

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

CRM No.M-23137 of 2018 (O&M)

Date of Decision: October 23, 2018

Fateh Singh

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Madan Gupta, Advocate
for the petitioner.

Mr.Sukhdeep Parmar, DAG, Haryana
for the respondent-State.

Mr.Ram Pal Verma, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Dalip @ Dalpat for quashing of criminal complaint No.77-1 of 2012 CIS No.COMA-263 of 2014 filed by respondent No.2 under Sections 218, 420, 466, 467, 468, 477 IPC, Sections 7 and 13 of the Prevention of Corruption Act along with orders dated 10.08.2016 and 30.01.2017 passed by learned Addl. Chief Judicial Magistrate, order dated 12.02.2018, whereby the petitioner and others were charge-sheeted and all other subsequent proceedings.

It is stated in the petition that a complaint was filed by respondent No.2 against the present petitioner along with three co-accused.

The case was committed to learned Sessions Judge, Jhajjar, who charge-sheeted present petitioner and other accused. It is also stated in the petition that entire proceedings were entirely perverse and not legally sustainable. Respondent No.2 filed the false complaint which is totally an abuse of process of law. Respondent No.2 Dalip @ Dalpat filed the complaint with the allegations that there was a land in village Gochhi which was inherited by Karam Chand @ Kamar Chand and the land remained in use with Tek Ram and his successor. Respondent No.2-complainant is grand son of Tek Ram and Tarif is his real uncle. It is further the allegation that Tarif, Narender and Jai Parkash forged a Will in collusion with the petitioner which was registered on 28.03.2011. No death certificate of Karam Chand @ Kamar Chand was produced and the petitioner declared Karam Chand @ Kamar Chand as dead by way of publication in the Tribune. It is further alleged that petitioner has no right to declare death of Karam Chand @ Kamar Chand and he has taken ₹3,50,000/- from Tarif for doing the same and also demanded ₹1,50,000/- from him. It is also stated in the petition that on these allegations, the complaint was filed before CJM, Jhajjar, who summoned the petitioner along with other accused in a mechanical way assuming that petitioner has declared illegally Karam Chand @ Kamar Chand as dead and Will has been registered in collusion with Tarif etc. and observed that petitioner has gone out of his official capacity. The Court summoned and issued warrants against the petitioner and other accused and they were directed to appear before learned Sessions Judge, Jhajjar. Learned Sessions Judge, Jhajjar, vide impugned order dated 12.02.2018 framed charges against the petitioner and other accused.

learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the record shows that Annexure P-6 is the application given by Tarif on 09.03.2011 to Sub Registrar, Jhajjar, for sanction of mutation on the basis of unregistered Will. It is written in the application by Tarif Singh that his uncle Kamar Chand executed a Will in his favour, who was unmarried and had no legal heir. The Will was written before him and thereafter, he forgot the same while keeping in the house and now while cleaning the house, the Will was found and he requested that the mutation of inheritance as per Will of his uncle be sanctioned in his name. Annexure P-7 is the affidavit of Tarif Singh. Annexure P-8 is the order passed by Sub Registrar, in which it is stated as under:-

“Today, the Will executant Karam chand son of Manohar Lal son of Sadhu, resident of Gochhi, which was presented by Tarif son of Tek Ram, resident of Gochhi. As per Will Tarif son of Tek Ram is the legal representative of the executants of the Will. About the Will executants of Will witnesses Jeet Ram son of Chunni Lal and Uday Singh son of Inder Singh have expired. Sh.Tarif has submitted his affidavit along with application. This Will may be registered after the death. A publication regarding the Will be given in the newspaper and be put up on 28.03.2011.”

Annexure P-9 is the publication given on 13.03.2011 in 'The Sunday Tribune', which is as under:-

Publication/Notice to General Publication

“The general public is informed that in my office one oral Will of Kamar Chand son of Manohar Lal son of Sadhu, resident of Village Gochii, Tehsil Beri, District Jhajjar produced and the Will he made in favour of his nephew Tarif Singh son of Tek Ram son of Amrit, resident of Gochhi. Now Kamar Chand expired and as per Will Tarif Singh wanted to get the mutation sanctioned on the basis of inheritance. If any

person having any objection regarding this he may from 09.03.2011 to 24.03.2011 appear in my office and can produce his objection, otherwise after expiration of the period no objection will be heard and this Will be registered and mutation will be sanctioned. From my office with my signature and seal.”

Annexure P-10 is order passed by Sub Registrar, wherein it is ordered as under:-

“Today after issuance of the publication the Will produced for this a publication was done in Tribune paper on 13.03.2011, till date no objection received so the Will of Kamar Chand son of Manohar Lal, resident of Gochhi after his death is registered.”

The perusal of the record firstly shows that present petitioner, who was Sub Registrar, has passed the order in his official capacity as per law. He has nowhere declared Karam Chand as dead. Rather, it is admitted at the time of arguments that Will after death can be got registered from Sub Registrar's office, as per law. The perusal of the record further shows that publication was given in 'The Tribune' for the purpose of inviting objections. If the Sub Registrar is to register Will in connivance with Tarif, then he could have registered it without publication or by issuing publication in a newspaper which has very less circulation but the publication was given in 'The Tribune'.

Further, I find that it is settled law that Court cannot take cognizance without sanction under Section 19 of the Prevention of Corruption Act. Even if it is taken that petitioner has now retired from the service, even then sanction under Section 197 Cr.P.C. is necessary for offences under IPC. The Hon'ble Supreme Court in *State of Madhya*

held that whereas in terms of Section 19 of Prevention of Corruption Act, it would not be necessary to obtain sanction in respect of those who had ceased to Public Servants, but Section 197 Criminal Procedure Code requires sanction for those who were or are public servant.

In the present case, the complainant has not obtained sanction from the competent authority before filing the complaint in question. Therefore, the summoning of the accused as well as all subsequent proceedings including framing of charge, are not as per law.

Resultantly, finding merit in the present petition, the same is allowed. Criminal complaint No.77-1 of 2012 CIS No.COMA-263 of 2014 along with all subsequent proceedings are hereby quashed qua the petitioner.

October 23, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No