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**(1997) 04 P&H CK 0077**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 6591-M of 1996**

Surjit Singh Bhatia

APPELLANT

Vs

Mehar Singh

RESPONDENT

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**Date of Decision :** 01-04-1997

**Acts Referred:**

**Citation :** (1997) 3 RCR(Criminal) 251

**Hon'ble Judges :** M.L.Singhal, J

**Advocate :** Jaivir Yadav, Sukhbir Singh, Advocates for appearing Parties

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## **Judgement**

M.L. Singhal, J.

1. This is a CrI. Misc Petition filed under Section 482 Cr.P.C. read with Section 402 Cr.P.C. by the petitioner who is a retired Assistant Collector 2nd Grade, Mohali whereby he has prayed for the quashing of the order dated 20.12.1995 passed by Additional Chief Judicial Magistrate, Ropar declining to recall the order dated 22.1.1993 summoning him for trial. He has also prayed for quashing of the order dated 22.1.1993 summoning him for trial.

2. Facts necessary for appreciation of this prayer of the petitioner are as follows :

Mehar Singh son of Sarwan Singh instituted complaint under Sections 468, 471 and 466 IPC in the court of Additional Chief Judicial Magistrate, Ropar against Nirmal Singh, Jarnail Singh, Sulkhan Singh (Patwari), Gurbax Singh, Field Kanungo and the present petitioner Surjit Singh Bhatia, Assistant Collector Second Grade, Mohali on the allegations that Nirmal Singh filed an application under Section 42 of the East Punjab Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter to be referred as the Act) for changing path in village Dhoomchheri. He had impleaded Jarnail Singh as one of the respondents. Nirmal Singh and other proprietors of the village had been appearing before the Additional Director, Consolidation of Holdings, Mohali who dismissed the application on 7.9.1983. According to Mehar Singh, Nirmal Singh and Jarnail Singh joined hands and procured a different order on 8.9.1983 by deceiving the

Additional Director of Consolidation of Holdings in the absence of the villagers and Mehar Singh and case was remanded to the Consolidation Officer for implementation of the order dated 8.9.1983. Consolidation Officer summoned Nirmal Singh time and again to hear him in the wake of remand order but he did not appear and the Consolidation Officer dismissed the remand case on 3.7.1984. Thereafter, Nirmal Singh and Jarnail Singh without requesting the Consolidation Officer or the Director joined hands with the Kanungo, Patwari and A.C.O. and got mutation No. 959 entered in their name in the absence of the parties. The accused antedated mutation entry as of 8.4.1992 and it was shown that mutation was sanctioned on 9.4.1992 though the relevant documents were not with them. According to Mehar Singh, all the accused committed forgery in the revenue record and prepared false entry and false mutation showing the new path without any authority and without any order. Vide order dated 22.1.1993 passed by the Additional Chief Judicial Magistrate, Ropar, accused were summoned for trial.

3. Petitioner moved an application for the recall of that order dated 22.1.1993. Vide impugned order dated 20.12.1995, Additional Chief Judicial Magistrate, Ropar refused to recall that order.

4. In support of his prayer for the quashing of the complaint, the order summoning him passed on 22.1.1993 and the order dated 20.12.1995 refusing to recall the summoning order, it is averred by the petitioner that there was a dispute between Mehar Singh, Nirmal Singh, Jarnail Singh and others and the Consolidation Officer allowed path from the joint boundary wall of Kila No. 22/10, 11, 22/2, 9, 12 west. Nirmal Singh filed appeal against the order of the Consolidation Officer before the Settlement Officer who vide order dated 22.6.1981 set aside the order of Consolidation Officer and allowed the new path. Annexure P1 is the order passed by the Settlement Officer dated 22.6.1981. Aggrieved from order dated 22.6.1981, Annexure P1, Nirmal Singh filed further appeal to the Director, Consolidation of Holdings under Section 42 of the said Act. Additional Director vide order dated 8.9.1983 remanded the case to the Consolidation Officer saying that path be widened from 2 karams to 4 karams and the case be decided after hearing both the parties. Annexure P2 is the said order passed by Additional Director, Consolidation of Holdings dated 8.9.1983. Vide order dated 3.7.1984, Consolidation Officer dismissed the case of Nirmal Singh in default because of his absence. After the dismissal of the case of Nirmal Singh, the path remained as it was. Mehar Singh got the mutation effected in his favour from the Naib Tehsildar in the revenue record on the basis of the order of the Settlement Officer which had been set aside by the Additional Director, Consolidation of Holdings vide order dated 8.9.1983. Nirmal Singh and others approached the officials of the Consolidation Department and brought to their notice that Mehar Singh had got mutation in his favour on the basis of the order of the Settlement Officer on 23.7.1990 vide mutation No. 904 which had been set aside by the Additional Director, Consolidation of Holdings vide order dated 8.9.1983. JUDGMENT passed by the Additional Director, Consolidation of Holdings

was also brought to their notice. Record of village was called for on 8.4.1992 which was submitted by the then Patwari and after perusing the order dated 8.9.1983 of the Additional Director, Consolidation of Holdings and the decision of the Consolidation Officer dated 3.7.1984, the order of the Revenue Tehsildar was set aside and the original numbers were entered. Case was prepared by Sulkhan Singh on 8.4.1992 and he (petitioner) approved the case on 9.4.1992. Mehar Singh filed petition before Director, Land Records exercising the powers under Section 42 of the Act saying that the Additional Director, Consolidation of Holdings had dismissed the petition of Nirmal Singh under Section 42 of the said Act on 7.9.1982 but on 8.9.1983, the Additional Director, Consolidation of Holdings had remanded the case to the Consolidation Officer for widening the path from 2 karams to 4 karams and it was prayed that earlier order dated 7.9.1983 be restored and the order dated 8.9.1983 be quashed. Additional Director, Consolidation of Holdings vide order dated 4.2.1992 dismissed the petition on the ground that Mehar Singh had no locus standi and the appeal was time barred and also the order dated 8.9.1983 had not been given effect in Annexure P3 is the copy of the order dated 4.9.1993. According to the petitioner he was entitled to the protection of Judicial Officers Protection Act as it was a judicial act which he performed. Prior sanction as envisaged by Section 197 Cr.P.C. was required to prosecute him. Compliance of the provisions of Section 195 Cr.P.C. was also a must. JUDGMENTS passed by the officers of the Consolidation Department were required to be implemented within 3 months of the date of receipt of the order in view of the instructions issued by the Department Annexure P6. In this case the record was called and was received on 8.4.1992 and mutation was sanctioned on 9.4.1992.

5. This petition has been opposed by Mehar Singh respondent urging that order Annexure P1 was passed as parties thereto had consented to the giving of passage as per the details given in the order dated 22.5.1981 passed by the Settlement Officer. Appeal filed by Nirmal Singh was dismissed by the Additional Director, Consolidation vide order dated 7.9.1981. JUDGMENT dated 8.9.1983 was obtained by Nirmal Singh by suppressing the material facts and without bringing to the notice of Additional Director Consolidation that the appeal filed by him (Nirmal Singh) had already been dismissed on 7.9.1983. JUDGMENT Annexure P2 was obtained by Nirmal Singh in collusion with Jarnail Singh without giving him (Mehar Singh) any opportunity of being heard. JUDGMENT Annexure P2 cannot have binding effect on the parties as there is no mention in order Annexure P2 that the order dated 22.6.1981 Annexure P1 passed by Settlement Officer was set aside or the order dated 7.9.1983 was reviewed or set aside. Mutation No. 959 was rightly sanctioned by the revenue authorities as per order dated 22.6.1981 passed by the Settlement Officer. JUDGMENT Annexure P1 was never set aside. On remand Nirmal Singh failed to appear before the Consolidation Officer and the case was rightly filed and the resultant effect was that the order Annexure P1 remained in operation. JUDGMENT dated 8.9.1983 Annexure P2 was never implemented. JUDGMENT dated 22.6.1981 passed by the

Settlement Officer was in operation as appeal against this order was dismissed by the Additional Director, Consolidation vide order dated 7.9.1983 Annexure R1/1. Mutation entry No. 959 prepared by Sulkhan Singh respondent and approved by the present petitioner on 9.4.1992 was the result of conspiracy by forging the revenue record. Mutation register was summoned by the petitioner through Sulkhan Singh Patwari and the revenue record was given to Sulkhan Singh against receipt on 20.4.1992. JUDGMENT summoning the record by Assistant Consolidation Officer was dated 16.4.1992. Annexure R1/2 is the copy of the receipt. Petitioner in connivance with other accused tampered and forged the mutation entry No. 959 adversely affecting the rights of Mehar Singh. It was no part of the official duties of the petitioner to tamper with the official record and forge the mutation entry. Mutation was entered on 8/9.4.1992 though there was no record with the petitioner on 8/9.4.1992. There is a statement (copy Annexure R1/4) made by Jaipal Singh Patwari before the Additional Chief Judicial Magistrate in the complaint to this effect.

6. Shri Jaipal Singh, Patwari appeared before the Additional Chief Judicial Magistrate and made statement, copy Annexure R1/4, and in that statement he had stated that on 20.4.1992 Shri Sulkhan Singh Patwari (Consolidation) took mutation register from him besides other record against receipt. Sulkhan Singh produced before him the order dated 16.4.1992 passed by the Assistant Consolidation Officer (i.e. the petitioner) asking for the record concerning appeal under section 42 of the Consolidation Act of village Dhoomchheri and he gave the record to Sulkhan Singh on 20.4.1992. He received back the record on 26.4.1992 from Sulkhan Singh. He stated that mutation No. 959 appears on the last page of the mutation register. Date 8.4.1992 was forged by Sulkhan Singh. On 9.4.1992, Gurbax Singh Field Kanungo verified the mutation which was sanctioned by Shri Surjit Singh. This mutation was entered on 8/9.4.1992 whereas this register was with him (Jaipal Singh Patwari, Halqa Dhoomchheri) 8/9.4.1992. There was thus prima facie case against Surjit Singh Bhatia and others.

7. At the stage of summoning the accused for trial after recording preliminary evidence, the Magistrate is not required to delve deep into the merits of the case. Magistrate is only to see whether the preliminary enquiry calls for further probe or not. In the exercise of the power vesting in this court under Section 482 Cr.P.C., this court will quash a criminal prosecution only when the same is false, frivolous or vexatious attended with mala fides, maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, 1995(3) RCR 701, the Hon'ble Supreme Court held that a complaint/FIR may be quashed if the allegations made therein are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

8. It was submitted by the learned counsel for the petitioner that this complaint

was incompetent, without sanction having been obtained as envisaged under Section 197 Cr.P.C. for prosecuting the petitioner. In *ASI Hardev Singh v. State of Punjab*, 1995(3) RCR 53, it was held that at initial stage, only the allegations made in the complaint are to be looked into without any investigation whether the allegations were correct or not. Defence of accused can be looked into at subsequent stage. Detailed scrutiny is not permissible. Section 197(1) Cr.P.C. reads as follows :

"When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction

(a) in the case of a person who is employed or as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State, of the State Government;

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted."

It is apparent that before subsection (1) of Section 197 of the Code of Criminal Procedure can be invoked, two conditions must be satisfied i.e. the accused must be a public servant i.e. is he must be a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the State Government or the Central Government, (b) the offence must be committed by the accused by acting or purporting to act in the discharge of his official duty. Surjit Singh was officer of the status of Naib Tehsildar. Revenue Commissioner is the appointing authority of Naib Tehsildars. State Government was not thus his appointing authority. He is thus not entitled to protection of Section 197 Cr.P.C. Further the act complained of does not appear to be connected with the performance of his official duty. He was not supposed to sanction a mutation on 8/9.4.1992 when the relevant record was not before him and the relevant record was before him on 20.4.1992 on the basis of an order dated 8.9.1983 which had been passed by the Additional Director, Consolidation in the absence of Mehar Singh and other villagers when on 7.9.1983 the Additional Director, Consolidation of Holdings had dismissed the application under Section 42 of the Act. The object of Section 197 Cr.P.C. is well known to guard public servants against false, frivolous and vexatious prosecutions. Section 197 enshrines that if a public servant is to be prosecuted for the commission of an offence committed by him

in the performance of his official duty or in the purported performance of his official duty, a superior public authority should apply its mind to the facts of the complaint/FIR and accord sanction for his prosecution and that too when it appears to that superior public authority that he should be prosecuted.

9. It was held by the Orissa High Court in *Dhulamani Behera v. State of Orissa* reported as 1988 CrL. L.J. 1027 that if initiation of the criminal proceedings is challenged, then necessity of a sanction has to be determined on the basis of the allegations made without any investigation as to whether such allegations are true or false.

10. It was held in *Jodh Singh v. Chandi Ram*, 1988(1) RCR 380 that one has to see the allegations made and not to go into the detailed scrutiny at the initial stage. The allegations to be seen are what has been stated in the complaint. In *S.B. Saha and others v. M.S. Kochar*, AIR 1979 Supreme Court 1841, the Hon''ble Supreme Court observed that "whether this allegation or charge is true or false, is not to be gone into at this stage. In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged."

11. In *Baijnath v. State of Madhya Pradesh*, AIR 1966 SC 220, the Hon''ble Supreme Court observed that a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does by virtue of his office."

12. In *S.B. Saha's case* (supra), the Hon''ble Supreme Court observed in para 18 as follows :

"The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by

Ramaswami, J. in Baijnath v. State of Madhya Pradesh, AIR 1966 SC 220 at p. 222 "it is the quality of the act that is important, and if it falls within the scope and range of his official duty, the protection contemplated by Section 197 of the Code will be attracted."

13. Looking to the facts of the complaint in the light of the ratio of the aforesaid decisions, it is quite clear that the petitioner was not entitled to the protection as envisaged by Section 197 Cr.P.C.

14. Petitioner cannot claim the protection of Judicial Officers' Protection Act as he was not a court. While sanctioning mutation, he was not a court as defined in Section 195 Cr.P.C. He was only a revenue officer dealing with the mutation case.

15. It would bear repetition that in the exercise of its inherent powers vesting in it under Section 482 Cr.P.C. this court will quash a criminal prosecution only in the rarest of rare cases. So, this Criminal Miscellaneous petition fails and is dismissed.