

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.112

Case No. : CRM-M-56484-2022

Date of Decision : January 31, 2023

Jagdish and others

.... Petitioners

vs.

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Namit Khurana, Advocate
for the petitioners.

Mr. Karan Sharma, DAG, Haryana.

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GURBIR SINGH, J. :

This is a petition under Section 482 Cr.P.C. for quashing of Complaint Case No.12 of 2017, instituted on 16.02.2017, under Sections 419, 420, 120-B IPC titled as “Ramesh Kumar vs. Gian Chand etc.” (Annexure P-1) as well as Summoning Order dated 08.09.2022 (Annexure P-2), along with all consequential proceedings arising therefrom qua the petitioners.

Learned counsel for the petitioners submits that the petitioners, along with co-accused Gian Chand, have been summoned to face trial in the aforesaid case. Respondent no.2 Ramesh Kumar filed a complaint against the petitioners and co-accused Gian Chand alleging therein that father of petitioners no.1 to 3 and Gian Chand was previously Namberdar of Village Sabhapur. He expired on 28.11.2000. After his death, all the petitioners and Gian Chand, in collusion with each other and with mala-fide intention

to defraud the villagers, started claiming that Gian Chand was appointed as Namberdar of Village Sabhapur by the State Government. Believing their version, none of the villagers applied for the rank of Namberdar of Village Sabhapur. Thereafter, Gian Chand started attesting sale deeds of various persons and identifying vendors and vendees purporting himself to be Namberdar of Village Sabhapur, before the Joint Sub-Registrar, Sadhaura. It is further alleged that Gian Chand also took money illegally from the vendors and vendees and attested more than 100 sale deeds representing himself to be Namberdar of the village. On inquiry, the complainant came to know that Gian Chand was never appointed as Namberdar of the village. All the accused persons, in conspiracy with each other and with mala-fide intention, defrauded public at large, caused loss to them and also committed fraud with the Government Authorities. The matter was reported to the SHO concerned but he kept on lingering on the matter. So, the present complaint (Annexure P-1) was filed.

The petitioners, along with Gian Chand, were summoned to face trial vide order dated 08.09.2022 (Annexure P-2).

Learned counsel for the petitioners submits that the petitioners have been implicated only with a view to wreck vengeance and in order to harass and humiliate them. From the complaint and other evidence, it is not reflected that the petitioners have committed any offence. No specific allegations have been levelled against the petitioners and there is no date or month mentioned for the alleged occurrence. There is no evidence on the file, by virtue of which, it could be even imagined that the petitioners have acted in a manner, as alleged by the complainant. The statements of the

complainant and aforesaid Gian Chand were recorded by the police while submitting its report under Section 202 Cr.P.C., which proved that the petitioners have no concern with the alleged occurrence and their involvement is highly improbable. It is mere making of rumors which do not make out an offence. No criminal conspiracy is proved on record. In fact, Gian Chand was contesting for the post of Namberdar of Village Sabhapur and the complainant withdrew his candidature in favour of another candidate. The present complaint has been filed as a pressure tactic.

It is further submitted that there is an inordinate delay in filing the present complaint. In the preliminary evidence, the complainant explained nothing about the delay of filing the present complaint. The complainant was never deceived by the petitioners. It is not the case of the complainant that Gian Chand charged anything from him or signed on his papers as Namberdar of Village Sabhapur. The petitioners were summoned only on the basis of suspicion. The Court is required to come to the opinion that prima-facie case exists, before summoning the accused.

Learned counsel for the petitioners has placed reliance on a judgment passed in **Ajay Mitra vs. State of M.P. and others – 2003 (1) RCR (Criminal) 674**, wherein Hon'ble Supreme Court, while relying on the principles laid down in **State of Haryana and others vs. Chaudhary Bhajan Lal and others – 1991(1) RCR (Criminal) 383** was pleased to observe that the High Court can quash the FIR or a complaint even at the initial stage, if no offence is made out.

Learned counsel for the petitioners further relies upon a

and another – 2005 (1) SCC 122 to contend that if from the material on record, it is shown that the complaint is malafide, frivolous or vexatious, interference by the Court is justified. He has also relied upon judgments namely **Asmathunnisa vs. State of A.P. and another – 2011 (2) RCR (Criminal) 571** and **Ahmad Ali Quraishi and another vs. State of Uttar Pradesh and another – 2020 (13) SCC 435.**

Heard.

Complainant Ramesh Kumar has filed the complaint in hand against Gian Chand and present petitioners. Petitioners no.1, 2 and 3 are brothers of Gian Chand. As per version of the complainant, petitioner no.4 is nephew of other petitioners.

The learned Trial Court also sought report under Section 202 Cr.P.C., a copy of which is placed on the file as Annexure P-5. It revealed that real father of petitioners no.1 to 3 and Gian Chand namely Jhandu Ram was Namberdar of Village Sabhapur, who died on 28.11.2000. As per version of the complainant, all the accused persons belong to the same family. The relevant portion of the complaint i.e. para no.3 reads as under :-

“3. That after the death of Sh. Jhanda Ram i.e. father of accused no.1 to 4, all the accused in collusion with each other and with malafide intention and in order to defrauded the Villagers, started saying that the accused no.1 has been appointed as Lambardar of village Sabhapur, Sub-Tehsil, Sadhaura, District Yamuna Nagar by the State Government. Nobody in the village doubted the integrity of the accused and believed their version to be true. Thus, none of

the villager applied for the rank of Lambardar in Village Sabhapur upon the death of Sh. Jhandu Ram.”

Further allegations as per para-6 are that all the accused persons, in conspiracy with each other and with mala fide intention, presented the accused no.1 as Lambardar in different Government offices fraudulently. Similarly, in para-7, it has been mentioned that accused no.1, in collusion with other accused persons, kept on illegally extorting money from innocent people on the pretext of doing some works, which he was obliged to do by law.

The learned Trial Court, on the basis of preliminary evidence led on the file and inquiry report under Section 202 Cr.P.C., furnished by concerned SHO, Police Station Sadhaura, summoned all the accused under Sections 419, 420 and 120-B IPC. As per the Summoning Order, Gian Chand started attesting the sale deeds of different people and identified different vendees and vendors purporting himself to be Namberdar of Village Sabhapur, in the column of identifier.

As per Section 204 Cr.P.C., if, in the opinion of a Magistrate taking cognizance of the offence, there is sufficient ground for proceeding, then he can issue process. It is well known that there cannot be direct evidence of conspiracy. It can also be established by the act and conduct. The punishment provided under Section 420 IPC is seven years. Under Section 120-B IPC, in such cases, a person can be punished in the same manner as if he had abetted the offence. Punishment for abetment is provided under Section 109 IPC. The punishment of such type of offence is

the same as provided for the offence. The limitation of three years is attracted only if there is punishment upto three years under Section 468 IPC. Otherwise, there is no bar for taking cognizance. In the present case, since the offence is where punishment of seven years is provided, so, there is no illegality committed by the learned Magistrate in taking cognizance of the offence. It is settled law that criminal law can be set into motion by anyone. After procuring the presence, the learned Magistrate shall record evidence as per Section 244 Cr.P.C. and then proceed further. Petitioners shall be given opportunity to cross-examine the witness. It is a question of evidence if the petitioners had acted in connivance and in pursuance of conspiracy with the co-accused. At this stage, no opinion can be formed. After recording the pre-charge evidence, the learned Trial Court can discharge accused if there is no case against the petitioners. There are specific allegations against the petitioners and co-accused and they are all family members. So, it cannot be said that the complaint in question was mala-fide, frivolous or vexatious.

In case of Ahmad Ali Quraishi (*supra*), quarrel took place between the parties. The police visited the spot and initiated proceedings under Sections 107 and 116 Cr.P.C. On same allegations, complainant filed application under Section 156 (3) Cr.P.C., which was rejected by the Sessions Judge. On the same allegations, complaint was filed by the complainant and it was held that the complaint appeared to have been filed with ulterior motive.

In the case of Asmathunnisa (*supra*), accused abused a member of Scheduled Caste by naming caste. It was stated therein that a

person, who was accompanying the accused, cannot be held guilty of offence.

All the citations referred by learned counsel for the petitioners are distinguishable on facts. Therefore, all these cases referred by learned counsel for the petitioners are of no help. The allegations against the accused persons in this case cannot be termed to be mala-fide, frivolous or vexatious.

In view of what has been discussed above, the present petition is without any merit and the same is accordingly dismissed.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

It is made clear that the Trial Court shall not be influenced by any observation made herein above and shall independently decide the complaint.

January 31, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.