

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

**CRM-M No.39281 of 2015 (O&M)  
Decided on: 06.11.2019**

Dr. Chand Singh Dhull

....Petitioner

Versus

Trilok Chand

....Respondent

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Mr. J.S. Bedi, Sr. Advocate  
with Mr. Abhaysher Singh, Advocate for the petitioner.

Mr. Rakesh Nehra, Advocate  
for the complainant.

**ARVIND SINGH SANGWAN, J.**

Prayer in this petition filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') is for quashing of complaint No.489 dated 25.01.2016 filed under Sections 323, 504, 458, 427, 395, 148, 149 read with Section 120-B of the Indian Penal Code (in short 'IPC') (Annexure P1) and all other subsequent proceedings arising therefrom and for setting-aside the summoning order dated 20.07.2012 (Annexure P2) passed by the trial Court vide which the petitioner and six other accused persons were summoned to face the trial as well as the order dated 29.10.2015 (Annexure P3) vide which the revision filed by the petitioner was dismissed by the Revisional Court.

Brief facts of the case as set up in the complaint filed by the respondent – Trilok Chand are that he is working on a shop i.e. Om Medical Agencies and the brother of complainant – Suresh Kumar Gupta, is the sole proprietor of the shop who has taken the Shop No.8 (earmarked as 'Chemist Shop') on licence in the Shopping Complex of

Post Graduate Institute of Medical Sciences, Rohtak (hereinafter to be referred as 'the PGIMS, Rohtak'). The complainant's brother Suresh Kumar Gupta had filed a civil suit before the Civil Court at Rohtak praying for a decree of injunction against the authorities of PGIMS, Rohtak not to evict him. In para 6 of the complaint, it is stated that Suresh Kumar Gupta, the proprietor of M/s. Om Medical Agencies, lost the case and vide order dated 28.04.2011, the Civil Court dismissed the application under Order 39 Rules 1 and 2 CPC. It is further stated that Suresh Kumar Gupta had filed a civil appeal which was dismissed by the Additional District Judge on 18.01.2012.

The learned Senior counsel has argued that it is further stated in the complaint that on 19.01.2011, accused Nos.1 to 5 (the petitioner was arrayed as accused No.7 being Director of the PGIMS, Rohtak) came to the shop and enquired about Suresh Kumar Gupta and directed the complainant to vacate the shop. Upon asking, they informed that accused No.6 – the Vice Chancellor of PGIMS, Rohtak had directed to get the shop vacated. Upon this accused No.3 made a telephonic call to the petitioner/accused No.7 and he came there along with 30-40 persons and removed the medicines and other goods lying in the shop, on a tractor. Thereafter, the complainant approached accused No.6 i.e. the Vice Chancellor of PGIMS, Rohtak, who refused to entertain his complaint and thereafter, the present complaint was filed with the allegations that all the accused persons have taken away medicines worth Rs.80/90 lacs along with other medical equipments and therefore, necessary action be taken against them.

The trial Court, thereafter, recorded the preliminary

evidence of the complainant and in the preliminary evidence, the complainant himself appeared as PW1 and examined one Kuldeep Gulia as PW2, the proprietor Suresh Kumar Gupta as PW3, Vikas Garg as PW4, Happy Arora as PW5 and Dharambir, a Copyist in Sessions Court as PW6 and had also placed on record some documents i.e. the complaint Ex.PA, Fax given to the Vice Chancellor as Ex.PC, certificate of the order of the Court as Ex.PE and closed the evidence. As per para 3 of the impugned complaint PW2, PW4 and PW5 were the employees of the said Om Medical Agencies and PW3 – Suresh Kumar Gupta was not present at the shop as he had allegedly gone to Chandigarh on the date of incident.

The trial Court, thereafter, passed the summoning order against all the 07 accused persons. The operative part of the order reads as under:-

*“...5. In the instant case, PW1 Trilok Chand while appearing into witness box has reiterated all the averments as set up in the complaint. PW2 to PW5 also supported the complainant version and corroborated the testimony of PW1 complainant in letter and spirit. PW6 Dharambir has deposed that copy of judgment in the case titled as 'Suresh Kumar Gupta vs Pt. Bhagwat Dayal Sharma' was prepared and supplied to both the parties on 24.01.2011. Therefore, from the perusal of the complaint as well as deposition of the witnesses examined by the complainant prima facie it can be safely said that the accused No.1 to 5 have caused simple hurt besides threatening the complainant to face dire consequences. Further, the act or conduct of the accused nos.1 to 7 of vacating the shop in question was not according to the due procedure of law as the accused have broken the lock of*

*the shop in question and taken away all the commodities present in the shop and also the aforesaid act has been committed on the order of Dr. S.S. Sangwan, VC of Pt. B.D. Sharma, Rohtak in the absence of Suresh Kumar Gupta, who was the sole proprietor of the aforementioned shop. Therefore, case for commission of offence punishable under Sections 323/504/452/427/379/148/149 read with Section 120-B of IPC is made out against all the accused. Thus, all the accused are hereby summoned to face trial under Sections 323/504/452/427/379/148/149 read with Section 120-B of the Indian Penal Code for 12.09.2012 on filing of PF, copies etc.”*

Thereafter, the petitioner along with four other persons filed a criminal revision before the Court of Sessions.

The Revisional Court dismissed the same by passing the impugned order dated 29.10.2015. The operative part of the order dated 29.10.2015, reads as under:-

*“...21. As discussed above, the licensee S.K. Gupta remained as an unauthorised occupant of the shop No.8 where he used to run a chemist shop. As per the complainant's version he was working as a pharmacist on that shop. Except in certain cases as given under Sections 198 and 199 of the Code of Criminal Procedure, every person whether is aggrieved or not, he has a right to set the criminal law in motion. Moreover, in this case, Trilock Chand being the pharmacist of the shop has a right to maintain the complaint in question, so, it cannot be said that Trilock Chand has no legal right to file this complaint.*

*22. In this case, admittedly, the ejectment order has been passed against the licensee S.K. Gupta on 28.4.2011 and admittedly S.K. Gupta had lost the civil suit seeking*

*injunction and lastly his appeal was also dismissed by the then learned Additional District Judge, Rohtak on 18.1.2012. After the dismissal of the appeal, Dr. S.S. Sangwan passed an order dated 19.1.2012 to seek the possession of shop No.8 given on license to S.K. Gupta. However, the learned counsel for the revisionists have failed to show whether or not any warrant of possession has been issued by the Court of competent jurisdiction for execution of the ejectment order passed under the Public Premises (Eviction of unauthorised occupants) Act. No doubt, Dr. S.S. Sangwan may have sought the opinion of Shri N.N Girotra, Advocate, their legal Adviser but in the opinion of this Court Shri S.S. Sangwan cannot assume the authority to get the ejectment order implemented suo-moto on the next day of the dismissal of the appeal of the licensee S.K. Gupta without getting a warrant of possession issued from the Court which passed the ejectment order.*

*23. At this stage, it cannot be said that whatever steps were taken by the revisionist was within the ambit of their power and it was not an abuse of their power as it is a question of fact and this Court being the revisional Court of limited jurisdiction cannot give a finding on this issue. However, as per the complainant version, he was manhandled and the respondents have taken away their medicines and other articles housed in the shop in question, so, at the time of the passing of the summoning order, the learned Judicial Magistrate has appreciated this fact in right perspective while passing the impugned order.*

*24. So far as the contention of the learned counsel for the revisionist that the licensee S.K. Gupta has already received the medicines and other articles and the revisionists had prepared an inventory while removing the goods cannot be appreciated at this stage and on this*

*score, the summoning order cannot be set aside being a matter of facts which shall be decided by the learned trial Court.*

*25. So far as the question of sanction is concerned, no doubt, in this case no sanction has been obtained by the complainant before filing this complaint or at the time of summoning of the revisionists nor such sanction was available with the complainant but it is an admitted fact that the revisionists are the employees of the Pt. B.D. Sharma, University of Health Sciences, Rohtak, which is headed by the Vice Chancellor. The Vice Chancellor and Directors of the University can be removed by the Chancellor of the University and not by the Government. In these circumstances, at his stage, it cannot be said that no sanction was required before launching prosecution against the revisionists and the instant prosecution is bad in the eyes of law.”*

The petitioner, thereafter, has filed the present petition praying for quashing of the complaint and for setting-aside the summoning order and the order passed by the Revisional Court.

Vide order dated 26.09.2016, it was observed that on perusal of the order issuing process under Section 202 Cr.P.C. show that not even a word is mentioned regarding the specific role of the petitioner and the process has been issued in the general words against respondents No.1 to 7 without even *prima facie* discussing the role of the present petitioner, who was working as a Director of PGIMS, Rohtak at the relevant time and it is a matter of serious concern that the trial Court has ordered issuance of a process in a mechanical manner without even trying to find out whether there is *prima facie* case existing against the petitioner. It was also observed that the trial Court

has acted irresponsibly and similar is the state of affair with the Revisional Court and, therefore, further proceedings before the trial Court were stayed.

Since the proceedings before the trial Court are stayed from 2016, the present petition is taken up for hearing in the Urgent List.

Learned Senior counsel has argued that on 13.12.2006, a show cause notice was issued to proprietor Suresh Kumar Gupta for vacation of Shop No.8 and on expiry of period of the show cause notice, on 27.02.2007, the licence of Shop No.8 was cancelled by the PGIMS, Rohtak. Again on 05.06.2007, after cancellation of the allotment of the shop, the proprietor Suresh Kumar Gupta was directed to vacate the shop within a period of 15 days.

Thereafter, Suresh Kumar Gupta, filed a suit for injunction before the Civil Court on 17.07.2007 and also filed an application for stay, which was dismissed vide order dated 24.05.2008. The appeal filed by him was dismissed by the District Judge vide order dated 13.08.2009 and thereafter, he filed Civil Revision No.4716 of 2009 in which it was directed that he should not be dispossessed from the shop except by adopting due process of law.

Learned Senior Counsel for the petitioner has further argued that in compliance thereof on 11.11.2009, an application under Sections 4 and 5 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 was filed on behalf of PGIMS, Rohtak in the Court of the Collector-cum-S.D.O. Civil, Sub-Division Rohtak, seeking eviction of Suresh Kumar Gupta which was allowed on

07.03.2011 thereby, issuing a direction to evict him from the Shop No.8 within a period of 30 days.

The proprietor Suresh Kumar Gupta then filed an appeal in the Court of the Commissioner, Rohtak which was also dismissed on 10.05.2011.

In the meantime, even the main Civil Suit No.66-1 of 2007 praying for decree of mandatory injunction was also dismissed by the Civil Judge on 28.04.2011. The appeal filed by the proprietor Suresh Kumar Gupta before the Additional District Judge was also dismissed on 18.01.2012.

Learned Senior counsel for the petitioner has also submitted that Suresh Kumar Gupta, the proprietor of the shop had even filed a contempt petition i.e. COCP No.238 of 2012 against the Vice Chancellor of the University before this Court and the same was disposed of vide order dated 24.01.2012 holding that the action of the College in dispossessing the petitioner cannot be construed as a willful or deliberate act of violation. It is further argued that even the RSA No.716 of 2012 filed by Suresh Kumar Gupta challenging the judgment and decree of the Civil Court and the Lower Appellate Court dismissing his suit for injunction was also dismissed by this Court on 17.02.2012.

Thereafter, the PGIMS, Rohtak sought the opinion of their Standing Counsel Mr. N.N. Girotra, Advocate who opined on 18.01.2012 that Shop No.8 may be vacated and accordingly, the same was got vacated by PGIMS, Rohtak on 19.01.2012, in the presence of the police force in pursuance to a letter issued by the Vice Chancellor (accused No.6), in which it was observed that since Suresh Kumar

Gupta, the licensee of shop No.8 is not vacating the shop, the possession be taken with the police help.

Learned Senior Counsel for the petitioner has further argued that in pursuance thereof, an information was sent to the local police to provide police help and thereafter, two Rapats No.19 and 23 dated 19.01.2012 was recorded at Police Post PGIMS, Rohtak, in this regard. It is further submitted that even on that day, again a notice for vacation of shop was issued by the Estate Officer, which was received by Vikas Garg but when the proprietor Suresh Kumar Gupta failed to vacate the shop, the Estate Officer with the help of police, after preparing an inventory of the articles in the shop, got vacated the shop and kept all the articles in a safe custody in the presence of the police party. In this regard, the proceedings were also recorded in the presence of the allottees of Shop Nos.5, 11, 12 and 13 as well as their employees and therefore, there was no question of misappropriating the articles of the complainant lying at the shop.

Learned Senior Counsel for the petitioner has also submitted that on receiving a message from Suresh Kumar Gupta, a reply dated 25.01.2012 was given to him by the Estate Officer that the articles which were removed from the shop in the presence of the police were, in fact, kept in a safe room under the lock and key and the complainant can collect his articles. It is also submitted that instead of collecting the articles, the present complaint was filed on the same day i.e. 25.01.2012 and the college is suffering unnecessarily, by employing three Chowkidars to take care of the same and a demand of mesne profit was also raised from the complainant. Learned Senior counsel for

the petitioner has, thus, submitted that the legal process has been followed as on 06.10.2012, Suresh Kumar Gupta has taken away all the articles/medicines against a receipt which is attached as Annexure P-8 (colly.) with this petition.

Learned Senior counsel for the petitioner has also submitted that as per the University Calender of Pandit Bhagwat Dayal Sharma University of Health Sciences, which regulate the PGIMS, Rohtak, the specific duties are assigned. It is further argued that the petitioner being the Director of PGIMS, Rohtak, was not directly In-charge of the Estate of the college, as the Estate Officer was appointed to look after the property of the college and all the correspondence with complainant, prior to the date when the possession was taken were made by the Estate Officer as per the direction of the Vice Chancellor.

Learned Senior counsel for the petitioner has further argued that neither the trial Court nor the Revisional Court has looked into the fact that after passing of an order of eviction by the Collector as well as dismissal of the revision by the Commissioner, there was no requirement to file an execution application as the strict rules of the Code of Civil Procedure do not apply in the proceedings under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 and therefore, a proper procedure was followed and after giving a notice of termination of licence under Sections 4/5 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, by the Estate Officer to Suresh Kumar Gupta, the proprietor of Shop No.8, was in the illegal possession since 2006. Therefore, the findings recorded by the Revisional Court that the possession was taken without

filing an execution of the eviction order under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 is incorrect. It is also submitted that Shop No.8 was assigned as a medical shop and PGIMS, Rohtak, is a big institution which is providing medical aid to thousands of patients, who come to take treatment in the college and Suresh Kumar Gupta, the proprietor was in unauthorized possession of the shop from 2006 till 2012 and has unnecessarily involved the college into unwanted litigation just to retain the illegal possession of the shop, which has not only resulted into huge monetary loss to the college but also caused inconvenience to thousands of patients, who were coming daily for treatment and were unable to purchase the medicines on the rate prescribed by the college as after 2006, Suresh Kumar Gupta was running the medical shop on his own whims.

Learned Senior counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court ***“Cantonment Board and another vs Church of North India”***, 2011(3) RCR (Civil) 26 to argue that the proceedings under the Public Premises Act are summary in nature and even the strict provisions of Transfer of Property Act are not applicable for issuing a notice for termination of the licence.

Learned Senior counsel has also relied upon the judgment ***“New India Assurance Company Limited vs Nusli Neville Wadia and another”***, 2008(1) RCR (Civil) 875, to submit that it has been held by the Hon'ble Supreme Court that the Public Premises Act provide for a speedy remedy and the provisions of Code of Civil Procedure and the Evidence Act being not applicable, what is necessary to be complied

with is the principle of nature justice. Learned senior counsel has, thus, argued that after 05 years long litigation in which the complainant lost before the Civil Court as well as before the authorities under the Public Premises Act, again after giving a notice, the possession was taken by the Estate Officer and, therefore, the findings by the Revisional Court that no execution was filed is not correct.

Learned Senior counsel for the petitioner has also submitted that the petitioner was neither present at the spot when the possession was taken nor was a part of the Committee constituted by the Vice Chancellor as is clear from the proceedings dated 18.01.2012 (Annexure P4) after taking the legal advice. It is further argued that except the self-serving statement of PW1, there is no other independent evidence as it is own case of the complainant that PW3 – Suresh Kumar Gupta, the proprietor was not present at the spot and PW2, PW4 and PW5 are the servants of the complainant and therefore, without applying the mind whether the petitioner was present at the spot or he had actively participated in taking the possession of the shop, the process has been issued. It is also submitted that the petitioner at the relevant time was the Director of PGIMS, Rohtak, whose job was primarily to take care of the academics and the hospital and not the Estate of the college, for which an Estate Officer was appointed, who is arrayed as accused No.4 in the complaint.

Learned Senior counsel for the petitioner has next argued that the complainant has failed to place on record any inventory of the items, which were in the shop at the time of taking the possession and therefore, the inventory prepared by the Estate Officer in the presence

of the police and other members of the Committee was found to be correct as subsequently vide receipt dated 06.10.2012 (Annexure P8, colly.), Suresh Kumar Gupta has received back the entire articles and therefore, the allegations of the complainant that goods worth Rs.80/90 lacs were taken by the accused persons, who are all officials of the PGIMS, Rohtak and acted in discharge of their official duty is not substantiated by any evidence.

Learned Senior counsel for the petitioner has also argued that since the petitioner was the Director of PGIMS, Rohtak, therefore, in the absence of prior sanction under Section 197 Cr.P.C. the prosecution is bad in the eyes of law and, thus, he cannot be summoned by the trial Court. It is also submitted that since the petitioner was appointed by the Governor of Haryana, he is a public servant within the meaning of Section 21 of the IPC as per Volume I of the University Calender and therefore, the prior sanction was required to prosecute him.

Learned Senior counsel for the petitioner has, thus, argued that the allottee of Shop No.8 left no effort to retain the illegal possession of Shop No.8 by involving the PGIMS, Rohtak, in multiple litigations and after he lost the litigation, the possession was taken in accordance with law. It is further argued that the prosecution of the petitioner and other accused persons is *per se mala fide* as the proprietor Suresh Kumar Gupta, who was allottee of Shop No.8 purposely himself has not filed the complaint and got it filed through his brother with a *mala fide* motive as he knew that he is in illegal possession of the shop since 2006, when by issuing a show cause

notice, his licence was cancelled and, therefore, for retaining the illegal possession of Shop No.8, he has caused huge financial loss to the college worth crores of rupees for which the college has already recommended action to file a suit for recovery of mesne profits. It is also submitted that the *mala fide* is otherwise apparent as none of the accused persons had any personal interest as they were acting in discharge of their official duties and were taking efforts to get the shop vacated as, on termination of the licence, as the proprietor Suresh Kumar Gupta was in unauthorized possession of the shop.

Learned Senior counsel for the petitioner has also argued that the complaint has been filed only with a purpose to avoid the payment of mesne profits to the college and to put pressure on the officials of the college so that they may not pursue the remedy of recovery from Suresh Kumar Gupta and for this reasons, he himself has not filed any complaint and rather the same has been filed through his brother.

Learned Senior Counsel for the petitioner has relied upon the judgment ***“Mrs. Priyanka Srivastava and another vs State of U.P. and others”***, 2015(2) RCR (Criminal) 1034. In the said case, the bank officials were pursuing the remedy on behalf of the bank to recover the amount against the complainant, who on false grounds filed a complaint under Section 156(3) Cr.P.C. before the Magistrate, who in casual manner has directed the police to register an FIR. The Hon'ble Supreme Court held that the Magistrate has passed an order in casual manner under Section 156(3) Cr.P.C. on a complaint given by a defaulter of the bank, to register an FIR against the senior officials of the bank. It is

held that the Magistrates should remain vigilant with regard to the nature of allegations made and not to issue directions without proper application of judicial mind and to bear in mind that sending the matter to police would be conducive to justice. In the instant case also, all the accused persons are the officials of PGIMS, Rohtak and in discharge of their official duty, they had pursued the remedy before the Civil Court for a period of more than 05 years and after the complainant side lost the civil litigation and when an eviction order was passed by the competent authority/Revisional Court under the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, the possession was taken and therefore, without considering all these facts, both the trial Court and the Revisional Court have to pass a summoning order without application of judicial mind that the complaint was filed with a *mala fide* motive by the brother of the licensee, who lost the litigation so that the licensee may not be liable to pay the mesne profits, subsequently for a period when he was in unauthorized occupation of the shop and has caused huge loss of crores of rupees to the college.

In reply, counsel for the complainant on the basis of the affidavit filed by the complainant could not dispute the factual position regarding the civil litigation in which the licensee Suresh Kumar Gupta, the brother of the complainant had lost the case. It is also not denied that an eviction order was passed under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 and the revision filed by the licensee was dismissed. The only argument raised by counsel for the complainant is that without resorting to the procedure under Order

21 of CPC and without filing an execution of the eviction order, the accused persons being the authorized persons of the college have taken the possession. However, it is also not denied that on 06.10.2012, all the articles taken in possession by way of an inventory stands returned to the licensee Suresh Kumar Gupta. There is no specific denial to the averments that various notices were issued by the Estate Officer prior to taking possession of the shop from the proprietor Suresh Kumar Gupta. However, in reply it is only stated that the petitioner was not legally authorized to take the possession of the shop by forcibly opening the lock of the shop in the absence of any such specific order.

The learned counsel further argued that absence of prior sanction under Section 197 Cr.P.C., can be a ground for quashing of prosecution as it is well settled principle that it can be obtained at any stage of trial. However, the learned counsel could not dispute that no application is filed by complainant till date for obtaining the sanction for prosecution from competent authority.

After hearing the counsel for the parties, I found merit in the present petition for the following reasons:-

***(a) The prosecution of the petitioner is mala fide for various reasons, firstly, that the complainant was not the proprietor of Om Medical Agencies. It is admitted case of the complainant that his brother Suresh Kumar Gupta is the sole proprietor of the shop and was licensee of Shop No.8, who never filed any complaint in order to avoid his liability to pay the mesne profits as his licence was terminated way back in the year 2007 and he was***

*retaining the illegal possession as he had filed a civil suit in which the application under Order 39 Rules 1 and 2 CPC was dismissed by the Civil Court and the First Appellate Court. However, when in civil revision, this Court directed that Suresh Kumar Gupta be not evicted except by adopting due process of law, the PGIMS, Rohtak then, filed the eviction proceedings under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, before the Collector-cum-S.D.O. Civil, Sub-Division Rohtak, which was allowed on 07.03.2011 and the appeal filed by Suresh Kumar Gupta was also dismissed by the Commissioner on 10.05.2011.*

*Therefore, the complainant knew that his brother/the sole proprietor, who was earlier a licensee, was in unauthorized possession of the shop and therefore, the complaint was never filed by Suresh Kumar Gupta.*

*Secondly, even the main suit filed by Suresh Kumar Gupta already stands dismissed by the Civil Court/the First Appellate Court as well as the R.S.A. was also dismissed by this Court. The contempt petition filed by Suresh Kumar Gupta was also dismissed by this Court on 24.01.2012 holding that the action of the College in dispossessing Suresh Kumar Gupta cannot be construed as willful or deliberate action of violation.*

*Therefore, Suresh Kumar Gupta finding that the*

*complaint by him will not be maintainable, it was filed through his brother/the complainant.*

*Thirdly, the mala fide on the part of the complainant side is otherwise apparent as it is concealed that at the time of taking of the possession, a notice was given which was received by his son Vikas and an inventory was prepared by the PGIMS, Rohtak, in the presence of the police, which was signed by many persons including the shopkeepers of the vicinity and later on, when a notice was given by the College to take back the articles, Suresh Kumar Gupta against a receipt had taken them back on 06.10.2012 which also show that since Suresh Kumar Gupta had no locus standi to file a complaint, the complaint was filed with a mala fide intention by his brother Trilok Chand as complainant.*

*Fourthly, a perusal of the complaint show that the same is silent about payment of the mesne profits to the College from the year 2007 till the possession was taken in the year 2012. The PGIMS, Rohtak is a prestigious government institution, which is providing medical aid to poor persons, who are entitled to purchase medicines from the medical shop in the premises of the College on the rates prescribed by the College and, therefore, the complainant, on one hand, was not paying anything to the College and on the other hand, was running the business by earning huge profits and thus, in this*

*process, he has caused huge loss to the College, which also show the mala fide on the part of the complainant.*

*(b) It is a matter of record which is not denied by the complainant in the written statement filed in this case that his brother Suresh Kumar Gupta has lost his civil litigation against the College and in compliance of the order passed by this Court in civil revision filed by him praying for injunction, wherein it was observed that he should be evicted by adopting due process of law, the College in the second round of litigation sought his eviction, in accordance with law. It is also not disputed that on the day, when the possession was taken, there was no stay from any higher Court against the order of eviction.*

*(c) In view of the judgment of the Hon'ble Supreme Court in Mrs. Priyanka Srivastava's case (supra) it is held that the trial Court has passed an order in a casual manner without application of judicial mind and taking into consideration that all the accused are official respondents who in discharge of their duty had taken the possession, in accordance with law and the trial Court has not taken into consideration the directions given by the Hon'ble Supreme Court while issuing the summoning order.*

*(d) Both the Courts below have not recorded any finding that the petitioner, as per the University*

*Calender had no direct role in taking the possession as it was the duty assigned to the Estate Officer, who also by following a due process and after giving a notice to the complainant had obtained the possession in compliance of the eviction order, in the presence of police and by preparing an inventory, which was signed by the other shopkeepers and all the articles were returned to Suresh Kumar Gupta, brother of the complainant against a receipt.*

*(e) The finding recorded by the Revisional Court that possession was taken without filing an execution petition is not the correct approach in view of the judgment of the Hon'ble Supreme Court Cantonment Board's case (supra) and New India Assurance Company Limited 's case (supra) wherein the Hon'ble Supreme Court has held that the provisions of Code of Civil Procedure and Evidence Act not being applicable, and only requirement is to follow the principle of natural justice and in the instant case, the possession was taken after the proprietor lost the case before the Civil Court and an eviction order was passed against him.*

*(f) Though, it is well settled principle of law that the sanction to prosecute a public servant can be produced before the Court, at any stage of the trial, however, in the instant case, considering the fact that all the accused persons, being employee of the PGIMS,*

*Rohtak, were acting in discharge of their official duties and from the year 2007 till 2012, the College was facing litigation at the instance of the brother of the complainant, therefore, in view of the fact that the complainant till date, has not filed any application before the competent authority to obtain the sanction for prosecuting the petitioner, even in spite of lapse of period of 07 years, the prosecution is held to be illegal.*

*(g) In view of the judgment of Hon'ble Supreme Court in "State of Rajasthan vs Bhajan Lal", 1992 Supplementary (1) SCC 335, I find that the case of the petitioner is squarely covered by the guidelines given by the Hon'ble Supreme Court.*

Accordingly, the present petition is allowed; the summoning order dated 20.07.2012 (Annexure P2) passed by the trial Court as well as the order dated 29.10.2015 (Annexure P3) passed by the Revisional Court are set-aside and the impugned complaint No.489 dated 25.01.2016 filed under Sections 323, 504, 458, 427, 395, 148, 149 read with Section 120-B IPC (Annexure P1) and all other subsequent proceedings arising therefrom are hereby quashed *qua* the petitioner.

(ARVIND SINGH SANGWAN)  
JUDGE

06.11.2019

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No