

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-547-MA-2014 (O&M)
Date of decision: 01.11.2018

Suresh Kumar

... Appellant

Vs.

Mohinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mange Ram Sharma, Advocate
for the appellant.

Mr. V.B. Aggarwal, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is to set aside the judgment dated 31.01.2014 passed by the trial Court, vide which the complaint filed by the appellant under Sections 166, 171, 477 of the Indian Penal Code (for short 'IPC') was dismissed.

Brief facts of the case are that a complaint was filed by the complainant on 29.07.2010 with the allegations that complainant was resident of Village Siwan, Tehsil and District Kaithal and was a registered voter in the Electoral Roll of Gram Panchayat, Siwan at Sr. No.391 of Ward No.1 Siwan and his name was entered at Sr. No.354 in the Voters' List. As per the provisions of Haryana Panchayati Raj Act, 1994 (for short 'Act of 1994'), the elections of Gram Panchayat were announced by the District Electoral Officer/Deputy Commissioner, Kaithal vide notice dated 21.05.2010 and

accused No.1 was appointed as Returning Officer for Block Siwan. Accused No.2-respondent herein, was appointed as Presiding Officer/A.P.O. by Returning Officer to receive nomination papers and to complete the process of the Election of Gram Panchayat, Siwan, including the election of Panch of Ward No.1 Village Siwan. The complainant wanted to contest the election for the post of Panch of Ward No.1 Gram Panchayat, Siwan. On 24.05.2010, the complainant had submitted his duly filled-in nomination papers within the prescribed time. Accused No.1 had deputed the respondent to receive the nomination papers and the complainant submitted nomination papers to the respondent. In this regard, complainant also deposited a security amount of Rs.40/- with the respondent vide receipt No.0119357 dated 24.05.2010, duly signed by the respondent. The scrutiny of nomination papers was to be done on 25.05.2010 from 10.00 am to 4.00 pm. The election symbols were to be allotted on 27.05.2010 and list of eligible candidates was to be published on 27.05.2010. On 27.05.2010, when the complainant went to the office of Returning Officer at about 3.00 pm for obtaining symbol for the election for the post of Panch of Ward No.1 Siwan, the respondent told him that his nomination papers were not available with him. When the complainant insisted the respondent to search out his nomination papers, then the complainant was asked to produce any proof regarding filing of nomination papers. Then the complainant had shown the receipt of security deposit to the respondent. The respondent took the same and after going through it, torn the same and threw the pieces with anger. The respondent also abused the complainant, assaulted him and told him bluntly that his nomination papers had been lost. The complainant then collected the pieces of receipt torn by the respondent and requested both the accused to search out

his nomination form and allot him a symbol. Both the accused flatly refused to allot him election symbol and to search out his nomination form. Thereafter, complainant came to the office of Deputy Commissioner, Kaithal and apprised the Deputy Commissioner, Kaithal with the circumstances by moving an application on 27.05.2010 in the evening. The said application was sent to BDPO, Guhla vide dispatch No.155/CEA dated 28.05.2010. It is alleged that both the accused in collusion with each other and other candidates, who were contesting the election for the post of Panch, Ward No.1, Gram Panchayat, Siwan, have fraudulently destroyed the nomination form of the complainant and removed the name of the complainant from the list of contesting candidates. The present complaint was filed that action be taken against the accused persons under the provisions of Indian Penal Code and Representation of Peoples Act, 1951 (for short 'Act of 1951').

After the complainant led preliminary evidence, the trial Court summoned only accused No.2-respondent to face trial for the offence punishable under Section 136(i)(a)(b) and sub Section 2 of the Act of 1951 vide order dated 29.02.2012. Thereafter, the complainant examined himself as CW1, Miyan Singh as CW2, D.K. Bhola, Advocate as CW3, Ramphal Singla as CW4 and Ashok Kumar, Clerk as CW5 and tendered into evidence Ex.C1 to Ex.C7 and Mark A-copy of voters list. The charge was framed against the accused under sub Section 2(a) of the Act of 1951, to which he did not plead guilty and claimed trial.

The accused in his statement under Section 313 Cr.P.C. denied all the incriminating evidence led against him and pleaded false implication in the case. However, no evidence was led by the accused in his defence.

The trial Court, after hearing counsel for the parties, vide its judgment dated 31.01.2014, passed the following order: -

“I have heard the learned counsel for the complainant and learned defence counsel and have gone through the case file carefully.

The learned counsel for the complainant has submitted that on 21.5.2010 the election for the post of Panch was declared vide Ex.C3 for Gram Panchayat, Siwan. In pursuance of the same the complainant submitted his nomination form with the accused on 24.5.2010 and also deposited security fee vide receipt Ex.C4. On 27.5.2010 the election symbols were to be allotted, when complainant reached the office of accused to obtain symbol then he was told by the accused that his nomination form has been lost. At this complainant requested the accused to find out his nomination form, but the accused refused and asked for the proof that the complainant had in fact filed the nomination form. When the complainant showed receipt Ex.C4 to the accused, the accused torn it and threw it away. The accused further abused the complainant and also assaulted him. It is submitted by learned counsel for the complainant that the accused had deliberately destroyed/removed the nomination form of the complainant. Thus, he has committed offence punishable under Section 136(i) (a) (b) read with Sub Section 2(a) of Representation of People Act, 1951. It is submitted that in order to prove the allegations complainant has got examined five witnesses, who has duly corroborated the version of the complainant and proved the records pertaining to election process and appointment of accused as APO.

On the other hand, it was argued by learned defence counsel that even if the allegations levelled by the complainant are taken to be true, no offence under the provisions of Representation of People Act is made out as the ibid act is meant for regulating the election processes pertaining to parliamentary assembly and council constituencies within the District concerned. It has no application with regard to the election process relating to the

Gram Panchayat, Elections. It is submitted that the offences relating to Gram Panchayat elections are specifically enumerated in the Haryana Panchayati Raj Act, 1994 and there is a clear bar to file complaint against any Returning Officer or Presiding Officer or any other official employed on official duty in connection with Election except on a complaint made by or under the authority of State Election Commission. With these submissions while referring to the relevant provisions of Haryana Panchayati Raj Act, 1994, it is prayed that no offence is made out and the present complaint is not maintainable.

In the present complaint, the point for determination is that whether the accused after receiving the nomination form of the complainant for the post of Panch on 24.5.2010 fraudulently destroyed the same being the Assistant Returning Officer and as such committed offence under Section 136(i) (a) (b) of Sub Section 2(a) of Representation of People Act, 1951.

At the very outset, it is pertinent to decide the maintainability of the present complaint. As per complainant, the accused has committed offence punishable under Representation of People Act, 1951. The preamble of Representation of People Act reads as

“An Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, (the manner of filling seats in the Council of States to be filled by representatives of Union territories), and matters connected therewith”.

From the bare perusal of the preamble appended to The Representation of People Act, 1950, it is clear that the act was enacted for regulating the process of elections pertaining to the Parliament and the State Legislatures. Thus, the act has no applicability in regard to the process involving the elections for Gram Panchayat.

In State of Haryana, in pursuance to the Constitution (73rd amendment) Act, 1992, which came into force w.e.f. 24.4.1993, Punjab Gram Panchayat Act, 1952 was repealed and a New Act namely "The Haryana Panchayati Raj Act, 1994 was enacted in accordance with the provisions of Constitution (73rd Amendment) Act, 1992. The Haryana Panchayati Raj Act, 1994, inter alia, provides for the election of Sarpanches, Panches and members of Panchayat Samitis and Zila Parishads by direct election by voters of the Wards to be constituted in Gram Panchayat, Panchayat Samiti and Zila Parishad for the purpose of election. Thus, in regard to the elections of Gram Panchayats and the offences with regard to the said election process are to be governed by the provisions of Haryana Panchayati Raj Act, 1994.

In the present complaint, the allegations are that accused Mohinder Singh being the Assistant Presiding Officer deliberately and fraudulently destroyed the nominations paper of the complainant, which was filed by the complainant on 24.5.2010 for the post of Panch of Ward No.1 village Siwan. In regard to the said offence, Section 187 of Haryana Panchayati Raj Act, 1994 provides:-

- (1) A person shall be guilty of an offence, if, at any election he-*
- (a) fraudulently defaces or destroys any nomination paper; or*
 - (b) fraudulently defaces, destroys or removes any lists, notice or other document affixed by or under the authority of a returning officer; or*
 - (c) fraudulently defaces or destroys any ballot paper or the official mark on any ballot paper; or*
 - (d) without due authority supplies any ballot paper to any person; or*
 - (e) fraudulently puts into any ballot box anything other than the ballot paper which he is not authorised by law to be put in ; or*
 - (f) without due authority destroys, takes, opens or otherwise interferes with any ballot papers then in use for the purpose of the election; or*

(g) fraudulently or without the authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of such acts.

(2) Any person guilty of an offence under this section shall-

(a) If he is returning officer or a presiding officer at a polling station or any other officer or official employed on official duty in connection with the election, on conviction, be punished with imprisonment for a terms which may extend to two years or with fine of rupees one thousand or with both;

(b) if he is any other person, on conviction be punished with imprisonment for a terms which may extend to six months or with fine of five hundred rupees or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

(4) An offence punishable under clause (b) of Sub Section (2) shall be cognizable.

Thus, when Section 187 of Haryana Panchayati Raj Act provides for the offence alleged by the complainant specifically, in the considered opinion of this court Representation of People Act, 1951 has no application. The accused had been summoned for offence under Section 136(i) (a) (b) punishable Sub Section 2 of Representation of People Act, 1951 vide order dated 29.2.2012. Notice of accusation was served upon him on 6.7.2012 for the commission of offence punishable under above mentioned provisions of Representation of People Act, 1951. When there is a specific provision in the Haryana Panchayati Raj Act, the present complaint under Representation of People Act, 1951 is misconceived and thus not maintainable. The complainant may explore other legal recourse with regard his complaint, if the law

so permits him.

In view of above discussion, when the complaint itself is not maintainable then accused cannot be punished in view of the same. Resultantly, the accused is hereby acquitted of the notice of accusation served upon him. His bail bonds and surety bonds stand discharged.”

Learned counsel for the appellant has argued that by mentioning wrong Sections i.e. instead of filing a complaint under Section 185 of the Haryana Panchayati Raj Act, 1994 (for short 'Act of 1994'), mere fact that the same has been filed under Section 136 (i)(a)(b) and sub Section 2 of the Act of 1951, will not change the nature of offence committed by the respondent and the said mistake could be rectified by the trial Court, by taking suo motu notice that the respondent has committed an offence punishable under Sections 185 & 187 of the Act of 1994. It is further argued that from the evidence led by the appellant, it has come on record that he had filed the nomination form, which was lost by the accused persons and when the appellant asked for the explanation, the accused persons refused and when the receipt Ex.C4 was shown to them, the same was torn away and thus he committed the offence.

In reply, learned counsel for the respondent has argued that the complaint in the present form was not maintainable. It is further submitted that as per provisions of Section 185 of the Act of 1994, if a person is guilty of an act or omission, in breach of his official duty, a complaint can be filed and similarly, under Section 186 of the Act of 1994, there is provision of prosecution for illegal removal of ballot papers from the polling station. Learned counsel for the respondent has further argued that further under Section 187 of the Act of 1994, certain offences and penalties are provided.

However, learned counsel has relied upon Section 188 of the Act of

1994, which reads as under: -

“188. Prosecution of certain offences.-- No court shall take cognizance of an offence punishable under section 184 or under section 185 or under clause (b) of sub-section (2) of section 187 except on a complaint made by an order of, or under authority from the State Election Commission.”

It is thus submitted on behalf of the respondent that no Court shall take cognizance of an offence under Sections 184, 185 or Section 187 (2) (b) except on a complaint made by an order or under authority from the State Election Commission.

Learned counsel for the respondent has further submitted that there is no evidence on record to show that the complainant has ever approached the State Election Commission for redressal of his grievance and at no point of time, any complaint or order was passed by the Commission for launching prosecution and therefore, the complaint filed by the appellant was not maintainable. It is further argued that the appellant-complainant has failed to lead any evidence that he had filed nomination papers at the given point of time and date and relies upon Rule 29 of the Haryana Panchayati Raj Election Rules, 1994 to submit that when the nomination papers by a candidate is presented, the Returning Officer (Panchayat) or Assistant Returning Officer will receive the same and said nomination will be deemed to be duly nominated only if he has deposited the required amount either in the Govt. Treasury or with the Returning Officer in cash and therefore, while receiving the nomination papers, a receipt was issued by the Returning Officer (Panchayat). Learned counsel has referred to the statement of the complainant who appeared as CW4 to submit

that he has levelled false allegations that when he presented the receipt, the same was torn away.

After hearing learned counsel for the parties, I find no merit in the present appeal.

A perusal of the lower Courts record shows that CW4 Suresh Kumar has stated that he had filed the nomination form along with Rs.40/- and a receipt was issued but when he had gone to receive the election symbol, he was informed that his nomination form is misplaced and on asking of accused Mohinder Singh, he had shown the receipt, which was torn and thrown away. A perusal of the statement further shows that at no point of time, the complainant had approached the State Election Commission by filing any complaint and rather stated that he had given a complaint to the Deputy Commissioner, which is Mark A, however, he never followed the same and no witness from the office of Deputy Commissioner was examined to prove that he had ever made any complaint. Even the receipt Ex.C1 was not proved on record in accordance with the provisions of Evidence Act and therefore, I find no illegality in the findings recorded by the trial Court.

Even otherwise, the respondent was summoned only under Section 136(i)(a)(b) and sub Section 2 of the Act of 1951, vide summoning order dated 29.02.2012 and the appellant never challenged the said order for not summoning the respondent under Sections 166, 177, 477 IPC and therefore, the said order has attained finality.

It is well settled principle of law as laid down by the Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs and others Vs. Chandrika and others, 2016 (2) RCR (Civil) 245** that in the light of specific

provisions under an Act, the same will displace the general rules and therefore, there being specific provision in the Act of 1994 for initiating prosecution of an accused person, for an offence committed under Sections 184, 185 and 187 IPC, that too on a complaint made by an order or under authority from the State Election Commission, the Court cannot take cognizance and the complaint filed by the complainant-appellant under Section 136 of the Act of 1951 was not maintainable, as the same will not apply to the conduct of elections under the Act of 1994.

For the reasons recorded above, I find no illegality in the impugned judgment dated 31.01.2014 passed by the trial Court.

Accordingly, the present appeal stands dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

01.11.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No