then its photocopy was prepared resulting into disappearance of the date. As per allegations in the complaint, the original notice was given to him, but in the process of snatching the same from him by the person who*

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

had brought the same, it got wrinkled and fell on the ground which was picked by him. In these circumstances, the revisionist-complainant could have produced the original notice, but failure to do so on his part itself reveals that he concealed the real facts. More so, from the material available on trial Court record, it is manifestly celar that there was no collusion amongst the respondents-accused as alleged by the revisionist-complainant, because the aforesaid FIR was registered at the behest of learned Illaqua Magistrate. Respondents-accused No.1 & 3 were public servant and there was no personation as they were holding the office as per their ranks and performing their duties to carry out the investigation.

9. *Nextly, the contention of learned counsel for the revisionist-complainant that the respondents-accused were liable to be summoned for commission of offence under Section 219 IPC also does not hold good. Section 291 IPC enshrines the provision that in case any public servant maliciously or corruptly makes or pronounces at any stage of judicial proceedings any report or order contrary to the law, he is liable to be punished. However, a perusal of the trial Court record would reveal that there was no prima facie case against the accused No.1 & 3 as they were not acting in judicial proceedings, rather notice under Section 160 Cr.P.C. was sent to the revisionist-complainant and his wife in connection with investigation of FIR No.173 dated 18.06.2005 before submission of the final report under Section 173 Cr.P.C. in the said FIR. As per provisions of Section 160 Cr.P.C. a Police Officer is empowered to acquire the attendance of the witnesses in the investigation of a case. Since, the aforesaid FIR was registered against the complainant-revisionist, the Investigating Officer was well withing his rights to give him notice under Section 160 Cr.P.C. for the purpose of his*

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

interrogatin. Even otherwise, a perusal of the statement of the revisionist-complainant would reveal that on 22.07.2005 Police Officials had visited his house and asked him to come to the Police Post for his interrogation, which means that the police had made efforts to join him in the investigation in said case. The observation of the learned trial Court that from the sequence of events it was clear that respondents-accused No.1 & 3 acted to investigate into the matter as the aforesaid FIR was registered against the revisionist-complainant by sending complaint of respondent-accused No.2 under Section 156(3) Cr.P.C. to the Police Station are in accordance with the procedural aspects.

10. *The findings of the learned lower Court that there was no evidence to issue process against the accused even under Sections 473, 474 and 120-B IPC are also based on the material available on record. A perusal of the trial Court would reveal that there was no evidence regarding cheating or forgery on the part of accused as none of them was found in possession of any counterfeit seals or any forged document with an intention to use it as genuine. From the oral as well as documentary evidence on trial Court record, it is manifestly clear that no ingredient of Sections 420, 120-B and 387 IPC was made out as none of the accused compelled the revisionist-complainant fraudulently to handover any property or valuable security sealed or signed by him. There is no evidence on the record that there was any criminal conspiracy on the part of all the accused.*

11. *Reappraisal of the trial Court record shows that the complainant-revisionist and respondent-accused No.2, who had dealings with each other for sale and pruchase of tractors, were not having cordial relations as the latter had got registered the aforesaid FIR against the former in*

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

Police Station, Sahabad, which and its subsequent proceedings were quashed by the Hon'ble High Court. In these circumstances false complicity of respondent-accused No.2 in this complaint case cannot be ruled out.

12. *The case reported as* ***Shivjee Singh vs Natendra Tiwary and others, 2010(3) RCR (Criminal) 466 (S.C.)*** *relied upon by the learned counsel for the revisionist-complainant does not help him being different from the facts and circumstances of the instant case.*

13. *It is well settled proposition of law that summoning of the accused is a serious matter. The Hon'ble Apex Court in case* ***M/s Pepsi Foods Ltd. vs Special Judicial Magistrate, 1997(4) RCR (Criminal) 761 (SC)*** *held as under:*

"*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any other accused.****"***

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

> ***14.*** *Following the above observations of the Hon'ble Apex Court, our own Hon'ble High Court in case* ***Arun Jha and another vs State of Haryana and another, 2006(1) RCR (Criminal) 300 (P&H),*** *held as under:*
>
> ***"****Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations.****"***

After hearing counsel for the petitioner, I do not find any merit in the petition. It is a matter of record that the Illaqa Magistrate while invoking the provisions of Section 156(3) Cr.P.C. has directed the police to register a case on the complaint of accused No.2 and investigate the matter and accordingly, the FIR No.173 dated 18.06.2005 was registered against the present petitioner. A perusal of the notice issued under Section 160 Cr.P.C. which is Ex.CW1/1 though, shows that it was issued to the complainant/petitioner and his wife in connection with the aforesaid FIR No.173 but in the notice, date of appearance before the concerned authority was not mentioned. The Courts below have recorded a finding of fact that a bare perusal of the

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh

notice which is a photocopy of the notice issued under Section 160 Cr.P.C., at the place where the date was mentioned, after putting some paper, the photocopy of the same was prepared which resulted into disappearance of the date. The Courts below have, thus, held that the petitioner has not intentionally produced the original notice and has tried to create false evidence. Apparently, the respondents/accused Nos.1 and 3 in exercise of their power, being police officials as per the directions issued by the concerned Court under Section 156(3) Cr.P.C. to register an FIR, were investigating the matter and, therefore, have not committed any offence.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

05.09.2017
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No

Mohd. Yakub
2017.09.13 16:35
I attest to the accuracy and
authenticity of this document
Chandigarh