

CRM-M-32129-2016 and another

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

**CRM-M-32129-2016
Date of decision :22.2.2022**

Rajesh Sharma

... Petitioner

Versus

State of Punjab and others

... Respondents

CRM-M-22423-2017

Rajeev Kumaria and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr.Veneet Sharma, Advocate
for the petitioner in CRM-M-32129-2016 and
for respondent No.2 in CRM-M-22423-2017.

Mr. Divanshu Jain, Advocate
for the petitioners in CRM-M-22423-2017 and
for respondents No.2 to 4 in CRM-M-32129-2016.

Mr. Tanvir Joshi, AAG, Punjab.

SANT PARKASH, J.

By way of this common judgment, I shall dispose of both the
above-mentioned petitions.

Both the above-said petitions have been filed, challenging the
order dated 20.11.2015 passed by learned Judicial Magistrate, 1st Class,
Amritsar in criminal complaint filed by Rajesh Sharma (petitioner in CRM-
M-32129-2016), whereby Rajeev Kumaria, Sonia, Rahul Kumaria and

Karan Kumaria (petitioners in CRM-M-22423-2017) have been summoned to face trial and the complaint qua respondents No.2 to 4 in CRM-M-32129-2016 was dismissed. The challenge has also been laid to orders dated 18.04.2017 as well as 04.06.2016 passed by the learned Additional Sessions Judge, Amritsar, vide which revision petitions filed by the petitioners have been dismissed, while affirming the order dated 20.11.2015 (P-2)

Brief facts of the case are that Pandit Ram Nath (father of complainant-Rajesh Sharma) founded P.B.N. High School Society with a motive to educate the children. It was re-registered on 7.8.1981. As per the constitution of the Society, a person of the family of Pandit Baij Nath is to be appointed as Manager-cum-Ex-officio Secretary of the Society. On 05.01.1986, Dr. J.N. Kumaria, eldest grandson of Pandit Ram Nath, was appointed as the Manager-cum-Ex-officio Secretary of the Society as per the resolution passed by the Society. The complainant became President of the Society in the year 2004. In the annual meeting of the society held on 26.4.2014, complainant-Rajesh Sharma was re-elected as President, Gurkewal Singh Dhillon was re-elected as Financial Secretary and Dr. J.N. Kumaria continued to be as Manager-cum-Ex-officio Secretary of the society. Accused-Rajeev Kumaria, who is younger brother of Dr. J.N. Kumaria, is a member of the Society and Principal of PBN School; accused-Sonia is wife of Rajeev Kumaria, whereas accused-Rahul Kumaria and accused-Karan Kumaria are their sons. Preeti (respondent No.3 in CRM-M-32129-2016) is fiancée of Rahul Kumaria; respondent No.2-Mona Bhatti is mother of Preeti and respondent No.4-Gurmeet Singh is a close associate of

accused-Rajeev Kumaria and Mona Bhatti. The meetings are to be convened by the Manager-cum- Ex- officio Secretary of the society and the proceedings are to be entered in the “Minutes Book”, which is to be kept by the Manager-cum-Ex officio Secretary, who is only authorized to record the proceedings.

Dr. J.N. Kumaria entrusted the Minutes Book to Rajeev Kumaria as the same was required to be produced in the court regularly in a civil suit filed by the complainant against Inderjit Singh, who wanted to become the President of the Society. On 26.4.2014, a resolution was passed in the presence of accused Rajeev Kumaria and Sonia that the said minutes book would be returned by Rajeev Kumaria to Dr. J.N. Kumaria as and when demanded and it was also resolved that entries in the minutes book were to be added by Dr. J.N.Kumaria only. However, petitioner-Rajeev Kumaria refused to return the said minutes book when demanded.

On 25.4.2015, annual meeting of the society was convened, which was presided over by the complainant. Rajesh Sharma-complainant was re-elected as President of the Society but accused Rajeev Kumaria and Sonia refused to sign the proceedings. A sub-committee was constituted to take the necessary action for recovery of original minutes book. The complainant on behalf of the Society filed a civil litigation. It is stated that accused-Rajeev Kumaria in furtherance of his criminal conspiracy allegedly forged an ante dated entry of 31.05.2014 in the minutes book to the effect that he shall discharge the function of Manager-cum-Ex-officio Secretary of the Society as Dr. J.N. Kumaria was living at a distant place and incorporated the name of Rahul Kumaria as a member in place of Kharaiti

Ram (since deceased). He is also alleged to have forged another entry incorporating the name of his son Karan Kumaria in place of Inderjit Sood. When the complainant left with no other option, he filed a complaint before the learned trial Court.

Taking cognizance of the complaint and after considering the preliminary evidence, the complaint, with regard to accused-Mona Bhatti, Preeti and Gurmeet Singh was dismissed vide order dated 20.11.2015. However, accused Rajeev Kumaria, Sonia, Rahul Kumaria and Karan Kumaria have been summoned to face trial under Sections 406/467/468/471/120-B IPC.

Aggrieved by the order dated 20.11.2015, two separate revision petitions were filed, which have been dismissed by the learned revisional court vide orders dated 18.04.2017 and 04.06.2016, upholding the order dated 20.11.2015 passed by the learned trial Court.

Hence the present petitions.

Learned counsel for the complainant-petitioner (in CRM-M-32129-2016) contended that while passing the impugned orders, it has been erroneously observed by the courts below that there is no conspiracy or role attributed to the private respondents. He submitted that in the alleged meeting of the Society held on 08.02.2015, the accused persons in connivance with each other, without following the bye-laws of the Society and without any sanction, removed the old members of the Society from its membership and inducted Mona Bhatti, Jaskirat Singh, Jagjit Singh and Preeti. He further pleaded that in the said alleged meeting, the signatures of the President, i.e., the petitioner, were forged. He next submitted that on

the basis of the above-said meeting dated 08.02.2015, another meeting dated 25.04.2015 was held in which respondent No.2-Mona Bhatti was elected as President of the Society; respondent No.4-Gurmeet Singh was elected as the Finance Secretary and accused-Rajeev Kumaria declared himself as Manager-cum-Secretary of the Society for life time, which is against the memorandum of association of the Society. He further submitted that the revisional court has not taken into consideration the allegations of forgery and fraud with regard to meeting dated 08.02.2015 committed by the private respondents.

Learned counsel for the accused-petitioners (in CRM-M-22423-2017) submitted that complainant-Rajesh Sharma has filed a false and frivolous complaint without being any specific allegation. He further submitted that the revisional court has not appreciated the fact that there is civil litigation pending between the parties. He further submitted that dispute is with regard to election of Society, which cannot be agitated in criminal litigation. He also submitted that the complaint was filed in personal capacity. He also submitted that the document (P-10) itself shows that Dr. J.N. Kumaria was not keeping good health.

Learned counsel for the State reiterated the averments made by the learned counsel for the petitioner-complainant in CRM-M-32129-2016 and submitted that the present petition deserves to be accepted and CRM-M-22423-2017 is liable to be dismissed.

After hearing the learned counsel for the parties and going through the record with their valuable assistance, there is no merit in both these petitions.

The Hon'ble Supreme Court has authoritatively held, in a celebrated judgment in case State of *Haryana and others v. Ch.Bhajan Lal and others*, AIR 1992 Supreme Court 604, which was again reiterated in case *Som Mittal v. Government of Karnataka* 2008(2) RCR (Criminal) 92 : (AIR 2008 Supreme Court 1528 SC 1528), that the criminal prosecution can only be quashed in rarest of rare case at the initial stage as per the following conditions:-

“(i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is the case of the complainant that accused-Rajeev Kumaria had entered into a criminal conspiracy with the other accused and in furtherance of the said criminal conspiracy; accused-Rajeev Kumaria had retained the minutes book illegally, which was entrusted to him by Dr. J.N. Kumaria. He had incorporated forged entries in order to incorporate his family members and close associates as members of the Society. Thus, all the accused persons are liable to be summoned.

From the perusal of the case files, it would be revealed that in order to prove the allegations, the complainant appeared as CW1 and other members of the Society appeared as CW2 and CW5 and reiterated the allegations. The learned trial court examined various documents viz-a-viz copy of minute book, Ex.CW2/1, which shows that the accused, namely, Rajeev Kumaria, Sonia, Rahul and Karan Kumaria, has signed as members, while Ex.CW1/D is the notice issued by the complainant calling upon Rajeev Kumaria to return the minutes book. The document, i.e. copy of letter dated 27.02.2015 (Ex.CW1/M), suggests that accused-Rajeev

Kumaria was claiming that he along with accused-Rahul Kumaria and Mona Bhatti were entitled to stake a claim in the affairs of the Society, whereas in the minutes proceedings dated 08.02.2015(Ex.Cw2/1) the names of accused-Rahul Kumaria and Mona Bhatti were mentioned as members of the society. The trial Court on the basis of above-said documentary evidence observed that it was admitted by accused Rajeev Kumaria that up-to 27.02.2015 he did not acknowledge accused-Rahul Kumaria and Mona Bhatti. Thus, this Court is of the view that the learned trial Court has rightly held petitioners, namely, Rajeev Kumaria, Sonia, Rahul and Karan Kumaria *prima facie* guilty for the offence under Sections 406/467/468/471/120-B IPC and summoned them to face the trial, while the complaint qua Mona Bhatti, Preeti and Gurmeet Singh (respondents No.2 to 4 in CRM-M-32129-2016) was dismissed on the ground that the complainant failed to prove that as to how and in what manner any criminal conspiracy was entered into between them.

Not only that, the revisional Court has examined the matter in the right perspective and negated the plea of the petitioners. In the revision petition filed by the petitioner-complainant, the learned revisional court vide its order dated 04.06.2016 has observed as under:-

“.....Stress had been put on documents Ex. CW1/H and Ex.CW1/K which alleged to bear forged signatures of complainant but it is relevant to mention here that document Ex.CW/H is dated 31.5.2004 whereas the present respondents have been made as members of the society vide entry dated 8.2.2015, therefore, forgery of signatures on Ex.CW1/H cannot be imputed to them. Further the reliance has been put on Ex. CW1/K dated 14.4.2015 alleging that this document bears

forged signatures of the complainant and others. It is relevant that it is intimation or attendance sheet in which every member had put his or her attendance and therefore, the participating member cannot be made responsible for the forged signatures of any other members in the attendance-sheet, therefore, document Ex. CW1/K is not sufficient to prove prima-facie that the present respondents had committed forgery of signatures on this document.

Further, learned counsel for the revisionist had relied upon Ex. CW1/O which bears the signatures upon Ex.CW1/O which bears the signatures of the present respondents. This document Ex.CW/O is the proceedings of the meeting dated 25.4.2015 and there is nothing pointed out in this document to show that this is the forged document. Therefore, prima facie revisionst had failed to prove on record that the present respondents had committee forgery, therefore, they have rightly not been summoned by the trial court.....”

In the revision petition filed by the accused-petitioners, the revisional court vide its order dated 18.04.2017 has observed as under:-

“Having heard the rival contentions of the respective parties and going through the record of the case, I am of the view that the present revision petition is having no merit. Since the respondent-complainant has filed the complaint and in support of his complaint, in his preliminary evidence, the respondent-complainant apart from examining himself, has also examined four witnesses including the documentary evidence. The learned Trial Court after appreciating the preliminary evidence, adduced on record, has come to the conclusion that a prima-facie case made out against accused No.1 to 4 so far as the offence under sections 406, 467, 468,471, 120-B IPC is concerned and accordingly opined that

there were sufficient grounds to summon the revisionist as accused to face the trial for the offences, enumerated above. Thus, there is nothing, by which, it can be said that the summoning order passed against the revisionist is suffering from any illegality or impropriety. Reading the complaint, as a whole, I am satisfied that it is the case where the contentions sought to be raised by the revisionist can only be dealt with after the conclusion of the trial and no illegality or impropriety has been committed by the Learned Trial Court while summoning the revisionist as accused. In these circumstances, this Court is of the view that there is nothing illegal in the impugned order.”

From the perusal of the case file as well as the orders passed by the courts below, this Court is of the view that the essential ingredients for quashing the criminal prosecution at the initial stage set out in **Ch.Bhajan Lal and Som Mittal's** cases (supra) are totally lacking in this case. Both the Courts below have recorded the cogent grounds in this relevant direction. Moreover, learned counsel for the petitioners have also failed to point out any patent illegality in the impugned orders passed by the courts below.

The main thrust of the argument of learned counsel for the accused-petitioners (in CRM-M-22423-2017) that the present case pertains to the election of the Society and the same can only be adjudicated upon by the civil Court. He further submitted that since the matter is already pending before the Civil Court, the present complaint is nothing but an abuse of the process of law and deserves to be dismissed.

Even this submission of learned counsel for the petitioners is unable to cut much ice. The pendency of the civil suit is no bar for the initiation of criminal proceedings when the element of forgery has been

alleged against the accused petitioners. There is no dispute with regard to settled proposition of law that the civil as well as the criminal proceedings can go on together and if it is proved on record that there is forgery and tampering in the record of the Society, certainly that may invite the criminal liability.

In view of the above, both these petitions are dismissed, being devoid of any merit. Pending application(s), if any, shall also stand disposed of.

22.02.2022**mks****(SANT PARKASH)
JUDGE**

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO