2025:PHHC:038400

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-50053-2022(O&M)
Reserved on : 27.02.2025
Pronounced on: 19.03.2025

SANDEEP SINGH

..... Petitioner

VERSUS

GURBINDER SINGH

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. Rahul Chadha, Advocate and
Mr. Shekhar Verma, Advocate
for the complainant.

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KIRTI SINGH, J.

The present petition has been filed under section 482 CrPC for quashing of the impugned orders dated 29.04.2022 (Annexure P-3) and 20.09.2022 (Annexure P-6) passed by the Ld. Judge, Fast Track Special Court, Chandigarh in COMA/2/2021 titled as Gurbinder Singh vs. Megh Raj and others.

2. Succinct factual matrix of the present *lis* is that a complaint was moved by the respondent in the present petition under sections 17, 18 and 19, read with section 21 of POCSO Act, 2012, alleging that the respondents therein had failed to act and discharge their duties by shielding the aggressors, who allegedly committed the offences of sexual harassment and assault on the minor victim. The same was ordered to be registered as a private complaint by Ld. Judge, Fast Track Special Court. Thereafter, on an

application moved by the respondent, at the stage of preliminary evidence, the official of CLTA in possession of the required documents was summoned with the said record in Court, vide the impugned order dated 29.04.2022. The petitioner, being the Manager of the Association, objected to the same and moved an application under section 162 of Indian Evidence Act, which was dismissed vide impugned order dated 20.09.2022. Hence the present petition.

3. Learned Counsel for the petitioner *inter alia* submits that the petitioner, being the dealing person, i.e., Manager (Administration) CLTA, has been summoned vide impugned order dated 29.04.2022 to produce the records as applied for by the respondent in his complaint. The contention that he has advanced is that the since the respondent has filed the complaint against the officials of CLTA also, including the computer operators and record keepers, therefore, he being the Manager, is also one of the accused, and therefore cannot be summoned as a witness vide the impugned order. The second pillar of his argument is that the petitioner, being an accused, cannot be compelled to produce documents against himself, by virtue of the constitutional safeguard of right against self incrimination guaranteed to him under Article 20(3). The third contention put forth is that the records that the petitioner has been summoned to furnish are not relevant to the present case and are infact privileged documents of the association. It is therefore contended that the impugned orders deserve to be quashed. To buttress his submission, learned counsel has placed reliance on judgments passed in ***"State of Gujarat Vs. Shyamlal Mohanlal Choksi"***, AIR 1965 SC 1251; ***"Y.Sivaramakrishnaiah Vs. State of Andhra Pradesh"***, 2018 SCC Online Hyd 722 and ***"Nandini Satpathy Vs. P.L.Dani"***, (1978) 2 SCC 424.

4. Per contra, learned counsel for the respondent has vehemently argued that the petitioner in the present *lis* is neither an accused in the complaint, nor has been summoned by name as a witness by way of the impugned order. It is only the concerned clerk/ record keeper of the association who has been called to present certain records pertaining to the in in-house enquiry conducted with regard to sexual harassment of the minor victim and financial records of the association, among others. The objection under Section 162 of Indian Evidence Act raised by the petitioner has also been dealt with and rejected by the learned Special Court vide the impugned order dated 20.09.2022. Hence, since neither the petitioner, nor the association of which he is an employee, are accused, thus they are not covered by the protection accorded by Article 20(3) of the Constitution, a contention which has been advanced by the petitioner counsel. Therefore, the present petition does not stand any ground and is liable to be dismissed. To fortify his submissions, learned counsel places reliance on **"State of Bombay vs. Kathi Kalu Oghad**", AIR 1961 SC 1808.

5. Heard learned Counsel on either side and perused the case file.

ANALYSIS RE: LAW

6. At the outset, it would be apposite to first discuss the procedure, as contained in the provisions of CrPC, to be followed in a complaint case. Broadly speaking, after taking cognizance of the offence, the first step to be undertaken by the Magistrate is to examine the complainant and the witnesses, if any. It is pertinent to note here that the term witness here implies imparting knowledge in respect of relevant facts. After doing so, the magistrate can either dismiss the complaint under section 203 CrPC, or, in case there exist sufficient grounds for proceeding, issue process under

Section 204 Cr.P.C. Alternately, the third option that can be exercised by the magistrate after the examination of the complainant under section 200 Cr.P.C. is of delaying the issuance of process and instead either ordering an investigation by the police or any other competent person, or conducting an inquiry himself and thereafter either dismissing the complaint or issuing summons or warrants to the accused, as the case may be.

7. Speaking about the right against self incrimination, in every Criminal Justice system across the globe, a need is reflected to preserve the immunities accorded to an accused without stifling legitimate investigation, and to achieve this confluence of rights of an accused and the responsibility of the legal machinery to ensure proper investigation is one of the major concerns in any criminal justice system. In the words of Lewis Mayers, "To strike a balance between the need of law enforcement on the one hand and the protection of the citizen from the oppression and injustice at the hands of the law enforcement machinery on the other hand is a perennial problem of statecraft."

8. This right, enshrined under Article 20(3) of the Indian Constitution, is a fundamental safeguard to ensure that individuals cannot be compelled to testify against themselves. It is based on the maxim *"nemo tenuter prodere accussare seipsum"* which means that "no man is bound to accuse himself". The Supreme Court in **M.P Sharma vs. Satish Chandra, AIR 1954 SC 300,** enlisted the components of this protection as under:

i. It is a right pertaining to a person "accused of an offence";

ii. It is a protection against compulsion to be a witness"; and

iii. It is a protection against such compulsion resulting in his giving evidence "against himself".

9. It is only when all these three essentials are met that a person can invoke his right against self incrimination. It has been held in a catena of cases that this protection extends to a person as soon as he is formally accused of an offence.

10. The Hon'ble Supreme Court in **Kathi Kalu Oghad** (supra), conclusive held that to bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made. It was further held that not only must the said statement have material bearing on the criminality of its maker, but the same should also have been made under compulsion. The relevant Para reads thus:

> *"**15.** In order to bring the evidence within the inhibitions of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and that it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement. "Compulsion" in the context, must mean what in law is called "duress". In the Dictionary of English Law by Earl Jowitt, "duress" is explained as follows:*
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> > *"Duress is where a man is compelled to do an act by injury, beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm, or being unlawfully imprisoned (sometimes called menace, or duress per mines). Duress also includes threatening, beating or imprisonment of the wife, parent or child of a person."*
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> *The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore extorted. Hence, the mere asking by a police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Article*

> *20(3). Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was in fact exercised. In other words, it will be a question of fact in each case to be determined by the court on weighing the facts and circumstances disclosed in the evidence before it."*

11. In **Romesh Chandra Mehta vs. State of West Bengal, AIR 1970 SC 940,** it was observed that a person stands in the character of an accused when an FIR is lodged against him in respect of an offence before an officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another to another Magistrate for trial of the offence.

12. The Supreme Court in the case of **Nandini Satpathy(supra)** observed that the constitutional shield must be as broad as the contemplated danger, and that the preventive blow of Article 20(3) falls also on testimonial compulsions at the incipient stages. However, it is imperative that the person to whom this protection extends must be an accused, being compelled. The Hon'ble Court also went on to distinguish between relevancy and incrimination, by explaining that while the former is tendency to make a fact probable, the latter is a tendency to make guilt probable; and held that though the ban against self incrimination goes beyond that case and also protects an accused in regard to other offences pending and imminent, which may deter him from voluntary disclosure of criminatory matter, however, fanciful claims, unreasonable apprehensions and vague possibilities cannot be the hiding ground for an accused person.

13. Further, the question whether right against self incrimination extends to production of documents is also no longer res integra, having been conclusively decided by the Hon'ble Supreme Court in **Kathi Kalu Oghad (supra)** wherein it was held that:

> *"11. The matter may be looked at from another point of view. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness". "To be a witness" means imparting knowledge in respect of relevant facts, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation. A person is said "to be a witness" to a certain state of facts which has to be determined by a court or authority authorised to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay, or giving his opinion, as an expert, in respect of matters in controversy. Evidence has been classified by text writers into three categories, namely, (1) oral testimony; (2) evidence furnished by documents; and (3) material evidence. We have already indicated that we are in agreement with the Full Court decision in Sharma case [(1954) SCR 1077] that the prohibition in clause (3) of Article 20 covers not only oral testimony given by a person accused of an offence but also his written statements which may have a bearing on the controversy with reference to the charge against him. 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 does not become a witness by the mere fact that he has produced it; and therefore, he cannot be cross-examined. Of course, he can be cross-examined if he is called as a 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 case [(1954) SCR 1077] that Section 139 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 an 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 impression. The production of such a document, with a view to comparison of the writing or the signature or the impression, is not the statement of an accused person, which can be said to be of the nature of a personal testimony. When an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a "personal testimony". The giving of a "personal testimony" must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression "to be a witness."

14. This Court in **LSE Securities Ltd. Vs. Jaswinder Singh Kapoor, CRM-34934-2014, decided on 07.01.2025**, dealt with a similar matter wherein the concerned clerk of the petitioner-company had been summoned along with the record of the proxies. Rejecting the two-fold contention of privileged documents and protection under the sweep of Article 20(3), this Court dismissed the petition while observing that:

"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 coaccused 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.*
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> *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?"*
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> *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."*

ANALYSIS RE: FACTS

15. It is pertinent to note here that in the legal postulates contained herein above, the common thread is protection of a person "accused" of an offence, from being compelled to give incriminating evidence, oral or documentary, against himself. The question, therefore, which arises before this Court, when reverting to the case at hand is, whether the petitioner is an "accused", who's right against self incrimination would be violated in case the impugned order is upheld.

16. A few factors which demand consideration are that first, the petitioner in the instant case was not included by name in the complaint made before the magistrate. It is not befitting, in the opinion of this Court, to hold that omnibus allegations against a person not specifically named would give him the character of an accused. For a person to be accused of an offence, he must be specifically named in an FIR or complaint for having allegedly committed an offence, which is not the case in the present petition.

The second aspect which warrants attention is that the matter is at the pre-summoning stage and even the preliminary evidence is yet to be concluded, only after which will the Court ascertain whether any respondent in the said complaint has to be summoned as an accused, under section 204 CrPC. The petitioner was summoned under section 200 CrPC, in the capacity of a witness, and not under section 91 CrPC, for production of certain records of CLTA, being the Incharge/Manager of the Association. Even if, arguendo, he is taken to be an accused, the documents in question are neither those which contain his personal knowledge or would amount to giving incriminating testimony. Infact, it is even an objection taken by the petitioner that documents being called for are not related to the present *lis*, thus contradicting the argument of them being incriminatory and therefore being covered by the protective umbrella of article 20(3). Further, the protection also cannot be extended in the present case since the documents in question do not fulfil the criteria of being privileged documents as discussed in the judgments cited hereinabove. The third argument advanced, regarding the admissibility of the said documentary evidence under section 162 of the Indian Evidence Act, also does not stand on all fours, since a bare perusal of the provision makes it amply clear that the question of admissibility is one that has to be determined by the Court itself and that the person so called to produce the documents cannot raise any such objections to escape the responsibility of submitting the documents before the Court.

CONCLUSION:

17. As a fallout of the aforesaid discussion, made in light of the judicial pronouncements cited herein above, this Court is of the view that the impugned orders dated 29.04.2022 and 20.09.2022 are well reasoned and

suffer from no illegality or infirmity that would warrant interference by this Court. Therefore, the present petition stands dismissed.

18. Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

19.03.2025
Kavita

Whether speaking / reasoned Yes/No
Whether Reportable Yes/No