

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

**Criminal Misc. No.M-27828 of 2018
Date of Decision: 09.07.2018**

Bhagmal Patwari

...Petitioner(s)

Versus

Narota Ram Saini

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Viney Saini, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of criminal complaint no.94 dated 13.09.2013/29.10.2015 (Annexure P-1) pending in the Court of SDJM, Naraingarh and summoning order dated 12.08.2015 (Annexure P-2) passed by Ms. Saravpreet Kaur, JMIC, Naraingarh, whereby the petitioner has been summoned to face trial in case under Sections 192, 197, 198, 468, 201, 202, 120-B, 34 IPC. Challenge has also been laid to order dated 20.03.2018 (Annexure P-3) passed by Additional Sessions Judge, Ambala, vide which the criminal revision filed by the petitioner against the summoning order has been dismissed.

Briefly stated, the respondent-complainant has filed a criminal complaint against the petitioner along with other persons under Sections

177, 181, 282, 192, 193, 196, 197, 198, 200, 201, 202, 468, 420, 120-B and 34 IPC, on the allegations that after the death of Lamberdar Naib Singh of Patti Shikhan of Vill. Bapoli, P.O. Shahzadpur, Tehsil Naraingarh, District Ambala, applications were invited for the vacant post of Lamberdar of the village. Three candidates namely Norata Ram, respondent, Gurmeet Singh and Jagmail Singh applied for the said post. The applications were sent for verification to the petitioner who was working as Halqua Patwari of Vill. Bapoli at that time. As per the complainant, though Gurmeet Singh was having 5 kanal 11 marlas of land in the village, but he was shown to be the owner of 2 acres of land only. Similarly, Jagmal Singh was shown to be illiterate and having no land, whereas he was having 6 acres of land in his name. In this manner, the petitioner misguided all the revenue officials and prepared a false report without verifying the facts, which was submitted before accused no.12 Pushyadeep Sharma, Naib Tehsildar. Though the complainant informed him about the mistakes and false reports so prepared by the petitioner, but he did not conduct any enquiry and rather kept the matter pending with him. Thereafter, Pushyadeep Sharma, Naib Tehsildar was transferred and accused no.13 Anil Kumar joined as Naib Tehsildar. The complainant requested him also and disclosed the abovementioned illegalities and fraud committed by the petitioner in conspiracy with other accused, but he did not take any remedial measure. Ultimately, the case of 'Lamberdari' was decided on 24.07.2013. The matter was also reported to the police, but no action was taken and therefore, the complaint in question was filed.

Learned counsel for the petitioner has argued that the petitioner has not committed any offence and he was only discharging his official duties at the most and it being the *bona fide* mistake on the part of the petitioner, the order of summoning is liable to be set aside. He has further argued that in view of Section 197 CrPC, the petitioner being a public servant, sanction for prosecution from the competent authority was a condition precedent, but no such sanction was taken. In support of his arguments, he has referred to judgment of Hon'ble the Apex Court in the case of **Prof. N.K. Ganguly Vs. CBI New Delhi 2016(1) RCR (Criminal)** **98.**

I have heard learned counsel for the petitioner.

The allegation against the petitioner is that he has prepared a false numberdari naksha Ex.C1, in which Gurmeet Singh was shown as owner of 2 acres of land whereas accused no.2 Jagmal Singh was shown as illiterate having no land, but as a matter of fact, Jagmal Singh was having 6 acres of land and accused Gurmeet Singh has having 5 kanal 11 marla of land. Since the petitioner has prepared the Naksha Ex.C1 on the false and frivolous information without verifying the actual and factual facts as well as the records, the trial Court has rightly summoned him as an accused, to face trial under Sections 192, 197, 198, 468, 201, 202, 120-B and 34 IPC. The revisionary Court has also dismissed the revision petition against the said summoning order.

The plea that the petitioner being a Government employee, prior sanction for prosecution from the competent authority was required, as envisaged under Section 197 CrPC, cannot be accepted at this stage,

particularly when there is misuse of power vested in a public servant, which can never be said to be part of official duties. Reference may be made to judgment of Hon'ble Apex Court in the case of **Choudhury Parveen Sultana Vs. State of West Bengal and Another** (2009) 3 SCC 398 wherein it was held as under:-

*“All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in **Bhagwan Prasad Srivastava's** case (supra), the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.”*

In this view of the matter, this Court finds no ground to interfere in the impugned orders. Accordingly, the present petition is dismissed.

However, it is made clear that the observations made hereinabove shall be confined to the present petition only and the same

shall not be construed as any expression on the merits of the case. The trial Court shall be well within its power to form its independent opinion in the case.

July 09, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No