

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

CRM-M-25364-2016(O&M)

Date of Order: 16.10.2019

Roop Lal and others

..Petitioners

Versus

Rajinder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pratham Sethi, Advocate,
for the petitioners.

Mr. Ish Puneet Singh, Advocate
for respondent no.1.

Mr. Bhupender Beniwal, AAG, Punjab

ANIL KSHETARPAL, J(Oral)

Facts of the case clearly leads this Court to a conclusion that continuation of criminal prosecution would result in abuse of the process of law, compelling this Court to exercise its powers under Section 482 of the Code of Criminal Procedure.

Fundamental dispute between the parties is with regard to inheritance of the property of late Sh. Sohan Singh. Respondent-Rajinder Singh-complainant claims that he is only son having been borne to Smt. Surjeet Kaur and Sohan Singh. Whereas it is the case of the petitioners/accused that after the death of late Smt. Surjeet Kaur in the year 1949, Sohan Singh re-married with Mohinder Kaur in 1950 and 3 sons and a daughter, who are petitioners herein, were born. Chowkidar of the village

is also one of the petitioner. Sohan Singh undisputedly died on 16.03.2002. It is the case of the complainant-respondent that he died in Sigma Hospital, Ludhiana, whereas petitioners claim that he died at village Nangal. The complaint was filed under Sections 420/465/467/468/471/120-B/197/198/199/200 IPC by Rajinder Singh, alleging that place of death has shown wrongly at Nangal i.e. village and therefore the petitioners have misled the authorities. Second allegation is that on the basis of death certificate, mutation of inheritance on the basis of natural succession has been got sanctioned before even final rites were performed.

The Judicial Magistrate has passed an order of summoning under Sections 420/465/467/468/471/120-B/197/198/199/200 IPC. From the reading of the order, it is apparent that the Court did not even *prima facie* record a finding as to how criminal offences for which the petitioners are being summoned are made out. Operative part of the order is extracted as under:-

“6. The evidence of complainant as CW1 and statements of other witnesses coupled with the evidence produced on record by the complainant, is sufficient evidence on record to proceed against all the accused. Here, this court is also supported by the law laid down in ruling contained in 2012(3) R.C.R.(Criminal)-595 (S.C.) titled Nupur Talwar vs. Central Bureau of Investigation and another, wherein following has been laid down:- Summoning order- Issuance of- that for the purpose of issuing process, all that the concerned court has to determine is, whether the material placed before it “is sufficient for proceeding against the accused”- The term “Sufficient” to proceed” is different and distinct from the term “sufficient to prove and established guilty”. Further in the above said ruling, law has been laid down that in a case exclusively triable by the Court of Sessions, all that the Magistrate has to do at the stage of Section 204 Cr.P.C. is to see whether on a perusal of the evidence there is “sufficient ground for proceeding” against the accused and at this stage, the Magistrate is not required to weigh the evidence meticulously as if he was the trial Court nor is he required to scrutinize the

evidence by the same standard by which the Sessions Court scrutinizes the evidence to decide whether to frame or not to frame charge.

7. Hence, prima-facie case is made out against all the above said accused u/ss 420/465/467/468/471/120-B/197/198/199/200 IPC. However, no credit worthy evidence has come on record against the accused u/s 197 IPC. Accordingly, all the accused are ordered to be summoned to face trial for the offences u/ss 420/465/467/468/471/120-B/197/198/199/200 IPC for 23.5.2016 on filing of PF/copies of complaint.”

There is another aspect of the matter. Rajinder Singh filed a civil suit claiming to be sole heir of Sohan Singh. In the civil suit, most of the petitioners were impleaded as party-defendants in which the complainant failed to establish his case, resulting in dismissal of the suit on 10.05.2011. Appeal against the aforesaid judgment has also been dismissed vide judgment dated 08.05.2013. No further appeal has been filed. Hence, the question of respondent being sole heir stands finally determined against him.

Information of births and deaths is regulated by Section 8 of the Registration of Births and Deaths Act, 1969(hereinafter referred to as the Act of 1969'). As per Section 8 of the Act of 1969, various persons as specified in Section have been made responsible to give information to the concerned authorities. Section 8 of the Act of 1969 is extracted as under:-

8. Persons required to register births and deaths.—

(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—

(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e), the head of the house or,

in case more than one household live in the house, the head of the household, the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;

(c) in respect of births and deaths in a jail, the jailor in charge;

(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere: Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

(f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause.

Section 23 deals with the penalties if a person fails to give information or if the information is false. Section 23 is extracted as under:-

23. Penalties.—

(1) Any person who—

(a) fails without reasonable cause to give any information which it is his duty to give under any of the provisions of sections 8 and 9;
or

(b) gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered; or

(c) refuses to write his name, description and place of abode or to put his thumb mark in the register as required by section 11, shall be punishable with fine which may extend to fifty rupees.

(2) Any Registrar or Sub-Registrar who neglects or refuses, without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any returns as required by sub-section (1) of section 19 shall be punishable with fine which may extend to fifty rupees.

(3) Any medical practitioner who neglects or refuses to issue a certificate under sub-section (3) of section 10 and any person who neglects or refuses to deliver such certificate shall be punishable with fine which may extend to fifty rupees.

(4) Any person who, without reasonable cause, contravenes any provision of this Act for the contravention of which no penalty is provided for in this section shall be punishable with fine which may extend to ten rupees.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this section shall be tried summarily by a Magistrate.

As noticed above, at the most the allegations are that the petitioners have given false information with regard to place of death and the mutation thereon has been got sanctioned, for which penalty is provided under Section 23 of the Act of 1969, a punishment with fine which may extend to Rs.50/-. It is not in dispute that the petitioners have not been summoned under Section 23 of the Act of 1969.

Learned counsel for the respondent failed to explain, how, even if it is assumed that place of death of Sohan Singh has been wrongly declared, accused have committed any criminal offence under which they have been summoned. He has further failed to explain, how such alleged misrepresentation, has prejudiced the rights of the parties. Mutation of inheritance, is for updation of the revenue record, required to be carried out immediately on the first opportunity. Hence, even if such updation was got

entered and sanction before final rites, would not give rise to any criminal offence.

Keeping in view the judgment passed by the Civil Court and nature of offence, which is being alleged by the respondent, this Court is of the view that continuation of criminal prosecution would be an abuse of the process of court.

Learned counsel for the respondent has submitted that the judgment passed by the civil court is not binding on the criminal court and therefore, the court should not quash this proceeding merely on the basis of civil court judgment.

The submission of learned counsel for the respondent is correct to certain extent. However, in the facts of the present case, it is required to be examined as to whether criminal prosecution can be permitted to continue or not?

The learned Magistrate has passed a totally non-speaking order. Summoning of accused in a criminal complaint is a serious matter. Before summoning an accused, it is the bounden duty of the court to record a finding as to how and in what manner *prima facie* case is made out against the accused who are sought to be summoned and how opinion as required under Section 204 Cr.P.C. has been formed by the concerned Magistrate before ordering issuance of the process to the accused. The preliminary evidence led has to be analyzed and discussed while keeping in mind that if such evidence goes un rebutted, the accused sought to be summoned can result in his conviction. At least on the face value, the preliminary evidence led is required to be appreciated. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court in the case of **M/s Pepsi**

Food Ltd. and another vs. Special Judicial Magistrate and others, (1998)5 SCC 749.

Keeping in view the facts of the present case, not only the order summoning/issuance of process, is found to be erroneous but even the criminal prosecution as initiated is found to be abuse of the process of law.

Hence, petition allowed.

October 16, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No