

**121(3+6) IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****(1)****CRM-M-1826-2020 (O&M)
Date of Decision: 31.08.2023**

Dr. Rajneesh Arora

.....Petitioners(s)

Versus

District Rural Development Agency (DRDA) Bathinda

.....Respondent

(2)**CRM-M-52926-2018 (O&M)**

Dr. N.P. Singh

.....Petitioners(s)

Versus

District Rural Development Agency (DRDA) Bathinda

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHUPresent: Mr. Puneet Sharma, Advocate,
for the petitioner in CRM-M-1826-2020.Mr. Jagjit Singh Lalli, Advocate,
for the petitioner in CRM-M-52926-2018.

Mr. Sandeep Kumar, DAG, Punjab.

MAHABIR SINGH SINDHU, J.

This order shall dispose off above two petitions filed under
Section 482 Cr.P.C for quashing of criminal Complaint along with all
consequential proceedings arising therefrom being similar in nature.

2 For brevity, facts are noticed from CRM-M-1826-2020.**3** Present second round of litigation is for quashing of criminal**Complaint No.5 dated 14.01.2012** titled as “District Rural Development

Agency Vs. Tarsem Dhingra and others”, pending in the Court of Sub-Divisional Judicial Magistrate, Phul (for short ‘SDJM’); summoning order dated 21.08.2015 (P-2) as well as order dated 20.08.2018 (P-10 colly.) vide which present petitioners along with two other co-accused were charge-sheeted under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 of Indian Penal Code (for short “IPC”); further challenge is to the order dated 20.12.2018 (P-11) passed by Id. Additional Sessions Judge, Bathinda, whereby revision petition of the petitioner(s) against the order dated 20.08.2018 (*supra*) was dismissed.

4 Allegations in brief are that District Rural Development Agency, Bathinda (for short “D.R.D.A.”) is running various schemes for development of rural areas in the State of Punjab. One of the schemes was for providing computer training to the students in villages under the Distance Education Scheme of PTU, Jalandhar. On 01.06.2001, a Memorandum of Understanding (for short ‘MoU’) was signed by Punjab Technical University, Jalandhar (for short “PTU”) with D.R.D.A. for running such centres. In continuation of the aforesaid MoU, another MoU dated 02.07.2002 was entered into between the parties and Sh. Tarsem Dhingra, Incharge of Tara Infotech Centre, Mandi Kalan was authorized for collection of fees from the students. On 22.04.2008, Sh. Parminder Singh Sandhu submitted a complaint that above-said Tarsem Dhingra in connivance with other employees of PTU has embezzled the amount of fee collected from the students.

FIRST ROUND:-

5 On 14.01.2012, complaint in question was filed against five persons, namely, (i) Tarsem Dhingra, (ii) Dr. Rajneesh Arora (petitioner in CRM-M-1826-2020), (iii) Dr. R.P.Singh, (iv) Dr. N.P. Singh (petitioner in

CRM-M-52926-2018) and (v) Sh. Mukhtiar Singh S.I. for commission of offences under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

6 As the complaint was filed through public servant (Sadhu Ram Kusla, the then APO, office of DRDA), therefore, learned Judicial Magistrate First Class (for short “JMFC”), while invoking Proviso (a) of Section 200 Cr.P.C, summoned all the five accused vide order dated 27.04.2012, in the following manner:-

“Perusal of the file reveals that present complaint was filed by Mr. Sadhu Ram Khusla, DRDA office of ADC Development Bathinda i.e. by a Government official in discharge of his official duty. He has placed on file his appointment letter dated 6.8.07 vide which he has appointed as Nodal Officer, DRDA Bathinda. Therefore, as per Section 200 proviso (a) there is no need to examine the complainant and the witnesses in the complaint is filed by public servant in discharge of his official duty and the same is in writing. Therefore, there is no need of preliminary evidence. Hence on the basis of the allegations in the complaint and the documents annexed thereto, sufficient grounds are made out to issue notice to the accused. Hence, accused be accordingly summoned for 26.05.2012.”

7 In pursuance of the above summoning order, accused Dr. R.P.Singh, Tarsem Dhillon, Dr. N.P. Singh (petitioner in CRM-M-52926-2018) & Dr. Rajneesh Arora (petitioner in CRM-M-1826-2020) appeared before learned SDJM and were admitted to bail vide separate order(s) dated 26.05.2012, 14.07.2012, 24.08.2012 & 28.08.2012, respectively.

8 Aggrieved against the above order, petitioner filed CRM-M-34219-2012 for quashing of the complaint in question and which was disposed off by the Single Bench of this Court vide order dated 01.11.2012 granting liberty to the petitioner to file a revision before learned Sessions Court, observing as under:-

“The present petition has been filed under Section 482 Cr.P.C for quashing of complaint No.5 dated

14.01.2012 and summoning order dated 27.04.2012 passed by Judicial Magistrate Ist Class without approaching the Court of Sessions by way of revision against the said order.

Disposed of with liberty to approach the Court of Sessions by way of revision against the said order dated 27.04.2012 passed by learned Judicial Magistrate Ist Class, if so advised.”

9 In terms of the above liberty granted to the petitioner, he filed CRR, which was allowed by learned Additional Sessions Judge, Bathinda vide order dated 29.11.2013, with the following directions:-

“The case is remanded back to the trial Court to pass a speaking order after recording preliminary evidence and after proper perusal of the documents annexed with the complaint. The parties are directed to appear before the learned trial Court on 20.12.2013.”

SECOND ROUND:-

10 In pursuance of the remand order dated 29.11.2013 (*supra*), learned JMJC after recording preliminary evidence and upon consideration of the material available on record, again passed the impugned summoning order dated 21.08.2015 against four accused; but dismissed the complaint, qua fifth accused, namely, SI Mukhtiar Singh.

11 It is noteworthy that at relevant point of time, none of the four accused, including present petitioners challenged the summoning order dated 21.08.2015; rather all of them joined proceedings before learned JMJC and they were released on bail vide separate orders dated 04.11.2015 & 06.02.2016.

12 Later on, pre-charge evidence was recorded and thereafter, learned SDJM, vide impugned order dated 20.08.2018, charge-sheeted all

four accused, (including present petitioners) under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

13 Still aggrieved against the order of framing charges, petitioner (Dr. Rajneesh Arora) filed Criminal Revision No. 480 of 2018 on 05.11.2018, but the same was dismissed by learned Additional Sessions Judge vide impugned judgment dated 20.12.2018.

14 Hence present petition.

CONTENTIONS ON BEHALF OF PETITIONER DR. RAJNEESH ARORA

15 Learned counsel contends that petitioner joined as Vice-Chancellor of P.T.U on 24.12.2008; thus, being completely unaware about the MoU dated 01.06.2001 & 02.07.2002, he was having no concern with the running of computer training centres. Further submits that petitioner had no role with the alleged embezzlement of funds as he was working only as the Vice Chancellor of PTU w.e.f. 24.12.2008 and as such having no dealing in any manner with the fees collected from the students.

CONTENTIONS ON BEHALF OF DR. N.P. SINGH

15.1 Learned counsel for petitioner contends that he being the Dean (Exams), Distance Education, PTU had no knowledge regarding the collection of funds as he was only the head of Examination Department of the University.

15.2 Apart from raising above contentions, it was also submitted on behalf of both the petitioners that learned SDJM while framing charges did not properly appreciate the pre-charge statement of complainant-Sadhu Ram Kusla, wherein he categorically admitted that competent authority had already withdrawn his authorization to pursue the complaint and moreover,

till date, there is no application for substitution of the complainant; hence entire criminal proceedings are vitiated.

15.3 Again contend that there is no material available on record to prove the complicity of petitioners with the alleged offences and mere allegations are that they failed to take action against the erring officials; thus present criminal complaint is complete misuse of the process of Court.

CONTENTIONS ON BEHALF OF RESPONDENT-COMPLAINANT

16 On the other hand, learned counsel for the complainant while opposing the prayer of petitioners, submitted that after recording preliminary evidence and upon due consideration of the material available on record, learned SDJM has passed the summoning order dated 21.08.2015, second time and moreover, for a period of three years, the order was not challenged by either of the petitioners; rather all the accused were facing proceedings without any objection.

16.1 Further argued that after recording of pre-charge evidence, learned SDJM charge-sheeted all four accused *vide* order dated 20.08.2018 and all of them, while pleading not guilty, claimed trial without raising any further grievance. Also argued that now trial is at the fag end in view of the fact that post charge evidence is being recorded and 2 (two) of the CWs have already been cross-examined by the defence.

16.2 Still further submitted that due to connivance of present petitioners as well as other co-accused, scheme for running the computer training centres in the rural area had to be abandoned and both the petitioners were very much aware of the controversy from the very beginning; thus, they are responsible for the entire episode. But despite that, both of them not only failed to take the desired action in the matter; rather protected the co-accused in connivance with each other for the reasons best known to them.

16.3 Lastly submitted that at this stage, instead of conducting a roving inquiry, it would be appropriate for this Court to dismiss the petition straightway with exemplary costs.

17 Heard learned counsel for the parties and perused the records.

18 From records, it is quite evident that complaint was filed by Sh. Sadhu Ram Kusla, the then Assistant Project Officer, DRDA, Bathinda on the basis of authorization dated 28.07.2010 & 12.09.2011. In the first round of litigation, petition under Section 482 Cr.P.C was filed by petitioner-Dr. Rajneesh Arora (CRM-M-34219-2012) for quashing of the complaint and which was disposed off by the Single bench of this Court on 01.11.2012 while granting him liberty to approach the Court of Session. Taking a cue from the above order, petitioner filed Criminal Revision against the first summoning order dated 27.04.2012 and learned ASJ vide order dated 29.11.2013, while accepting the prayer of petitioner, directed the JMIC to pass fresh order in the matter.

19 In compliance of the directions of the Revisional Court, learned SDJM, after recording preliminary evidence and upon taking into consideration the material available on record, again passed the summoning order dated 21.08.2015. It is matter of record that for three years, none of the accused challenged the second summoning order; rather all of them joined proceedings before learned trial Court without any objection.

20 A bare perusal of the second summoning order reveals that learned SDJM examined the records minutely; then only, after recording its satisfaction, summoned the above four accused, but dismissed the complaint qua fifth, namely, Mukhtiar Singh SI. Moreover, the due application of mind by learned SDJM is quite discernible from the summoning order itself and for reference, relevant part of the same reads as under:-

“When leading preliminary evidence in support of allegations of complaint, the complainant Sadhu Ram Kushla himself stepped into box as CW1 and reiterated the entire allegation contained in the complaint. Complainant placed on record documents i.e. copy of body meeting Ex.C1, memo 1 June 2001 Ex.C2, memo of 2nd July 2002 Ex.C3, notification dated 22.02.2007 Ex.C4, copy of letter dated 03.07.07 Ex.C5, office order dated 06.08.07 Ex.C6, copy of letter dated 09.07.07 Ex.C7, Copy of letter No. 358 Ex.C8, LC Mandi Kalan Ex.C9, copy of letter No.3/28/2008 Ex.C10, notice No. 15704 dated 27.03.08 Ex.C11, copy of letter dated 27.03.08 Ex.C12, copy of letter Ex.C13, office order dated 06.03.09 Ex.C14, office order dated 12.10.09 Ex.C15, copy of letter SSP Bathinda Ex.C16, copy of letter SSP Bathinda Ex.C17, copy of letter SSP Bathinda, Ex.C18 copy of letter dated 25.11.08 Ex.C19, copy of letter ADC (Dev.) dated 11.03.08 Ex.C20, copy of letter ADC (Dev) dated 15.12.08 Ex.C21, copy of letter ADC (Dev) dated 06.02.08 Ex.C22, copy of letter dated 26.03.08 Ex.C23. From the evidence on record sufficient grounds are made out to summons the accused no.1 to 4 u/s 415, 420, 409, 408, 468, 471, 166, 167, 217, 218 IPC. There is no direct allegations against Mukhtiar Singh SI. So complaint against Mukhtiar Singh SI is hereby dismissed. All the accused No.1 to 4 be summoned on filing of process fee and copies of complaint for 26.08.2015.”

21 Records also reveal that in order to prove the allegations made in the complaint, pre-charge evidence of four CWs, were recorded, viz:-

- (i) Complainant-Sadhu Ram Kusla (CW-1),*
- (ii) N.K. Jeet, Advocate;*
- (iii)(CW-2), Rajinder Dogra, Deputy Registrar, P.T.U.,*
Jalandhar (CW-3);
- (iv) Sumeet Kumar, Senior Assistant, Distance Education,*
PTU, Jalandhar (CW-4).

Thereafter, learned SDJM, upon taking into consideration the material available on record, charge-sheeted all the four accused, including present petitioners with specific charges for commission of offences under

Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

22 Consequent upon passing of the summoning order dated 21.08.2015, proceedings before learned trial Court were going on smoothly for the last three years without there being any grievance by either side. Thus, it seems that just to scuttle the trial, petitioners filed criminal revision against the order dated 20.08.2018, whereby, petitioners along with others were charge-sheeted, but the same was dismissed by learned ASJ on 20.12.2018, while assigning the following reasons:-

“14. After summarising the legal position on the subject, the Hon’ble Apex Court held that whether or not the allegations are true, is a matter which cannot be determined at the stage of framing of charge. Any such determination can take place only at the conclusion of the trial. The trial Court record shows that the accused had hatched a criminal conspiracy and in pursuance of their such conspiracy they had forged false records of students and collected fees, fraudulently and dishonestly, in order to earn wrongful gains for themselves and wrongful loss to the public at large and the complainant and the students in particular and as such, on the basis of such fake, forged and fabricated records they awarded, marks and degrees to the students by siphoning off their fee for their personal gain and usage. The revisionist also while acting in capacity of public servant had connived with the remaining accused and had earned wrongful gains for himself with consequential wrongful loss to the complainant by siphoning off the fee/share of the complainant for his personal gain and usage and have thus caused injury to the complainant.

16. The trial Court record shows that prima facie the charges have been correctly framed by the learned Court below and there is no perversity or illegality in framing the charges on the basis of the material available before the learned Trial Court. Accordingly, finding no ground to interfere in the order impugned, the same is hereby ordered to be confirmed. Revisions are dismissed. Parties to appear in the trial Court on 5th of January 2019 at 10-00 AM. Trial Court record be sent back and file of this Court be consigned.”

23 A perusal of the above extract reveals that learned ASJ while dismissing the revision of petitioner *inter-alia* observed that learned trial Court has correctly framed the charges and no perversity or illegality was found therein. It was also observed that accused hatched a criminal conspiracy; in pursuance of such conspiracy, they forged the records of students; collected fees; in order to earn wrongful gain, fraudulently and dishonestly caused loss to the public at large by embezzling the fees. Further observed that on the basis of forged and fabricated records, siphoned off the fees collected from students for their personal gain. Specifically observed that petitioners while acting in the capacity of public servant, connived with other co-accused for their wrongful gain and caused wrongful loss to the complainant as well as students.

24 Thus, there are specific allegations against the petitioners for forgery and fabrication of records; collecting fees from students and misappropriation of the same for their personal gain. Both the petitioners have been charge-sheeted on account of the fact that they embezzled fees received from students and caused wrongful loss to the public exchequer.

25 Learned SDJM also, *prima-facie* found the commission of offence by all the accused, including present petitioners while passing the summoning order dated 21.08.2015 and later on, they were charge-sheeted on 20.08.2018. Even the learned revisional court has also concurred with the order of charge-sheeting the petitioners under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC

26 Apart that, it is curious to note that before filing of the present complaint, lot of hue and cry was raised and ultimately, a report was submitted in the matter by the committee on 30.05.2009 (P-8) and operative part of the same reads as under:-

“14. The Committee observes that the present arrangement of running all the LCs under the DRDA, Bathinda, by the petitioners and all others concerned is not working and has several aforesaid deficiencies. Also, the MOU with DRDA has expired. Therefore, the committee recommends that the present arrangement of running all the LCs under the DRDA, Bathinda by the petitioners and all others concerned be discontinued forthwith, and no further permission be given by the PTU to all these LCs presently under the DRDA, Bathinda to make any new admissions to or to enroll any new students for any course for any further semester under the PTU’s DEP system. However, to safeguard the interests of the existing students in all these LCs run under the DRDA, Bathinda, by the petitioners and any other persons, the academic/financial control of these students be temporarily shifted from the DRDA, Bathinda to University itself under normal DEP system till permanent arrangement is made. Accordingly, the PTU should forthwith prepare the lists of all its existing DEP students of all the LCs presently under the DRDA, Bathinda, and work out plans for the recommended shifting of their said control to avoid further students sufferings.

15. As per the documents submitted by the University, the deficient amount including examination fees share comes to Rs.36,21,145/- instead of Rs.17,19,191/-. Out of this total deficient amount of Rs.36,21,145/- due from these LCs, the University has received only Rs.2,16,728/- from them, and the balance amount (Rs.34,014,417/-) is recoverable from them as detailed in para No.11 above. The University may, therefore, decide on its own to recover this huge balance deficient amount from these learning centres as deemed fit by the University at the earliest.”

27 In spite of the above report, no action was taken by the quarter concerned. Thus, harassed with the situation, Shri Kusla sent a detailed complaint dated 11.04.2009 (R-1) to the Dean of PTU as well as Member of the Committee. In such a situation, concern of Shri Kusla is not only genuine; rather appreciable.

28 Hence, the argument raised by learned counsel for the petitioners that authorization from Shri Kusla was withdrawn by D.R.D.A, is unacceptable and liable to be rejected. Moreover, it is quite elementary that concept of *locus-standi* in criminal jurisprudence is quite alien. In other words, anyone can set the criminal law into motion, unless there is any specific bar to that effect. Reference in this regard can be made to the decision rendered by Hon'ble the Supreme Court in **A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500** and relevant part of para 6 reads as under:-

“6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision.”

.....

.....

“While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any

element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.”

Additionally, it is quite evident from letter dated 30.04.2015 (Ex.P-2) that after retirement of Shri Kusla, another APO(M) was authorized to pursue the complaint against all the 04 accused. Here, it would be worthwhile to mention that as on today, proceedings before learned trial Court are at an advance stage as 02 of the CWs have already been cross-examined by the accused.

29 The argument raised on behalf of the petitioners that they have been arrayed as accused merely on account of the fact that petitioners failed to take action against the erring official(s), is also liable to be rejected for the simple reason that there are specific allegations against both the petitioners for committing the offences under Section 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC. Hence, at this stage, it would not be appropriate for this Court to examine the merits of the accusation; but at least, in view of the facts and circumstances of the case discussed hereinabove, it cannot be said that *prima-facie* no offence is made out against the petitioners.

30 On the contrary, there is sufficient material available on record to proceed against the petitioners for causing financial loss to the public exchequer and depriving the students from building their career. Unfortunately, due to the omissions and commissions of accused, the entire scheme had to be abandoned.

31 *A fortiori*, present petition is neither an appeal, nor a revision; rather this is a petition under Section 482 Cr.P.C, which may be entertained only to secure the ends of justice or to prevent the miscarriage of justice or in a situation where it is established that continuation of criminal proceedings would be an abuse of the process of Court.

Thus, in the opinion of this Court, quashing of the criminal proceedings at the hands of petitioners in the present case would amount to “negation of the rule of law” as well as “detrimental to the administration of criminal justice system”. Hence, no ground is made out to interfere with the impugned summoning order; or the charge-sheet; or the order passed by learned Additional Sessions Judge; rather, continuation of the proceedings would be in the interest of justice.

32 Resultantly, there is no option except to dismiss the petition.

33 Ordered accordingly.

34 Since complaint is pending for the last more than 11 years, therefore, learned SDJM is requested to proceed in the matter expeditiously.

35 Pending application(s), if any, shall also stand disposed off.

36 A photocopy of this order be placed on the file of connected case.

31.08.2023.

SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No