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

202

**I. CRM-M-43183-2018 (O&M)**
**Date of decision: 12.05.2023**

GURCHARAN SINGH SOHAL

....Petitioner

Versus

THE OLD FRIENDS COOP SOCIETY THROUGH ADMINISTRATION APPOINTED

...Respondent

**II. CRM-M-45808-2018 (O&M)**

MANDEEP KAUR & ANOTHER

....Petitioners

Versus

THE OLD FRIENDS COOP SOCIETY THROUGH ADMINISTRATOR

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Ms. G.K. Mann, Sr. Advocate with
Ms. Simrat Kaur, Advocate for the petitioners.

Mr. P.S. Bajwa, Advocate for the respondent.

Mr. Amardeep Singh Gill, Advocate
for applicant/proposed respondent No.2.

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**<u>AMAN CHAUDHARY. J.</u>**

1. This common order shall dispose of the above-mentioned two criminal miscellaneous petitions as these arise out of the same complaint number.

2. The challenge in these petitions is to the complaint No. 3567, Annexure P-5 dated 21.11.2016, as well as the summoning order dated 17.03.2018 passed by Judicial Magistrate 1st Class, Jalandhar vide which the petitioners have

been summoned to face the trial under Sections 420/465/467/468/471/447/506 and 120-B of the Indian Penal Code (in short 'IPC').

3. Learned Senior counsel for the petitioners had contended that insofar as petitioner-Gurcharan Singh is concerned, he being a resident of Australia, no enquiry was conducted by the learned Magistrate under Section 202 Cr.P.C. to determine whether a prima facie case has been made out or not, and apply his mind to the materials presented for ensuring sufficient grounds for summoning him, thus, the proceedings are vitiated. The plot in question was admittedly in the ownership of the accused-petitioner Gurcharan Singh, who had transferred the same in favour of his sister Mandeep Kaur after depositing the requisite fees with the Society. A complaint was filed by the President of the Society, before the police, wherein after an enquiry by the Economic Offences Wing, an opinion on being sought, was submitted by the DA, Legal dated 31.05.2016, that there was no evidence on the file to prove forgery and that petitioner Gurcharan Singh had out of his free will transferred the plot, based on which the said complaint was rightly closed. It has also been submitted that the present complaint had been filed after almost 2 years and 6 months, which shows the malafide intention of the applicant-proposed respondent, who is the former President of the Society and had an axe to grind with the petitioner, there being *inter se* litigation. In fact he had himself signed the possession letter, being the President of the Society at the relevant time. Even if the allegations made in the complaint are accepted to be true in entirety, they do not disclose the ingredients of any offence of forgery, cheating or wrongful loss or wrongful gain that has been caused to the Society or to the

proposed respondent. The summoning order has thus been wrongly passed. Reliance is placed on the judgments of Hon'ble The Supreme Court in **Rajendra Singh Tomar vs. State of Uttarakhand**, 2020 (1) R.C.R (Criminal) 476, and of this Court in **Jaspal Kaur vs. Manraj Singh Kang,** 2013 SCC OnLine P&H 3872 and **Vinod Kumar Sethi and others vs. State of Punjab and others**, 1982 (1) CLR 638.

4. On the other hand, learned counsel for the respondent-Society while making a reference to paras 2, 3 and 5 of their reply, by the Secretary of the Society, had submitted that the transfer of the plot in question had been made by the original allottee Gurcharan Singh Sohal in favor of his sister Mandeep Kaur after following the due procedure as approved by the Society. Furthermore, it has been asserted that false and frivolous complaints had been filed against Mandeep Kaur when she raised her voice regarding the numerous illegal transfers of plots done by the applicant-proposed respondent. It is pertinent to mention that a reference was made to the closure of the previous complaint by Commissioner of Police, Jalandhar after seeking opinion of DA Legal to the effect that there was no evidence of forging of signatures by petitioner-Mandeep Kaur of her brother, who had transferred the plot in question in her favour with his own free will.

5. Learned counsel appearing for the applicant-proposed respondent referring to the application submitted he being the complainant and Ex-President of the Society, and fully aware and conversant of the facts and circumstances of the case be impleaded, though, he was previously suspended from the post of President and an Administrator has been appointed of the Society. His removal

from the said post was challenged by him but the same was dismissed by the Joint Registrar, Cooperative Societies, against which he filed a writ petition before this Court, whereby vide order dated 08.07.2022 the matter has been remitted for taking a fresh decision and is pending.

6. In rebuttal, the learned Senior counsel while referring to the reply filed by petitioner-Gurcharan Singh Sohal to the application of Kashmir Singh for impleading him had submitted that he has no locus standi to file the application, he no longer being the President of the Society. Rather an FIR has been lodged against him for misusing his authority and committing fraud by selling a society plot twice/thrice to various people. It is without disclosing the facts of earlier enquiry, vide which the complaint with similar allegations was closed on the opinion of the DA, he filed another application under Section 156(3) Cr.P.C. as President of the Society, however, he no more holds the said post. He wants to settle personal scores with the petitioners by making complaints against him as he was committing fraud by illegally selling plots of the society. He had even sold passages of the colony to many people as well as shops and converted parks into plots and in the FIR lodged against him, his petition for anticipatory bail was dismissed by this Court. It is when the matter was enquired into by the Deputy Registrar Cooperative Society consisting of Registrars, that he was placed under suspension and thereafter, removed from the post of President. Still further, against the aforesaid closure of the complaint, he had filed a petition before this Court, which was ordered to be dismissed as withdrawn vide order dated 27.10.2016, to avail appropriate remedy as available under law. The society has

already filed a Resolution and authorized the Secretary of the Society to pursue the present case, thus, there is no necessity to implead him as a respondent.

7. Heard learned counsel for the parties at length.

8. It is apposite to refer to reply filed by the Society filed to the present petition, relevant paras whereof, read thus:-

> "2. That it may be stated here that the transfer of plot no. 62, in the Old Friends Co-operative House Building Society, Vivek Vihar, Maqsoodan, Jalandhar was made by Gurcharan Singh Sohal on 26.09.2013 in favour of his real sister Mandeep Kaur wife of Gurmail Singh, with the approval/ consent of the Society. A copy of the possession letter signed by the then President of the Society Kashmir Singh Saini is annexed herewith as Annexure R/1.
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> 3. That it may further be pointed out that no loss or prejudice has been caused to the Society by the above sale/ transfer.
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> xxx xxx xxx
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> 5.That the Ex-President of the Old Friends Co-operative House Building Society, Vivek Vihar, Maqsoodan, Jalandhar, Kashmir Singh was involved in numerous illegal transfers of plots against which Mandeep Kaur and her husband Gurmail Singh and other members of the Society had raised their voice. A copy of the FIR lodged against Kashmir Singh and one Amrik Singh the then Secretary of Society is annexed herewith as Annexure R/2/T. Further the order rejecting bail to the above said Kashmir Singh passed by this Hon'ble Court is annexed herewith as Annexure R/3."

9. The position that emerges is that it is a case of transfer of plot by a brother in favour of his sister. The ownership of the transferer is not disputed. There is no allegation that the procedure required for the said purpose by the Society was not followed or that the requisite fee was not paid. The then President, proposed-respondent had also affixed his signatures on the letter of possession/transfer. It was duly transferred.

10. In **Md. Ibrahim and others vs. State of Bihar,** 2009 (8) SCC 751,

Hon'ble The Supreme Court observed and held that, "...execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

11. The Bombay High Court in **Kishor Purushottam Chaudhari vs. The State of Maharashtra and anr,** Criminal Writ Petition no. 1324 of 2017 decided on 01.03.2019, wherein the allegations against the accused-petitioners were of preparing three forged receipts of electricity metres set aside the application for discharge by the Metropolitan Magistrate by observing and holding even if forged documents have been prepared, it will not amount to the offence of forgery or cheating as there has been no wrongful loss or gain to either of the parties.

12. In **Simran Ahluwalia vs. State**, CRL Rev. P. No. 145/2010, decided on 07.03.2012, the Delhi High Court held that, "...So to constitute an offence of cheating/forgery it is essential that a wrongful loss or wrongful gain to somebody must be there. The alleged Mrs. Sudarshan Walia had only got her name deleted from a joint locker of a bank. Even if we presume that the signature of Simran Ahluwalia are forged it does not cause any wrongful loss or wrongful gain to

anybody. Therefore, does not constitute any offence."

13. This Court in in the case of **Yadvinder Singh vs. Mansa Singh**, 2009 SCC OnLine P&H 4809, quashed the summoning order passed under Sections 420, 467, 468, 471 and 120-B IPC observing that the third party cannot file a complaint against a person on the ground that a decree had been obtained by the parties through avoiding stamp duty, as affixation of the same is a matter between the Court and the State as the private party is not competent to do the same. Further held, the commission of the aforementioned offences cannot be deduced by any stretch of imagination from the preliminary evidence produced on record and the allegations raised.

14. Pertinently, the complaint that was filed before the police, was closed after having been enquired, based on the opinion of the District Attorney, Legal, Annexure P-6, who had gone through the facts of the complaint enquiry report of Assistant Commissioner of Police (HQ), Jalandhar, dated 16.2.2016 and 17.5.2016 as well as other documents attached thereto and found there to be no evidence on the file that petitioner-Mandeep Kaur had forged the signatures of her brother petitioner Gurcharan Singh Sohal, who had transferred the plot with his own free will. There is no allegation of any wrongful loss or wrongful gain to anybody or prejudice been caused to the Society, as stated by the Secretary of the respondent-Society in the reply dated 20.09.2022 filed on its behalf.

15. Hon'ble The Supreme Court of India in the case of **Anil Kumar vs. M.K. Aiyappa** (2013) 10 SCC 705, held that, "We may first examine whether the Magistrate, while exercising his powers under Section 156 (3) Cr.P.C., could act in

a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156 (3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

16. In **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda** (2015) 12 SCC 420, it was observed and held that, "The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with

the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

17. In **Birla Corporation Ltd. v. Adventz Investments and Holdings**, (2019) 16 SCC 610, **National Bank of Oman vs. Barakara Abdul Aziz and another** (2013) 2 SCC 488 and **Sunil Todi vs. State of Gujarat** 2021 SCC OnLine SC 1174, Hon'ble The Supreme Court held that, the scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further.

18. It is trite that a person is said to have done an act dishonestly, if the intention is of causing wrongful gain to one or wrongful loss to another. Considering the peculiarity of the facts and circumstances of this case, the ingredients of forgery and cheating not being attracted, no offence under Sections 467 and 471 IPC can also be said to have been committed. Thus, the commission of the offence of conspiracy will also automatically fall, as it must relate to the offence. The provision of Section 202 Cr.P.C. are in the nature of a safeguard to the accused persons, who are residing outside the jurisdiction of the Magistrate, but

it is apparent that no such enquiry as postulated therein has been conducted, the petitioner-Gurcharan Singh as stated was residing abroad. There is also no reflection of application of mind in the summoning order. These grounds as well invite invocation of the powers under Section 482 Cr.P.C. to quash the complaint and summoning order, as permitting continuation of proceedings against the petitioners would result in an abuse of process of law as also miscarriage of justice.

19. As a sequel, the present petition succeeds and complaint No. 3567, Annexure P-5, dated 21.11.2016, as well as the summoning order dated 17.03.2018 are hereby quashed.

20. Pending applications, if any, shall be disposed of accordingly.

**(AMAN CHAUDHARY)**
**JUDGE**

**May 12, 2023**
S.Sharma(syr)

Whether speaking/reasoned : Yes/ No

Whether reportable : Yes/ No