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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33124-2017 [O&M]

Date of Decision : July 26, 2019

Ram Piari and another

.... Petitioners

Versus

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr.R.S.Ghuman, Advocate,
and Ms. Shashi Ghuman, Advocate,
for the petitioners.

Ms. Monika Jalota, DAG, Punjab,
for respondent-State.

Mr. Satbir Rathore, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing Complaint No. 88 of 2016 (Annexure P/1) dated 1.9.2016 under Sections 420, 465, 467, 468, 471 and 120-B IPC titled – **Net Ram Vs. Ram Piari and others** and summoning order dated 13.06.2017 (Annexure P/2) passed by learned Judicial Magistrate Ist Class, Anandpur Sahib.

2. Petitioners have come with the plea that they have been falsely implicated in this complaint case and learned trial Magistrate has passed the summoning order dated 13.6.2017, (Annexure P/2) in routine.

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Filing of complaint, Annexure P/1 is sheer misuse and abuse of process of law. Earlier, there was civil litigation between respondent No.2 and sons of petitioner No.1 and the said litigation was finally decided against respondent No.2 vide orders, Annexures P/6 to P/8. Petitioner No.1 is an illiterate widow lady and was homeless, belonging to Balmiki caste (Scheduled Caste) and Gram Panchayat, Village Sarthali, unanimously passed resolution No. 5 for giving a residential plot measuring 5 Marlas to petitioner No.1. The said resolution passed by the Gram Panchayat on 17.12.1990 and was approved by Director, Rural Development and Panchayats, Punjab, Chandigarh and necessary mutation No. 3380 was entered and sanctioned. On the basis of that resolution and transfer, petitioner No.1 raised construction of residential house on said 5 Marlas plot and is living there since long with her family.

3. Learned counsel for the petitioner contended that the Resolution No. 5 (Annexure P/3) was passed way back on 17.12.1990 and the same has been challenged by respondent no.2 after a gap of 26 years. None else from village Sarthali had come forward to challenge the said allotment. Respondent No.2/complainant has filed the present litigation at such a belated stage because he remained unsuccessful in the civil litigation separately. Even the witnesses examined during the complaint proceedings before learned Magistrate showed their ignorance about the approval having been given by Director, Rural Development and Panchayats, Punjab, Chandigarh and respondent (complainant) has not been able to prove its case. As such, the present complaint and the summoning order are liable to be quashed.

4. While arguing on this point, learned counsel representing

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respondent No.2 contended that respondent No.2 was not aware of passing of Resolution No. 5 on 17.12.1990 and he came to know about passing of the same in the year 2013 and thereafter, the present complaint was filed.

5. When confronted on factual position, learned counsel for respondent No.2 fairly conceded that none-else from the village is aggrieved and no litigation was filed by him in representative capacity as per provisions of the Code of Criminal Procedure or Code of Civil Procedure. Otherwise also, there is no illegality in the Resolution having been passed by the Gram Panchayat, which has been duly approved by Director, Rural Development and Panchayats, Punjab, Chandigarh.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that it appears that respondent No. 2 had initiated the present litigation because of some personal vendetta only and there is no explanation to the delay of more than 26 years in filing the present complaint because the plot was allotted to petitioner No.1 vide resolution dated 17.12.1990 and thereafter, petitioner No.1 had constructed a residential house thereon and had been living in the same since long. In the light of above facts, the contention having been raised by respondent No.2 that he had no knowledge about passing of resolution, Annexure P/3 is not acceptable as both the parties are residents of the same village – Sarthali, Post Office – Takhatgarh, Police Station - Nurpur Bedi, District Rupnagar. Otherwise also, there is nothing on merits to proceed further against the present petitioners for commission of offence under Sections 420, 465, 467, 468, 471 and 120-B IPC because the plot was allotted to

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petitioner No.1 as she was belonging to Balmiki caste (Scheduled Caste) and keeping in view her poor financial position, the resolution Annexure P/3 was passed in 'Aam Izlass' and learned Magistrate has not considered this aspect of the matter while passing the order under challenge.

7. Resultantly, the present petition is accepted and the impugned summoning order, dated 13.06.2017 (Annexure P/2) passed by learned Judicial Magistrate Ist Class, Anandpur Sahib stands quashed qua the petitioners.

8. Disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

July 26, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes