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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29668-2016 [O&M]

Date of Decision:- November 30, 2017

Babita

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. G.S.Punia, Senior Advocate,
with Mr. P.S.Punia, Advocate,
for the petitioner .

Mr. Sidakmeet Sandhu, AAG, Punjab

Mr. Akshit Aggarwal, Advocate, for
Mr. Sherry K. Singla, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint and the order, dated 2.6.2016 (Annexure P/1 colly.) and order dated 18.7.2016 (Annexure P/2) framing of charge and charge (Annexure P/2 Colly) as also all subsequent proceedings arising therefrom.

2 Facts relevant for the purpose of decision of this petition; that Sagir Hussain, respondent No. 3 herein, had filed a Complaint under Sections 323, 504, 506, 452 and 34 of Indian Penal Code (**IPC**) wherein the present petitioner and her mother were summoned as accused. During the proceedings, a complaint was filed under Section 340 of Code

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of Criminal Procedure (for short, "**the Code**") on the allegation that petitioner, Babita left India for United Kingdom (UK) on 5.6.2002 from Raja Sansi Airport, Amritsar and returned on 19.9.2002 on valid passport No. B2508378. Allegations are that on 3.10.2002, the petitioner made a false statement that she was unable to attend the Court on 13.08.2002 as she was ill, whereas in fact, she was in UK on 13.8.2002. Thereafter false affidavit was filed on 8.1.2003 regarding her illness and on these allegations, the petitioners allegedly committed offence under Section 193 IPC.

3. On proceeding of application under Section 340 of the Code, notice was given to the petitioner and she submitted her reply and the enquiry was conducted by Judicial Magistrate Ist Class, Malerkotla and learned Magistrate returned the finding that on the basis of statement of officials from Airport Authority and documentary evidence, it was established that false affidavit was filed by present petitioner, Babita and ordered for filing of complaint under Section 177 and 181 IPC before Illaqa Magistrate/Duty Magistrate as per provisions of Section 195 of the Code. Thereafter, proceedings were transferred to the Court of Sub Divisional Judicial Magistrate, Malerkotla and charge was framed on 30.3.2012 (Annexure P/6).

4. Petitioner filed an application for dropping the proceedings and for discharge and that application was disposed of with the directions to file a complaint before the Illaqa Magistrate, but no complaint was filed by Sagir Hussain or any competent person as required under Section 195 of the Code. That way, limitation had expired. The charge under Section

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177 and 181 IPC was framed without taking into consideration the fact that the proceedings were time-barred as per provisions of Section 468 of the Code.

5. Learned senior counsel representing the petitioner contended that as per provisions of Section 195 (1) of the Code, no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC except on a complaint in writing of a public servant concerned or some other public servant to whom he is administratively subordinate. As per the allegations, false affidavit was filed before the Court of Sub Divisional Judicial Magistrate, Malerkotla on 8.1.2003 and as per above referred provisions, only Sub Divisional Judicial Magistrate, Malerkotla was competent to file a complaint, whereas the complaint has been filed by Judicial Magistrate Ist Class, Malerkotla. As per provisions of Section 12 of the Code, Sub Divisional Judicial Magistrate, Malerkotla is higher in hierarchy as he has supervisory powers and control over the Judicial Magistrate. As such, the complaint filed by Judicial Magistrate Ist Class is not competent.

6. Contention was also raised by learned senior counsel representing the petitioner that order for filing a false affidavit was passed on 3.7.2010. For commission of offence punishable under Section 177 IPC, the sentence provided is upto six months and as per provisions of Section 181 IPC, the sentence provided is three years. To sum-up, learned senior counsel representing the petitioner submitted that the entire proceedings are liable to be quashed firstly, because the complaint has not been filed by competent person as required under Section 195 of the

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Code and secondly, the same has not been filed within prescribed period under the law and proceedings are barred under Section 468 of the Code. As such, the orders are liable to be quashed.

7. Learned State counsel as well as learned counsel representing the complainant submitted that learned Courts below have already taken note of all these aspects while passing the orders and keeping in view the seriousness of the offence, the impugned orders were passed and there are no ground to set-aside the same.

8. Having considered the facts and arguments raised by learned counsel for the parties, this Court is of the considered view that there is no dispute regarding the allegation and facts that false affidavit was filed. However, the present petition has been filed mainly on legal grounds that the complaint has not been filed by the competent person.

9. On 3.7.2010, Judicial Magistrate Ist Class, Malerkotla passed the order (Annexure P/5) and relevant part of the same is being extracted below:-

“.... respondent has committed an offence punishable under Section 177/181 IPC and complaint accordingly be filed before the Illaqa Magistrate/Duty Magistrate as per provision of Section 195 Cr.P.C. ...”

10. However, no complaint was filed in the Court within the prescribed period and on 22.1.2016, Sub Divisional Judicial Magistrate, Malerkotla passed the order to file a complaint in compliance of order dated 3.7.2010. At that time, it was observed that the complaint has not been prepared inadvertently and no proceedings were taken up by Illaqa Magistrate/Duty Magistrate. However, the relevant portion of order dated

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22.1.2016 (Annexure P/9) passed by Sub Divisional Judicial Magistrate, Malerkotla is extracted below:-

“... As there is no complaint in the present case which was required to be prepared after conclusion of proceedings under Section 340 Cr.P.C. so, in view of these circumstances, file is ordered to be sent to the Id. Successor Court of Sh. D.K.Chaudhary, the then JMJC Malerkotla i.e. Mrs. Rajbeer Kaur, PCS, JMJC, Malerkotla with the request to prepare the complaint in the present case and send the same for further proceedings in the present case. Ahlmad is directed to send the file complete in all respect to the Court of Id. Successor Court of Sh. D.K.Chaudhary, the then JMJC Malerkotla on or before 15.02.2016....”

11. It is not disputed that the alleged offences are under Sections 177 and 181 IPC. Even charge has been framed vide impugned order for the said offences.

12. Section 468 of the Code deals with period of limitation prescribed for taking cognizance of the offence and for ready reference, Section 468 of the Code is extracted below :-

“468. Bar to taking cognizance after lapse of the period of limitation.

(1). Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2). The period of limitation shall be-

- (a). six months, if the offence is punishable with fine only
- (b). one year, if the offence is punishable with imprisonment for a term not exceeding one year;

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(c). three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3). For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

13. The above provisions clearly reveal that for the offence punishable under Section 177 IPC, a complaint was to be filed within one year as the sentence provided is upto six months and for the offence punishable under Section 181 IPC, the limitation period was three years, but cognizance had not been taken till 2016 and the Court applied its judicious mind on 18.7.2016 vide order Annexure P/2 when the charge was ordered to be framed.

14. The issue regarding taking of judicial cognizance by a Court was before Hon`ble Supreme Court in **Narayandas Bhagwandas Madhavdas Vs. State of West Bengal, AIR 1959 SC 1118**, and it was observed by the Apex Court that the Court is normally said to have taken cognizance of the offence, when the Magistrate applies his mind for proceeding under Section 200 of the Code and the subsequent Sections of Chapter XVI of the Code or under Section 204 of Chapter XVII of the Code. That way, the cognizance in this case was taken on 18.7.2016 which was barred as per provisions of Section 468 of the Code, but the Court below has not considered these aspects while passing the impugned orders dated 2.6.2016 (Annexure P/1) and 18.7.2016

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(Annexure P/2). As such, the complaint dated 2.6.2016 (Annexure P/1) filed by Judicial Magistrate Ist Class, Malerkotla and the impugned orders and all proceedings arising out of the same are set-aside.

15. Resultantly, the present petition stands allowed in the above terms.

November 30, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes/No
Yes/No