



239

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

**CWP-5085-2022 (O&M)
Date of Decision:21.01.2025**

JOGINDER SINGH AND OTHERS

-PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Nitin Jain, Advocate,
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab
for respondents no.1 to 3.

Mr. Vijay Rana, Advocate,
for respondent no.4.

KULDEEP TIWARI, J.(ORAL)

1. The order dated 09.03.2021 (Annexure P-12), passed by respondent no.2-the Punjab Commissioner for NRIs (hereinafter referred to as 'NRIs Commission'), for taking cognizance on a petition preferred by the private respondent no.4, for inclusion of some more person as accused, and also for addition of stringent provisions of the Indian Penal Code, in case FIR No.0008, dated 05.02.2020, registered at Police Station Mullepur, District Fatehgarh Sahib, and, for forwarding the petition to the SSP, Fatehgarh Sahib, for taking appropriate legal action thereon, and thereupon call for the status report, has caused grievance to the



petitioners, and propelled them to approach this Court through the instant petition under Article 226/227 of the Constitution of India, seeking quashing of above order on the ground that the cognizance taken by the NRIs Commission is beyond its subject jurisdiction.

2. Though the instant petition, challenge is also thrown to the complaint filed by respondent no.4, and all consequential proceedings thereto, including registration of FIR (*supra*), and also setting aside of fresh complaint dated 02.03.2021 (Annexure P-11), however, at the time of issuance of notice of motion, learned counsel for the petitioners did not press the prayer for quashing of the FIR (*supra*), and withdrew the said prayer, with liberty to avail alternate remedy as available to the petitioners, as per law.

3. Now, the petitioners restricts their prayer before this Court, only to the extent of quashing of the order dated 09.03.2021 (*supra*), *inter alia* on the ground that the NRIs Commission has after deciding the main petition became *functus officio* in respect of the complaint which was disposed of vide order dated 16.12.2019 (Annexure P-9). Secondly, that the complaint in question has been lodged by a non-NRI person, which is not maintainable before the NRIs commission. The notice of motion order dated 14.03.2022 is extracted herein after:-

“At the very outset, learned counsel for the petitioners contends that he does not press the prayer for quashing of FIR No.0008 dated 05.02.2020 registered under Sections 420, 498- A and 406 IPC at Police Station Mulepur, District Fatehgarh Sahib. He seeks to withdraw the said prayer in order to avail any other remedy in accordance with law. Ordered accordingly. However, he is aggrieved by the order dated 09.03.2021 and subsequent proceedings undertaken before the Punjab State Commission for NRIs as the said



order was passed by the Commission even after becoming functus officio in respect of a complaint which was disposed of vide order dated 16.12.2019. Learned counsel also refers to para No.58 of Jatt Ram Vs. Punjab State Human Rights Commission, 2005(3) RCR (Criminal) 716 in this regard. Secondly, learned counsel points out that the complaint in question has been lodged by a nonNRI person which is not maintainable before the Commission.

Notice of motion for 19.07.2022.

Till the next date of hearing, Commission is requested to adjourn the proceedings beyond the date fixed by this Court.”

4. Before delving into the exercise of gauging the legality of the impugned order (*supra*), this Court thinks it appropriate at this stage to have a glimpse on the facts, upon which there is no wrangle amongst the parties.

i. The respondent no.4, filed a complaint before the NRIs Commission, against petitioner no.1, who is an NRI, residing in Italy, making various allegations. On the basis of the complaint, the NRIs Commission made a recommendation for registration of an FIR under Sections 420, 498-A and 406 of the IPC, vide order dated 16.12.2019 (Annexure P-9). Thereupon, the FIR in question was registered.

ii. Since respondent no.4, not being satisfied with the ongoing investigation in the FIR (*supra*), he filed a fresh petition merely on two counts i.e., for addition of some other persons as co-accused, and for addition of some stern sections of Indian Penal Code. Thereupon, the NRIs Commission took the cognizance on the aforesaid petition, and forwarded the complaint/petition to the SSP



Fategarh Sahib, for taking an appropriate legal action, and not only that, a compliance report/status report, was also called for, in this regard, before the next date.

SUBMISSIONS MADE LEARNED COUNSEL FOR THE PETITIONERS

5. Learned counsel for the petitioners has raised mainly twofold arguments, the first one, regarding the maintainability of the initial complaint filed by respondent no.4, who is not an NRI, and to lend vigor to his arguments, he draws attention of this Court towards the definition of 'complaint' which is defined under Section 2(c) and 'Non-Indian Residents(NRI)' under Section 2(f) of the Punjab State Commission for Non-Resident Indians Act, 2011 (hereinafter referred to as 'the Act of 2011'), so as to submit that since the complainant is not an NRI, therefore, any petition on behalf of the respondent no.4, is not maintainable before the NRIs Commission. Section 2(c) and 2(f) of the Act of 2011, are extracted hereinafter:-

(c) "**complaint**" means all petitions or communications received in the Commission from a Non-resident Indian or from any other person on his behalf, in person or by post or by telegram or by fax or by any other means whatsoever, alleging, disputes or violations or abetment thereof or negligence in the prevention of such dispute or violation, by a public servant or a private person or providing material on the basis of which the Commission takes *suo-motu* cognizance;

(f) "**Non-resident Indians**" means a person of Indian origin, who is either permanently or temporarily settled outside India, in either case-

- (i) for or on taking up employment outside India; or
- (ii) for carrying on a business or vocation outside India; or
- (iii) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period; and"

6. The second argument, which is raised by learned counsel for



the petitioners, is that, the NRIs Commission, does not vest with any power to interfere into the ongoing criminal investigation, by passing the impugned order dated 09.03.2021(*supra*). The NRIs Commission, has infact transgressed into the criminal administration, which is not its domain.

7. He further continued his argument to the effect that this issue is no longer *res integra*, as the scope of jurisdiction of NRIs Commission, is limited, and it cannot arrogate itself the powers of Section 482 or Section 156(3) of the Cr.P.C., so as to interfere into the ongoing criminal proceedings, or the investigation. For that he placed reliance upon to judgments passed by a Division Bench of this Court in '**Jatt Ram vs. Punjab State Human Rights Commission (P&H DB)**' 2005 (3) RCR (CrI.) 716, and, '**Punjab State Civil Supplies Cropn.Ltd. vs. Punjab State Human Rights Commission (P&H DB), 2007 (3) RCR(Civil) 552.**

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE RESPONDENT(S)

8. The submissions, as made by learned counsel for petitioners were strongly opposed by learned counsel appearing for respondent no.4. By referring to the basic object of the Act of 2011, he submits that the NRIs Commission, has been constituted to protect and safeguard the interest of Non-Resident Indians of the State of Punjab, and to recommend remedial measures for their grievances alongwith the matters connected therewith, or in incidental thereto.



9. Further, the word 'incidental thereto', as provide in the aims and objects of the Act of 2011, authorising the NRIs Commission to include all such matters which are incidental, or related to a dispute in favour of, or against an NRI. Therefore, the petition, before the NRIs Commission, has been preferred by respondent no.4, who though not an NRI, however, her grievance, is against an NRI, who is petitioner no.1, before this Court.

10. In continuation of his arguments, he reiterated the allegations against the petitioners, which are mentioned in the instant petition, as pending before the NRIs Commission, and further submits that the NRIs Commission in order to redress the grievance of the private respondent no.4, has rightly taken cognizance on her fresh application while passing the impugned order (*supra*).

ANALYSIS

11. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and has perused the entire case filed.

12. Though the said petition, as preferred by private respondent no.4, who is not an NRI, has been put to challenge before this Court, however, at the time of issuance of notice of motion, as observed above, the petitioners restricted their prayer only to the extent of the legality of the impugned order dated 09.03.2021 (*supra*), therefore, in this writ petition, this Court refrains itself to examine, as to whether the NRIs Commission, has any power to entertain a petition/complaint against an



NRI, preferred by a person who admittedly not an NRI, leaving it to be adjudicated in an appropriate petition.

13. So far as, the legality of impugned order dated 09.03.2021, is concerned, this Court finds merits in the submissions, as made by learned counsel for the petitioners. The study survey of the Act of 2011, makes it clear that the NRIs Commission can inquire into the matter, and make recommendations in order to protect, and safeguard the interest of NRIs in the State of Punjab, but there cannot be any wrangle as to the powers of NRIs Commission, which does not extend to directly interfere into ongoing criminal investigation. The NRIs Commission, does not function as a Court of Law, whereas, Section 12 of the Act of 2011, grants the NRIs Commission, the same authority as that of a civil court while investigating/inquiring any matter for the purpose prescribed therein. Further, Section 14 thereof, empowers the NRIs Commission to utilize the service of certain officer/investigating agency for conducting inquiry/investigation into the matter. For better appreciation, Sections 12 and 14 of the Act of 2011, are extracted hereinafter:-

12. Powers and functions of the Commission. - (1) The-Commission shall, while investigating any matter under this Act, have all the powers of a civil court trying a suit in particular, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining on oath;
- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter which may be prescribed.



(2) The Commission shall perform its functions by holding "sittings" and "meetings" at any place within the State of Punjab.

(3) The Members of the Commission including the Chairperson shall function in accordance with the rules framed under this Act.

14. Power of the Commission to utilize the services of certain officers and investigating agencies for conducting investigation. -
The Commission may conduct inquiry or investigation into the matters falling within its authority :-

- (a) either directly; or
- (b) through an investigating team constituted by the Commission; or
- (c) through the Deputy Commissioner of the district concerned; or
- (d) through the Government.

14. A conjoint reading of Sections 12 and 14, and other provisions of the Act of 2011, makes a vivid postulation that the NRIs Commission, does not vest with any jurisdiction, to directly interfere into the ongoing criminal investigation, specifically, entertaining any complaint made for addition of certain person as a co-accused, and additional of stern provisions of the IPC. It is the sole prerogative of investigating agency to consider and ascertain, as to which person can be arrayed as an accused, that too on the basis of the material incriminating substance collected during investigation, and also the statement of witnesses recorded, and thereupon, to determine as to which provisions of the IPC, are attracted. The NRIs Commission cannot run a parallel investigation or exercise jurisdiction, in the matter which is purely within the domain of an investigating agency.

FINAL ORDER

15. In view of the above, this Court deems it appropriate to interfere into the impugned order dated 09.03.2021 (*supra*), which is



hereby, **set aside**. Further, a *mandamus* is passed upon the investigating agency concerned, to conduct a thorough investigation in accordance with law, and in case during the course of investigation, on the basis of the incriminating evidence collected, the investigating agency comes to the conclusion that any other person is required to be nominated as an accused, or any other provisions of the IPC is required to be invoked, same exercise be carried out within the four corner of law.

16. *In summa* the instant petition is hereby, **allowed**.

17. All pending application(s), if any, also stand **disposed** of accordingly.

January 21, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No