

121(4) **IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-2011-2020 (O&M)
Date of Decision: 31.08.2023

Dr. Rajneesh Arora

.....Petitioners(s)

Versus

District Rural Development Agency (DRDA) Bathinda

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Puneet Sharma, Advocate,
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present second round of litigation is for quashing of criminal **Complaint No.15 dated 27.04.2012** 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 23.12.2014 (P-2) as well as order dated 30.08.2018 (P-10 colly.) vide which present petitioner along with eleven 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 30.08.2018 (*supra*) was dismissed.

2 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. The accused received the books by illegal way by giving fake address of Tara Infotech Institute near PNB Rampura, prepared forged documents, forged record of students and collected fees. A complaint was submitted that above-said Tarsem Dhingra in connivance with other employees of PTU has embezzled the amount of fee collected and received books by forging record.

FIRST ROUND:-

3 On 27.04.2012, complaint in question was filed against thirteen persons, namely, (i) Tarsem Dhingra, (ii) Vikram Singh, (iii) Lachhman Dass, (iv) Teja Singh, (v) Principal, Universal Learning Institute, (vi) Kuldeep Rai, (vii) Mohit Sharma, (viii) Rajneesh Arora (petitioner), (ix) Dr. R.P.Singh, (x) D.S. Sekhon, (xi) M. Dhiwan, (xii) Ajesh Gugnani, (xiii) SHO Buta Singh for commission of offences under Sections 417, 420, 408, 409, 468, 471, 120-B, 166, 167, 217 & 218 IPC.

4 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:-

“Complaint presented today. It be registered. The complaint has been filed by the complainant in his official capacity. Since the complaint has been filed by a public servant in discharge of his official duty. So, recording of preliminary evidence of the complainant is dispensed with. Let notice to the accused be issued for 09.05.2012 on filing of PF/DM and copy of complaint.”

5 Although complaint was filed against thirteen persons, but during inquiry, it transpired that Principal-Universal Learning Institute and Mohit Sharma is one and the same person. Thereafter, in pursuance of the above order, accused Tarsem Dhingra, Lachhman Dass, Teja Singh, Kuldeep Rai, Mohit Sharma, Rajneesh Arora (petitioner), Dr. R.P.Singh, D.S. Sekhon, M. Dhiwan, Ajesh Gugnani, SHO Buta Singh appeared before learned SDJM and they were admitted to bail vide separate order(s) dated 02.06.2012, 05.07.2012, 26.05.2012.

6 Aggrieved against the above order, petitioner filed CRM-M-34220-2012 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.15 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.”

7 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 27.01.2014, 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.”

SECOND ROUND:-

8 In pursuance of the remand order dated 27.01.2014 (*supra*), learned SDJM after recording preliminary evidence and upon consideration of the material available on record, again passed the impugned summoning order dated 23.12.2014 against eleven accused, but dismissed the complaint, qua twelfth accused, namely, SHO Buta Singh.

9 It is noteworthy that at relevant point of time, none of the eleven accused, including present petitioner challenged the summoning order dated 23.12.2014; rather all of them joined proceedings before learned SDJM and they were released on bail vide separate orders dated 04.02.2015, 13.03.2015, 26.05.2015, 03.06.2015, 13.06.2015 & 04.07.2015. However, accused Vikram Singh did not join the proceedings and was declared as a proclaimed offender on 04.07.2016.

10 Later on, pre-charge evidence was recorded and thereafter, learned SDJM, *vide* impugned order dated 30.08.2018, charge-sheeted all eleven accused, (including present petitioner) under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

11 Still aggrieved against the order of framing charges, petitioner filed Criminal Revision No. 481 of 2018 on 05.11.2018, but the same was

dismissed by learned Additional Sessions Judge vide impugned judgment dated 20.12.2018.

12 Hence present petition.

CONTENTIONS ON BEHALF OF PETITIONER DR. RAJNEESH ARORA

13 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.

13.1 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.

13.2 Again contend that there is no material available on record to prove the complicity of petitioner 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

14 On the other hand, learned counsel for the complainant while opposing the prayer of petitioner, submitted that after recording preliminary evidence and upon due consideration of the material available on record, learned SDJM has passed the summoning order dated 23.12.2014, second

time and moreover, for a period of three years, the order was not challenged by either of the petitioner; rather all the accused were facing proceedings without any objection.

14.1 Further argued that after recording of pre-charge evidence, learned SDJM charge-sheeted all the accused *vide* order dated 30.08.2018 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 3 (three) of the CWs have already been cross-examined by the defence.

14.2 Still further submitted that due to connivance of present petitioner as well as other co-accused, scheme for running the computer training centres in the rural area had to be abandoned and petitioner was very much aware of the controversy from the very beginning; thus, he is responsible for the entire episode. But despite that, he 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 him.

14.3 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.

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

16 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-34220-2012) 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 27.01.2014, while accepting the prayer of petitioner, directed the SDJM to pass fresh order in the matter.

17 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 23.12.2014. 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.

18 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 twelve accused, but dismissed the complaint qua twelfth, namely, Buta Singh SHO. 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. He reiterated the entire allegations contained in the complaint. CW-2 HC Bhagwant Singh has corroborated the version of the complainant. Complainant also placed on record copy of statement recorded by the Police in the Hospital as Ex.C-1, copy of his MLR as Ex.C-2, Copy of pictorial diagram as Ex.C-3 and copy of rapat dated 05.11.2012 as Ex.C-4 and closed the preliminary evidence.

3. I have gone through the file carefully.

4. From the evidence on record sufficient grounds are made out to summons the accused no.1 to 12 u/s 417, 420, 408, 409, 468, 471, 120-B, 166, 167, 217, 218 IPC. As there is no direct allegation against accused No.13 who has no concern with the complaint; as such no ground is made out to summon the accused No.13. They be summoned accordingly for 09.01.2015 on filing of PF and copies of complaint.”

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

- (i) Complainant-Sadhu Ram Kusla (CW-1);
- (ii) Jarnail Singh (CW-2);
- (iii) Sumeet Kumar, Senior Assistant, Distance Education, PTU, Jalandhar (CW-3).

Thereafter, learned SDJM, upon taking into consideration the material available on record, charge-sheeted all the eleven accused, including present petitioner with specific charges for commission of offences under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

20 Consequent upon passing of the summoning order dated 23.12.2014, 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, petitioner filed criminal revision against the order dated 30.08.2018, whereby, petitioner 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.

15. 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.”

21 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. The accused received the books by illegal way by giving fake address of Tara Infotech Institute near PNB Rampura, prepared forged documents, forged record of students and collected fees. Specifically observed that petitioner 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.

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

23 Learned SDJM also, *prima-facie* found the commission of offence by all the accused, including present petitioner while passing the summoning order dated 23.12.2014 and later on, he was charge-sheeted on 30.08.2018. Even the learned revisional court has also concurred with the order of charge-sheeting the petitioner under Sections 120-B, 417, 420, 409, 465, 471, 166 & 167 IPC.

24 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.34,04,417/-) 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.”

25 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.

26 Hence, the argument raised by learned counsel for the petitioner 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 twelve accused. Here, it would be worthwhile to mention that as on today, proceedings before learned trial Court are at an advance stage as 03 of the CWs have already been cross-examined by the accused.

27 The argument raised on behalf of the petitioner that he has been arrayed as accused merely on account of the fact that petitioner 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 the petitioner 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 petitioner.

28 On the contrary, there is sufficient material available on record to proceed against the petitioner 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.

29 *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 petitioner 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.

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

31 Ordered accordingly.

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

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

34 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