2025:PHHC:000186

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112 **CRM M-34934 of 2014**
Date of Decision: 07.01.2025

LSE Securities Ltd ...Petitioner

Versus

Jaswinder Singh Kapoor ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Atul Goyal, Advocate, for the petitioner.

Mr. Namit Gautam, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 27.02.2013 (Annexure P-3) passed by the Judicial Magistrate First Ludiana, whereby, the application of the respondent for summoning the concerned clerk of the LSE Securities Limited was allowed and he had been summoned alongwith the record of proxies. A further prayer has been made to quash the impugned order dated 13.09.2013 (Annexure P-6), whereby, the application filed by the petitioner claiming privilege to the record has also been dismissed.

2. Learned counsel for the petitioner contended that the petitioner is a company, which was incorporated on 07.01.2000 and is registered with Registrar of Companies. The company was incorporated with the main objective of carrying on business of stock

broking and is a subsidiary of the Ludhiana Stock Exchange Limited. The AGM meeting of the petitioner company was held on 15.09.2012 and K.K.Puri and Naresh Sareen were appointed as Directors by the majority of voting. Subsequent to the meeting, on 25.01.2013, the respondent filed a complaint (Annexure P-2) against the petitioner, in which, the petitioner, i.e., the LSE Securities, has been arrayed as an accused as well as K.K.Puri and Naresh Sareen and other officers of the company were also nominated as accused. The main allegations in the complaint pertained to the facts that Jaspal Singh and Sanjay Anand in connivance and controversy with each other and other co-accused had forged the signatures of various members, so as to obtain the proxies in their favour and resultantly voted in favour of K.K. Puri and Naresh Sareen. After the filing of the complaint, the respondent/complainant preferred an application for issuance of summons to the concerned clerk of the LSE Securities Limited, Ludhiana, Stock Exchange Building, Ludhiana alogwith the record of proxies as well as resolutions of the companies given for the election of directors held on 15.09.2012. Even, the said clerk was to bring alongwith him a total list of voters, list of casted votes, list of polling agents, counting agents, list of candidates, their results and also the original record of signatures of voters lying with the LSE Securities Limited on 26.02.2013. The trial Court allowed the application (Annexure P-3) on 27.02.2013 by making remarks on the application itself and no formal order was passed. The petitioner/accused filed an application before the trial Court claiming privilege as the required/summoned record was a confidential record and a further request was made that since the petitioner is also an accused, the record cannot be summoned from them. A detailed reply (Annexure P-5) was filed to the said application.

3. Learned counsel further contended that ultimately the above said application was dismissed by the trial Court on 13.09.2013 vide order annexure P-6. The trial Court failed to appreciate that under Article 20(3) of the Constitution of India, no person, who is accused of any offence shall be compelled to be a witness against himself and the impugned order was against the basic and fundamental provisions of the Constitution of India. The petitioner filed a revision petition before the Court of Sessions Judge, Ludhiana. However, vide order dated 27.08.2014 (Annexure P-8), the Sessions Court refused to exercise the revisional powers only on the ground of maintainability of the revision petition and it was held that the impugned order passed by the trial Court was interlocutory in nature and the revision was not maintainable.

4. Learned counsel further contended that Article 20(3) of the Constitution of India protects the interests of the citizens of this country and it has been clearly laid down that an accused can never be compelled to be a witness against himself. Even, under Section 91 of Cr.P.C., the Magistrate has no powers to summon the record from the custody of the accused. Still further, the summoned record is of

sensitive nature including the signatures of various members of the Company, who held huge deposits in various banks and the Company. Even the members of the Company were mostly sub-brokers of the Company and their signatures could not be disclosed without the consent of the members and to make such signatures public could lead to misuse and heavy losses to them. Still further, no candidate had so far challenged the election and had not raised any allegations. Thus, the complaint had been filed by the respondent/complainant only to victimize the accused in the present case.

5. On the other hand, learned counsel appearing on behalf of the respondent submitted that there was no provision in Cr.P.C., whereby, a privilege of confidential record could be claimed. The summoned record pertained to an offence of impersonation and forgery, which was lying with the record keeper. It requires mention that the record keeper of the accused-company was not an accused in the present case and the petitioner has wrongly referred to the provisions of Article 20(3) of the Constitution of India. Still further, the application was filed only for summoning the concerned clerk of the LSE Securities Limited, who was not the accused and the record from his custody could clearly show that the petitioner and his co-accused had committed certain forgeries for the sole purpose of getting appointed two persons, namely, K.K. Puri and Naresh Sareen as directors of the company. Even, the record keeper was served with the process of the Court, but despite that he failed to produce the

summoned record. This clearly shows that the petitioner was in connivance with record keeper and had moved the present application (Annexure P-4) without referring to any provision of law. Moreover, the record pertaining to the elections was with the record keeper/clerk only and not with the accused and they could not have claimed any privilege, which is not even provided by the statute. Still further, it has been wrongly claimed that the record was confidential and sensitive. In fact, such a privilege can be claimed where the State interest is involved or where there is a threat to the national security, which is not the case here.

6. I have heard learned counsel for the parties and perused the record.

7. The main contention raised by learned counsel for the petitioner is that the summoned record was of sensitive nature and it included the signatures of various members of the company, who held huge deposits in the various banks as well as the company. They were sub-brokers of the Company and their signatures could not be disclosed without their consent. Moreover, the petitioner and his co-accused had taken the objections of Article 20(3) of the Constitution of India, which provided that no accused could be compelled to be a witness against himself. However, this Court does not find any merit in the submissions made by learned counsel for the petitioner.

8. The Hon'ble Supreme Court had considered the various provisions on the subject of previlage and held in the matter of ***R.K. Jain Vs. Union of India, AIR 1993 SC 1769*** as follows:-

> *"12. Section 123 of the Indian Evidence Act, 1872 postulates that no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with permission of the officer at the head of the department concerned, who shall give or withhold permission as he thinks fit. Section 124 provides that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Section 162 envisages procedure on production of the documents that a witness summoned to produce document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it deems fit, may inspect the documents, unless it refers to matters of the State, or take other evidence to enable it to determine on its admissibility. XXX XXX XXXX XXX*
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> *59….. If public interest immunity under Article 74 (2) or Section 123 of Evidence Act is claimed, the Court would first consider it in camera and decide the issue as indicated above. The immunity must not be claimed on administrative route and it must be for valid, relevant and strong grounds or reasons stated in the affidavit filed in that behalf. Having perused the file and given our anxious considerations, we are of the view that on*

the facts of the case and in the light of the view we have taken, it is not necessary to disclose the contents of the records to the petitioner or his counsel."

9. Still further, the Hon'ble Supreme Court in the matter of ***People's Union for Civil Liberties and another Vs. Union of India and others, (2004) 2 SCC 476*** while considering the issue for determining the question of privilege, observed as follows:-

> *"70. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:*
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> *(1) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and*
>
> *(2) whether disclosure of the contents of the document would be against public interest?"*
>
> *It was further observed as under:*
>
> *"73. In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."*

10. In the present case also, the trial Court has only directed the concerned clerk of the LSE Securities Limited, Ludhiana to come present as a witness alongwith the record of proxies as well as the resolution of companies given for the election of directors held on 15.09.2012, total list of voters, list of casted votes, list of polling agents, counting agents, list of candidates and results and their record and also the record of ballot papers alongwith original record of

signatures of the voters. It is also admitted fact that the record keeper of LSE Securities Limited is not an accused in the present case. Moreover, the Court had not directed any of the accused to produce any document and the plea raised by learned counsel for the petitioner is totally misplaced.

11. Still further, the provisions of Article 20(3) of the Constitution of India came up for consideration before the Hon'ble Supreme Court of India in the matter of ***State of Bombay Vs. Kathi Kalu, AIR 1961 SC 1808,*** wherein, the Hon'ble Supreme Court held as follows:-

> *"The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of Section 139 of the Evidence Act, which in terms provides that a person may be summoned to produce a document in his possession or power and that he has done not become a witness by the mere fact hilt he has produced it; and, therefore, he cannot be cross-examined. Of omrse, he can be cross-examined if he is called as it witness who has made statements conveying his personal knowledge by reference to the contents of the document or if he has given his statements in Court otherwise than by reference to the contents of the documents. in our opinion, therefore, the observations of this Court in Sharma's case. 1954 S. C.*

R. 1077: (AIR 1954 S C. -100) that Section 25F of the Evidence Act has no bearing on the connotation of' the word 'witness' is not entirely well founded in law. It is well established that clause (3) of Article 20 is directed against self incrimination by it accused person, self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in controversy, but which do not contain any statement of' the accused based on his personal knowledge. For example, the accused person may be in possession of a document which is in his writing or which contains his signature or his thumb-impressions. The production of such a document. with a view to comparison of the writing or the signature or the impress on, is not the statement of an accused person, which can be said to be of the nature of a personal testimony."

12. Still further, considering the Article 20(3) of the Constitution of India, the protection against self incrimination would come to the rescue of a person only when these three ingredients are satisfied, (a) accusation of an offence against such person (b) compulsion to provide evidence and (c) giving out self incriminating material, relating to accusations levelled against him, either in the form of oral testimony or in the form of a statement recorded or in the form of document produced. The protection that is afforded under Article 20(3) of the Constitution of India is against the expression of opinion or incriminating material from the accused under compulsion.

The compulsion can be of various natures and forms. In the present case, the petitioner and his co-accused were never compelled to produce any document nor were called upon to make any statement, which could inculpate anyone of them. Only the record keeper of the LSE Securities Limited was required to produce certain documents, which could throw light on the controversy involved in the present case and could help the trial Court in adjudication of the issues involved in the present complaint. None of the accused could be permitted to raise such a plea of the protection under Article 20(3) of the Constitution of India.

13. The off-shot of the above discussion is that the impugned orders dated 27.02.2013 and 13.09.2013 (Annexures P-3 and P-6, respectively) passed by the trial Court as well as the impugned order dated 27.08.2014 (Annexure P-8) passed by the Court of Additional Sessions Judge, Ludhiana are based on correct appreciation of facts and law and the petition is liable to be dismissed by this Court.

14. Dismissed.

07.01.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No