

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-24713 of 2015 (O&M)

Date of decision : 01.08.2018

Yatinder Kumar Verma

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. A.S.Virk, Advocate
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Narender Pal Bhardwaj, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of impugned criminal complaint No.20/2013 dated 30.08.2011, filed under Sections 409, 420, 467, 468, 471, 120-B IPC pending in the Court of Judicial Magistrate Ist Class, Kurukshetra and the consequent impugned summoning order dated 09.10.2013 passed by the trial court and the consequent proceedings arising therefrom being sheer misuse of the process of law.

The version of the complainant is that the petitioner was the elected Sarpanch of Village Mehra, District Kurukshetra. During his tenure of Sarpanch from 2005-2010 and also from 2010-2015, he had allotted some work with regard to cleanliness of the pond to complainant Rudha Ram (hereinafter referred to as 'the complainant) and that the petitioner has wrongly alleging that he had paid an amount of Rs.64,120/-

on three occasions. Petitioner produced three receipts dated 14.07.2006, 6.10.2007 and 11.10.2007, with regard to making abovesaid payment but infact those receipts were forged and fabricated and had never been issued by the complainant. As such, the complainant had filed aforesaid criminal complaint under Sections 409, 420, 467, 468, 471, 120-B IPC before the learned Judicial Magistrate Ist Class, Kurukshetra, who conducted an inquiry and ultimately summoned the petitioner vide impugned order dated 09.10.2013 (Annexure P-10).

The petitioner has challenged the said complaint as well as impugned order dated 09.10.2013 on the following grounds, as set out in the petition:-

(A) Because there is a protection given under Section 53 of the Haryana Panchayati Raj Act, 1994 to a Sarpanch or a Panch by providing a limitation of 6 years from the date of election or two years from the date of cession from the post, in order to initiate any recovery proceedings regarding the alleged loss caused to the gram panchayat. The complaint filed by the respondent no.2 under the Haryana Panchayati Raj Act, 1994 was duly enquired and filed by the competent authority i.e. The Deputy Commissioner, Kurukshetra vide order dated 17.11.2013 and the same attained finality. Therefore, the filing of the present criminal complaint without there being any order of the competent authority, fixing the liability, is not at all maintainable.

“51. Suspension and removal of a Sarpanch or Panch. (1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch, as the case may be. --

(a) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director, or Deputy Commissioner's concerned the charge made or proceedings taken against him, is likely to

embarrass him in the discharge of his duties or involves moral turpitude or defect of character.

(b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.”

“53. Liability of Sarpanch or Panch – Every Sarpanch or a Panch of a Gram Panchayat shall be liable for the loss, waste or misapplication of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or mis-application is a consequence of his neglect or misconduct while working as Sarpanch, Up-Sarpanch or a Panch as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of Gram Panchayat or otherwise, for loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat and after giving adequate opportunity to Sarpanch or Panch, as the case may be, to explain, assess by order in writing the amount due from him on account of such loss, waste or misapplication of such Gram Fund or property and taken necessary steps for its recovery.

(3) Any person aggrieved by an order under sub-section (2) may within one month of the date of such order apply to the Director to have it set aside and the Director may suspend, vary or rescind such order upon such terms as to costs, payment into court or otherwise, as he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in sub-section (3) the Government may, either on its own motion at any time or an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Director has passed an order under sub-section (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it thinks fit. :

Provided that the Government shall not pass an order under the sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(5) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch or Panch as the case may be, whichever is earlier.

(6) The amount assessed as due from Sarpanch or Panch, as the case may be, after the death be recovered from the legal heirs to the extent of property inherited by them.”

(B) Because even under Section 204 of the Haryana Panchayati Raj Act, 1994 yet another protection is provided to the panch or Sarpanch providing that there is a bar of action and no suit or other legal proceedings, in a civil or criminal court, shall be against any Panch, Sarpanch Members, Chairman, Vice-Chairman, President and Vice-President as the case may be in respect of any act done in good faith under the Act. The provisions of Section 204 are reproduced below:-

“204. (1) No suit or other legal proceedings in a civil or criminal court shall be lie against any Panch, Sarpanch Members, Chairman, Vice Chairman, President and Vice President, as the case may be, in respect of any act done in good faith under this Act.

(2) No civil suit or proceedings shall lie against any Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, in respect of any act done in the discharge of any of its functions and duties imposed under this Act.”

(C) Because different enquiries were conducted by the competent authority on all the complaints being submitted by the complainant and his close associates, however, no criminality was found against the petitioner. Further there was no report of any vigilance or police authority. As submitted above, all the complaints filed against the petitioner

by the complainant party were duly enquired and the petitioner was found innocent. The writ petitions and the LPA filed on behalf of the complainant party were dismissed with heavy costs and therefore the parallel proceedings initiated by the complainant party by misusing the process of law is nothing else but amounts to settle the personal and political vendetta against the petitioner, a serving Sarpanch with malafide intentions for extraneous considerations;

(D) Because the petitioner is being harassed, time and again, at the instance of the complainants as the petitioner, in his capacity as Sarpanch is not only undertaking the development work but also tried his best to remove the unauthorized possession against one of the above mentioned Sube Singh, son of Rura Ram (not the complainant No.2), the gram panchayat Mehra, through petitioner, had to file another CWP No.5621 of 2015 for seeking direction to complete the development work of village pond on which said Sube Singh is allegedly claiming his possession. Therefore, the petitioner is being victimized and unnecessarily targeted on account of the malafide and political vendetta being settled in the village by the complainant party.

(E) Because a perusal of the complaint itself show that in para no.5, the complainant has concealed the correct facts as it is pleaded that despite the complaints moved to the Deputy Commissioner, till date no action has been taken, whereas the Deputy Commissioner, under the provisions of the Section 51 of the Haryana Panchayati Act, 1994 got the matter enquired through a regular enquiry officer and has filed the complaints. Therefore, the complaint is liable to be quashed on the ground alone.

(F) Because no prima facie offence on the face of the complaint is made out as, no enquiry, muchless any report proving prima facie proving the guilt of the petitioner is made out. Even the summoning orders has been passed in mechanical manner without appreciating the contents of the

complaint and the preliminary evidence led by the complainant itself do not reveal any commission of any offence.”

The instant petition has been contested by the State as well as respondent No.2.

Learned State counsel in its reply has stated that all the receipts are forged and fabricated and are used with dishonest and fraudulent intention to misappropriate the funds of Gram Panchayat. Complainant Rudha Ram has also filed a separate reply/petition on the ground that the summoning order has not been challenged before the Sessions Court by filing a revision petition and the inquiry report submitted by Deputy Commissioner (Annexure P-3) does not base upon correct appreciation of evidence and petitioner is not entitled to protection under Section 197 Cr.P.C. or under the provisions of Haryana Panchayati Raj Act.

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

The petitioner has relied upon three receipts dated 14.07.2006, 6.10.2007 and 11.10.2007. On perusal of record of the trial court, it transpires that those receipts have been placed on record as Ex.C-1 to Ex.C-3. The complainant has denied that those receipts were signed by him. The receipts were sent to the Forensic Science Laboratory, Haryana, Madhuban, Karnal who submitted his opinion as under:-

“Based upon the above similarities in writing habits between standard and questioned signatures which are significant and sufficient and cannot be attributed to accidental coincidence and when considered collectively, they lead to the opinion that the person who wrote red enclosed standard signatures

stamped and marked R1 to R6, S1 to S5 also wrote the red enclosed questioned signatures similarly stamped and marked Q1 to Q3.

OPINION-1(B) *Minute and detained examination of document containing signatures in the red enclosed part marked Q1 to Q3 reveals that there are marks of white fluid under the existing figures of date reading as '11-08' of date '11-08-2011' at point 'A' as well as at point 'B' and when deciphered the original figures of date reading as '13-04-2011' at point 'A' as well as at point 'B'.*

IV. OPINION:-

The disputed prints marked Q1, Q2 and Q3 on the documents mentioned in para-II above all are different from Right and Left thumb prints of Rura Ram S/o Musadi Ram (S-1) dated 31.10.14 and Salinder Kumar S/o Rura Ram (S-2) dated 31.10.14 on their sample papers as the ridge characteristic details of the case prints do not tally with said sample thumb prints. Life size photographs of above all are enclosed.”

The petitioner also relied upon the alleged affidavit of Salender Kumar (Annexure R2/3), who is the son of the complainant. A bare perusal of the the said affidavit dated 11.08.2011 reveals that Salender Kumar alongwith his father Sh. Rudha Ram had drain out the water from the pond in the month of July, 2006 and further that Salender Kumar had received the labour charges @ Rs.280/- per hour and total amount comes to Rs.64,120/-. It is further added in the said affidavit that said amount was received by Salender Kumar with the consent of his father.

However, it has been argued on behalf of complainant that this affidavit has also been a forged and fabricated document. As such, the validity and genuineness of affidavit is subject to proof and can only be decided with the help of evidence during the trial.

To the mind of this Court, this Court has limited jurisdiction with regard to the quashment of the complaint. The assertions of the petitioner require evidence to be adduced.

The Hon'ble Supreme Court in *State of Haryana and others versus Ch. Bhajan Lal Ors. 1992 AIR Supreme Court 604* has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Whether the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In the case in hand, the genuineness of affidavit of Salender

Kumar and receipts Ex.C1 to C3 are subject to legal proof and can only be

ascertained with the help of evidence which is to be adduced during trial.
The relevancy of said affidavit is also to be seen after adducing of evidence.

The complainant has asserted that certain amount has been entrusted to the petitioner and he has to explain for the same. If the receipts are genuine then those can be proved during the trial.

Learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in *Vijay and anr. 2017 (4) RCR (Criminal) 308.*

The said judgment having distinguishable facts will not apply in the instant case.

In view of aforesaid discussion, no ground to quash the abovesaid criminal complaint and the impugned summoning order dated 09.10.2013 is made out.

Therefore, the instant petition stands dismissed.

01.08.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No