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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4549-2015

Date of Decision:- September 18, 2017

Gurmeet Kaur Petitioner

Versus

Devender Gupta Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. S.S.Narula, Advocate,
for the petitioner.

Mr. P.K.Chugh, Advocate,
for the respondent.

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SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure (for short “the Code”) is for quashing of Complaint No.1383 dated 13.03.2010/11.11.2011 (Annexure P/1) titled **Devender Gupta Vs. Director, Town and Country Planning and others** filed by respondent Devender Gupta, under Sections 323, 452, 506, 427, 384, 440, 166, 148, 149 read with Section 34 of Indian Penal Code (IPC) along with all consequential proceedings and the impugned order, dated 20.11.2014, (Annexure P/2) passed by learned Judicial Magistrate Ist Class, Gurgaon summoning the present petitioner and two others for the offences

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punishable under Sections 323, 452, 506, 427, 384, 440, 166 read with Section 120-B IPC.

2. Facts relevant for the purpose of decision of the present petition; that originally, a complaint was filed by complainant, namely, Devender Gupta, respondent herein, under Sections 323, 452, 506, 427, 384, 440, 166, 148, 149 read with Section 34 IPC against the present petitioner, namely, Gurmeet Kaur, District Town Planner (Enforcement) and 12 others averring therein that the complainant is a founder and Chairman of Anupama College of Engineering and Anupama Institute of Management, both situated in District Gurgaon. Both the institutions are approved by All India Council for Technology Education and are being run since 1996. On 24.09.2006, the petitioner had forcibly entered the above mentioned college campus in her official Jeep alongwith some other officials and started creating chaos and had taken away college telephone No.2241615 forcibly. The college officials resisted to that, but the petitioner refused to oblige. The Director of the college immediately lodged a complaint with the Police Post Bilaspur regarding the said incident, but the police did not take any action. The complainant met the accused personally at her office on 10.11.2006 along with Sh. Khazan Singh, Advocate and the petitioner asked for building map/plan and the complainant had shown all the documents. Subsequently, Mahipal demanded ₹20.00 lacs as bribe and the complainant refused to oblige.

3. On 5.5.2007, at about 9.45 AM, the present petitioner forcibly entered the college premises and also brought adequate number of police personnel along with heavy machinery and equipments for demolition and

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throw out the staff and students out of the campus after giving them merciless beating and started demolishing the existing building despite the fact that the building was constructed much prior to the year 2005 when the land was in no control zone. The said action on the part of the petitioner was with *mala fide* intention because of non-payment of bribe. One FIR was registered on the instructions of accused No. 5 and on investigation, the accused was found innocent and case was found to be false. One writ petition was also filed bearing CWP No.16184 of 2001 and this Court appointed a Local Commissioner to inspect the college campus and the Local Commissioner in his report dated 18.10.2007 mentioned that the existing building was constructed before the year 2004 and the notification of controlled area came into force with effect from 05.08.2005 whereas, the building was constructed much prior to the said date and as such, the notification was not applicable.

4. During preliminary evidence, the complainant examined three witnesses, namely, Naresh Kumar (CW-1), Mahavir Singh, Clerk (CW-2) and himself as CW-3 and on the basis of statements of these witnesses and documentary evidence, Ex. PA to PZ and Ex. PAA to Ex. PDD, the Court below passed the summoning order dated 20.11.2014 (Annexure P/2) against the present petitioner and two more accused under Sections 323, 452, 506, 427, 384, 440, 166 read with Section 120-B IPC.

5. Learned counsel for the petitioner contended that the complaint, Annexure P/1 and the summoning order, Annexure P/2 are misuse of the process of law and the same be quashed while invoking the inherent powers under Section 482 of the Code.

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6. It was further contended by learned counsel for the petitioner that illegal construction was raised by the complainant-respondent and the same was pulled-down after following due process of law. The area where the institutes of the complainant were set-up was declared as 'controlled area' vide notification dated 5.8.2005 (Annexure P/4). After the said declaration, physical survey was carried out through the District Town Planner. The complainant was not entitled to raise any further construction beyond the partly constructed building. Show cause notice under Section 12(2) of the Punjab Scheduled Roads Act was issued. However, instead of seeking permission to raise construction from the competent authority, the complainant continued to raise unauthorized construction. The complainant was directed to restore the building and land to its original stage and a notice dated 9.10.2006 (Annexure P/6) was sent. As the said directions were not complied with, the petitioner by taking support and help of the district Administration as also the police, demolished the construction raised by the complainant-respondent. The present complaint has been filed just to harass the present petitioner, who was discharging her duties as a public servant.

7. On the ground of maintainability of the present petition seeking quashing of the complainant, Annexure P/1 and the summoning order, Annexure P/2, learned counsel for the petitioner placed reliance upon the judgments of Supreme Court in **Prabhu Chawla Vs. State of Rajasthan and another, 2016 (4) R.C.R. (Criminal) 270** wherein scope and ambit of Section 482 vis-a-vis Section 397 of the Code was discussed and Hon`ble Apex Court observed that powers under Section 482 of the Code

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begin with a non-obstante clause and there can be no total ban on the exercise of such course and jurisdiction. The limitation is self-restraint, nothing more. On the same point, reliance was also placed on the judgments from Hon`ble Supreme Court in **M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1997(4) R.C.R. (Criminal) 761; Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others, 2007 (4) R.C.R. (Criminal) 548; National Bank of Oman Vs. Barakara Abdul Aziz and Anr., 2013 (2) SCC 488 and State of Orissa through Kumar Raghvendra Singh and Ors. Vs. Ganesh Chandra Jew, 2004(2) R.C.R. (Criminal) 663.**

8. Learned counsel for the respondent, while referring to counter affidavit filed by the respondent, contended that the facts detailed in the petition are incorrect. In fact, the given facts make out purely a civil wrong or purely a criminal offence or civil wrong as also a criminal offence. The test is whether the allegations in the complaint disclose a criminal offence or not. On this point, reliance was placed upon the judgment from Hon`ble Supreme Court in **Indian Oil Corporation Vs. NEPC India Ltd., (2006) 6 SCC 736.** Reliance was also placed upon decision from Hon`ble Apex Court in **Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460.**

9. Having considered the matter in its entirety, this Court is of the considered view that as regards to the maintainability of the petition, there is no dispute that as per provisions of Section 482 of the Code, the Court has ample powers to quash the proceedings including filing of complaint and the summoning order, if the act amounts to mis-carriage of justice. Such a view as taken by Hon`ble Apex Court in **Prabhu Chawla's case**

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(supra). In the light of this, the facts and entire back-ground of the present case is required to be looked into.

10. As regard to maintainability of the present petition under Section 482 of the Code though, there is no limit on the powers of the Court under Section 482 of the Code, but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings should be exercised very sparingly in the rarest of rare cases. Such a view was taken by Hon`ble Apex Court in **Madhu Limaye Vs. The State of Maharashtra**, AIR 1978 SC 47, wherein Hon`ble Supreme Court observed as under:-

“9. At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :-

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party ;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

11. The Court must apply the test as to whether the uncontroverted allegations as made out from the record of the case and the documents submitted thereon establish the offence or not. If the Court has to observe that the matter requires examination of evidence and material on record to determine whether there is sufficient material on the basis of which, the

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case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they would constitute an offence and if so, is it an abuse of the process of Court leading to injustice. If full-fledged enquiry is required to appreciate the evidence collected, then powers under Section 482 of the Code should not be exercised and in the present case, no case is made out to quash the proceedings.

12. As per the facts and material before the Court, the matter in controversy relates back to the period, when the construction was raised long back. Admittedly, the construction of college building was raised long back and even prior to the issuance of notification, Annexure P/4. The demolition has been carried out and version of the petitioner is that due process of law was adopted and only unauthorized construction was demolished. The entire matter revolves around appreciation of evidence as to whether illegal construction alone was demolished or the construction which was in existence prior to issuance of notification (Annexure P/4) was also demolished and in that process, the petitioner exceeded her limits as a public servant even. The allegations against the present petitioner and her co-accused are of raising of demand of bribe and the learned Magistrate has passed the order, Annexure P/2, after considering the statements of three witnesses including documentary evidence available on the file.

13. Law on the point is well settled that at the time of summoning of accused, the Court is to see *prima facie* evidence and not to go in the detailed enquiry. Contention was also raised that the petitioner was discharging her duties as public servant, but needless to mention that

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doing illegal act by a public servant would not require sanction under Section 197 of the Code. Such a view as taken by this a Coordinate Bench of this Court in **N.K.Jain Vs. C.B.I. Through Superintendent of Police, Chandigarh, 2000(4) R.C.R. (Criminal) 789.** It shall be matter of defence alone, whether the petitioner was discharging her duties as a public servant or she had exceeded her jurisdiction while doing so. But, at this stage while deciding petition under Section 482 of the Code, there is no such material before the Court to record the observation whether the act done by the petitioner was in discharge of her duties as public servant or she has exceeded the jurisdiction and that can be decided by the Court below only after considering the entire material and evidence available on the file.

14. In view the above, the present petition under Section 482 Cr.P.C., is without any merit and the same is not maintainable as well and stands dismissed as such.

September 18, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes