

In the High Court of Punjab and Haryana at Chandigarh

CRM M-18084 of 2013 (O&M)
Reserved on : September 11, 2018

Date of Decision: September 19, 2018

Anoop Kumar and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gautam Dutt, Advocate,
for the petitioner.

Mr. Nikhil K. Chopra, Addl. A.G., Punjab.

Mr. Arshdeep Singh Cheema, Advocate,
for respondent No.2.

P.B. Bajanthri, J.

1. In the present petition, petitioners have questioned the validity of complaint No. 30/2012 dated 27.08.2012 filed by complaint-respondent no.2 and subsequent proceedings including summoning order dated 11.03.2013 passed by Sub Divisional Judicial Magistrate, Garhshankar (Annexures P/1 and P/2 respectively).

2. The grievance of the petitioners, complainant and others is relating to partition of certain lands. It was pending consideration before Tehsildar-cum-Assistant Collector Ist Grade (for short "ACIG"), Garshankar, District Hoshiarpur and it was decided on 30.11.2011 which was *ex parte* proceedings. Complainant and others have not been afforded opportunity. Thereafter, order dated 30.11.2011 was not released timely so

as to unable the respondent-complainant to approach next higher authority in questioning the order dated 30.11.2011. It was alleged that two orders were passed on 30.11.2011 while tampering certain things relating to *sanad takseem* (partition). Copy of the order dated 30.11.2011 is stated to have been prepared in favour of the petitioners and it was released belatedly on 14.03.2012. It was also alleged that ante-dating stamp papers dated 30.12.2011 is used in connivance with the petitioners etc.

3. Respondent No.2-complainant questioned the validity of order dated 30.11.2011 in CWP No. 16713 of 2012 and it was disposed of on 30.04.2013 with the observation that by mutual consent of the parties, the matter would be heard by Financial Commissioner. The Financial Commissioner remanded the matter to the Assistant Collector First Grade for fresh decision after affording due opportunity to all co-sharers vide order dated 29.08.2014. Thereafter, CWP No. 24409 of 2014 was preferred by the petitioners challenging the order dated 29.08.2014 passed by the Financial Commissioner. Said writ petition was allowed and order dated 29.08.2014 of Financial Commissioner was set aside vide order dated 29.10.2015. Thereafter, LPA No. 1785 of 2015 was preferred. Said LPA was allowed and order dated 29.08.2014 passed by Financial Commissioner was upheld vide order dated 17.02.2016 (Annexure P/24). LPA decision was subject matter of litigation before the Supreme Court, wherein LPA decision has been upheld on 08.12.2017 (Annexure P/25).

4. Complainant – Sukhbir Singh (respondent No.2) has presented the complaint against the petitioners and others in respect of order dated 30.11.2011 passed by the Tehsildar-cum-ACIG on the allegations of tampering, manipulating, forgery of records, etc. The complainant has

alleged in his complaint that application filed by the complainant for setting aside *ex parte* proceedings, was not disposed of and the proceedings were continuing without the complainant being afforded an opportunity to defend the proceedings. Further alleged that he received two types of orders dated 30.11.2011 and both the orders were contradictory. It is further alleged that files of the cases were retained by Reader of ACIG so that complainant and others were prevented from filing an appeal within statutory period of limitation. Further alleged that documents are ante-dated and forged and the same were used to derive a favourable order in favour of the petitioners.

5. In this background, petitioners have questioned the validity of complaint (Annexure P/1) and summoning order (Annexure P/2). Learned counsel for the petitioners vehemently contended that order of Tehsildar-cum-ACIG dated 30.11.2011 was subject matter of litigation before this Court and matter went up to the Supreme Court. Quashing of order dated 30.11.2011 has been upheld while remanding the matter to the revenue authorities for fresh consideration. Therefore, complaint has no substance and consequently summoning order in view of civil litigation between the petitioners and the respondent insofar as order dated 30.11.2011 has attained finality before the Supreme Court in Special Leave to Appeal No. 9521 of 2016. Preliminary objection of respondent no.2 that petition under Section 482 Cr.P.C. is not maintainable is incorrect. Supreme Court held that even Section 482 Cr.P.C. could be invoked instead of Section 397 Cr.P.C. Learned counsel for the petitioners cited the following decisions:-

- i) ***SLP (Crl.) No. 2181 of 2016 - Ben Guren vs. Regional Officer, Haryana Pollution Control Board, Dharuhera Region, Panchkula, decided on 28.03.2016;***
- ii) ***Prabhu Chawla vs. State of Rajasthan and another,***

reported in **2016(4) RCR (Criminal) 270; (para no. 5 and 6)**

- iii) ***Dhariwal Tobacco Products Limited and others vs. State of Maharashtra and another***, reported in **(2009) 2 SCC 370** (Para No.6);
- iv) ***Surya Baksh Singh vs. State of Uttar Pradesh***, reported in **(2014) 14 SCC 222** (para nos. 17, 18 and 25); and
- v) ***Urmila Devi vs. Yudhvir Singh***, reported in **(2013) 15 SCC 624** (para nos. 21-23).

6. Per contra, learned counsel for respondent No.2 raised a preliminary objection relating to maintainability of petition under Section 482 Cr.P.C. insofar as challenge to complaint and summoning order as petitioners have alternative remedy of revision under Section 397 Cr.P.C. In support of this contention, learned counsel for respondent no.2 relied on the following decisions:-

- i) ***Tejram s/o Mahadeorao Gaikwad vs. Smt. Sunanda w/o Tejram Gaikward and others***, reported in **1996 CriLJ 172** (para No.4);
- ii) ***Padmanabh Keshav Kamat vs. Anup R. Kantak and others***, reported in **1999 CriLJ 122** (para nos. 11 and 12);
- iii) ***Natwar Lal vs. State and others***, reported in **2008 (10) RCR (Criminal) 776**;
- iv) ***Crl. Misc. No. M-24182 of 2013 - Dr. Poonam Chaudhary and another vs. State of Haryana and another***, decided on **20.08.2013**.

It was submitted that having regard to the conduct of the petitioners and others in getting order dated 30.11.2011 it is evident that by means of fraud it was obtained. Even though order is set aside but still fraud in issuing order dated 30.11.2011 would be examined and guilty persons are to be

punished. Mere quashing of subject matter of order would not wave off the fraud.

7. Heard learned counsel for the parties.

8. Question for consideration in the present petition is:-

i) Whether petition under Section 482 Cr.P.C. could be invoked in challenging the complaint and the summoning order without exhausting remedy under Section 397 Cr.P.C. or not?

ii) Allegation in the complaint is with reference to Tehsildar-cum-ACIG's order dated 30.11.2011 was a subject matter of litigation on the civil side wherein it has been set aside and the matter was remanded. Therefore, order dated 30.11.2011 is not exist in the eye of law and as on this day, whereas the allegation in the complaint is with reference to non-existing order.

9. Section 397 Cr.P.C. reads as under:-

“397. Calling for records to exercise powers of revision

– (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions

Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Decisions cited by learned counsel for the respondents relating to different High Courts including this Court in the case of **Dr. Poonam Chaudhary (supra)**, whereas learned counsel for the petitioners relied on Supreme Court's decisions. Relevant para of the latest decision in the case of **Ben Guren vs. Regional Officer, Haryana Pollution Control Board, Dharuhera Region, Panchkula** (cited supra), wherein interim relief has been extended with reference to the decision of **Dhariwal Tobacco Products Limited and others vs. State of Maharashtra and another**, reported in **(2009) 2 SCC 370**. Para Nos. 12 and 14 of the decision has been extracted in the order dated 28.03.2016 in the case of **Ben Guren** (cited supra). Thus, perusal of the aforesaid decisions, it is evident that challenge to complaint and the summoning order under Section 482 Cr.P.C. is permissible without exhausting remedy under Section 397 Cr.P.C. Thus, 2nd respondent's preliminary objection relating to maintainability of petition under Section 482 Cr.P.C. is hereby rejected.

10. Coming to the merits of the case, petitioners' contention is that Tehsildar-cum-ACIG's order dated 30.11.2011 which was subject matter of litigation on civil side has attained finality insofar as setting aside the order

and it was subject matter of litigation up to the Supreme Court, therefore, complaint is relating to order dated 30.11.2011 is not maintainable in view of judicial pronouncement on the civil side whereby order dated 30.11.2011 of Tehsildar-cum-ACIG has been set aside is concerned, Supreme Court held in *Syed Askari Hadi Ali Augustine Imam and another vs. State (Delhi Admn.) and another*, reported in (2009)5 SCC 528 that decision rendered in civil litigation is not binding on the criminal proceedings. Moreover, civil litigation is relating to validity of the decision of Tehsildar-cum-ACIG dated 30.11.2011, whereas in the complaint, there are serious allegations made against the petitioners and officials of the State-Department to the extent of collusion while manipulating and the forgery of records in passing order dated 30.11.2011. Even though in a litigation, if order dated 30.11.2011 is set aside and it is no more existing in the eye of law, at the same time conduct of the petitioners and the officials of the concerned department would not absolve from the allegations. In other words, conduct of the petitioners and the officials of the concerned department are in criminal in nature, which are evident from the statement of Gurmit Singh, CW-1 dated 25.09.2012 before Sub Divisional Judicial Magistrate reveals certain issues relating to manipulation of records in respect of issuance of order dated 30.11.2011 (various discrepancies like hand-writing, signatures, etc.). Therefore, with reference to the respondent's complaint, petitioners and others were summoned to face trial under Sections 166, 167, 219, 420, 466, 468, 120-B, 34 IPC. Moreover, perusal of the complaint and the summoning order, it is evident that there are serious allegations made against the petitioners and others which are alleged to be attracted criminal offences, therefore, merely Tehsildar-cum-ACIG's order

dated 30.11.2011 by which *sanad taksim* (partition) is not existing in the eye of law in view of judicial pronouncement would not come in the way of taking criminal action in respect of proceedings and passing of order dated 30.11.2011. Presently, there is only summoning order against the petitioners, however, the petitioners have opportunity to cross-examine the witness in complaint before framing of charge. If the petitioners have material to prove their innocence, in that case, they could be discharged at the point of charge.

11. Accordingly, petition stands rejected.

September 19, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No