

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-6257 of 2016 (O&M)
Date of Decision: March 14, 2019

Varinder Kumar Jain

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. K.S. Dadwal, Advocate
for the petitioner

Mr. Luvinder Sofat, AAG Punjab

None for respondent No. 2

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Sudhir Mittal, J.

The property in dispute is Shop No. B-8-2295 situated in Main Bazar, Phool Chakar, Ropar. The said property was purchased by respondent No. 2 and Suman Jain wife of Ramesh Kumar jointly vide registered sale deed dated 06.06.1989. Allegedly, in a family partition the said shop came to the share of the complainant-respondent No. 2. A dissolution deed dated 01.04.2000 was also executed between the husband of the complainant-respondent No. 2 and Harmesh Kumar Jain (accused No. 2), according to which, husband of the complainant-respondent No. 2 gave up his share in the joint business in favour of accused No. 2 in lieu of which accused No. 1 relinquished her half share in the shop in dispute in favour of complainant-respondent No. 2. An affidavit was also executed by her in this regard. Thus, in the municipal record, the shop in dispute was reflected in the name of the complainant-respondent No. 2 alone.

In the complaint filed by complainant-respondent No. 2, it is further

stated that on 30.03.2006, the petitioner in connivance with accused No. 1 and 2 changed the entry in the municipal record and reflected the name of accused No. 1 as co-owner without any information or notice to the complainant-respondent No. 2. Thereafter, a complaint was made to the Sub Divisional Magistrate, Ropar, who conducted an enquiry and vide report dated 08.01.2010 (Annexure P-4) it was found that the petitioner had connived with accused Nos. 1 and 2 to change the municipal record. Departmental action was recommended against the petitioner. Accordingly, the enquiry report was put up before the Deputy Director, Urban Local Bodies, Ludhiana, who after perusing the same, wrote a communication dated 30.04.2010 (Annexure P-5) to the Director, Department of Local Government Punjab, expressing his agreement with the enquiry report and endorsing the finding that the petitioner had changed the municipal record without following the procedure prescribed by law. Thus, the complaint (Annexure P-1) was filed under Sections 420, 406, 467, 468, 471, 120-B IPC.

3. After perusing the preliminary evidence, learned Judicial Magistrate Ropar, passed summoning order dated 04.02.2013, summoning accused Nos. 1 and 3 to face trial under Sections 420, 34 IPC. The petitioner is accused No. 3.

4. Learned counsel for the petitioner submits that vide order dated 31.03.2011 (Annexure P-7), the Deputy Director, Urban Local Bodies, Ludhiana exonerated the petitioner of any wrong doing. The said order was sent to Department of Local Government Punjab and vide memo dated 06.02.2012 the Government of Punjab also accepted the findings of the said enquiry. The complaint given by the complainant-respondent No. 2 was ordered to be filed. Thus, the filing of the complaint and the summoning of the petitioner is illegal and deserves to be quashed. Once the departmental enquiry has exonerated the petitioner, criminal action taken on the same charge cannot be permitted to

continue. Reliance is placed upon ***P.S. Rajya vs. State of Bihar, 1996(3)***

RCR(Criminal) 261 and judgment dated 21.08.1997 passed in Criminal Misc. No. 19944-M of 1995 titled as ***Gurnam Singh vs. State of Haryana***. It is further submitted that the petitioner, being an Executive Officer of the Municipal Council, was a Government official and he could not be summoned in a criminal case without the appropriate sanction of the Government under Section 197 of the Code of Criminal Procedure, 1973. Even on a bare perusal of the averments made in the complaint, it becomes clear that Section 415 IPC is not attracted in this case and, thus, the petitioner could not have been summoned under Section 420 IPC. The record of the municipal council pertaining to house tax is not a document of title and the action of the petitioner has not caused any loss to the complainant-respondent No. 2. Lastly, it is submitted that the the private complaint could not have been filed without first making a complaint to the police under Section 154 Cr.P.C. In support of the final submission, reliance is placed upon ***Priyanka Srivastava and another vs. State of U.P. and others, 2015(2) RCR(Criminal) 1034***.

5. It may be noted that the State of Punjab has filed a formal reply in which it is submitted that the matter being regarding quashing of a private complaint, the State has no role to play. No reply has been filed on behalf of the complainant-respondent No. 2, despite service. Even the counsel has not come present to argue the matter, as was the position on many of the previous dates.

6. Against the enquiry report dated 08.01.2010 of the Sub Divisional Magistrate (Annexure P-4), a representation dated 29.09.2010 was submitted by accused No. 1 (Suman Jain) to the Secretary, Local Government Punjab, a copy of which is Annexure P-6 on the record. This was marked to the Deputy Director Urban Local Bodies, Ludhiana, who conducted a fresh enquiry in the matter and exonerated the petitioner vide order dated 31.03.2011 (Annexure P-7). A perusal of

not a regular departmental enquiry. Even the complainant-respondent No. 2 was not associated therewith. This enquiry report was accepted by the Director, Local Government Punjab vide order dated 28.07.2011 (Annexure P-9) by passing a cryptic order and the Government of Punjab further passed order dated 06.02.2012 (Annexure P-10) consigning the complaint to record by passing a one line order. Thus, the petitioner was not formally charged nor was a regular departmental enquiry conducted. Accordingly, it does not lie in the mouth of the petitioner to contend that criminal proceedings should be quashed because he has been exonerated in the departmental proceedings. The judgment in ***P.S. Rajya (supra)*** does not apply to the facts of this case. In the said case, criminal proceedings were quashed because in a regular departmental enquiry conducted by the Central Vigilance Commission, the delinquent official was found innocent and the Union Public Service Commission had concurred with the conclusion of the enquiry conducted by an independent examination of the case. The judgment in ***Gurnam Singh (supra)*** has placed reliance upon ***P.S. Rajya (supra)*** and need not be referred to. The first contention of learned counsel for the petitioner is, thus, rejected.

7. The second contention of learned counsel for the petitioner is based upon Section 197 Cr.P.C. According to him, being a public servant the petitioner could not have been summoned to stand trial without the prior sanction of the Government. The allegation against the petitioner is that he misused his office and dishonestly tampered with the municipal record without following the procedure prescribed by law in connivance with accused No. 1 namely Suman Jain. The protection of Section 197 Cr.P.C. is available only in case a public servant is sought to be prosecuted for an offence in the discharge of his official duties. Mis-utilization of his post by the petitioner in a dishonest manner can not be said to be an act done in the discharge of official duty and, thus, the petitioner is not entitled to

has been settled by an authoritative pronouncement of Supreme Court of India, one of which is *K. Satwamt Singh vs. State of Punjab, AIR 1960 S.C. 266* (Larger Bench). The second contention is also rejected.

8. It has been next contended by learned counsel for the petitioner that the house tax assessment register is not a document of title and, thus, the actions of the petitioner did not result in deprivation of the title of the complainant-respondent No.

2. Consequently, Section 415 IPC is not attracted in the facts and circumstances of this case. The ingredients of Section 415 IPC are –

- (a) deception by person
- (b) fraudulently inducing the deceived person to deliver a property or to consent to any person retaining property.
- (c) inducing the person so deceived to omit to do some thing which he would not do otherwise.
- (d) such act causes or is likely to cause damage.

In the facts and circumstances of this case, all the aforementioned ingredients of Section 415 IPC are fulfilled. The petitioner has deceived the complainant-respondent No. 2 by effecting change in the municipal record without notice to her; there is an implied consent on her part to accused No. 1 being co-owner of the shop in dispute and such a consent would deprive her of property. It is true that the house tax assessment register is not a document of title but had the petitioner failed to detect the change carried out therein over a long period of time, it would have provided cause to accused No. 1 to assert title thereof. This argument of learned counsel for the petitioner, thus, can not be accepted.

9. As a desperate measure, learned counsel for the petitioner submitted that private complaint could not have been preferred without approaching the police under Section 154 Cr.P.C. In this regard he has placed reliance upon the case of

not only against the statutory provisions but is also against common sense. A bare perusal of Section 154 Cr.P.C. shows that whenever an offence is committed the police is informed of such commission and information relating thereto is reduced into writing by official incharge of police station, if given orally. Thereafter, the information is to be entered in a book maintained by such officer whether the information is supplied orally or in writing. The provision relates only to receipt of information of commission of a cognizable offence and nothing more. The Code nowhere requires that before a Magistrate is approached under Section 200 Cr.P.C. through a criminal complaint, prior information must be given to the police. Reference to *Priyanka Srivastava (supra)* is totally misconceived as the said judgment has been passed taking into consideration Section 156(3) Cr.P.C. and its misuse by the citizens to settle personal scores.

10. For the aforementioned reasons, there is no merit in this petition and the same is, accordingly, dismissed.

March 14, 2019

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No