

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

257

CRM-M-14327-2017 (O&M)
Reserved on: 23.01.2024
Pronounced on:06.02.2024

P.C. Sanghi

...Petitioner

Versus

Baljinder Singh (Bittu) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Preetwinder Singh Ahluwalia, Advocate
for the petitioner

Mr. Vansh Chawla, Advocate
for respondent no. 1

Mr. Rajiv Kataria, Advocate,
Ms. Deepshika Arora, Advocate and
Mr. Divjot Singh Chadha, Advocate
for respondents no. 2 to 5.

Harpreet Singh Brar, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for quashing the impugned order dated 29.03.2017 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Chandigarh in Criminal Complaint No. 10902/2013 dated 18.11.2010 titled '*Federation of Sector Welfare Associations (Regd.) Chandigarh and another v. Dr. A.S. Sanwaria etc*' whereby by application filed for substitution of complainant-society and amendment of the title of the complaint was allowed.

FACTUAL BACKGROUND

2. The facts of the case, in brief, are that the petitioner is the Chairman of Federation of Sector Welfare Associations (Regd.), Chandigarh (hereinafter referred to as 'FOSWAC') registered under Societies Registration

Act, 1860 vide registration no. 1540 of 1998. In June, 2017, one C.K. Jain, member of Tenants Cooperative House Building Society, moved a complaint before Pradeep Mehta, IAS, Advisor to the Administrator, U.T. Chandigarh alleging filing of false affidavits by respondent No.2-Dr. A.P. Sanwaria and his family members (respondents No.3 to 5) before the Registrar Cooperative Societies, U.T. Chandigarh. The matter came to the knowledge of the petitioner and Rajinder Kumar Goyal, Member, Executive Committee, Citizens Association Sector 21 (Regd.) (registered under the Societies Registration Act, 1860 vide registration No.329 of 1976-77) who obtained the necessary information under the Right to Information Act, 2005 from Cooperative Societies and Home Department, U.T. Chandigarh. An inquiry was conducted by Vigilance Cell, U.T. Chandigarh and a perusal of its report indicates that respondents No.2 to 5 filed false affidavits and deliberately gave different addresses to seek membership of another society.

3. In spite of the Vigilance Cell report, exercising their influence, respondents No.2 to 5 were able to suppress material facts. The matter was discussed at the Executive Committee meeting of FOSWAC as well as Citizen's Association and the petitioner was authorised to file a complaint (Annexure P-2) vide resolution dated 04.07.2010 (Annexure P-3) against respondents No.2 to 5. The learned trial Court took cognizance of the same and respondents-accused were summoned to face trial vide orders dated 30.09.2011 and 22.04.2014 (Annexure P-4). Aggrieved by the same, respondent No.3 approached this Court by filing CRM-M-43098-2013, however, the same was dismissed as withdrawn vide order dated 03.12.2014 (Annexure P-5). Thereafter, statements of witnesses were recorded at the trial Court and pre-charge evidence was closed on 08.11.2016.

CONTENTIONS:

4. Learned counsel for the petitioner *inter alia* contended that from the very inception, respondent No.1 is trying his best to scuttle the judicial scrutiny of the allegation contained in the complaint (supra). In an attempt to bury the matter, the respondents, in collusion with each other, moved an application for substitution of Sandeep Bhalla, Executive Member in place of Rajinder Kumar Goyal (Annexure P-7), who was pursuing the complaint on behalf of Citizen's Association, which was dismissed by the learned trial Court vide order dated 16.12.2013 (Annexure P-9). Respondent No.1 was summoned as a witness by the learned trial Court but a perusal of zimni orders dated 21.05.2016 to 20.08.2016 (Annexure P-10 colly) would indicate that he either did not appear or when appeared, he refused to bring relevant records. Instead of bringing the relevant records, respondent No.1 placed a copy of the resolution regarding compromising of the matter on record reflecting his collusion with the respondents. Thereafter, the petitioner submitted a synopsis on record, brought it to the notice of the trial Court that compounding of the offence cannot be permitted on the basis of the alleged compromise and moved an application for passing of an appropriate order, which remained pending consideration. Meanwhile, another application dated 04.10.2016 (Annexure P-14) was moved by respondent No.1 for substitution of the complainant. In spite of the detailed reply filed by the petitioner (Annexure P-15), the learned trial Court allowed the application for substitution filed by respondent No.1 vide impugned order dated 29.03.2017 (Annexure P-1).

5. Learned counsel further submitted that there is no provision in the Code of Criminal Procedure for substitution of the complainant and respondents No.2 to 5 were summoned to face trial on 30.09.2011 and

22.04.2014 (Annexure P-4 colly). As such, in view of the law laid down by the Hon'ble Supreme Court in *S. R. Sukumar Vs. S. Sunaad Raghuram (2015) 9 SCC 609* after the stage of cognizance, no amendment in the complaint can be allowed. Admittedly, the application for amendment was filed after the concerned jurisdictional Magistrate had already issued the process under Section 204 Cr.P.C. Moreover, the facts of the case clearly prove the oblique motive of respondent No.1 to suffocate the prosecution by hook or by crook. Further reliance is placed upon the judgment passed by this Court in *Jai Mata Traders Vs. Unique Foundary Regd. 2011 (4) RCR (Criminal) 687* in support of his argument that there is no provision of law that the amendment in the complaint can be allowed, especially in view of the fact that the present case is a warrants case. The Hon'ble Supreme Court in *K. M. Mathew Vs. State of Kerala 1992 Crl. Law Journal 3779* has only upheld the judicial discretion of the Magistrate to allow the application for substitution in a summons case.

6. Per contra, learned counsel appearing for respondent No.1 submitted that a perusal of the record would indicate that the petitioner was authorized to file the complaint on behalf of the Association on the basis of a resolution dated 04.07.2010 passed by the Executive Committee of the Association. Whereas, the cause of action set up in the complaint (supra) is for committing cheating with the Association and it is nobody's case that the petitioner himself has suffered any loss or he has been cheated by respondents No.2 to 5. He further emphasized on the fact that the Resolution dated 04.07.2010 passed by the Chairman of the Executive Committee authorizing the petitioner to institute the complaint (supra) on behalf of the Association has already expired. A new body was elected for the period from 2014 to 2016 and the minutes of the meeting of the Executive Committee held on 04.05.2014

(Annexure P-16) shows that the meeting was attended by 186 members of the Association and respondent No.1 is now the new elected Chairman of the Association. As such, the petitioner is not holding any post in the Association and he is not competent to pursue the complaint on behalf of the Association and vide Resolution dated 01.09.2016, respondent No.1 is authorized to pursue the complaint on behalf of the Association being Chairman of the complainant-Association. He further contends that the entire record of the complainant-Association is in its possession and in case, the petitioner is allowed to pursue the complaint, it would be a lame prosecution and the amendment sought is only of formal nature and no prejudice would be caused to either of the parties.

7. Learned counsel appearing for respondents No.2 to 5 has adopted the arguments raised by respondent No.1.

OBSERVATION AND ANALYSIS

8. Having heard learned counsel for the parties and after perusing the record, it transpires that the complaint (supra) has been filed by the complainant-Association through its authorized representative on the allegations of cheating committed by respondents No.2 to 5 with the complainant-Association. As the petitioner has no cause of action independent to that of the complainant-Association, the amendment which has been allowed is only of a formal nature and it was allowed on the ground that new Executive Committee of the complainant-Association has been elected and it has duly authorized respondent No.1 to pursue the complaint (supra) on behalf of the complainant-Association. At the most, it would amount to curable infirmity by allowing the amendment of the title of the complaint. This Court finds no force in the argument advanced by the learned counsel for the petitioner that the complaint is sought to be substituted *de hors* the mandate of law and such

substitution is not permissible at all. Learned counsel for the petitioner fails to demonstrate any prejudice, which is likely to be caused to the petitioner by the amendment allowed vide the impugned order. This Court finds support from the view expressed by the Hon'ble Supreme Court in ***Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and another*** 2016 AIR (Supreme Court) 2519 and by this Court in ***Suman Devi Vs. Chhatarpal***, CRM-M No.6036 of 2018. Even in the judgment relied upon by the learned counsel for the petitioner in ***S.R. Sukumar*** (supra), the Hon'ble Supreme Court speaking through Justice R. Banumathi has observed the following:-

“17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In U.P. Pollution Control Board vs. Modi Distillery and Ors., (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-

“...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal

application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured...”

18. *What is discernible from the U.P. Pollution Control Board’s case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.*

9. Moreover, the Hon’ble Supreme Court in **Kunapareddy @ Nookala Shanka Balaji’s case** (supra) has categorically held that even in criminal cases governed by the Code of Criminal Procedure, the Courts are not powerless and may allow amendment in appropriate cases and the argument of learned counsel for the petitioner that there is no power of amendment was specifically negated.

CONCLUSION

10. In view of the above discussion, this Court is not inclined to accept the argument raised by the counsel for the petitioner that in the absence of any specific provision in the Code of Criminal Procedure, Courts have no power to allow amendment. However, in case, the petitioner has any surviving cause of action, independent to the complainant-Association with regard to

commission of any cognizable offence, he would be at liberty to initiate appropriate proceedings in his personal capacity or he may appear as a witness in the complaint (supra).

11. The instant petition stands dismissed with above observations.

(HARPREET SINGH BRAR)
JUDGE

February 06, 2024
Pankaj*

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>