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

CRM-M-14280 of 2019

Date of decision: May 22, 2019

Rajdeep Kaur

.....Petitioner

Versus

Jagir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ajiteshwar Singh, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J (Oral)

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for quashing of complaint case No.68 of 2016 dated 01.03.2016 titled as 'Jagir Singh versus Rajdeep Kaur and others' as well as summoning order dated 04.10.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar (for short 'JMIC') under Sections 419, 420, 465, 466, 468, 471 and 120-B of Indian Penal Code, 1860 (for short 'IPC') along with all consequential proceedings arising therefrom; further challenges to the judgment dated 10.05.2018 passed by learned Additional Sessions Judge, Jalandhar, whereby, revision against the aforesaid order has been dismissed.

Brief facts of the case are that respondent-complainant-Jagir Singh filed a complaint against four accused including two ex-Sarpanches, whose details are as under:-

- (i) Rajdeep Kaur, ex-Sarpanch (petitioner herein);
- (ii) Dalbir Singh, ex-Sarpanch;
- (iii) Gurbaksh Kaur wife of Santokh Singh (beneficiary of pension);
- (iv) Amarjit Kaur daughter of Santokh Singh (Anganwari worker of the village).

Allegations are that Gurbaksh Kaur applied for pension in the fictitious name of Mohinder Kaur wife of Santokh Singh by impersonation and thus, received pension while misappropriating the public funds. Both the ex-Sarpanches recommended and prepared the list of beneficiaries for sanction of pension on the basis of wrong verification made by the daughter of Gurbaksh Kaur, namely Amarjit Kaur. Also alleged that two bank accounts were opened under different names, i.e. one in the name of Gurbaksh Kaur wife of Santokh Singh whereas the other in the name of Mohinder Kaur wife of Santokh Singh, with Oriental Bank of Commerce, Branch village Mand, District Jalandhar.

It is contended that petitioner had discharged her duties as a Sarpanch of village, thus, being a public servant, sanction under Section 197 of Cr. P.C. is pre-requisite before passing the impugned summoning order by learned JMIC. Also contended that there is no material available on record to connect the petitioner with commission of alleged offence, inasmuch as Dalbir Singh-co-accused remained Sarpanch for the period from 1993 to 2003; whereas petitioner during 2008 to 2013. Further contended that present complaint is counter-blast to FIR No.322 dated 28.09.2009, under Sections 447, 427 IPC, at Police Station Maqsudan, District Jalandhar, registered by petitioner against the respondent and his son-Davinder Singh.

Heard learned counsel for the petitioner and perused paper-book.

Before proceeding with the matter, it is necessary to mention here that a similar petition, i.e. CRM-M-9947 of 2019 was filed by co-accused of the petitioner, namely Dalbir Singh against both the impugned

orders, but the same was dismissed as withdrawn, on 05.03.2019 from this Court, with liberty of exemption from personal appearance before learned JMIC and order reads as under:-

“Present petition has been filed under Section 482 Cr.P.C. challenging the order dated 04.10.2017 (P-3), passed by learned Judicial Magistrate 1st Class, Jalandhar in a criminal complaint titled as 'Jagir Singh Versus Rajdeep Kaur', summoning the petitioner to face the trial for the offences punishable under Sections 419, 420, 465, 466, 468, 471 and 120-B of the Indian Penal Code. Further challenge is to the order dated 10.05.2018 (P-6), passed in CRR Nos.98 and 113 of 2018 by learned Additional Sessions Judge, Jalandhar, dismissing the revision against the aforesaid summoning order.

After arguing for sometime, learned Counsel for the petitioner confined his prayer only up to the extent of seeking exemption from personal appearance of the petitioner before learned trial Court in view of the fact that he is residing abroad.

Prayer seems to be justified and accepted.

Consequently, the present petition is dismissed as withdrawn with liberty to the petitioner to appear through his Counsel before learned trial Court uptill the stage of recording the statement under Section 313 Cr.P.C., but it is made clear that in case any adverse order is passed against the petitioner, he shall not raise any grievance against the same, subject to the following conditions:-

- (i) petitioner shall be represented through Counsel;*
- (ii) shall not delay/stall the trial proceedings;*
- (iii) shall not dispute their identity as accused;*
- (iv) shall have no objection if the prosecution evidence is recorded in their absence, but in the presence of their Counsel;*
- (v) shall appear before learned trial Court as and when required;*
- (vi) any other condition which the learned trial Court may impose”.*

Perusal of the order dated 05.03.2019 reproduced hereinabove clearly reveals that challenge to the impugned orders at the instance of co-accused-Dalbir Singh did not find favour before this Court and the same has attained finality qua him.

A careful perusal of impugned orders as well as paper-book further reveal that respondent-complainant has been examined as CW1 at

pre-summoning stage and he deposed that Gurbax Kaur wife of Santokh Singh applied for sanction of a pension while impersonating herself as Mohinder Kaur, whereas co-accused Dalbir Singh recommended her name for sanction of pension in a fictitious name. This witness further deposed that verification regarding the identity of above said Mohinder Kaur was made by accused Amarjit Kaur being *anganwari* worker, who is none-else, but daughter of Gurbax Kaur and thus she was fully aware about the real name of her mother. He also stated that Amarjit Kaur intentionally prepared list of pension-holders on the basis of wrong identification and two bank accounts were opened in the name of beneficiary, i.e. one as Gurbax Kaur and second as Mohinder Kaur, with the Oriental Bank of Commerce, village Mand and continued to receive pension amount in these accounts.

Balwinder Singh, Sarpanch of village Sangal Sohal, was examined as CW2, who produced the relevant record regarding distribution of pension, as Exhibit C1 to Exhibit C13 and copies of receipt of pension by Mohinder Kaur wife of Santokh Singh. This witness was elected as Sarpanch in the year 2013 and when he came to know that Mohinder Kaur is wrongly getting the pension, she was asked to produce her identity proof as her real name is Gurbax Kaur, but she failed to do so, consequently, he recommended to the Department for discontinuation of pension.

Rajinder Verma, Manager, Oriental Bank of Commerce, Branch Mand, was examined as CW4, who produced the record pertaining to two accounts, i.e. 00642010003410 and 00642030001300; out of them one is joint account held by Santokh Singh alongwith Gurbaksh Kaur, whereas, other pertains to Mohinder Kaur wife of Santokh Singh. Thus, the impugned summoning order has been passed by learned JMIC while

considering the entire material available on record and the same is not only self-speaking but well reasoned also.

Still further, learned revisional Court did examine the matter thoroughly in true perspective and rightly came to the conclusion that in view of Exhibit C15 to Exhibit C21, beneficiary was having two accounts, i.e. one in the name of Gurbaksh Kaur with Santokh Singh and another of Mohinder Kaur wife of Santokh Singh, consequently, did not find any wrong with the summoning order passed by learned JMIC.

The contention that present complaint is a counter-blast to the FIR No.322 dated 28.09.2009, lodged by the petitioner against the respondent as well as his son, the same cannot be accepted in view of the fact that respondent-complainant along with his son-Davinder Singh already stands acquitted in that case by learned Judicial Magistrate Ist Class, Jalandhar, vide judgment dated 07.01.2017 and nothing has been brought to the notice of this Court to substantiate that above order has been set aside by any superior Court, thus, the argument to that effect also is devoid of any merit.

Concededly, neither at the time of filing of complaint, nor as on today the petitioner is a public servant and moreover the question relating to sanction under Section 197 Cr. P.C. is to be considered by learned trial Court at the appropriate stage in view of the law laid down by Hon'ble Supreme Court in the case of **Parkash Singh Badal and another** versus **State of Punjab and others**, (2007) 1 SCC 1 and Paras 38 and 39 of the same reads as under:-

“38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the

proceedings. The question whether sanction is necessary or not may have to be determined from stage to stage.

39. So far as the question about the non-application of mind in the sanction or absence of sanction is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have taken place, the other questions really become academic.”

Thus, passing of the impugned summoning order before obtaining sanction under Section 197 Cr. P.C. cannot be invalidated by this Court, at this stage, while entertaining the present petition under Section 482 of Cr. P.C.

Even otherwise, the contentions raised on behalf of the petitioner are pleas of defence and the same would be considered by learned trial Court at the appropriate stage(s), but cannot be the basis for quashing of the impugned summoning order at the threshold.

Keeping in view the facts and circumstances discussed hereinabove, there is no merit in the present petition, consequently, the same stands dismissed.

However, it is clarified that observations made above may not be construed as an expression of opinion on the merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

May 22, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No