

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2940 of 2020

Arising Out of PS. Case No.-208 Year-2015 Thana- GANDHIMAIDAN District- Patna

1. Rakesh Chandra Malhotra @ R.C. Malhotra (Male), Son of Late Balak Ram Malhotra, F-45 Ganga Tower, LCT Ghat, P.S.-Patliputra, District-Patna.
2. Alok Takiyar, Son of Late Baldeo Raj Takiyar, Block No.24, Flat No.189, Road No.10, Rajendra Nagar, P.S-Kadamkuan, District-Patna.
3. S.K. Malhotra @ Sunil Kumar Malhotra, Son of Late Balak Ram Malhotra, Jan Priya Apartment, S.K. Puri, Boring Road, Patna.

... .. Petitioners

Versus

1. The State of Bihar
2. Bhupendra Chauhan Son of Late Indarjeet Singh Chairman, Adhoc Committee, Punjabi Biradari, At Lala Lajpat Rai, Memorial Bhawan, Chajubagh, Patna-1.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. P.N. Shahi, Sr. Advocate
		Mr. Sada Nand Roy, Advocate
For the State	:	Mr. Pancha Nand Pandit, APP
For Opp. Party No.2	:	Mr. Suresh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 19-05-2023

This application has been filed for quashing of the order dated 11.04.2017 passed by learned Additional Chief Judicial Magistrate, Patna, in Gandhi Maidan P.S. Case No.208 of 2015, by which the learned Magistrate has taken cognizance against the petitioners for the offences under Sections 406, 467, 468, 420 and 120-B of the Indian Penal Code.

2. As per the F.I.R., the informant/opposite party no.2 is the Chairman of Ad-hoc Committee of Punjabi Bradri,



Patna having its headquarters at Lala Lajpat Rai Memorial Hall, Patna and there are 650 members in the Punjabi Bradri. It is alleged that in the year 2013, through Annual General Meeting, the petitioner no.1 and petitioner no.2 were elected as President and General Secretary of the Punjabi Bradri. It is also alleged that in the Annual General Meeting of 2012, it was decided that after demolition of old building of Lala Lajpat Rai Memorial Hall, new building will be constructed. Since, the petitioner no.1 himself is a builder, he has taken the responsibility for the same. The petitioner no.1, the then President, gave proposal that Rs.3,00,00,000/- as estimated value of the building which has been supported by the petitioner no.2 being General Secretary of Punjabi Bradri. When the members of the Pubjabi Bradri enquired about the same, they were abused by the petitioner nos. 1 and 2. It is also alleged that a committee was constituted to enquire in to the matter but, the petitioner no.1 did not provide the documents and in spite of repeated letters, the petitioner no.1 did not appear before the enquiry committee. It is further alleged that thereafter a special meeting was held and in the said meeting the petitioner no.1 and 2 have been removed from their respective posts and an Ad-hoc Committee was constituted.

2.1. It is also alleged that the petitioner no.1



proceeded with construction work with petty contractor and uptill now only 75% work of building has been completed. It is also alleged that about Rs.4,00,00,000/- has already been paid to the contractor but no books of account and no balance sheet have been maintained. It is also alleged that by modifying the by-laws of Pubjabi Bradri, an amount of Rs.2,00,00,000/- has been taken as loan from the bank. It is also alleged that in this regard a complaint has been filed before the I.G. (Registration) and inquiry is going on. It is also alleged that the petitioners have defalcated huge amount and on the basis of forged documents, the petitioners have taken a loan of Rs.2,00,00,000/- from the bank.

3. Sri P.N. Shahi, learned senior counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case at the instance of their enemies due to political rivalry prevailing in Punjabi Bradri. He also submits that in fact, the proposal for amendment in by-laws of Punjabi Bradri was proposed in the year 2010 itself and the same has been passed on 26.12.2010 modifying the section related to obtaining loan from the Bank but the said fact has been suppressed by the informant only with a view to defame the petitioners.



4. Learned senior counsel counsel for the petitioners further submit that the allegation regarding appointment of contractor is concerned, is a false statement as an agreement was made on 07.09.2012 for demolition of Lala Lajpat Rai Memorial Hall, Patna, and in the said agreement the informant has also put his signature as one of the witnesses and at that time, one H.L. Gulati was the President of the society not the petitioners. He further submits that the allegation regarding non-production of documents is concerned, the same is also incorrect as all the documents related to account has already been handed over to the auditor of the Punjabi Bradri and the report is still awaited and in absence of any report, the allegation regarding defalcation is misleading statement.

5. Learned senior counsel for the petitioners further submits that the construction work of the building of the Punjabi Bradri has been completed and the same is being utilized by the members of the Punjabi Bradri. He also submits that the present F.I.R. is the counter blast of Gandhi Maidan P.S. Case No. 207 of 2015 filed by the petitioner no.1 against the informant and other persons. He further submits that because of the internal politics in the Punjabi Bradri a number of litigation are going on between the members.



6. Sri Suresh Kumar, learned counsel appearing for the opposite party no.2 has submitted that the petitioners have defalcated money and have taken loan for construction of the building by modifying the by-laws of the society and therefore, this Court may not quash the F.I.R. as *prima facie* case is made out against the petitioners.

7. I have heard learned senior counsel for the petitioners, learned counsel for the opposite party no.2 and learned counsel for the State. I have also perused the materials on record including the F.I.R.

8. From the record, it appears that prior to filing of present F.I.R., the petitioner no.1 had filed a criminal case viz. Gandhi Maidan P.S. Case No. 207 of 2015 against Bhupendra Chouhan, Shyam Lal Kapoor, Suresh Kumar, Sanjay Saluja, Braj Bugga, Kuldeep Bugga, Harbansh Lal Gulari and 4-5 known persons stating therein that he (petitioner no.1) is the elected President of Punjabi Bradari and on 16.08.2012 while the monthly meeting was going on, the accused persons came and abused the petitioner no.1 and obstructed the meeting. It is also alleged that on 31.05.2014 at about 10:20 A.M. while the office bearers and members of Punjab Bridari went for monthly meeting in Lala Laj Lajpat Rai Memorial Hall, the accused



persons stopped them from holding the meeting and assaulted them and again on 01.06.2015 at around 12:00 noon when the petitioner no.1 and the Secretary of the Punjabi Bradri were doing some official works, the accused persons came and assaulted them and also threatened them. The present F.I.R. has been filed by Bhupendra Chouhan, who is accused no.1 in Gandhi Maidan P.S. Case No. 207 of 2015 filed by the petitioner no.1. Therefore, it seems that the present F.I.R. is the counter blast of Gandhi Maidan P.S. Case No. 207 of 2015.

9. It also appears that because of internal politics in Punjabi Bradri, a number of litigations are going on between the parties, which are as follows:-

- (i) Title Suit No.63 of 2023 (Punjabi Bradri & Ors. vs. Arun Kumar Gupta and Ors.)
- (ii) Title Suit No. 129 of 2023 (Punjabi Bradri vs. Rajiv Arora and Ors.)
- (iii) Title Suit No.303 of 2014 (Punjab Bradri and Anr. vs. Sri Rakesh Chandra Malhotra & Ors.).which have been indicated hereinabove.

10. In Title Suit No.63 of 2023 the following



prayer has been made:-

- “(i) That after adjudication declare the election of the society (Punjabi Bradri) Patna for the session 2019-2021 held on 28.07.2019 valid, and the proceeding dated 17.12.2019 of the committee by which Defendants no.1 to 7 are terminated to be valid and correct and the extension of the tenure/period of 2 year i.e. 2019-2021 to the period till the full and final payment of the loan money due found against the plaintiff no.1, and the amendment by laws No.9(D), 5(C) dated 10.07.2020 confirmed on 26.07.2020 legal, valid, operative and in the interest of the plaintiff no.1.*
- (ii) That declare the proceeding before the Defendants no.8, 9 respecting the matter involved in this case to the election of the office bearer of the society and decision of termination of Defendant no.1 to 7 under the proceeding dated 18.12.2019 of the society illegal without jurisdiction.*
- (iii) That pass the order of adinterim against the defendant restraining them to not to make any interference in the said society (plaintiff no.1) by the plaintiffs no.2, 3, 4 so that they should not interfere into the matter of the society in any manner till the disposal of the present suit.*
- (iv) Grant the cost of the suit is the favour of the plaintiff and against the Defendants.*
- (v) That grant the other relief/reliefs to which*



the plaintiffs are found entitled to.”

11. In paragraph no.10 of the above Title Suit, the following statement has been made by the plaintiffs:-

“10. That it is stated that the building of the plaintiff no.1 had become in dilapidated condition from Zero ground, the committee has decided to preserve the identity of the plaintiff no.1, the said building is demolished completely to be started construction of the building from zero ground in the year 2014 after taking Rs.2,00,00,000/- (Two Crore) is taken as loan hypothecating the said building from the Bank of India. Mid-Corpate Branch, Sone Bhawan, Patna, in the year 2014 after the resolution passed by the then committee of the society.”

12. From reading of the aforesaid paragraph it appears that the allegation made in the present F.I.R. is also a subject matter of Title Suit No.63 of 2023. It also appears that because of the dispute going on between the members of the Punjabi Bradri, false cases have been filed with a view to pressurize the petitioners for not proceeding further with Gandhi Maidan P.S. Case No. 207 of 2015. The informant and other members of his group are involved in filing frivolous cases against the office bearers as and when they are not successful in



gaining control over the affairs of the Punjab Bradri. Further, the matter was also taken to the office of the I.G. (Registration) and investigation is going on. Moreover, the building has been completed and the same is being utilized by the members of the Punjabi Bradri and the dispute with the Bank with regard to the loan has been settled.

13. In the opinion of this Court, the present dispute is nothing but a civil dispute between the members of the Punjabi Bradri and has been given the colour of criminal case in order to pressurize the petitioners. This kind of case is an abuse of the process of the criminal Courts and cannot be allowed to be used to wreak vengeance upon the petitioners or other members of the Punjabi Bradri. The informant and others are free to contest the matter in civil side and once the building has been completed and the same is being used for welfare of the members of the Punjabi Bradri, no useful purpose would be served by allowing the present case to continue.

14. In view of the aforesaid facts and also considering the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana & Ors vs Ch. Bhajan Lal & Ors.* reported in *AIR 1992 604*, the present F.I.R. is fit to be quashed as the same is malicious one.



15. Accordingly, this application is allowed and the F.I.R. vide Gandhi Maidan P.S. Case No. 208 of 2015 registered for the offence under Sections 406, 467, 468, 420 & 120-B of the Indian Penal Code and all consequential proceedings arising out of the aforesaid FIR including the order dated 11.04.2017 passed by learned Additional Chief Judicial Magistrate, Patna, are quashed in the interest of justice.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A.
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