

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

CRM-M-33986-2016 (O&M)

Date of decision : 29.08.2019

Naresh Kumar Aggarwal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashit Malik, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Vineet Sharma, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Through the present petition under Section 482 Cr.P.C, quashing of criminal complaint No.247 of 2015 under Sections 420, 467, 468, 471, 120B, 506 IPC and summoning order dated 17.05.2016, have been sought.

There are three registered societies:-

- 1) Arya Girls High School Managing Committee (Registered) Adda Bazaar Tarn Taran
- 2) Arya Samaj Regd. Managing Committee Adda Bazaar, Tarn Taran
- 3) Arya Samaj, Tarn Taran (registered on 28.02.2006)

Fundamental dispute between the parties is with respect to

leasing out of a shop by petitioner on 26.07.2001 in favour of Sahib Singh and Navtej Singh (nephew of Sahib Singh).

Respondent No.2 first filed complaint which was registered as an FIR No.223 dated 14.10.2011 on similar allegations. Police after investigation found no substance in the aforesaid complaint and it was found that action of the petitioner to give on lease the shop in question as a President of the society does not constitute any criminal offence. Police also noticed that similar complaint was also filed by the respondent to the Deputy Commissioner.

Respondent No.2 also filed a criminal complaint in the Court of Judicial Magistrate. Basic allegations in the aforesaid complaint are to the effect that Naresh Kumar Aggarwal-petitioner has no concern with Arya Samaj, Tarn Taran but he in connivance with his co-accused has fraudulently prepared a fake rent deed dated 26.07.2011 with respect to the property (shop in question) belonging to the society.

Learned Judicial Magistrate summoned the petitioner and other co-accused vide order dated 17.05.2016.

A detailed reply has been filed by the respondent.

If one carefully examines the allegations made in the complaint, it is apparent that there are two allegations against the petitioner; (i) the petitioner has no concern with Arya Samaj, Tarn Taran (ii) the shop has been leased out by the petitioner by getting a fake rent deed.

In the present petition, it has been pleaded that initially father

of the petitioner namely Sh. Amar Nath Aggarwal and Ram Kishan, uncle of the petitioner purchased the properties in the name of Arya Samaj Mandir, Adda Bazaar, Tarn Taran and DAV School way back vide sale deeds dated 01.11.1937, 09.09.1963, 24.09.1970 and 04.08.1971. Thereafter, the properties were initially transferred in the name of DAV School which was opened to promote education in the area. In the year 1965, father of the petitioner being President of the Society formed other society having same members i.e. Arya Girls High School Managing Committee (Regd.), Adda Bazaar, Tarn Taran. Few shops including the shop in question were constructed in order to augment the income of Arya Girls High School (Regd.) Managing Committee, Adda Bazaar, Tarn Taran. The shop in question was let out to late Sh. Sadhu Singh. In 1986, another resolution was passed and the land in DAV School was also transferred to Arya Girls High School (Regd.) Managing Committee, Adda Bazaar, Tarn Taran. Petitioner claims that after the death of his father, he was elected as a President. He also purchased some land in the name of Arya Samaj Mandir vide sale deed dated 30.07.2001 which was again later on transferred to Arya Girls High School.

It is further asserted that respondent No.2 had got registered a society with the same name i.e. Arya Samaj (Regd.) Managing Committee, Adda Bazaar, Tarn Taran on 24.01.2006 (Annexure P-8), however, later on when the Registrar of Societies came to know of the same, he cancelled the registration and the name was changed to Arya Samaj, Tarn Taran vide certificate dated 28.02.2006 (Annexure P-10).

As noticed above, the entire allegations in the complaint as well as in the FIR are to the effect that the petitioner has no authority and, therefore, a fake rent note has been prepared. It is not disputed that fresh rent note is in favour of Sahib Singh son of Sadhu Singh, the original tenant and Navtej Singh, his nephew. In other words, with respect to a shop which was already on tenancy with the family of late Sh. Sadhu Singh, a fresh rent note has been executed. Respondent No.2 had filed a suit with regard to shop in question but he withdrew the same.

Initiation of criminal proceedings is a serious matter. Judicial Magistrates are required to be vigilant. The Judicial Magistrates after due application of mind are required to pass the order of summoning the accused. In the present case, this Court finds that the learned Judicial Magistrate has not applied his mind. Learned Judicial Magistrate has not even adverted to the cancellation report which was submitted by the police and was part of the file as the cancellation report was attached with the criminal complaint. Still further, learned Judicial Magistrate has failed to appreciate that there are no allegations/assertions/averments that Naresh Kumar Aggarwal-petitioner has either embezzled the rent or has in any way cheated the religious organization. It is also not in dispute that the rent note dated 26.07.2011 is in favour of son of original tenant Sadhu Singh and his nephew.

Dispute in the present case appears to be with regard to management of different societies. On the one hand, petitioner-accused claims that he is President of society No.1 and 2 noticed in the initial part

of the judgment, whereas petitioner No.3 claims that he is President of society noticed at Sr. No.3. No material has been placed on record to prove that there is any adjudication as to which of the society is owner of the property.

Keeping in view the aforesaid facts, initiation of criminal proceedings were not justified. Hence, set aside.

Petition allowed with costs of ₹50,000/-.

29.08.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No