

Before Sureshwar Thakur & N.S. Shekhawat, JJ.

JAGDISH VARINDER SINGH SANDHU—Petitioner

versus

WILLIAM SINGH SANDHU—Respondent

CRM-M No. 50195 of 2018 (O&M)

August 31, 2022

Indian Penal Code, Ss. 191,193—Code of Criminal Procedure, 1973—Ss. 151,195,340—O.39 RL, 1,2 and 2A, Section 151—Breach of order of injunction passed under O.39 Rule 1 and 2 read with section 151 CPC—Construction raised on the disputed suit property—Held, even if penal mis-demeanors did occur before the jurisdictionally empowered court where before they occur-such a breach can be remedied under statutory provision of O.39 Rule 2A CPC—Recoursing to Section 340 CrPC and Section 191,193 IPC is an untenable remedy—Complaints quashed—Present Petition allowed.

Held, that the reason for making the above conclusion arises, from the factum, that the breach of the order of ad-interim injunction as made upon the civil suit application (supra), by the learned Civil Judge concerned, did not comprise any ground for the complainant, to at all assume, that the accused-petitioners herein, hence committing an offence under Section 340 Cr.P.C., and, or theirs committing offences embodied in Section 191, and, in Section 193 of the IPC. The above offences would be made out only, if any false document was placed before the learned Civil Judge concerned, and or, could be made out, if a false affidavit was sworn, and, it became placed on record by the petitioners-accused herein, before the learned Civil Judge concerned, and, could never be made out, only upon, any purported breach being made by the petitioners- defendants qua the order of ad-interim injunction, as became rendered by learned Civil Judge concerned, upon the plaintiff's application cast under Order 39 Rule 1 and 2 read with Section 151 CPC. In addition, even if the above penal mis-demeanors did occur, thereupon, only the learned jurisdictionally empowered Court, where before they occur, and or, on whose record the purported perjuries, did make there surfacings, and or, on whose record, the purported fictitious documents became adduced, rather alone enjoyed

the jurisdictional empowerment to recourse the mandate (supra), and, could never, the complainant except upon his making a motion before him, take to independently of an order being made, by the jurisdictionally empowered Court, rather ever make the complaint against the petitioners carrying therein the above offences.

(Para 8)

Further held that, In consequence, this Court finds merit in the petitions, and, both the petitions are allowed. The complaint bearing No. 29T/02.05.2013/18.04.2015, registered on 27.09.2017 is quashed, and, set aside, and, also the consequential thereto proceedings, as became launched, are also quashed and set aside.

(Para10)

Sangram S. Saron, Advocate and Prateek Gupta, Advocate and Shubreet Kaur, Advocate, *for the petitioners*.

Rubal Garg, Advocate, for the respondent.

SURESHWAR THAKUR, J. (ORAL)

(1) Through petition bearing No. **CRM-M-50195-2018**, the petitioners pray for quashing, and, setting aside of complaint registered on 27.09.2017, by the aggrieved respondent herein before the learned Chief Judicial Magistrate-cum-Additional Civil Judge (Senior Division) Patiala, wherein offences, constituted under Section 340 Cr.P.C., and under Section 195(1)(d) of the Cr.P.C., read with Sections 193 and 191 of the IPC, became embodied.

(2) Moreover, through another petition bearing No. **CRM-M-52511-2019**, the petitioners prays for the setting aside of the consequential thereto proceedings, as, become launched against the petitioners-accused herein, by the jurisdictionally empowered Court.

(3) Since both the above petitions hence relate to a common complaint, therefore, both are amenable for a common verdict being made thereons.

FACTUAL BACKGROUND

(4) The factual backdrop of the instant dispute engaging the contesting litigants becomes embodied in civil suit bearing No. 108 of 06.03.2010, becoming instituted at the instance of the complainant against the petitioners-accused herein, claiming therein relief qua rendition of a declaratory decree, as well as, rendition of a

consequential therewith relief of possession in respect of the suit khasra numbers, as become described in Annexure P-4. Moreover, during the pendency of the above civil suit, the plaintiff cast an application under Order 39 Rule 1 and 2 read with Section 151 CPC, wherein, he claimed relief of ad-interim injunction being rendered by the learned civil Court concerned, in respect of the suit property, and, thereon, as revealed by Annexure P-3, an affirmative order became recorded, hence restraining the defendants- petitioners-accused herein, from raising any construction on the suit property.

CAUSE OF ACTION

(5) It appears, that despite the above ad-interim order of injunction becoming recorded by the learned Civil Judge concerned, the defendants-petitioners- accused herein did not mete compliance thereto, and, subsequently the aggrieved plaintiff instituted a complaint, as carried in Annexure P-11, as, appended with the instant petition rather before the learned trial Magistrate concerned. Consequently, the learned trial Magistrate concerned, entered upon trial qua the petition complaint (supra), and, also made orders for summoning the petitioners accused herein in the complaint.

(6) As above stated, the petitioners-accused herein are aggrieved from the complaint (supra), as became instituted against them, and, also become aggrieved from consequent thereto, entering(s) of trial, upon the complaint, and, besides his assuming cognizance thereons.

ANALYSIS BY THIS COURT

(7) As above stated, the dispute engaging the contesting litigants is a civil dispute, whereas, the initiation of the criminal proceedings against the defendants-accused, arose, as evident from a reading of para No.6 of the complaint (supra), para whereof becomes extracted hereinafter, from the petitioners-accused herein purportedly breaching the ad-interim order, as became rendered on the plaintiff's application cast under Order 39 Rule 1 and 2 read with Section 151 CPC. Therefore, even if there was evident breach thereto, on the part of the defendants-petitioners-accused in the complaint, resultantly the remedy for the undoing of the breach, rather was through, his instituting an application under Order 39 Rule 2A of the CPC, before the learned Civil Judge concerned, than his proceeding to institute the petition complaint embodying therein the above offences.

“That the respondents have flagrantly violated the order of injunction granted by the Hon'ble Court and changed the very nature of the land in question by constructing roads and buildings there upon. The construction of a row of duplex flats was going on in full swing besides other construction activities even on the day of demarcation.”

CONCLUSION

(8) The reason for making the above conclusion arises, from the factum, that the breach of the order of ad-interim injunction as made upon the civil suit application (supra), by the learned Civil Judge concerned, did not comprise any ground for the complainant, to at all assume, that the accused-petitioners herein, hence committing an offence under Section 340 Cr.P.C., and, or theirs committing offences embodied in Section 191, and, in Section 193 of the IPC. The above offences would be made out only, if any false document was placed before the learned Civil Judge concerned, and or, could be made out, if a false affidavit was sworn, and, it became placed on record by the petitioners-accused herein, before the learned Civil Judge concerned, and, could never be made out, only upon, any purported breach being made by the petitioners- defendants qua the order of ad-interim injunction, as became rendered by learned Civil Judge concerned, upon the plaintiff's application cast under Order 39 Rule 1 and 2 read with Section 151 CPC. In addition, even if the above penal mis-demeanors did occur, thereupon, only the learned jurisdictionally empowered Court, where before they occur, and or, on whose record the purported perjuries, did make there surfacings, and or, on whose record, the purported fictitious documents became adduced, rather alone enjoyed the jurisdictional empowerment to recourse the mandate (supra), and, could never, the complainant except upon his making a motion before him, take to independently of an order being made, by the jurisdictionally empowered Court, rather ever make the complaint against the petitioners carrying therein the above offences.

(9) Moreover, since a specific statutory remedy, is prescribed in Code of Civil Procedure, 1908, for undoing, and, remedying the above breach, inasmuch as, the remedy qua the above breach becoming cast under Order 39 Rule 2A, CPC, resultantly the afore remedy, was the best appropriate remedy, rather than the recouring by the aggrieved plaintiff, the, untenable remedy, qua his casting a completely mis-constituted petition complaint, before the learned Civil Judge

concerned.

(10) In consequence, this Court finds merit in the petitions, and, both the petitions are allowed. The complaint bearing No.29T/02.05.2013/18.04.2015, registered on 27.09.2017 is quashed, and, set aside, and, also the consequential thereto proceedings, as became launched, are also quashed and set aside.

(11) No order as to costs.

(12) The personal, and, surety bonds, if any furnished, by the petitioners, are ordered to be forthwith cancelled, and, discharged.

(13) Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.
