

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9329-2022 (O&M)
Date of decision: 26.05.2022

Rajesh Dahiya and another

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikram Singh, Advocate and
Mr. Sandeep Kumar, Advocate
for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.11 dated 16.01.2021 under Sections 120-B, 193, 196, 205, 209, 419, 420, 466, 467, 468, 471 of the Indian Penal Code (for short 'IPC'), registered at Police Station Gannaur, District Sonapat and the report under Section 173 Cr.P.C. dated 15.07.2021 as well as all the subsequent proceedings arising out of the FIR.

While issuing notice of motion, following order was passed by this

Court on 04.03.2022: -

“...Counsel for the petitioners has argued that as per the allegations in the FIR, which was got registered at the instance of the Sub-Divisional Judicial Magistrate, Gannaur, during the proceedings of a case titled as “Seema vs Jasmer”, wherein some proceedings under Section 97 Cr.P.C., were pending, the petitioners have filed an application which was purported to be signed by one Rajeev Yadav, Advocate. It is further submitted that both the petitioners are practising Lawyers at Sub-Division Kharkoda Court and there is no dispute that the Power of Attorney was signed by the accused to whom, they were representing, however, on a dispute raised by Rajeev Yadav, Advocate, that his signatures are not there on the application, the present FIR has been registered. It is also submitted that without conducting an enquiry or seeking an explanation from the petitioners, straightway the FIR has been registered without adhering to provision of Section 195 Cr.P.C.

Notice of motion.

Mr. Deepak Grewal, DAG, Haryana, who is present in the Court, accepts notice on behalf of the respondent – State.

List again on 09.05.2022.

In the meantime, further proceedings before the trial Court

shall remain stayed.”

For ready reference, the FIR reads as under: -

“Seema Vs. Jasmer others CRM 01/2021 present L/ASI Sudesh Kumari along with Smt. Dayawati. Shri S.L. Parashar, Advocate on behalf of Smt. Dayawati. 1. At 6.45 PM Smt. Dayawati produced by L/ASI Sudesh Kumari family members of Smt. Dayawati are also present. Statement of Smt. Dayawati is recorded by the undersigned in which she specifically deposed that she is residing with her daughter Lalita out of her own free will and consent and she is being taken care properly by them. Smt. Dayawati is identified by her counsel Sh. S.L Prashar who also filed his power attorney on behalf of Smt. Dayawati. Dayawati marked her signature and thumb impression on the said power attorney and statement recorded. (2) It is pertinent to mention here that at the same time Shri Rajiv Yadav, Advocate appeared before the Court and stated that he has not marked his signature as Rajiv Yadav, Advocate on the application but infact his signature was taken only on only Power of Attorney by two Advocates namely Sh. Rajesh Dahiya practicing at Sub Divisional Kharkhoda Court and Ms. Monika Malik, practicing at Sonipat Ditriect Court. He alleged that he marked his signature on blank power of attorney on the assurance given by advocates Shri Rajesh Dahiya and Ms. Monika

Malik that they required a local counsel and would mention their names as main counsels in the power of attorney, but they did not do so. In this regard his statement has been recorded separately.

(3) It will not be inordinate to mention herein that when the application moved before the undersigned it was moved none other than but by Shri Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate who also argued at length over the same. However, in the Zimni order of even dated 08.01.2021 the presence was recorded of the applicant with Shri Rajiv Yadav, Advocate on replying upon the power of attorney but it is a serious concern when Sh. Rajiv Yadav, Advocate specifically stated that on the application, he did not mark his signature, then who marked the same, raised doubt towards the involvement of Sh. Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate and the arguments on the application moved under Section 97 Cr.P.C. was also done before this Court by both counsels namely Sh. Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate may have forged his signature. It is further pertinent to mention herein that in the application name and address of complainant/application mentioned as "Seema wife of Sh. Ashok Kumar and D/o Smt. Dayawati at present R/o Gandhi Vihar, Ganaur, Tehsil Ganaur, District Sonipat". But in Ganaur Sub

Division, there is no residential area/colony in the name of Gandhi Vihar. It again shows that the above mentioned Advocates Sh. Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate cheated the court by mentioning the address which is no where in existence indeed and also concealed the fact which is being apprised to this Court by Shri S.L. Parashar Advocate that same kind of application was also moved by the applicant before the Court of Ms. Jogindri, learned SDJM, Kharkhoda and that application bear the address of complainant/applicant different, which was allowed it means that just to harass Smt. Dayawati, the old lady aged 85 years, the counsels namely Sh. Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate also forged the address of applicant/complainant as the resident of Gandhi Vihar which is no where and such kind of misconduct from the sides of Advocates namely Sh. Rajesh Dahiya, Advocate and Ms. Monika Malik, Advocate is not expected, however, some legal action required to be initiated to verify or to ascertain who marked/forged the signature of Sh. Rajiv Yadav, Advocate on the application hence present matter I to be reported to Superintendent of Police, Sonipat for further action. Copy of the whole case file along with statements being recorded be sent to Superintendent of Police, Sonipat for taking necessary action after

registering the FIR against the wrongdoer and submit the report before the undersigned. File be consigned to the record room after due compliance. Sd/- Vishal SDJM Ganaur 08.01.2021 UID No.HR0331 Surender Kumar No.30 Dt 12.01.2021. Forwarded to the Superintendent of Police, Sonipat with enclosures as above for necessary action and report total 20 pages. Sd/o Reader to Vishal Sub-Divisional Judicial Magistrate Ganaur Dt. 12.01.2021.”

Learned counsel has referred to operative part of the report under Section 173 Cr.P.C., which reads as under: -

“...On receiving the above said letter, the FIR was registered and investigation was initiated by ASI Satbir 230. During the investigation the certified copies of the record documents were taken into police possession by procuring it from the Hon’ble Court Gannaur and the Hon’ble Court Kharkhoda. On getting the evidence sufficient for arrest against the accused Monika Malik W/o Sh. Pardeep Malik R/o Rehmana and Rajesh Dahiya S/o Sh. Hawa Singh R/o Village Sisana, Police Station Kharkhoda and on 02.02.2021 surrender by Monika Malik W/o Sh. Pardeep Malik R/o Rehmana and Rajesh Dahiya S/o Sh. Hawa Singh R/o Village Sisana, Police Station Kharkhoda, they were joined into investigation after taking the permission from the Hon’ble Court. On getting the evidence against the accused persons sufficient for

arrest on file, they were arrested. The discloser statement of the accused persons were recorded and the signatures of the accused Rajesh and Monika Malik were taken before the Hon'ble Court with the prior permission of the Hon'ble Court. The accused Rajesh was sent to judicial custody at Sonipat prison. He is on bail now. The accused Monika Malik was got admitted at CHC, Gannaur due to fever. On 03.02.2021, after bail was granted to the accused Monika by the Court of Sh. Y.S. Rathor, Hon'ble Session Judge, Sonipat, the accused Monika Malik was released on bail on getting the order from Sh. Vishal, SDJM, Gannaur. Thereafter the investigation of the case was conducted by SI Vijay Pal No.619/SPT. During investigation, the signed documents of Rajiv Yadav Advocate submitted for opening the bank account, taken into police possession vide memo. The same has been submitted at FSL, Madhuban, Karnal. The bail application of the accused Seema W/o Sh. Ashok, R/o Barona, P.S. Kharkhoda, Sonipat is pending on 02.09.2021 before the Hon'ble High Court of Punjab and Haryana, Chandigarh. The challan against the accused Rajesh Dahiya and Monika Malik is prepared under Section 173 CRPC on getting the sufficient evidence on file and is being submitted in the Hon'ble Court..."

It is argued that even from the investigation conducted so far, no

offence is made out against the petitioners except that the Court of SDJM has sent the complaint to the police station for taking legal action against them. It is further argued that Section 195 (1)(b) Cr.P.C. provides as under: -

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a

document produced or given in evidence in a proceeding in any Court, or..”

Learned counsel has thus submitted that for any offence referred to in Clause (b)(i) of sub-section (1) of Section 195 Cr.P.C., procedure is provided under Section 340 Cr.P.C., which reads as under: -

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;”

It is further submitted that while issuing directions to the police, the SDJM has not followed the procedure under Section 340 Cr.P.C., which clearly provides that the Court, at the first instance, has to conduct preliminary inquiry and after recording a finding to this effect, make a complaint and send to the

Magistrate of 1st Class having the jurisdiction, thus, in the absence of having such procedure, impugned FIR is not at all maintainable.

In support of his arguments, learned counsel for the petitioners has relied upon a judgment in **Sh. Narendra Kumar Srivastava Vs. State of Bihar and others, 2019 (5) RCR (Crl.) 501**, wherein the Hon'ble Supreme Court has held as under: -

“16. Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1) (b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.”

Learned counsel has further relied upon another judgment of the Hon'ble Supreme Court in **M/s Bandekar Brothers Pvt. Ltd. and another Vs. Prasad Vassudev Keni, etc., 2020 AIR (Supreme Court) 4247**, in which it is held as under: -

“19. At this stage, it is important to understand the difference

between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies.

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22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words “or in relation to”, making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the Appellant’s case namely, this Court’s judgment in Iqbal Singh Marwah (supra).”

In **M/s Bandekar Brothers Pvt. Ltd.’s** case (supra), the Hon’ble Supreme Court has further held that if in the course of same transaction, two separate offences are made out, for one; Section 195 Cr.P.C. is not attracted and

it is not possible to split them up, the drill of Section 195 (1)(b) Cr.P.C. must be followed. It is held that in case, where in the course of same transaction of an offence, for which no complaint by a Court is necessary under Section 195(1)(b) Cr.P.C. and an offence, for which, a complaint of Court is necessary under that sub-section, are committed and it is not possible to split up and held that the prosecution of accused for offence not mentioned in Section 195 (1)(b) Cr.P.C. should be upheld.

Learned counsel has also relied upon one another judgment of the Hon'ble Supreme Court in **Amarsang Nathaji as Himself and as Karta and Manager Vs. Hardik Harshadbhai Patel and others, 2017 (1) RCR (Crl.) 92**, to submit that for initiating proceedings under Section 340 Cr.P.C., the Court must make out a prima facie case for the purpose of inquiry into an offence referred to in Section 195 (1)(b)(i) Cr.P.C. It is further held in this judgment that mere fact that a person has made contradictory statement in a judicial proceeding is not by itself always sufficient to justify the prosecution, unless it is shown that a person has intentionally given any false evidence.

Reply by way of affidavit of Deputy Superintendent of Police, Sonipat is on record, in which, after verifying contents of the FIR, which was registered on the direction of SDJM, it is stated that during investigation, copies were obtained from the Court of SDJM; the petitioners were joined in the investigation and their standard signatures were taken, which were sent to FSL, Madhuban, which is still pending and thereafter, report under Section 173

Cr.P.C. was submitted against them. It is further submitted that accused Seema was granted the concession of anticipatory bail by this Court vide order dated 02.09.2021 passed in CRM-M-6932-2021 and the case is now fixed for framing of charge, however, the affidavit do not reveal as to how while submitting report under Section 173 Cr.P.C., the Investigating Officer drawn the conclusion that evidence worth submitting the report has come on record and it appears that same has been submitted only because the complaint came from the Court of SDJM.

After hearing learned counsel for the parties and considering the aforesaid submissions, I find merit in the present petition, for the following reasons: -

- (a) The Court of SDJM recommended for taking legal action against the petitioners on finding that during the proceedings of an application under Section 97 Cr.P.C., with reference to a lady Smt. Dayawati, who is an old lady, the petitioners produced Power of Attorney. It is stated in the FIR that on application under Section 97 Cr.P.C., Mr. Rajiv Yadav, Advocate did not sign, though he admits that on the Power of Attorney/vakalatnama, his signatures were obtained by the petitioners on the pretext that they require a local counsel and they will mention their own names as main counsel in the Power of Attorney along with his name, but the same was not done.

- (b) The trial Court held that cheating has been done, while conducting proceedings of the trial Court, however, perusal of Section 195(1)(b) shows that it provide prosecution for contempt of lawful authority of a public servant or offence against a public servant or relating to a document is given in evidence and as per Section 195(1)(b)(i) Cr.P.C., if any offence is punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 IPC, then procedure under Section 340 Cr.P.C. is required to be followed.
- (c) Section 340 Cr.P.C. clearly provides that with regard to an offence, under Clause (b) of sub-section (1) of Section 195, the Court has to conduct a preliminary inquiry and after recording a finding, send it to a Magistrate of 1st Class having jurisdiction, therefore, on the face of it, with regard to an offence under Section 195 (1)(b) Cr.P.C., FIR could not be registered, as only a complaint could have been referred to the Magistrate under Section 340 Cr.P.C., therefore, offence under Sections 193, 196, 205, 209 read with Section 120-B IPC is not made out.
- (d) In the FIR, the SDJM raised a suspicion that it should be ascertained, who signed in place of Mr. Rajiv Yadav, Advocate. However, surprisingly before recommending legal action, followed by registration of impugned FIR, no efforts were made to get the signatures of Mr. Rajiv Yadav, Advocate tallied with disputed

signatures on application. Even report under Section 173(2) Cr.P.C. was filed without report of FSL, which shows that even police acted in haste under pressure of Court.

- (e) As noticed above, prior to recommending registration of FIR, neither the trial Court got the disputed signatures verified from FSL and even till submitting the report under Section 173 Cr.P.C., it is specifically stated that FSL report is still awaited. In the absence of any such evidence, offence under Sections 419, 420, 466, 467, 468, 471 IPC is not made out.
- (f) From bare perusal of FIR, it cannot be held that any offence effecting administration of justice has been committed in relation to the application, which was filed by the petitioners on behalf of applicant Seema with the signatures of another Advocate Mr. Rajiv Yadav, appended on the same, being his disputed signatures. While recommending the case to the police, it is only stated that it requires ascertainment, as to who has put the signatures of Mr. Rajiv Yadav, Advocate and therefore, even the police, without getting the signatures compared, by conducting a preliminary inquiry, straightway registered the FIR and submitted the challan even without any such FSL report.
- (g) On the face of it, it appears to be a dispute regarding disbursement of legal fee between the petitioners, who are Advocates and Mr.

Rajiv Yadav, engaged by them, being the local counsel, who admitted that he was engaged by the petitioners as main counsel and he will be the local counsel and signed the vakalatnama/Power of Attorney, but disputed the signatures on the application, therefore, it cannot be said that the petitioners have acted in a manner, which resulted into effecting the administration of justice during the Court proceedings, as at the first instance, the Court was required to satisfy itself by conducting some sort of inquiry and record a finding that the petitioners have committed any cheating or forgery of any document.

In view of the above, this petition is allowed and FIR No.11 dated 16.01.2021 under Sections 120-B, 193, 196, 205, 209, 419, 420, 466, 467, 468, 471 IPC, registered at Police Station Gannaur, District Sonipat and the report under Section 173 Cr.P.C. dated 15.07.2021 as well as all the other subsequent proceedings arising therefrom, are hereby quashed.

[ARVIND SINGH SANGWAN]
JUDGE

26.05.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No