

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

267

CRM-M-10938-2020 (O&M)  
Date of decision: 15.11.2022

SUDHIR KATYAL AND OTHERS

....Petitioners

Versus

TRILOK CHAND

...Respondent

CRM-M-8132-2021 (O&M)

S.S. SANGWAN

....Petitioner

Versus

TRILOK CHAND

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

\*\*\*\*\*

Present : Mr. Akashdeep Singh, Advocate  
for the petitioners in CRM-M-10938-2020.

Mr. Keshav Pratap Singh, Advocate  
for the petitioner in CRM-M-8132-2021.

\*\*\*\*\*

AMAN CHAUDHARY. J.

This order shall dispose of the above-mentioned two Criminal  
Miscellaneous petitions, the same issue and facts involved therein being the  
same. The facts are being taken from CRM-M-10938-2020.

By way of the present petitions quashing has been sought of the  
Criminal Complaint No.489 dated 25.01.2012, Annexure P-2, filed under  
Sections 323, 504, 458, 427, 395, 148 and 149 of the IPC read with Section

120-B IPC pending in the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Rohtak, the summoning order dated 20.07.2012, Annexure P-3 and the order 29.10.2015, Annexure P-4, whereby the revision petition filed by the petitioners was dismissed by the learned Additional Sessions Judge, Rohtak, alongwith all subsequent proceedings arising therefrom qua the petitioners.

Pithily, the complaint was filed by the respondent, who is brother of the tenant of a chemist shop, situated within the premises of PGIMS Rohtak. In the said complaint, the petitioners, who are officials working in the Administrative office of the PGIMS Rohtak, (hereinafter referred to as 'the Institute'), as Superintendent, Assistant, Security Officer and Deputy Medical Superintendent and the Vice-Chancellor of the said Institute, were arrayed as accused-respondents. The allegations leveled therein are that 30-40 persons had tried to get the shop of the brother of respondent vacated and all accused had taken away the medicines worth Rs.89-90 lakhs along with other medical equipments. It was also stated by the complainant that he had approached the Vice-Chancellor, who refused to entertain his complaint, whereupon the complaint in question was filed by him before the trial Court. The petitioners were summoned by the trial Court vide order dated 20.07.2012, Annexure P-3, which was taken up in revision before the Additional Sessions Judge, Rohtak and the same came to be dismissed vide order dated 29.10.2015, Annexure P-4.

Learned counsel for the petitioners would contend that as a matter of fact, on 05.06.2007, the licence of SK Gupta-tenant of chemist shop, who is the brother of respondent-complainant, was cancelled, which

came to be challenged by him in a Civil Suit dated 17.07.2007. The trial Court vide judgment and decree dated 24.05.2008 dismissed the same. The appeal filed before the learned Additional District Judge also came to be dismissed vide judgment dated 13.08.2009. Aggrieved-tenant had thereafter filed RSA No. 716 of 2012, challenging the judgments as passed by the Courts below, which was also dismissed by this Court vide judgment dated 17.02.2012, Annexure P-12. Learned counsel brought to the notice of this Court that during the interregnum, the Institute had also initiated the proceedings under Sections 4 and 5 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, against the petitioners on 11.01.2009, wherein an order dated 07.03.2011 was passed by the said authority in favour of the Institute for his eviction within 30 days. The said order was unsuccessfully challenged by him by way of filing an appeal, which was dismissed on 6.4.2011 by the Commissioner, Rohtak. The Vice-Chancellor had also received legal advice dated 18.01.2012 Annexure P-5, in the matter from the counsel representing the Institute before the learned trial court, wherein he had informed that the appeal filed by S.K. Gupta in respect of the Chemist shop has been dismissed by the learned Additional District Judge, Rohtak and now the shop can be got vacated. It is only thereafter, the office order dated 19.01.2012 was passed by the Institute of the petitioners to take possession of the shop. Whereafter a DDR was also recorded on 19.01.2012, Annexure P-6, wherein it was mentioned that the possession of shop No.8 was taken, had been got vacated in the presence of shopkeepers of the vicinity, SHO, Police Station Urban Estate, Sh. Rampal, Security Officers of PGI, Medical Officers of PGI, Dr. Sahu, DMS and

Randhir Singh, Assistant MG, Branch PGI, in discharge of their duties, to avoid any clash during taking out the proceedings.

Learned counsel would contend that it was only after adopting due procedure including notice having been given that the possession had been taken of the shop in question which was in occupation of the brother of the respondent, that too after he had lost the litigation upto learned District Judge, Rohtak, whereby his appeal was dismissed on 18.01.2012. The tenant did not file any complaint but it is his brother, who though had no concern with the business of the tenant, filed the complaint alleging that the items were stolen from the shop.

Learned counsel would further contend that besides the self serving statement of the complainant, there being no independent corroboration thereto, the summoning order was erroneously passed by the trial Court in a casual manner and without due application of mind. It is also submitted that the factum of the petitioners discharging their official duties at the relevant time was not taken into consideration.

Learned counsel has advanced three-fold legal submissions, first limb of which being, that the petitioners, who are Government officials, working in PGIMS, Rohtak, could not have been summoned by the trial Court, in absence of a prior sanction having been obtained under Section 197 CrPC. Insofar as, the Vice-Chancellor is concerned, he being appointed by the Governor of Haryana is a Public Servant within the meaning of Section 21 IPC as per Volume I, University Calendar and therefore prior sanction was required to prosecute him as well.

The second limb of submission being that the erstwhile tenant

of the Institute of the petitioner had got the complaint in question instituted with *mala fide*, at the hands of his brother, to avoid payment of the *mesne* profit, inasmuch as the civil litigation *inter se* the parties had culminated in favour of the said Institute.

The third limb of the submission advanced by the learned counsel for the petitioners is, that for institution of a complaint under Section 156(3) CrPC, a prior complaint in writing had to be made to the police officials and in the eventuality of no action having been taken thereon, either by the police officer concerned or his superior, was a complaint under Section 156(3) CrPC maintainable. They further submit that in terms of the judgment of Hon'ble The Supreme Court of India in the case of **Priyanka Srivastva and another Vs. State of U.P. and others**, 2015(2) RCR (Criminal) 1034, the complaint must also accompany a specific affidavit as to whether a complaint was submitted before the police authority, which in this case had not been so done, there also being no averment made in this regard. Thus, the submission is that the Magistrate in a causal and mechanical manner had passed the summoning order against the petitioners.

It was the submission of the learned counsel that the absence of prior sanction required under Section 197 Cr.P.C. can be a ground for quashing of prosecution as no such sanction was obtained prior to issuance of summoning order.

Learned counsel would also contend that in case of the eviction on account of orders passed under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, no application for executing the said

order is required to be filed as has been held by Hon'ble The Supreme Court in the case of **Cantonment Board and another Vs. Church of North India**, 2011 (3) RCR (Civil) 426.

Reliance was also placed by leaned counsel upon the judgment of Hon'ble The Supreme Court of India in the case of **New India Assurance Company Ltd. vs. Nusli Neville Wadia and another** reported as 2008 (1) RCR (Civil) 875, wherein it was held 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 natural justice.

Learned counsel would contend that the complaint in question, was also sought to be quashed by Dr. Chand Singh Dhull, Director of PGIMS, Rohtak by filing CRM-M-39281-2015, which was allowed by this Court vide a detailed judgment dated 06.11.2019 setting aside the summoning order dated 20.07.2012 passed by the trial Court as well as the order dated 29.10.2015, passed by the Revisional Court alongwith the impugned complaint No.489 dated 25.01.2012 qua the petitioner therein, which have been impugned in the present case. Learned counsel also contend that said judgment has not been assailed by the complainant-respondent till the date and has thus attained finality.

Learned counsel contend that the present case is squarely covered by the aforesaid judgment.

Notice issued to the sole respondent has been received back served. However, despite grant of opportunities, there is no representation on his behalf.

Heard.

In reference to the facts of the present case, there having been no sanction obtained to launch prosecution against the petitioners, who being the officials of the Institute, had acted in discharge of their official duties, in accordance with law, thus, the summoning order passed by the trial Court against the petitioners, is contrary to the law laid down by Hon'ble The Supreme Court of India in the case of **General Officer, Commanding vs. CBI and another** (2012) 6 SCC 228, wherein it was held as follows:

“Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.”

The courts below failed to take into consideration the fact that the petitioners being the officials of PGIMS, Rohtak had pursued the remedy before the Civil Court for a period of more than 05 years, which the complainant side had lost and it was only after an order of eviction having been passed by the competent authority under the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, that the possession was taken after adopting due process of law, by issuance of a notice and as was held by Hon'ble The Supreme Court of India in the cases of **Contonement Board and New India Assurance Company Ltd.** (supra),

that the provisions of Code of Civil Procedure and Evidence Act are not applicable in case of proceedings under Public Premises Act, which are summary in nature and only requirement is to follow principles of natural of justice. As such, the summoning order was passed without due application of mind and the Revisional Court, also fell in grave error in affirming the same, without taking into consideration the law laid down by Hon'ble The Supreme Court of India in the case of **Anil Kumar vs. M.K. Aiyappa** (2013) 10 SCC 705. The para as relevant to the instant case reads thus:

“8. We may first examine whether the Magistrate, while exercising his powers under Section 156 (3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156 (3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

This Court vide judgment dated 06.11.2019 in a petition

bearing CRM-M-39281-2015, filed by Dr. Chand Singh Dhull, Director of PGIMS, Rohtak, had quashed the complaint No.489 dated 25.01.2012, summoning order dated 20.07.2012 and order dated 29.10.2015, passed by the Revisional Court, as impugned in the present case.

In view of the aforesaid, the continuation of the proceedings against the petitioners would amount to an abuse of process of law and in order to secure the ends of justice, the proceedings initiated against the petitioners deserve to be quashed.

The aforementioned conclusion is supported by the judgments of Hon'ble The Supreme Court of India in the cases of **State of Karnataka vs. L. Muniswamy and others**, AIR 1977 SC 1489, and **Jugesh Sehgal vs. Shamsher Singh Gogi**, reported as (2009)14 SCC 683, which elucidated the scope and ambit of the power of High Court under Section 482 Cr.P.C. The para as relevant of the judgment in **L. Muniswamy and others** (supra) reads thus:-

“7. ....Section 482 of the New Code, which corresponds to s. 561-A of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding 29 of 31 ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the

structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

In **Jugesh Sehgal** (supra) Hon'ble The Supreme Court of India

observed as under:-

"16. The next question for consideration is whether or not in the light of the afore-mentioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?

17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide, but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.

18. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.

19. Although in Bhajan Lal's case (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which

such power could be exercised.”

Bearing in mind the aforesaid facts and circumstances of these cases and the law as enunciated, referred to in the forgoing paragraphs, this Court is persuaded to allow the present petitions. As a corollary thereto, the Criminal Complaint No.489 dated 25.01.2012, orders dated 20.07.2012 and 29.10.2015, alongwith all subsequent proceedings arising therefrom stand quashed qua the petitioners.

(AMAN CHAUDHARY)  
JUDGE

November 15, 2022  
S.Sharma(syr)/gsv

|                                  |   |                 |
|----------------------------------|---|-----------------|
| <i>Whether speaking/reasoned</i> | : | <i>Yes / No</i> |
| <i>Whether reportable</i>        | : | <i>Yes/ No</i>  |