

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

CRM-M-9851-2019 (O&M)
Date of decision : 03.10.2019

Tikshan Sood

...Petitioner

Versus

Satbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Respondent No.1-Satbir Singh in person.

ANIL KSHETARPAL, J.

Petition under Section 482 Cr.P.C. has been filed with a prayer to quash criminal complaint No.Regn.No.COMI/40/2018 dated 23.03.2018 filed under Section 171-G of IPC and Section 125-A of the Representation of Peoples Act, 1951 (hereinafter to be referred as “the Act of 1951”) and all subsequent proceedings including the order summoning the petitioner dated 05.07.2018 passed by the Chief Judicial Magistrate, affirmed in revision by Additional Session Judge vide order dated 31.01.2019.

Respondent-complainant filed a criminal complaint invoking the jurisdiction of the Chief Judicial Magistrate for prosecuting petitioner-accused. Various averments were made in the complaint. In some and substance, the allegations are that petitioner while filing his nomination paper for 2017 Assembly Elections, has not furnished correct information

and has deliberately concealed material facts. After recording of preliminary evidence, petitioner-accused was summoned only on the basis of allegations made in para 7(C) of the complaint which is extracted as under:-

“C. That Annexure 1-E of the affidavit of 2017 shows property at Village Patti Tehsil and District Hoshiarpur measuring 8 acres and 1 marla with market value of Rupees 1.60 only. Very interestingly this property is shown in Annexure 1-E of the affidavit of 2012 with a market value of Rupees 60 lakh (9 acres and 1 marla). That means to say in 5 years the property got reduced for a value from Rs 60 lakhs to Rs. 1.60 lakh (with a reduction from 9 acre 1 marla to 8 acres 1 marla).”

Operative part of the order passed by the learned Chief Judicial Magistrate summoning the petitioner is extracted as under:-

“6. I have heard the counsel for the complainant and gone through the evidence of complainant as well as documents placed on record. The complainant has leveled number of allegations against the accused, but the allegation mentioned at Sr. No. C of the complaint prima facie shows that the accused has furnished false information when compared with the market value as per annexure-IV. At this stage admittedly detailed appreciation of evidence is not required. The prima facie aspect of the case is to be seen and considering documentary evidence led on record by the complainant i.e. form 1E submitted by the accused in the year 2012 and similar form submitted by the accused in the year 2017, the entry mentioned at Sr. No.1 is prima facie false and in view of the provisions of Section 171G of IPC and 125-A of the Representation of People Act, 1951 the accused has prima facie committed the offences punishable under sections 171G of IPC and 125-A of the Representation

of People Act, 1951. Hence, the accused namely Tikshan Sud is ordered to be summoned under sections U/s 171G of IPC and 125-A of the Representation of People Act, 1951 to face the trial for 5.09.2018 on filing of P.F., copy of complaint etc.”

As noticed above, revision against the aforesaid order has been dismissed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

In the present case, petitioner has been summoned under Section 171-G IPC and Section 125-A of the Act of 1951. Both the provisions are extracted as under:-

“SECTION 171-G OF THE INDIAN PENAL CODE:-

171-G: False statement in connection with an election--*Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.*

**SECTION 125-A OF THE REPRESENTATION OF
PEOPLES ACT:-**

125-A. Penalty for filing false affidavit, etc.—*A candidate who himself or through his proposer, with intent to be elected in an election,—*

- (i) fails to furnish information relating to sub-section (1) of section 33A; or*
- (ii) give false information which he knows or has reason to believe to be false; or*

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”

Learned counsel for the petitioner while drawing attention of the Court to Annexure 1(E) Column No.1, has submitted that there is obvious clerical/arithmetical mistake in describing the approximate current market value of the property. The entry at Column No.1 is extracted as under:-

“

<i>Sr. No.</i>	<i>Location & Survey No.</i>	<i>Area (In acres)</i>	<i>Whether inherited property (Yes/No)</i>	<i>Date of purchase in case of self acquired property</i>	<i>Cost at the time of purchase</i>	<i>Any investment on the land by way of development etc</i>	<i>Approx. current market value</i>
1	Village Patti, Tehsil & District Hoshiarpur, Survey No.9//14, 16, 17, 21, 24, 12//1, 3/2, 4, 5, 7, 8, 9, 10/1 and <u>out of it 22 kanal under sale agreement earnest money received Rs.35 lacs</u>	8 acres, 0 kanal, 1 marla	No	27.6.1991	47,000/-	NIL	1.60 lakh

”

It was pointed out by learned counsel for the petitioner that in

fact the current value is ₹160 lacs and not ₹1.60 lacs. He further submitted that on account of decimal having been placed at a wrong place, the aforesaid bona fide error has occurred. He further submitted that total land is 8 acres 1 marla which if converted into kanal comes to 64 kanals 1 marla. He, while drawing attention of the Court, has submitted that out of 64 kanals 1 marlas, 22 kanals was agreed to be sold for which receipt of earnest money of ₹35,00,000/- has been specially declared. Hence, he submitted that once for approximately 1/3rd of the land, the amount of earnest money itself is ₹35,00,000/-, the price of total land cannot be ₹1.60 lacs. He further, in order to prove the bona fide of the petitioner, submitted that the approximate total of the current market value of entire properties, while referring to page 105 of the paper book, has been correctly declared i.e. ₹7,37,50,000/-. In other words, total approximate value of the properties declared is after taking into consideration market value of properties referred to at Village Patti to be ₹160 lacs and not ₹1.60 lacs. Hence, he submitted that the small error in the nomination form which was supported by an affidavit does not attract provisions of Section 171-G of IPC or Section 125-A of the Act of 1951. He further submitted that the petitioner has even disclosed correct details of the property owned by his spouse.

He further submitted that total imprisonment which can be imposed under Section 125-A of the Act of 1951 is six months and the complaint was beyond time because the nomination paper was filed on 15.01.2017 whereas complaint came to be filed on 23.03.2018. Hence, he submitted that as per Section 468 Cr.P.C., the complaint was beyond time.

On the other hand, respondent who has appeared in person has

submitted that he has already filed a detailed reply alongwith copies of various judgments relied upon by him. He also submitted that petitioner is not only guilty of concealment of this fact but has also committed various other offences as spelled out in the complaint.

This Court has considered the submissions of the learned counsel for the petitioner and the respondent.

As noticed above, the petitioner has been summoned only with respect to offence described in para 7(C) of the complaint which pertains to entry in column No.1 of Annexure 1(E) at page 85 of the paper book. Once, the order of summoning is only with respect to allegations made in para 7 (C), the complainant-respondent cannot be permitted to re-agitate other allegations made in the complaint particularly when the correctness of order of summoning has never been challenged by the complainant. The complainant cannot now at this stage reassert with regard to other allegations. If the complainant/respondent was aggrieved of summoning order, he should have assailed the correctness thereof at appropriate stage. The present petition has not been filed by the complainant rather it has been filed by the accused-petitioner. Hence, he cannot be permitted to make submissions on the basis of other allegations made in the complaint for which the petitioner has never been summoned.

Now it is to be examined whether the mistake is bona fide or not. On consideration of material placed on file, it appears that the mistake is bona fide. In fact, due to wrong placement of a decimal, the case has reached upto this Court. It is apparent that the petitioner wanted to declare the current market value at ₹160 lacs and not ₹1.60 lacs. The total land

declared is 8 acres 1 marla which comes to 64 kanals 1 marla. Out of the aforesaid land, 22 kanal is agreed to be sold against which earnest money of ₹35,00,000/- had been received and declared. Obviously, for little bit more than $1/3^{\text{rd}}$ of the land, the earnest money of ₹35,00,000/- has already been received. Hence, the total current market value of the entire piece of land cannot be ₹1.60 lacs. In 2012 also, the market value of the land was declared at ₹60,00,000/-. Further, it is not disputed before this Court that total current market value of all the properties has been correctly declared/mentioned as ₹7,37,50,000/- by including a sum of ₹1,60,00,000/- (₹160 lacs) and not ₹1.60 lacs. Petitioner has specifically made this assertion in para 8 of the petition, correctness whereof is not disputed. Even at the time of arguments, respondent-complainant did not dispute this fact.

In view of the aforesaid facts, it is apparent that the error in the current market value of the land in column No.1 is due to a clerical/arithmetical mistake (due to printers devil). For prosecuting an accused, there has to be a mens rea and motive. Section 171-G of IPC clearly prescribes that when the false statement in connection with election is with intent to effect the result of an election, then only the offence is deemed to have been committed. Similarly, Section 125-A (ii) of the Act of 1951, provides that when false information is given by the candidate who knows or has reasons to believe the information to be false, is liable to be prosecuted. On consideration of the facts of the case, only conclusion which is possible is that the incorrectness of the information is neither knowingly nor the petitioner had reason to believe it to be false. It is a simple case of clerical/arithmetical mistake.

It is undisputed that approximately the land measuring 1 acre out of 9 acre 1 marlas was sold through registered sale deed by the petitioner to Sh. Parteek Gupta before the nomination papers were filed in the year 2017.

It is by now well settled that summoning of an accused is a serious matter and the Court before summoning an accused must after due application of mind carefully scrutinize the evidence and then only pass an order if the offence was prima facie found to have been committed by the accused. Reference in this regard can be made to the judgment passed by Hon'ble the Supreme Court in the case of *M/s Pepsi Food Ltd. and anothers Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749.*

In view of the aforesaid, the complaint as well as summoning order, confirmed in revision, are set aside. Criminal prosecution against the petitioner is quashed. No order as to costs.

Petition allowed.

03.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No