

121(5) **IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-51250-2018 (O&M)

Date of Decision: 31.08.2023

Dr. N.P. Singh

.....Petitioners(s)

Versus

District Rural Development Agency (DRDA) Bathinda

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Jagjit Singh Lalli, 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.54 dated 12.10.2012** titled as “District Rural Development Agency Vs. Iqbal Singh and another”, 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 petitioner along with other co-accused were charge-sheeted under Sections 120-B, 417, 420, 408, 465, 471 & 199 of Indian Penal Code (for short “IPC”).

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. Iqbal Singh Brar, Incharge of Tara Infotech Centre, Bhagta Bhaike was authorized for collection of fees from the students. A complaint was filed against the above-said Iqbal Singh Brar that he in connivance with present petitioner has got his services regularized on the basis of forged documents and both of them have embezzled the fees collected from the students.

3 On 12.10.2012, complaint in question was filed against two persons, namely, (i) Iqbal Singh and, (ii) Dr. N.P. Singh for commission of offences under Sections 417, 420, 408, 409, 465, 468, 471, 177, 181, 199, 120-B IPC.

4 Learned Judicial Magistrate First Class (for short ‘JMIC’) after recording preliminary evidence and upon consideration of the material available on record, passed the impugned summoning order dated 21.08.2015 against both the accused.

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

6 Later on, pre-charge evidence was recorded and thereafter, learned SDJM, *vide* impugned order dated 20.08.2018, charge-sheeted both the accused (including present petitioner) under Sections 120-B, 417, 420, 408, 465, 471 & 199 IPC.

7 Hence present petition.

CONTENTIONS ON BEHALF OF PETITIONER

8 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.

8.1 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.

8.2 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 he 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

9 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 21.08.2015 and moreover, for a period of three years, the order was not challenged by the petitioner; rather both the accused were facing proceedings without any objection.

9.1 Further argued that after recording of pre-charge evidence, learned SDJM charge-sheeted all the accused *vide* order dated 20.08.2018 and both 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.

9.2 Still further submitted that due to connivance of present petitioner as well as 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.

9.3 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.

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

11 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.

12 Learned JMIC, after recording preliminary evidence and upon taking into consideration the material available on record, passed the summoning order dated 21.08.2015. It is matter of record that for three years, none of the accused challenged the summoning order; rather both of them joined proceedings before learned trial Court without any objection.

A bare perusal of the summoning order reveals that learned JMIC examined the records minutely then only, after due application of mind by learned JMIC passed the summoning order and the same is quite discernible from the 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 allegations contained in the complaint. Complainant placed on record documents i.e. copy of letter dated 13.01.2012, Ex.C25, copy of letter dated 22.08.2010 Ex.26, copy of letter Ex.C27, copy of letter Ex.C28, copy of letter dated 29.06.2011 Ex.C28, copy of letter Ex.C30, copy of letter Ex.C31, copy of letter Ex.C32, copy of letter Ex.C33. From the evidence on record sufficient grounds are made out to summon both the accused u/S 417, 420, 408, 409, 465, 468, 471, 177, 181, 199, 120-B of IPC. Both the accused be summoned on filing of process fee and copies of complaint for 26.08.2015.”

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

- (i) Complainant-Sadhu Ram Kusla (CW-1),*
- (ii) PHG Amrik Singh, Advocate (CW-3),*
- (iii) Sukhchain Singh (CW-4),*
- (iv) Maninder Sharma (CW-5),*
- (v) Raj Kumar (CW-6),*
- (vi) Rajinder Dogra (CW-7),*
- (vii) Renu Sharma (CW-8),*
- (viii) Gurmail Singh (CW-9),*
- (ix) Sandeep Nagar, Deputy SPD (CW-10),*
- (x) Nirmal Singh (CW-11).*

Thereafter, learned SDJM, upon taking into consideration the material available on record, charge-sheeted both the accused, including present petitioner with specific charges for commission of offences under Sections 120-B, 417, 420, 408, 465, 471 & 199 IPC.

14 After passing of the summoning order dated 21.08.2015, proceedings before learned trial Court were going on smoothly for the last three years.

Even learned JMJC while passing the impugned summoning order observed that accused hatched a criminal conspiracy; in pursuance of

such conspiracy the accused in connivance with each other forged the documents of Iqbal Singh Brar and got his services regularized from contractual. 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.

15 Learned JMIC also, *prima-facie* found the commission of offence by both the accused, including present petitioner while passing the summoning order dated 21.08.2015 and later on, he was charge-sheeted on 20.08.2018.

16 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. ”

17 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.”

.....

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“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 both the 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.

18 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 Sections 120-B, 417, 420, 408, 465, 471 & 199 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.

19 On the contrary, there is sufficient material available on record to proceed against the petitioner for forging record and causing financial loss to the public exchequer.

20 *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; rather, continuation of the proceedings would be in the interest of justice.

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

22 Ordered accordingly.

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

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

25 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