IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47422-2019
Date Reserved:24.04.2023
Date of Pronouncement :15.05.2023

Kala Ram Kansal .....Petitioner

Versus

State of Punjab & another .....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Bansal, Advocate for the petitioner.

Mr. Amit Shukla, AAG Punjab.

Ms. Mona Goyal, Advocate for respondent No. 2.

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HARKESH MANUJA, J

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of complaint No.82 dated 11.12.2017 followed by summoning order dated 25.07.2018 passed by the court of Ld. SDJM, Budhlada; whereby petitioner has been summoned to face trial under Sections 420, 465, 467, 471 and 34 IPC.

2. As per allegations levelled in the complaint, the property in question was owned by Parkash Chand with Bhagwanti being her widow whose whereabouts were not known since last more than 45 years & the complainant, namely, Pinki Rani being the only surviving heir i.e. daughter of deceased of Parkash Chand. .

3. By playing fraud upon complainant, the petitioner colluded with the beneficiary i.e. Bimla Devi and got her name entered in Tax Assessment Records maintained by Municipal Committee, Budhlada on the basis of two forged affidavits dated 22.12.2006. One affidavit pertained to Bhagwanti widow of Parkash Chand wherein she deposed that she was

having no objection in case property in question was transferred in the name of Bimla Devi, whereas the other affidavit of even date in the name of Bimla Devi i.e. beneficiary which was submitted to the Municipal Council, Budhlada for the purpose of getting the entries changed in the House Tax records.

4. In the complaint, it was submitted that co-accused / Randeep Kumar who was closely related to Bimla Devi conspired with her while getting these affidavits prepared and attested from the petitioner who was Tehsildar-cum-Executive Magistrate Budhlada. An application under Section 156(3) CrPC was filed before Court of Ld. Sub-Divisional Judicial Magistrate, Budhlada, wherein learned trial Court summoned the petitioner under Sections 420, 465, 467, 468, 471 and 34 IPC vide order dated 25.07.2018.

5. Learned counsel for the petitioner submits that in the facts and circumstances of present case, even if allegations levelled in complaint are taken to be at their face value, no offence as alleged is made out against the petitioner who is not at all the beneficiary of affidavits in question, and also not related to any of the parties. Learned counsel further submits that attestation of the affidavits in question was done merely in pursuance of discharge of his official duties based on the identification made by Babu Singh-Nambardar. Besides it, learned counsel also submits that there are no allegations of corruption against the petitioner and the passing of summoning order against him was totally in violation of Section 197 CrPC, as the affidavits in question were attested by him in discharge of his official duties. In this regard, learned counsel places reliance upon the decision made by Hon'ble Supreme Court in ***"Rakesh Kumar Mishra Vs. State of***

Bihar and Ors." (2006) 1 SCC 557 and Paras 6 and 13 thereof being relevant, are reproduced hereunder for reference:-

> *"6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.*

> 13. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed."

6. Besides above, learned counsel for the petitioner relying upon Section 202 CrPC submits that the summoning order passed in the present case was in violation of the procedure laid down therein and in this regard he placed reliance upon the judgment passed by this Court in **S.K. Bhowmik Vs. S.K. Arora and Anr. 2007(4) R.C.R.(Criminal) 650.** Relevant paragraphs 6 and 9 thereof are reproduced hereunder:-

> *"6. The words "if he thinks fit" occurring before postpone the issue of process give clear indication about the option before a Magistrate to issue process or postpone the issue of the same in his discretion without holding an enquiry. This discretion now would not be available with the Magistrate in cases where amendment is made applicable. In short, the Magistrate would now be under obligation to enquire into a case either himself or direct investigation to find out whether or not there was sufficient ground for proceeding against an accused where he resides at a place beyond his area of jurisdiction. This is the only change introduced in the provision. The nature of enquiry envisaged under this section ofcourse has not undergone any change. It has been held that the nature of enquiry would vary with the circumstances of each case and the enquiry as contemplated certainly is such which should not be exhaustive. In Kewal Krishan v. Suraj Bhan and Anr. , the Hon'ble Supreme Court observed:*
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> *All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the stage of framing charges. Even at the state of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the*

allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.

It was further observed that to ascertain whether or not the evidence so collected would disclose sufficient grounds for proceeding is lower than the one to be adopted at the stage of framing charges. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors. , it is observed as under:

The scope of the inquiry under Section 202 is extremely limited-only to the ascertainment of the truth or falsehood of the allegations made in the complaint-(i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact, in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

9. Viewed in this background, it would be safe to say that the manner in which this amendment has been introduced and the wording thereof, when read in the light of objects behind the same, would make it clear that the legislature intended this provision to be made as obligatory/mandatory in nature. Thus, it would be proper to say that holding of an enquiry and the other options available to the Magistrate in this regard under Section 202 Cr.P.C. would be obligatory where it is found that person is residing beyond his jurisdiction. In this case, the present petitioner is not residing within the jurisdiction exercised by Judicial Magistrate Ist Class, Faridabad. Thus, it was obligatory for the Magistrate to hold enquiry envisaged under Section 202 Cr.P.C. before issuing process."

7. He again submits that the complaint in question has been filed with inordinate delay as the affidavits pertain to the year 2006; whereas the complaint has been filed in the year 2017. He also submits that the petitioner stood exonerated in the departmental inquiry held by Addl. District Collector (Annexure P-5/ Page 26).

8. On the other hand, learned counsel for complainant/ respondent No.2 points out to a statement made by Kanta Devi widow of

Parshotam Das (Annexure R-6) who happens to be the real daughter of Bimla Devi wherein she admits that Bhagwanti left the house after three years of death of her husband, namely, Parkash Chand and never returned back. As a matter of fact Parkash Chand expired on 20.02.1970 and upon its correlation with the factum of Bhagwanti having left the matrimonial house, it happened somewhat around 1973-74 and thus, there was no question of any kind of affidavits having been attested in the name of Bhagwanti in December 2006. Similarly respondent No.2 also relies upon the statement of Bimla Devi, the beneficiary which has been placed on record as Annexure R-7 at Page 115. Learned counsel further submits that signatures of Babu Singh who allegedly attested the signatures of deponent on the affidavit in question dated 22.12.2206 does not even bear the stamp of the said Nambardar. He further submits that in view of the facts narrated above, it cannot be said that the petitioner was discharging his official duties by attesting a forged affidavit. In support of her submissions, she places reliance upon:

- **"Manohar Nath Kaul vs State of Jammu and Kashmir"** reported as AIR 1983 Supreme Court 610
- **"Mohinder Singh vs State of Punjab"** in CRM-M-9967-2001 DoD 16.03.2001
- **"N.K. Jain vs CBI"** in Criminal Writ Petition No.1066 of 2000 DoD 29.09. 2000
- **"Mohinder Kumar Seth vs Darshan Lal Kansal and others"** reported as 2005 (1) R.C.R. (Criminal) 339
- **"Jagtar Singh (BDPO) v. State of Punjab"** (P&H) : Law Finder Doc Id # 417698 reported as 2013 (2) R.C.R. (Criminal) 301

- **"Ramesh Kumar Vohra v. State of Haryana"** (P&H) : Law Finder Doc Id # 368678 reported as 2012 (3) R.C.R. (Criminal) 322

9. I have heard learned counsel for the parties and gone through the paper-book as well as the authorities cited by them at the Bar. A perusal of complaint No. 82 of 11.12.2017 filed by respondent No 2 before the Magistrate reveals that the offences as specified in summoning order dated 25.07.2018 *prima facie* appears to be satisfied. This Court while exercising its power u/s 482 CrPC cannot go into the minute details of attributions made against the petitioner and the explanations provided by the petitioner for each incident, as in that circumstance, it would be dragged into the arena of weighing the evidences, which is beyond its domain. With respect to delay, it has been averred in the complaint that the complainant came to know about order of change of record of house tax assessment register only in the month of June, 2016 and therefore, it cannot be said that the complaint was delayed. Delving further into this matter would not be appropriate as matter involves disputed questions of facts which require evidence to be led before the Ld. Trial Court.

10. With respect to the argument raised by the learned counsel for the petitioner that he stood exonerated in inquiry held by Addl. District Collector is without much substance as it was a cursory observation without going into the merits of the case as well as without taking into consideration all the evidences and, therefore, it cannot be considered equivalent to a judicial adjudication of the matter. In the context of another argument raised by the learned counsel for the petitioner that no enquiry was conducted by the Magistrate, mandated under Section 202 Cr.P.C. As the petitioner resides at a place beyond the area of his jurisdiction, it was held by Hon'ble Apex Court in **"National Bank of Oman vs. Barakara Abdul**

Aziz & Anr.” reported as 2013 (2) SCC 488, 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 and for reference relevant part thereof, is reproduced hereunder:

> *“The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint –*
>
> *(i) on the materials placed by the complainant before the Court*
>
> *(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made our; and*
>
> *(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”*

At this stage, neither it is required to join the accused (**"Adalat Prasad vs Rooplal Jindal & Ors"** in case bearing Appeal Number (crl.) 91 of 2002 decided on 25 August, 2004), nor that all the witnesses shall be examined **(“Shivjee Singh vs. Nagendra Tiwary & Ors.”** reported as AIR 2010 SC 2261). In the present case, when the process has been issued after the complainant was examined as CW-1 and considering the documents brought on record as Ex-C1 to Ex-C48, the requirement of enquiry has been substantially complied with and no fault can be found on this account.

11. In view of the aforesaid, learned counsel for the petitioner restricted his argument only to the protection available under Section 197 CrPC, that no sanction for prosecution has been taken in this case. Regarding this, learned counsel for respondent No 2 has even disputed that this act was done by the petitioner while discharging his official duties, as neither any number of entry in the official register of affidavit of the Executive

Magistrate Budhlada, nor any date, month and year of its attestation was mentioned thereby clearly suggesting that the said affidavit was attested by petitioner in a clandestine manner. Even identification by the nambardar Babu Singh has been disputed as neither his seal/ I-card is present on the affidavit and even his signature has also been doubted

12. In **"Indra Devi v. State of Rajasthan (SC)" bearing case no.** Criminal Appeal No.593 of 2021 decided on 23.7.2021, Hon'ble Apex Court observed that indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duties. Similar position of law has also has been reiterated in the authorities cited by the learned counsel for respondent No. 2 as well. In view of the contentions raised by the counsel for respondent No 2 regarding the identification by the Nambardar Babu Singh, it becomes further imperative to go into the root of the matter and find the role played by the petitioner which has to be judged on the basis of evidences from both the sides.

13. Even otherwise, Hon'ble Apex Court in **"Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari "** bearing Criminal Appeal No. 967 of 2021 decided on 26.10.2021, observed that even if it is assumed that in absence of sanction under Section 197 Cr.P.C., the proceedings are vitiated, in that case, the High Court could have directed the authorities to take sanction and then proceed, instead of quashing the entire criminal proceedings. For reference, para 15 is relevant, which is reproduced as under:

> *"15. Now, so far as the observation made by the High Court that in view of bar under section 197 of the Code of Criminal Procedure, 1973 and no sanction was obtained is concerned, the aforesaid also cannot be ground to quash criminal proceedings in exercise of powers under section 482 of the Code of Criminal Procedure, 1973. Looking to serious allegations against the Police Officers of misuse of powers and it*

is alleged that innocent persons residing in the society were beaten and even in the earlier day the phone call was made by the complainant / victim informing that thieves have come in the society and complaint was made that nothing is being done despite repeated such incidents and the alleged incident in the present case is in the midnight when again Police Officers along with additional police staff went to the village and the allegation against the accused are with respect to second incident, it is very debatable whether power under section 197 of the Code of Criminal Procedure, 1973 would apply and the acts which are alleged to have been done by the accused / Police Officers can be said to be part of official duties. Therefore, at this stage, to quash the entire criminal proceedings in exercise of powers under section 482 of the Code of Criminal Procedure, 1973 is impermissible. Even assuming that the High Court was right that in absence of sanction under Section 197 , the proceedings are vitiated, in that case, the High Court could have directed the authority to take sanction and then proceed, instead of completely quashing the entire criminal proceedings."

14. In view of the discussion made above, the present petition is dismissed. However, it shall be open to the concerned Magistrate to take sanction from the competent authority if at any stage it reaches upon a conclusion that the petitioner committed the offence as alleged in the complaint while discharging his official duties

May 15, 2023 **[HARKESH MANUJA]**
sonika **JUDGE**

Whether speaking/reasoned yes/no
Whether reportable? yes/no