

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

CRM-M-43170-2016

Date of Decision : 13.07.2023

Gurbax Ram and others

..... Petitioners

Versus

Hari Dev

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Arun Takhi, Advocate
for the petitioners.

Mr. S.S.Hira, Advocate
for the respondent.

VIKRAM AGGARWAL, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking quashing of criminal complaint No.6 dated 07.01.2012, titled as "Hari Dev versus Gurbax Ram and others", filed by the respondent-complainant under Sections 166, 167, 463, 464, 465, 466, 468, 471, 120-B IPC (Annexure P-5) against the present petitioners, the summoning order dated 16.10.2013 (Annexure P-6) vide which the petitioners were summoned to face trial for commission of offences punishable under Sections 166, 465, 471, 120-B IPC and the order dated 23.08.2016 (Annexure P-9) vide which the application filed by the petitioners under Section 245 read with Section 468 Cr.P.C. for discharge was dismissed.

It would be relevant to mention that it was stated during the course of

arguments that petitioner No.3 Ram Parkash had unfortunately expired during the

pendency of the present petition.

1.1 The present litigation arose from a fight for the post of Scheduled Caste Lambardar of Village Thathal, District Hoshiarpur. Initially, petitioner No.3 Ram Parkash was appointed as SC Lambardar by the District Collector, Hoshiarpur vide order dated 28.02.2006. The respondent-complainant was also one of the candidates for the same. He, however, was not appointed on the ground that he was running a tailoring shop in village Bassi Gullam Hussain. An appeal was preferred by the respondent-complainant which was also dismissed by the Commissioner, Jalandhar Division, Jalandhar on 05.09.2006. The revision petition filed by him was allowed by the Financial Commissioner, Punjab vide order dated 24.09.2008. A writ petition i.e. CWP-10234-2009 was preferred by petitioner No.3 against the said order wherein he annexed a certificate dated 25.11.2008 stating that respondent-complainant was doing the work of a labourer. This certificate was issued by petitioner No.1 Gurbax Singh as he was the Sarpanch of Village Thathal and had also been signed by petitioner No.2 being the Panch of the village. It is this certificate dated 25.11.2008 (Annexure P-1) which led to the initiation of the present litigation.

1.2 A complaint was filed by respondent-complainant with the police as also with the District Development and Panchayat Officer with regard to the same. It was alleged that the certificate (Annexure P-1) was a forged document created by the petitioners to harm the respondent-complainant. As per the petitioners, both authorities found the allegations to be false in their respective inquiry reports (Annexures P-3 and P-4 respectively). Thereafter, the present complaint (Annexure P-5) was preferred in which it was alleged that the petitioners had forged the certificate dated 25.11.2008 and had produced it in the High Court.

After preliminary evidence having been led, the summoning order dated

16.10.2013 (Annexure P-6) was passed. An application under Section 245 read with Section 468 Cr.P.C. (Annexure P-7) was moved by the petitioners for discharge on the ground that the complaint was barred by limitation. The said application was also dismissed by the trial Court vide order dated 23.08.2016 (Annexure P-9).

2. Reply was filed by the respondent opposing the present petition.

3. I have heard learned counsel for the parties and have also perused the paper book.

4. Learned counsel for the petitioners submitted that the complaint, summoning order and the order rejecting the application for discharge deserve to be set aside. Three-fold arguments were raised by learned counsel for the petitioners. It was firstly contended that the trial Court had observed that no offence under Section 463 IPC was made out but still went on to summon the petitioners under Sections 465 and 471 IPC. Learned counsel contended that once offence under Section 463 was not made out, the petitioners could not have been summoned under Sections 465 and 471 IPC. The second limb of arguments was with regard to the bar raised by Section 195 Cr.P.C. It was contended that since an offence punishable under Section 166 IPC was alleged to have been committed and it was stated that a forged certificate had been filed with the writ petition, only a complaint as envisaged by the provisions of Section 195 Cr.P.C. would be maintainable and a private complaint would not be maintainable. It was finally contended that even otherwise the complaint was barred by limitation because the punishment provided for commission of offence under Section 166 IPC is simple imprisonment for one year for which, the limitation, as per provisions of Section 468 Cr.P.C. would be one year. It was submitted that the complaint in question was filed by respondent/complainant on 07.01.2012 whereas the writ petition i.e.

CWP No.10234 of 2009 had been filed by petitioner No.3 in which certificate dated 25.11.2008 had been annexed. Learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of India in **Gopalakrishna Menon versus D.Raja Reddy 1983 (2) R.C.R. (Criminal) 354, Kailash Mangal versus Ramesh Chand (D) Th. Legal Representative 2015 (3) R.C.R. (Criminal) 163, Sh. Narendra Kumar Srivastava versus State of Bihar & Ors. 2019 (5) R.C.R. (Criminal) 501 and Amarsang Nathaji as Himself and as Karta and Manager versus Hardik Harshadbhai Patel and Others 2017 (1) R.C.R. (Criminal) 92.**

On the other hand, learned counsel for the respondent submitted that there is no merit in the present petition and the same deserves to be dismissed. It was contended that Section 463 IPC merely defines forgery and does not lay down any substantive offence and summoning could have been done under Sections 465 and 471 IPC. It was rightly so done by the trial Court. Learned counsel submitted that the bar of Section 195 Cr.P.C. would not apply since the petitioners had been summoned not only under Section 166 IPC but also under Sections 468 and 471 IPC. Learned counsel further submitted that the bar would apply only if the documents in the custody of the Court had been forged and would not apply when documents had been allegedly forged outside the Court and then filed alongwith the petition. With regard to limitation, it was submitted that limitation would be 03 years and since the complaint was filed on 07.01.2012, it was well within the period of limitation. In support of his contentions, learned counsel relied upon the judgment of Hon'ble Supreme Court of India (Large Bench) in **Iqbal Singh Marwah & Anr. Versus Meenakshi Marwah & Anr. 2005 (2) R.C.R. (Criminal) 178**, the judgment of Coordinate Bench of this Court in **Madho Ram versus Suresh Kumar 1999 (2) R.C.R. (Criminal) 619** and the judgment of Full Bench of this Court in **Madan Lal Sharma versus Punjab & Haryana High Court 1999 (2)**

R.C.R. (Criminal) 223.

I have given due consideration to the arguments addressed by learned counsel for the parties

It is settled law that at the stage of summoning, only a prima facie case has to be seen. The summoning order duly mentions about the preliminary evidence having been led by the respondent-complainant and depicts application of mind by the trial Court to the same. At that stage, there would be no requirement to delve deep into the merits of the controversy and the trial court would not be required to arrive at a conclusion as to whether conviction would be possible on the basis of the preliminary evidence or not. The argument that since the trial Court found that no offence under Section 463 IPC was made out, the petitioners could not have been summoned under Sections 465 and 471 IPC, is devoid of merit. Section 463 IPC merely defines forgery and does not lay down any substantive offence. Section 465 IPC lays down the punishment for forgery and Section 471 IPC deals with a punishment for the forged document being used as genuine. The trial Court, therefore, did not commit any illegality by summoning the petitioners under Sections 465 and 471 IPC. Infact, the order passed by the trial Court reflects due application of mind.

In so far as the bar under Section 195 Cr.P.C. is concerned, the case is squarely covered by the ratio of law laid down by the Hon'ble Apex Court in **Iqbal Singh Marwah & Anr. Versus Meenakshi Marwah & Anr. 2005 (2) R.C.R. (Criminal) 178.** In this case, a forged Will had been tendered in evidence before the Court. It was held by the Hon'ble Supreme Court of India that the aggrieved party could lodge a criminal complaint against the person who had forged a Will and the bar of Section 195 (1)(b)(ii) Cr.P.C. would not be applicable as the document had not been forged while being in the custody of the Court but was

already forged when it was produced. Same is the case here also. The certificate dated 25.11.2008 (Annexure P-1) was annexed with the writ petition meaning thereby that if at all it was a forged certificate, the same had been forged/fabricated and then was filed alongwith the writ petition and was not forged while in the custody of the Court. The criminal complaint is, therefore, fully maintainable.

Coming to the point of limitation, the certificate is dated 25.11.2008 and as per the reply (Annexure P-8) to the application under Section 245 read with Section 468 Cr.P.C, filed by the petitioners, the respondent-complainant had appeared before the High Court on 27.08.2009 in pursuance to the notice issued to him when he acquired the knowledge of certificate dated 25.11.2008. The complaint was filed on 07.01.2012 which was well within the period of limitation of 03 years. Since the petitioners were summoned for commission of offences punishable under Sections 166, 465, 471 and 120-B IPC, the limitation for filing the complaint, as per Section 468 (2)(c) Cr.P.C. would be 03 years and not 01 year as argued by learned counsel for the petitioners. This period of 03 years would begin from the time when the respondent-complainant acquired the knowledge of the certificate, as laid down in Section 469 (1)(b) Cr.P.C. The argument that the complaint was barred by limitation also, therefore, fails.

The judgments relied upon by the learned counsel for the petitioners would not be applicable in view of the Constitution Bench Judgment of the Hon'ble Supreme Court of India in **Iqbal Singh Marwah's case** (supra).

In view of the aforementioned facts and circumstances, no illegality is found in the summoning order dated 16.10.2013 (Annexure P-6) and the order dated 23.08.2016 (Annexure P-9) vide which the application filed by the petitioners under Section 245 read with Section 468 Cr.P.C. for discharge was

dismissed as the same had been moved on the ground of limitation alone. In so far as the enquiries etc. are concerned, it would be open for the petitioner to confront the complainant and other witnesses with the same during the pre-charge evidence/cross-examination.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

13.07.2023
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No