

(2016) 04 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : CRM-M-16907 and 17932-2015 (O/M)

Rajesh Joshi and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, Section 469, Section 473, Section 482

Representation of the People Act, 1950 — Section 17, Section 31

Citation : (2016) 2 LawHerald 1115 : (2016) 2 RCRCivil 847

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Satya Pal Jain, Senior Advocate and Dheeraj Jain, Advocate, for the Appellant; P.S. Paul, Deputy A.G. assisted by Pardeep Kumar, I.A.S., for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—1. By this order, I will dispose of two connected petitions i.e. CRM-M-16907-2015 titled as Rajesh Joshi Versus State through the Electoral Registration Officer and CRM-M-17932-2015 titled as Vijay Joshi and others Versus State through the Electoral Registration Officer, filed under Section 482 Cr.P.C., for quashing criminal complaint (Case No. 08/14 dated 25.2.2014) (Annexure-P-1), pending against the present petitioners before the Court of the learned Chief Judicial Magistrate, Amritsar. Prayer has also been made for quashing the summoning order dated 25.2.2014 (Annexure-P-3), alongwith all consequential proceedings arising therefrom.

2. Brief facts of the case are that the State through Electoral Registration Officer, 15 Amritsar North Assembly Constituency-cum-Additional Deputy Commissioner (Development), Amritsar, Pardeep Kumar Sabharwal, PCS, had filed a criminal complaint against the present petitioners under Section 31 read with Section 17 of the Representation of People Act, 1950 (in short "the Act"), stating that the

petitioners have got themselves enrolled at two places as voter and had made wrong declarations, which is punishable under Section 31 of the Act. The contents of the complaint will be examined in the later part of the judgment.

3. Notice was issued to the respondent.

4. I have heard the learned counsel for the parties and have also carefully gone through the file.

5. It is necessary to reproduce the provisions of Sections 17 and 31 of the Act, which read as under :-

"S.17. No person to be registered in more than one constituency.- No person shall be entitled to be registered in the electoral roll for more than one constituency."

"S.31. Making false declarations.-If any person makes in connection with -

(a) the preparation, revision or correction of an electoral roll, or

(b) the inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.]

6. The perusal of Section 17 of the Act shows that no person shall be entitled to be registered in the electoral roll for more than one constituency. However, the violation of said section itself has not been made punishable, meaning thereby that registration as a voter at two places itself is not a criminal offence.

7. Section 31 of the Act provides for punishment in case of making false declaration, which is either known or believed to be false or not believe to be true regarding preparation, revision or correction of an electoral roll or any inclusion or exclusion of any entry in or from any electoral roll. The offence carries the maximum punishment of one year or fine or both.

8. Section 468 Cr.P.C. provides for bar to taking cognizance after the lapse of period of limitation. The said section reads as under :-

"S.468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

9. It goes to show that under Clause 2(b) of said section, the limitation for taking cognizance in the present case was one year.

10. Section 469 Cr.P.C. provides for the commencement of the period of limitation i.e. the date when the offence is committed and when the commission of offence is not known to the person aggrieved by the offence, then from the date of such knowledge.

11. Now, coming to the contents of the present complaint, it is alleged in the complaint as under :-

(1) On 31.10.2005, Smt. Poonam Joshi (petitioner) applied for enrollment as a voter for herself and her family members i.e. accused No. 1 to 9 after filing an Electoral Card No. 77381, Serial No. 37 for 23-Tarn Taran (General) Assembly Constituency (Pre-delimitation), showing them to be residents of Gali Chappar Wali No. 2, Tarn Taran. Accused Poonam Joshi signed the electoral card being head/senior adult member of the family. Accused No. 1 to 9 were accordingly enrolled as voters.

2. In the voter list, prepared in the year 2006, for Amritsar North (General) Assembly Constituency (Predelimitation), the names of Shri Anil Joshi, Smt. Monika Joshi and Smt. Pushpa Rani were entered at Serial No. 946 to 948, showing them to be residents of House No. 03, Backside Main Bazar, Panj Peer, New Golden Avenue, Amritsar. The votes were also applied by the accused on the enumeration pad and the same record is not traceable.

3. The accused got prepared the votes in the names of accused No. 1 to 9 in 07-Amritsar West (General) Assembly Constituency (Pre-delimitation). These votes were prepared in the names of accused on the basis of handwritten manuscript. The names of the accused were not mentioned in the electoral card. The Divisional Commissioner, Jalandhar Division, Jalandhar, conducted an inquiry and vide report dated 26.12.2013 found the tampering of manuscript or the electoral rolls/card.

4. In the year 2007, Shri Anil Joshi, Smt. Monika Joshi and Smt. Pushpa Rani got deleted their votes in 023-Tarn Taran Assembly Constituency (Pre-delimitation), but the vote of Pushpa Rani existed in the year 2008 023-Tarn Taran Assembly Constituency (Pre-delimitation). However, Anil Joshi, Monika Joshi and Pushpa Rani got deleted their votes in 016-Amritsar North (General) Assembly Constituency (Pre-delimitation) and further got prepared the same in Assembly Constituency as 016- Amritsar North (General) Assembly Constituency

(Predelimitation), entered at Part No. 064, Serial No. 1546 to 1548. After the delimitation, the votes were transferred to new 018- Amritsar East (General) Assembly Constituency, which were got deleted in the supplementary list 2008.

5. The votes of the accused persons in 017-Amritsar West (General) Assembly Constituency (Pre-delimitation) were also transferred and after delimitation in new 015-Amritsar North (General) Assembly Constituency. The remaining seven votes at Serial No. 357 to 360, 362, 364 and 365 in 023-Tarn Taran Assembly Constituency (Pre-delimitation) were also shifted after delimitation to new 021-Tarn Taran General Assembly Constituency. These votes were got deleted in the year 2013. The votes of seven accused were got deleted from 015-Amritsar North Assembly Constituency in the year 2014. The votes were got prepared in the 021-Tarn Taran Assembly Constituency, except Jyoti Joshi in the year 2014. It is alleged against the accused as under :-

"9. That the accused persons are not entitled to be registered in the electoral rolls for any constituency more than once and are also entitled to be registered in the electoral roll for more than one constituency. They have made, in connection with the inclusion or exclusion of the entry in or from an electoral roll, declarations in writing which is false and they know and believed to be false. The accused persons who were not only from these places by virtue of that enrollments. It shows that they were aware about their enrollment at the different places and as such the accused have violated the provisions under Section 17 of Representation of People Act, 1950 and have committed an offence punishable u/s 31 of Representation of People Act, 1950."

6. It is further stated that on receipt of the complaint, the Divisional Commissioner, Jalandhar Division, Jalandhar, submitted his inquiry report on 26.12.2013 to to the Chief Electoral Officer, Punjab, Chandigarh, who further submitted the report to the Election Commission of India, which directed the filing of the criminal complaint. It is further stated in the complaint that if the Court comes to the conclusion that the complaint could not be filed within the period of limitation, that delay is due to reason of correspondence between the public officials from time to time and due to the pendency of the inquiries. As such separate application under Section 473 Cr.P.C. for extending the limitation period is being filed alongwith the complaint.

12. It further comes out that in the application under Section 473 Cr.P.C., the same averments were made for condoning the delay.

13. The learned Chief Judicial Magistrate, Amritsar, passed the following summoning order :-

" Complaint has been filed today. It be registered. Alongwith the complaint an application under Section 473 of Code of Criminal Procedure for condonation of delay in filing present complaint has also been filed on the ground that the matter was enquired by Divisional Commissioner, Jalandhar who submitted his report on 26.12.2013 to the Chief Electoral Officer, Punjab and who further

submitted his report to Election Commission of India vide his letter dated 10.1.2014 and it is on the direction of the Election Commission of India that the present complaint is being filed against accused persons.

I have gone through the record of the case and the relevant referred reports are on the record. So in view thereof, the Court is satisfied that the delay has been properly explained.

Heard. Present has been a complaint moved by Public Officer in discharge of his official duties. So recording of preliminary evidence is hereby dispensed with. I have gone through the record of the case from the document on record. Prima facie offence under Section 31 for the violation of Section 17 of Representation of People Act, 1950, is made out against all the accused. Let notice to all the accused be issued for 9.4.2014."

14. At the very outset, it is to be seen that though the learned Chief Judicial Magistrate, Amritsar, was of the view that the Court is satisfied that the delay has been properly explained, but no order has been passed, condoning the delay by giving reasons as to when the offence was committed and how the delay has occurred and how the Court is satisfied about the explanation.

15. Learned senior counsel for the petitioners has vehemently argued that the contents of the complaint show that it lacks necessary ingredients of offence under Section 31 of the Act. It has been further argued that the registration of votes at two places itself is not an offence. The offence is under Section 31 of the Act for making wrong declarations. It is further argued that no such alleged false declarations have been attached with the complaint. The complaint also does not mention about the particulars of alleged false statements or declarations. No date, time or contents of the false statements are mentioned. It is also not specified whether the false declaration was made only by one accused or two accused on behalf of others or all the accused separately. It has been further argued that the complaint is barred by limitation under Section 468 Cr.P.C. The explanation given in support of application filed under Section 473 Cr.P.C. is totally vague and insufficient.

16. On behalf of the State, the learned State counsel was pointedly questioned as to whether the complainant has got in his possession any false declaration made by all or any of the accused, to which it was replied that the said declarations made at the time of preparation of votes are not with the complainant and it has been mentioned in the complaint itself that the record of enumeration pad is not traceable.

17. The first act, as per the allegations levelled in the complaint is that only Smt. Poonam Joshi applied for registration as voters on behalf of all the accused No. 1 to 9 on 31.10.2005. The first enrollment as a voter is no offence. Then, in para-4 of the complaint, it is alleged that in the year 2006, the names of Shri Anil Joshi, Smt. Monika Joshi and Pushpa Rani were entered in 016-- Amritsar North (General) Assembly Constituency (Pre-delimitation), but the record of

enumeration pad is not traceable. Therefore, it cannot be said that who got the names of all the said voters, namely, Anil Joshi, Monika Joshi and Pushpa Rani entered in the said constituency. Since it is alleged that the enrollment in Tarn Taran (General) Assembly Constituency was made in the year 2005 by Smt. Poonam Joshi on behalf of all the accused, therefore, even if some record had been available to show that either all or any of the accused persons, namely, Anil Joshi, Monika Joshi and Pushpa Rani made any declaration, even then the said act is not an offence under Section 31 of the Act, since the first declaration was made only by Smt. Poonam Joshi and not by said Anil Joshi etc. for registration as voters in 016-Amritsar North (General) Assembly Constituency. Then, there are allegations of registration of votes by accused no. 1 to 9 in 017-Amritsar West (General) Assembly Constituency. However, it is not alleged as to who had got their names entered as voters and whether one or all of the accused signed separate declarations. Then, there are allegations of deletion of votes and entering in other constituency, regarding which no declaration has been attached with the complaint to show as to who got said deletion or entry made in the electoral rolls.

18. Learned senior counsel for the petitioners has placed on file the specimen application form for inclusion of name in the electoral roll, which is Form No. 6 under Rules 13 (1) and 26, which requires the following declaration :-

19. The said form is not denied by the State. Admittedly, no such form has been attached with the complaint. Even if, the earlier enrollment as voter is considered, it has to be either signed by head of the family or by one of the members of the family. The votes were earlier made on enumeration pad and no document was attached to the effect that any declaration under Section 31 of the Act was required at all or if it was required, what were the contents thereof. Since the said declarations are not available and the first enrollment as voters in Tarn Taran (General) Assembly Constituency was made by Smt. Poonam Joshi, therefore, for subsequent enrollment in Amritsar (General) Assembly Constituency even if proved to be made by Shri Anil Joshi, Smt. Monika Joshi and Smt. Pushpa Rani does not attract the provisions of Section 31 of the Act. For the subsequent entries, no record has been attached with the complaint to show as to who got the enrollment made and who made the declaration under Section 31 of the Act. Therefore, on the perusal of the complaint and the documents attached with the same, no offence under Section 17 read with Section 31 of the Act is made out against any of the accused.

20. Further, it comes out from the contents of the complaint that the offence was committed between year 2006 to year 2008. The complaint was filed on 25.2.2014 i.e. much beyond the period of limitation of one year. The ground mentioned for extending the period of limitation is that inquiries were pending before different authorities and due to correspondence between different offices of Punjab Government as well as Election Commission of India. However, as per the complaint itself, the same was for the first time received in the December,

2012, on the basis of which the inquiry was initiated. The complaint received by the complainant was itself beyond the period of limitation. No reason has been mentioned as to what were the reasons, for which the alleged offence was not detected till December, 2012. Further, the order passed by the learned Chief Judicial Magistrate, Amritsar, reproduced above, shows that though it was mentioned by the Court that the delay has been properly explained, but the learned Chief Judicial Magistrate, Amritsar, did not pass an expressed order, condoning the delay under Section 473 Cr.P.C. Needless to say that before passing even the said order regarding his satisfaction qua the delay, no hearing opportunity was given to the accused by the learned Chief Judicial Magistrate, Amritsar.

21. From the foregoing discussion, I come to the conclusion that the complaint alongwith documents attached with the same does not disclose any offence under Sections 31 of the Act and is nothing, but misuse of the process of Court.

22. It is to be added here that an application was filed by two persons, namely, Sandeep Gors, Advocate, and Vaneet Mahajan, Advocate, Amritsar, for impleading them as necessary party, which was dismissed by this Court, vide order dated 28.3.2016, passed in CRM No. 39001 of 2015 in CRM No. M-16907 of 2015. Even order passed by a Division Bench of this Court in Vaneet Mahajan Versus Election Commission of India and others, (arising out of CWP No. 20660 of 2014, decided on 4.5.2015) shows that the said applicants wanted that Shri Anil Joshi, who was elected as a Member of Legislative Assembly (MLA) from Amritsar North Constituency be unseated on the basis of similar allegations of making wrong declaration and alleging that, his name is entered in two places. The said petition was dismissed by a Division Bench of this Court in Vaneet Mahajan's case (supra) on 4.5.2015, imposing the costs of Rs. 50,000/-. It goes to show that the said two applicants have their own axe to grind and want to settle some score with one of the respondents, namely, Anil Joshi, who was elected as a Member of Legislative Assembly from Amritsar North Assembly Constituency.

23. As a result of the foregoing discussion, both the petitions are allowed. The criminal complaint (Case No. 08/14 dated 25.2.2014) (Annexure-P-1), pending before the learned Chief Judicial Magistrate, Amritsar, alongwith summoning order of the even date and all the consequential proceedings arising therefrom stand quashed.