

Sr.No.250

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

**Crl.Misc.Nos. 19392-19393 of 2018 in/and
Crl.Misc.M-14352-2016(O&M)
Date of decision:20.08.2018**

Surinderpal Singh Pannu

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

**Present: Mr. D.S.Pheruman, Advocate
for the petitioner.**

Mr. K.S.Aulakh, DAG, Punjab.

Rajbir Sehrawat, J.(Oral)

CRM-19392-2018

This application has become infructuous and it is disposed of as such.

**CRM-19393-2018 and
CRM-M-14352-2016**

This is a petition filed for seeking quashing of the Order dated 17.12.2015(Annexure P-14) passed by the Chief Judicial Magistrate, Gurdaspur vide which the application moved under Section 227 of Cr.P.C by the petitioner for his discharge in FIR No.77 dated 26.09.2013 registered under Sections 420,467,468,471,120-B IPC, at Police Station Dera Baba Nanak, District Gurdaspur was dismissed and, further, for quashing of the Report filed by the Police against him under Section 173 Cr.P.C. Further prayer is made for quashing of the Order dated 27.01.2016; whereby charge was framed against the petitioner.

In brief the facts of the case are that the FIR was lodged by one Kajal Rani Wd/o Harminder Singh resident of 18-Bark Green Badmore Wolvrahampton West Midlands, United Kingdom against Prithpal Kaur daughter of Balwinder Singh, Manjit Kaur wife of Ashwani Kumar, AmritPal Singh son of Rajinder Singh, Jiwan Kumar son of Nasib Chand, Harvinder Singh son of Rajinder Singh and the Sub Registrar, Dera Baba Nanak, Distt. Gurdaspur with the allegations that the complainant was settled in England and married to Harminder Singh son of Balwinder Singh. Marriage was duly registered in England in the year, 2010. The complainant and her husband Harminder Singh were leading a happy married life. Thereafter, the husband of the complainant, namely, Harminder Singh suffered some complication in Kidney. Earlier he was getting treatment in England only. However, at the advice of his mother Manjit Kaur and sister Prithpal Kaur, Harminder Singh came to India on 10.09.2012; to his native place at Goraya, Tehsil Phillaur, District Jalandhar for Naturopathy. But he expired on 19.10.2012 in Goraya, District Jalandhar. Thereafter, Complainant came to India but the family member of the deceased Harminder Singh misbehaved with her. Being the legally wedded wife of Harminder Singh; the complainant inherited the movable and immovable property of her husband to the extent of $\frac{1}{2}$ share, the remaining $\frac{1}{2}$ share going to Manjit Kaur(mother of Harminder Singh). However, the mother of the deceased, Manjit Kaur and his sister Prithpal Kaur, in order to defeat the right of inheritance of the complainant; set up a forged Will; alleged to have been executed by Harminder Singh on 21.09.20012 at Dera Baba Nanak, Distt. Gurdaspur, Punjab. It was alleged in the complaint that this Will of the deceased is fabricated; because the signatures of Harminder Singh do not

match with the usual standard signatures of Harminder Singh. No alphabet in the false signatures has any resemblance with the normal standard alphabet written by Harminder Singh in his ordinary signatures. Harminder Singh was not in his disposing mind at the time of alleged execution of the Will and was under continuous medication. It was further alleged that all the properties are situated in the District Jalandhar whereas the Will was got registered at Dera Baba Nanak in District Gurdaspur. This was done in collusion and conspiracy with the Registrar of Dera Baba Nanak, District Gurdaspur; who registered the Will on 17.12.2012 after the death of the executant. He had received illegal gratification for being party to the fraud. It was further alleged that even the address of the deceased Harminder Singh has not been disclosed anywhere in the Will and no definite details are mentioned. The forged Will was got registered at Dera Baba Nanak, District Gurdaspur only to misuse the process of manual registration of the documents; because in major cities of Punjab, the registration of documents is computerised. Had the registration of the Will been attempted at District Jalandhar then the registration of forged Will would not have been possible. It was further alleged that in the Will the words "Dera Baba Nanak, District Gurdaspur" have been incorporated subsequently; as these words have been filled in a blank space; with the typewriter; whereas the other wordings in the Will is computerised. Hence an action against the culprits was prayed for in the complaint.

The present petitioner is the Sub Registrar posted at Dera Baba Nanak, Distt. Gurdaspur at the time of the registration of the alleged forged Will. He had registered the above said Will in favour of the other accused; despite the fact that the property involved in the Will were not in his normal

area of jurisdiction; for the purpose of registration and despite the fact that it was a Will sought to be registered after the death of the executant.

After Investigation of the case, the police had filed challan initially against five persons on 04.07.2014. Thereafter, the supplementary challan was present against the present petitioner on 12.02.2015; although the supplementary challan against the petitioner was prepared by the police on 16.09.2014.

However, the present petitioner filed application dated 12.03.2015 for dropping of the proceedings against the petitioner for the lack of sanction as required under Section 197 Cr.P.C. Thereafter, the Assistant Inspector General of Police, NRI, Amritsar; had written a letter dated 27.03.2015 seeking from competent authority the sanction for taking cognizance by the Court in the above-said FIR. That sanction was considered by the Commissioner Jalandhar Division, Jalandhar and the same was granted for prosecution of the petitioner. One of the aspects to be noted in the sanction dated 08.05.20015 is that this sanction has taken note of all the facts, as presented to the Sanctioning Authority, alongwith the record. This sanction also records as under:-

“I am satisfied that against Surinderpal Singh Pannu, Naib Tehsildar(at present), Amritpal Singh, Jiwan Kumar, Harvinder Singh etc. accused persons the offences punishable under Sections 420/467/468/471/120-B IPC are made out.”

However in the last para of the Sanction Order(which is also not so appropriately translated by the petitioner), observed that officer who

was granting sanction was competent to appoint and remove the petitioner and was granting the sanction for the above-said offences which was pending before the Court in the case and for any other offences which may crop up against the petitioner during the trial of the offence and under Section 19 of the Prevention of the Corruption Act, 1988.

Since only the challan had been filed against the petitioner and no further proceedings had taken place, but before that sanction for prosecution of the petitioner had been granted by the competent authority, therefore, the Trial Court dismissed the application filed by the petitioner for his discharge vide Order dated 17.12.2005. Just as the application was filed by the petitioner only on the basis that sanction for prosecution is not there, therefore, the Trial Court also dismissed the application for this reason that sanction has now been received from the competent authority. Challenging this Order, passed by the Trial Court, the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that since the sanction for the prosecution was not attached with the challan filed against him, therefore, the report filed by the police against the petitioner was an incomplete report. Therefore, the same stands vitiated. Court can not act upon an incomplete report. There is no power with the police to file incomplete report in the first instance and then to supplemented by filling lacuna. It is further contended by learned counsel that the petitioner was working in discharge of his official duty, therefore, the Court could not have taken cognizance of the offences against him except with sanction from the competent authority. Still further it is contended by learned counsel that since the sanction has been granted by

the competent authority only under Section 19 of the Prevention of Corruption Act, 1988 and not for the prosecution under Sections alleged in the FIR, therefore, it can not be taken as a sanction for prosecution under Section 197 of Cr.P.C. It is further contended that no offence under the Prevention of Corruption Act, 1988 is alleged against the petitioner. Therefore, the sanction granted by the competent authority under Section 19 of the Prevention of Corruption Act, 1988 is meaningless. In the end it is submitted that since the cognizance itself could not have been taken by the Trial Court, therefore, the framing of the charge against the petitioner is illegal and deserves to be quashed.

The State filed reply to the application of the petitioner. In the reply, the State had taken preliminary objection that since the application under Section 227 of Cr.P.C. has been dismissed and thereafter, the charge has been framed against the petitioner on 27.01.2016, therefore, Order framing charge being revisable order, the revision petition should have been filed by the petitioner. The present petition is not maintainable. It was further pleaded in the reply that the petitioner is not a 'judge' by any mean. However, he is a 'public servant'. But in his capacity as Sub Registrar it is not his duty to register the fabricated Will. Therefore, no sanction was required. In any case, the proper sanction has been received from the Commissioner, Jalandhar Division, Jalandhar. Qua the investigation by the police, it was claimed in the reply that there is sufficient material against the petitioner to file the report under Section 173 Cr.P.C. against him. It was pleaded that the petitioner was posted at Dera Baba Nanak, Gurdaspur; whereas; Prithpal Kaur and both the witnesses belong to District Jalandhar. Still further it was claimed that even the name of the office of the petitioner,

i.e. Dera Baba Nanak is added, in the Will in a different print then the original print of the Will. The role of the petitioner was first inquired into a preliminary inquiry by DSP, Dera Baba Nanak and after it was found that the petitioner does have a role in this fabrication of registered Will, the name of the petitioner was included. Therefore, the report under Section 173 of Cr.P.C. is rightly filed against the petitioner for the offences under the sections alleged against him in the report.

Having heard the learned counsel for the parties, this Court is of the considered opinion that the argument raised by learned counsel for the petitioner is not sustainable. The argument of the learned counsel that the report filed by the police was incomplete on account of not obtaining the sanction against the petitioner; is not having any legal basis to sustain it. The police files the report under Section 173 Cr.P.C only containing the conclusions arrived by it qua the investigation alongwith the supportive materials, documents and the statements of the witnesses. This is only in the nature of a complaint being put up to the Trial Court. The requirement of the sanction for prosecution, in case the accused is a public servant, arises only when the Court applies its mind to see whether the Court is to proceed against the accused or not. Therefore, merely because the report under Section 173 Cr.P.C. is filed by the Police against a public servant; without attaching therewith the sanction received from competent authority; for prosecution of such a public servant; does not make the police report incomplete. Being the conclusions of the police investigation, supported by the documents and evidence collected during investigation, the report filed by the police in such a situation would be complete report as required under Section 173 Cr.P.C. The sanction from the competent authority can

very well be filed by the prosecution; when subsequently the Court is called upon to take a cognizance of the offences against the public servant; by applying his mind to the report filed under Section 173 Cr.P.C. In this case, the sanction of prosecution of the competent authority was duly obtained and produced before the Court. Only thereafter, the Court has proceeded to consider the case against the petitioner and ordered framing of the charge. Therefore, it can not be said that the Court had taken cognizance against the petitioner without there being the sanction from the competent authority; for his prosecution.

The second argument of learned counsel for the petitioner is that the sanction granted by the competent authority is only under Section 19 of Prevention of Corruption Act for prosecution for offences under the Prevention of Corruption Act, 1988. Therefore, this can not be taken to be a sanction for prosecution for the offences under Indian Penal Code. This argument of the learned counsel also does not have any force. A bare perusal of the sanction order shows that the authority has applied its mind to the record and the material placed before it by police qua the culpability of the petitioner in the offences as alleged in the FIR. The Sanction order itself mentions the sections alleged against the petitioner and the authority has recorded its satisfaction that the petitioner deserves to be prosecuted under these Sections of IPC. Hence the satisfaction of the authority for grant of sanction for prosecution of the petitioner offences under IPC is duly recorded in the sanction order itself. This sanction order, further, also says that during the trial some more offences may be found out against the petitioner and that sanction was also being granted qua those sections, for prosecution of the petitioner under those sections as well. Then in the end, it

is also mentioned that sanction is granted under Section 19 of the Prevention of Corruption Act, 1988. In such a situation it can not be said, by any means, that the sanction granted by the competent authority is not the sanction for prosecution of the petitioner for the offences under Indian Penal Code, and that it is restricted to sanction for prosecution of the petitioner for offences under Prevention of Corruption Act, as required under Section 19 of the Prevention of Corruption Act, 1988. Needless to say that it is not the form of the order of sanction, rather it is the substance of the sanction order; which is to be seen by the Court while considering the validity of such a sanction. Since the sanction order itself says that the competent authority was satisfied that the petitioner deserves to be prosecuted for the offences alleged against him, including the offences which may crop up during the trial, therefore, this Court finds that the sanction of prosecution is valid and sustainable. The petitioner can not be heard to say that he is being prosecuted without sanction or that the sanction is defective.

Although in the prayer clause of the petition, even the report under Section 173 Cr.P.C., filed by the police against the petitioner, has also been sought to be quashed, however, the petitioner has not raised argument on this point at the time of hearing. Otherwise also, once the Court has framed the charge against the petitioner; finding a prime facie case against him, thereafter, it can not be said that the report under Section 173 Cr.P.C. does not disclose the offences against the petitioner and therefore, the same should be quashed. Hence the report under Section 173 Cr.P.C., or for that matter, the charges framed by the Court against the petitioner can not be quashed.

In view of the above, Court finds no merit in the petition. The same is hereby dismissed.

20th August, 2018
Shivani Kaushik

[Rajbir Sehrawat]
Judge

Whether speaking/reasoned

Yes

Whether Reportable

No