IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-54161-2019
Reserved on : 12.08.2021
Pronounced on: 27.08.2021

Dr.Daljit Singh Cheema & others ... Petitioners

Versus

Balwant Singh Khera ... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present:- Mr.R.S.Cheema, Sr. Advocate
with Mr. K.S. Nalwa, Advocate, for petitioners No.1 & 3.

Mr.Ashok Aggarwal, Sr.Advocate
with Mr.Mukul Aggarwal, Advocate, for petitioner No.2.

Mr. Ish Puneet Singh, Advocate for the respondent.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J.

Petitioners in the present petition, filed under Section 482 Cr.P.C. seek quashing of the complaint No.23 of 2009 dated 20.02.2009 (Annexure P-7) titled "Balwant Singh Khera Vs. Sukhbir Singh Badal and others" filed under Sections 463,465, 466, 467, 468, 471, 191, 192 of IPC, 1860 and impugned summoning order dated 04.11.2019 (Annexure P-19) passed by ACJM, Hoshiarpur summoning the petitioners under Sections 420, 465, 466, 467, 468, 471 read with 120-B IPC and all subsequent proceedings arising therefrom.

2. A perusal of the paperbook and the record would go on to show that initially a complaint was filed against Sukhbir Singh Badal (petitioner No.3), Sukhdev Singh Dhindsa, Surinder Singh Shinda and

Dr.Daljit Singh Cheema (petitioner No.1) on 20.02.2009 (Annexure P-7) Petitioner No.2, Prakash Singh Badal, father of Sukhbir Singh Badal was not arrayed as respondent-accused. The gamut of allegations in the complaint was that Shiromani Akali Dal (SAD) was functioning at both State and national level and the SAD (Badal) had become a larger faction of the said party. It is claimed that the party was engaged in religious activities which were not secular as it was also contesting and winning the elections of the Shiromani Gurudwara Parbandhak Committee (SGPC) which was the Apex Jurist Body of the Sikhs and also for the Delhi Gurudwara Parbandhak Committee. Petitioner No.2, Shri Parkash Singh Badal had given undertaking that they would abide by the principles of secularism. All the 4 original accused, in order to seek registration of SAD headed by Shri Prakash Singh Badal being the President, gave an undertaking that it would bear allegiance to the principles of secularism with the Election Commission of India. Thereafter, the Election Commission of India had registered it as a political party and allotted its symbol "Traju". The copy of the undertaking given to the Election Commission of India was attached as Annexure C-2. Shri Prakash Singh Badal, being the President, had also submitted a constitution (Annexure C-1) with the Gurudwara Election Commission in conformity and on the lines of Sikh Gurudwara Act, 1925 which had different set of eligibility criteria for membership and he had also filed an affidavit in conformity with the provisions of the Constitution of India and the 1951 Act. Thus, both the undertakings, one

with the Gurudrawa Election Commission and another with Election Commission of India were stated to be contrary to each other. The one filed with the Election Commission of India was to fulfill the constitutional mandate, as per the provisions of Section 29-A(5) of the 1951 Act by intensively projecting a secular image but the one filed with the Gurudwara Election Commission, was violating the very conditions of secularism by restricted membership along religious lines. The wrongful intention was, thus, attributed and they had stated to have made false statement to the knowledge of the accused and they had committed serious criminal offences and made themselves liable to be prosecuted since the Election Commission of India had granted them recognition on the said basis. Resultantly, prosecution was launched under Sections 465, 466, 467, 468, 471, 191 & 192 IPC.

3. Initially, the concerned Clerks of the Election Commission of India and the Gurudwara Election Commission were summoned. Petitioner No.1 was also sought to be summoned as a witness to produce the concerned documents which order was set aside by this Court in CRM-M-28841-2014 on 11.12.2015 (Annexure P-10). One Charanjit Singh Brar was summoned wherein he had brought the record of the SAD including the Resolution dated 03.03.2000 and the copy of the amended Constitution dated 26.05.2004 which was adopted on 13.06.2004. Resultantly, an application for amendment dated 28.04.2017 came to be filed wherein apart from the 4 accused, 5 more persons were sought to be arrayed as accused and Section 120-B IPC was also sought

to be added.

4. The averments in the application was that emergence of certain new facts had changed the nature of the complaint and there was ample evidence on record against the accused for summoning. The accused persons were yet to be summoned for the above-said offences and no prejudice would be caused to the said persons. Reliance was placed upon the judgments passed in **S.R.Sukumar Vs. S.Sunaad Raghuram 2015 (3) ACJ (SC) 11** and **Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & another 2016 (3) RCR (Crl.) 315**, for the purposes of allowing the amendment. The said application was dismissed by the Magistrate vide order dated 07.06.2017 (Annexure P-14), by coming to the conclusion that there was no averment as to which new facts have emerged which led to the necessity of the amendment as desired. The Court held that the desired amendment would change the nature of the complaint and the number of offences which were desired to be added as also the number of additional accused. It was also noticed that it was not the contention of the applicant that the new facts are in the nature of subsequent events which created a new cause of action in favour of the complainant which could have been prosecuted by the complainant by filing a separate complaint.

5. Apparently, the complainant also approached this Court in CRR-2439-2017 against the order dated 07.06.2017, which was withdrawn on 18.07.2017 as this Court observed that the complainant could file an application before the Trial Court entailing the details as to

why the amendment is sought. Resultantly, the second application dated 08.08.2017 came to be filed and Sections 182, 193, 199, 200, 420, 465, 466, 467, 468, 471 IPC were sought to be added along with Section 120-B IPC and also adding 5 additional accused. Reference was also made to the liberty given by this Court to file an application giving all the details of the amendment. The said application was also dismissed on 09.11.2017 (Annexure P-14) by the concerned Magistrate giving the same reasons. The complainant was then examined on 06.12.2017. CW-3 had then appeared for further examination-in-chief on 04.12.2018. CW-5, Manjit Singh Tarantarani, the Ex-Secretary of the SAD, who had held the post from 1987 to 1990 was examined on 13.02.2019. Two other witnesses were also examined and eventually, the summoning order was passed on 04.11.2019 wherein the 3 petitioners have been summoned for offences under Section 420, 465, 466, 467, 468, 471 read with Section 120-B IPC. The other 4 additional accused who had been sought to be arrayed were not summoned along with Surinder Singh Shinda and the complaint qua them was dismissed as the evidence was held not sufficient to summon them.

6. The primary argument which has been raised by Mr. Ashok Aggarwal, Sr.Advocate, for the 2nd petitioner-Mr.Parkash Singh Badal, is that a summoning has been done on the basis of an amended complaint which had been preferred inspite of the fact that vide two specific orders, the amendment had been declined on 07.06.2017 (Annexure P-13) and thereafter, by another order dated 09.11.2017 (Annexure P-14). It is,

accordingly, submitted that by virtue of the amendment, petitioner No.2 had been sought to be arrayed as accused No.2 in the complaint apart from another 4 accused who were sought to be arrayed as accused Nos.6 to 9. It is submitted that the successor Court, thus, could not have summoned the petitioner No.2 who was not arrayed as an accused in the original complaint dated 20.02.2009 (Annexure P-7) and also for offences which did not find mention in the original complaint.

7. Mr.R.S.Cheema, Sr.Advocate for petitioners No.1 & 3 has argued that the complaint is also liable to be quashed on the ground that no offence is made out qua the present petitioners as they were not signatories or office bearers on the declaration which had been given to the Election Commission of India and therefore, the prosecution is an abuse of the process of Court and is liable to be quashed on this ground. Accordingly, reference is made to the provisions of Section 29-A of the Representation of People Act, 1951(for short, the '1951 Act), which reads as under:

> "Representation of the People Act, 1951
> Section 29-A - Registration with the Election Commission of Associations and Bodies as Political Parties :
> (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.
> (2) Every such application shall be made,—
> (a) if the association or body is in existence at the commencement of the Representation of the People

(Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the

> sovereignty, unity and integrity of India.
>
> (6) The Commission may call for such other particulars as it may deem fit from the association or body.
>
> (7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body: Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).
>
> (8) The decision of the Commission shall be final.
>
> (9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."

8. Counsels for the petitioners have, thus, submitted that the gamut of allegation was that petitioner No.2, Prakash Singh Badal being the President of the Akali Dal, had given an affidavit that it would bear allegiance to the principles of secularism and thereafter, the party had been registered with the Election Commission of India and was granted the symbol of "Traju". Reference is, thus, made to Ex.C-2 which is the application given to the Election Commission of India to show that in the application itself, it was shown that the applicant was Bhai Shaminder Singh, General Secretary and not Prakash Singh Badal. The names of different senior and junior office members had been given and the

General Secretary and the Secretary-cum-Treasurer, Sardar Manjit Singh Tarntarni. The memorandum which had been adopted along with the application also stated that it would bear true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India, which was also signed by Manjit Singh Calcutta. The same had also been filed by the same Secretary on 14.08.1989 and the applicants were General Secretary, namely, Bhai Shaminder Singh, Ex.M.P.

9. It is, thus, submitted that the documents which were submitted before the Election Commission of India do not show that any of the petitioners were associated with the filing of the application with the Election Commission of India and therefore, no offence could have been made out qua them as they were not signatories to it and neither the office bearers, at that point of time. In the absence of any registration process having been done by the petitioners, they could not be arrayed as accused and summoned. It is mentioned that though the witness-CW-5, Manjit Singh Tarntarni had stated that Shri Prakash Singh Badal was the party President which was not in consonance with the application filed. Reliance is also placed upon Section 203 IPC that once said application for amendment had been dismissed on two earlier occasions, the successor Officer should have respected the earlier Officer's order and cognizance taken was not justified, in the facts and circumstances.

10. The said argument has been opposed by counsel for the

complainant on the ground that the Court has taken cognizance of the offences which were prima facie made out on the examination of the complainant on oath and other witnesses and therefore, it issued summons and thus, it is argued that prima facie case is made out as per the relevant materials produced before the Courts below and therefore, interference under Section 482 Cr.P.C. is not justified. It is contended that a wrong declaration was given which was contrary to the earlier declaration given and therefore, the Trial Court had passed a well reasoned order dated 04.11.2019 (Annexure P-19), summoning the present 3 petitioners out of the 9 who had been arrayed in the application for amendment of the complaint.

11. It has been further argued that the provisions of Section 482 Cr.P.C. are to be applied in the rarest of rare case and only where exceptional circumstances are made out, this Court would stifle the proceedings which are at the initial stage itself. Mr. Ish Puneet Singh, Advocate, thus, argued that the order of summoning is well reasoned and the evidence was specifically dealt with. It was submitted that a prima facie case had been made out and satisfaction had been recorded by the Court at the time of issuing summons with proper application of mind and this Court would not substitute its opinion for the view taken by the Magistrate as the case is at the initial stage. It was rightly submitted that merely because an earlier application for amendment has been declined, it would not come under the purview of Section 203 Cr.P.C. and a separate complaint could always be filed, which was also the

observations of the Magistrate also while passing the second order, declining the amendment on 09.11.2017. It is, accordingly, contended that petitioner No.2 was specifically named in various paras of the original complaint and his name finds mention repeatedly in the documentary evidence which has been produced. Thus, a mere irregularity that he was not shown in the array of parties as an accused and therefore, on account of technical objections and mere irregularities, this Court would not exercise its jurisdiction to quash the proceedings as there was no failure of justice which has taken place.

12. It is further submitted that the Court was taking cognizance of the offence and not of the offenders and the powers to summon cannot be curtailed, in view of the provisions of Section 190 Cr.P.C. and there was sufficient power under Cr.P.C. to take cognizance of the offence once the evidence has come on record and merely on account of delay, the proceedings could not be cut-short.

13. Thus, in the opinion of this Court, two material issues arise for consideration which can be termed as:

(a) Whether in the absence of petitioner No.2 having not been arrayed as an accused in the original complaint, is he liable to be summoned, especially keeping in view the fact that on two occasions, the application for amendment was disallowed by the Trial Court itself.

(b) Whether on the face of it, no offence is made out and the complaint is liable to be quashed qua all the petitioners, to

secure the ends of justice and also on the issue of delay.

14. Accordingly, in order to appreciate question No.(a) posed, the construction and lay out in the Cr.P.C. and the power of the Trial Court, is to be noticed.

15. The factual matrix of the case having been noticed above in para No.2 to Para No.5, the powers of the Trial Magistrate while issuing summons and taking cognizance of the offenders needs to be examined. Section 2(d) defines a complaint whereas Section 2(g) defines an enquiry which is to be conducted other than a trial, conducted by the Magistrate. The same read as under:

> "2 (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
>
> xxxx xxxx xxxx
>
> (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"

16. Thus, a perusal of the same would go on to show that a complaint or an allegation against known or unknown person who has committed an offence, action is sought to be taken against him by the Court and thus, can be enquired into by the Court.

17. A perusal of Section 190 Cr.P.C. contained in Chapter-XIV would go on to show that the Magistrate is empowered to take cognizance of an offence in 3 eventualities; upon receiving of a complaint of facts which constitutes such offence; upon a police report of

such facts and thirdly; upon information received from any person other than a police officer or upon his knowledge that such offence has been committed and thus, these are the conditions requisite for summoning an accused person. Under Chapter-XV under Section 200, a Magistrate taking cognizance of an offence on a complaint, is required to examine upon oath the complainant and the witnesses present, if any, and the substance of such examination is to be reduced in writing and to be signed by the complainant and the witnesses and also by the Magistrate.

18. Under Section 202, Magistrate has the power to enquire into the case himself or direct an investigation to be made by a police officer or by such person he may think fit, for the purpose of deciding whether there is sufficient ground for proceeding, after considering the statements on oath, if any, of the complainant and the witnesses and keeping in mind the result of the enquiry or investigation. Power vests with the Magistrate to dismiss the complaint if he finds that there is no ground for proceeding, however, for such cases, he has to record his reasons for doing so under Section 203. The summoning order is mentioned under Chapter-XVI and process is issued when the Magistrate comes to the opinion that there is sufficient ground for proceeding. The complaint necessarily is to accompany the summons or the warrants issued against the accused.

19. Under Chapter-XIX, trial by Magistrate of warrant cases is provided for which would be applicable in the present case. Under Section 244, when the accused appears, the Magistrate is to hear the

prosecution and take such evidence as may be produced in support of the prosecution and applies to cases instituted otherwise than the police report. Under Section 245, after taking all the evidence referred to in Section 244, the Magistrate has an option that the accused can be discharged if no case is made out against him on the unrebutted evidence by recording reasons that his conviction may not be warranted. Only where such evidence has been taken and inspite of the fact that the Magistrate is of the opinion that there is a ground for assuming the fact that the accused has committed an offence triable under the said Chapter, he will try the accused by framing a charge in writing against the said accused. Liberty is given under Section 246 to cross-examine any other witness of the prosecution whose evidence has been taken and the witnesses can be recalled and after cross and re-examination, are liable to be discharged. Thereafter, under Section 247, the evidence of the defence can be called upon and then the provisions for acquittal or conviction follow.

20. Thus, the procedure prescribed gives sufficient liberty to the Magistrate to enquire into the complaint and take into consideration not only the facts as stated in the complaint but also the statement of the witnesses for the purpose of enquiry to issue process and take cognizance of all the offences which have been allegedly committed. Section 2(d) would, thus, go on to show that a person does not have to be specifically named for a trial before a Magistrate and can be a unknown person. In **Pravin Chandra Mody Vs. State of Andhra Pradesh 1965 (1) SCR**

269, a charge-sheet being filed under Section 420 I.P.C. of the Essential Commodities Act, was objected to. It was held that under Section 190, Magistrate has the power to take cognizance where the information discloses a cognizable as well as a non-cognizable offence. Resultantly, the order not interfering with the said proceedings, was upheld.

21. A Three Judges Bench of the Apex Court in **Raghubans Dubey Vs. State of Bihar 1967 AIR (SC) 1167**, at that point of time, examined the provisions of the Criminal Procedure Code, 1898, in which, the police, in its investigation report, had not included the name of the petitioners in the final report but had mentioned it in Column No.2 of the charge-sheet. The Sub-Divisional Magistrate had discharged the accused who had not been sent to trial while transferring the case to the competent Magistrate. On a petition filed before the Magistrate for summoning the said accused in the said case, by recording the statement of PW-1, the Magistrate summoned the said person by issuing non-bailable warrants since it was a case under Sections 302, 201, 149 IPC. The order had been challenged unsuccessfully before the Sessions Court and thereafter, taken to the High Court. Eventually the summoned person approached the Apex Court which, while noticing the provisions of Section 190 Cr.P.C., came to the conclusion that Magistrate was taking cognizance of the offence and not of the offenders and it was his duty to find out who really the offenders are. It was, accordingly, held that once he had material that apart from the other persons sent up by the police, some other persons are involved, it was his duty to proceed

against such persons. Relevant portion of the judgment reads as under:

> "Similarly Section 207(b) can only apply if the case was instituted otherwise than on a police report. On the facts of this case it is quite clear that the case does not fall within Section 190(1)(a) or Section 190(1)(c) because the Sub-Divisional Magistrate had taken cognizance of the offence on April 5, 1961. But, says Mr. Latifi, that though it is true that cognizance was taken on April 5, 1961, the cognizance was taken of the offence as far as the other accused were concerned and not as far as the appellant was concerned, as a matter of fact the appellant had been rightly or wrongly discharged. In our opinion once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. As pointed out by this Court in 1965-1 SCR 269, the term "complaint" would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(1)(a) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted, even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(1)(b)."

Thus, inspite of the discharge order earlier, the Apex Court permitted the prosecution to start afresh by upholding the summoning order.

22. The said view was followed by the Apex Court in **Swil Ltd.**

Vs. State of Delhi & another 2001 (6) SCC 670 wherein also a person had not been shown as an accused in the charge-sheet submitted by the police but shown in Column No.2 and had been summoned by the Magistrate for the offence under Sections 406, 120B, 420 IPC. The Delhi High Court took the view that summoning could not be done at that stage and could only have been done under Section 319, after the evidence had been recorded. The Apex Court allowed the appeal and set aside the order of the High Court by coming to the conclusion that once the Magistrate was holding enquiry under Section 2(g) of the Code, he is exercising his jurisdiction under Section 190, taking cognizance of the offence and issuing process and there was no bar under the said provisions to issue process against persons against whom there is some material.

23. Similar view has been expressed in **Rajinder Prasad Vs. Bashir 2001 (8) SCC 522**, wherein the Magistrate, while committing, the case had added 4 respondents as accused persons and the Addl.Sessions Judge had framed charges against the said persons. The said order was set aside by the High Court which was interfered by the Apex Court, while referring to the earlier decisions, as has been discussed above.

24. In **CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. & another 2005 (7) SCC 467**, the complainant-appellant was aggrieved by the order of the High Court who had remitted the matter on the ground that process had been issued by taking cognizance of the offence in the proceedings under Section 138 of the Negotiable Instruments Act, 1881.

Resultantly, it was held that the recording of the statement of the complainant had been done and process had been issued. It was, thus, held that there was no reason to reject the complaint as cognizance is to be taken of the offence and not of the offenders. It was also held that a complaint may be filed against several persons and the Magistrate may choose to summon some of the accused and after taking cognizance and examining the complainant and other persons, the Court could come to the conclusion that no case is made out for issuance of process and could reject the complaint. It was also held that it was open to the Magistrate to examine the complainant and such evidence which had been produced before him and then cognizance of the offence was to be taken while proceeding with the enquiry and resultantly, the order of the High Court was set aside. Relevant portions of the judgment read as under:

> "8. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the

Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under Section 156(3) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal.

9. Counsel for the respondents submitted that the cognizance even if taken was improperly taken because the Magistrate had not applied his mind to the facts of the case. According to

> him, there was no case made out for issuance of process. He submitted that the debtor was the company itself and the respondent No.2 had issued the cheques on behalf of the Company. He had subsequently stopped payment of those cheques. He, therefore, submitted that the liability not being the personal liability of respondent No.2, he could not be prosecuted, and the Magistrate had erroneously issued process against him. We find no merit in the submission. At this stage, we do not wish to express any considered opinion on the argument advanced by him, but we are satisfied that so far as taking of cognizance is concerned, in the facts and circumstances of this case, it has been taken properly after application of mind. The Magistrate issued process only after considering the material placed before him. We, therefore, find that the judgment and order of the High Court is unsustainable and must be set aside. This appeal is accordingly allowed and the impugned judgment and order of the High Court is set aside. The trial court will now proceed with the complaint in accordance with law from the stage at which the respondents took the matter to the High Court."

25. Similarly, in **Suman Vs. State of Rajasthan & another 2009 (4) Crimes 205**, the Apex Court held that it was open to the Court to proceed against such person if from the evidence collected or produced in the course of any enquiry and the trial of offence, the Court is prima facie of the opinion that the person had committed an offence and he can be tried along with other accused, while referring to the provisions of Section 319 Cr.P.C.

26. Recently, in **Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 SCC 609**, the Apex Court held that while issuing

process, the Magistrate is deemed to have taken cognizance of the offence and even if the offender is not known or named when the complaint is filed or when FIR was registered and his name may transpire during investigation or afterwards. Thus, the power of the Magistrate to issue process in police cases against persons who are not charge-sheeted, has been upheld on the condition that there has to be sufficient material to show the said persons' involvement and the Magistrate has to apply his mind independently. Similarly, while discussing the provisions of Section 204 Cr.P.C., of which we are concerned with herein, it was held that upon consideration of the materials namely the complaint, examination of the complainant and his witnesses or report of enquiry, if a prima facie case is made out, process could be issued against the accused. Whether the person is likely to be convicted or not, was not a ground to issue process or not and due application of mind was stated to be the sole consideration. Only if the same has been done and proper satisfaction was there that the allegations, if proved, would constitute an offence, the summoning order could be held to be justified. Relevant portions of the judgment read as under:

> "47. We have already mentioned above that even if the CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of First Class (and in those cases where Magistrate of the Second Class is specially empowered to do so) may take cognizance of any offence under the following

three eventualities:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts; and

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

This Section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in Chief Enforcement Officer v. Videocon International Ltd. in the following words: (SCC p.499, para 19)

"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it connoted 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking Cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence."

48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to

whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See SWIL Ltd. v. State of Delhi[21]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See Union of India v. Prakash P. Hinduja and another[22]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected

by the investigating officer.

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

Findings:

27. Keeping in mind the above position of law, if one is to

glance at the original complaint dated 20.02.2009 (Annexure P-7), it would be clear that though petitioner No.2-Shri Parkash Singh Badal has not been arrayed in the complaint as an accused. However, there is specific averment qua the fact that the Shrimani Akali Dal (SAD) was registered political party and was heading the Government led by the said petitioner, being the Chief Minister and his son, petitioner No.3-Sukhbir Badal being the Deputy Chief Minister. Specific averments have been made in para No.12, naming him and regarding the role played by both of them including petitioner No.1, Dr.Daljit Singh Cheema, regarding the registration of the party with the Election Commission of India. Similarly, in para No.14, it has again been mentioned that Shri Parkash Singh Badal as President has submitted the Constitution with the Gurudwara Election Commission, which was in conformity with the lines of Sikh Gurudwara Prabhandhak Committee. Specific averments were made that there are different sets of eligibility criteria which was contrary to each other and therefore, undertakings given on one hand with the Gurudwara Election Commission and the other with the Election Commission of India were contrary to each other. On one hand, the SAD (Badal) was being projected as a political party and putting forward its secular image but on the other hand, while filing its papers with the Sikh Gurudwara Election Commission, it was admitting that its membership was restricted along with its lines. In such circumstances, it is stated that the Constitution filed with the Election Commission of India, to the knowledge of the accused, was false. The complainant, while producing

his evidence in the form of the official from the Election Commission of India, produced the requisite application which was submitted for registration of the political party under Section 29-A along with the Memorandum which was attached that the SAD (Badal) would adhere to the principles of socialism, secularism and democracy and will bear true faith to the Constitution of India as by law established.

28. Similarly, the record of the Gurudwara Election Commission was summoned through the official wherein it was brought on record that Shri Parkash Singh Badal, being the President of Shrimani Akali Dal had submitted the Constitution (CW-2/A) and his signatures were marked at point-A. The list of office bearers showing Shri Parkash Singh Badal as the President, Shri Sukhbir Singh Badal as General Secretary and petitioner No.1, Dr.Daljit Singh Cheema as another office bearer, was duly exhibited as Ex.CW-2/B. The letter dated 25.11.2003, signed by Shri Parkash Singh Badal, addressed to the Gurudwara Election Commission, forwarding the list of office bearers, was also exhibited as Ex.CW-2/C. Copy of the Constitution of SAD along with its eligibility clause whereby only persons of Sikh faith could be admitted was also brought on record as Ex.CW-3/A by the official of the SAD. The resolution No.9 dated 03.03.2000 (Ex.CW-3/1) was also produced by him along with the names of the Committee which was constituted to amend the Constitution on 01.01.2004 (Ex.CW-3/2) wherein the name of petitioner No.1 was mentioned. The proposed copy of the amended Constitution dated 26.05.2004 (Ex.CW-3/3) and the copy of the amended

Constitution as adopted by the General House on 13.06.2004 vide resolution No.3 (Ex.CW-3/5) were also placed on record, which had been signed by petitioner No.1, which provided that SAD would adhere to the principles of secularism. The said witness stated that the resolution was signed by petitioner No.2, Shri Parkash Singh Badal, the then President who was authorized to form a Committee to amend the Constitution of the party. He further deposed that there was no other amended Constitution of the party other than Ex.CW-3/6. He further stated that neither the draft Constitution nor the adopted Constitution was scribed in the official record of the party.

29. The complainant, while appearing as CW-4, also made specific allegations against Shri Parkash Singh Badal that there was a conspiracy by him as he was holding the post of the President and the false and fabricated Memorandum was attached at the time of submitting the same with the Election Commission of India initially. It was further submitted that the party was winning elections to the religious bodies of the Sikhs and by aligning with the SGPC, it was contesting the Delhi Sikh Gurudwara Prabandhak Committee elections also. Reference was made to the letters written by Shri Parkash Singh Badal on 25.11.2003 attached as PW-3/C. Statement was further made that the undertaking given to the Election Commission of India was under his instructions, to comply with the mandatory provisions of Section 29-A of the 1951 Act.

30. Similarly, CW-5, the Ex-Secretary of SAD also has named petitioner No.2 as the party President and that he had directed them to

fulfill all requirements as mandated under Section 29-A of the 1951 Act. It was specifically stated that on the asking of petitioner No.1, application was moved by him being Secretary and co-signed by the General Secretary, Manjit Singh Calcutta and Bhai Shaminder Singh, MP. It was further stated that the application was so given on the asking of petitioner No.2.

31. Thus, it is apparent that sufficient material was available before the Magistrate wherein the role of petitioner No.2 had come forth. It is also to be noticed that vide letter dated 09.12.2006 (Ex.CW-6/A), petitioner No.2 had written to the Director, Gurdwara Elections that the SAD was setting up its candidates for the 46 Gurdwara Wards in Delhi. In such circumstances, it cannot be said that there was no material before the Magistrate to summon petitioner No.2. The law regarding the power of the Magistrate to summon in a warrant case, as such, in proceedings pertaining to cases instituted other than a police report, has already been discussed above in para No.14 to para No.26.

32. The Apex Court in **State of Gujarat Vs. Afroz Mohammed Hasanfatta (2019) 20 SCC 539**, discussed the issue threadbare regarding the power of the Courts to take cognizance both on the police report and in cases instituted other than a police report. It was, accordingly, held that for issuance of summons under Section 204 Cr.P.C., only sufficient ground for proceeding is to be taken into consideration on the ground that the accused has committed an offence. The Court is not required to evaluate the evidence and its merits and whether there is sufficient

material to record a conviction or not, is not to be gone into. The view taken by a Single Judge Bench of the Allahabad High Court **Raj Kumar Agarwal Vs. State of U.P. 1999 Criminal Law Journal 4101** was approved which had held that evidence is to be considered very briefly while passing the summoning order under Section 204 Cr.P.C. The relevant portions of the judgment read as under:

> "20. In a case instituted on a police report, in warrant cases, under Section 239 Cr.P.C., upon considering the police report and the documents filed along with it under Section 173 Cr.P.C., the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the accused to be groundless and record his reasons for so doing. Then comes Chapter XIX-C-Conclusion of trial-the Magistrate to render final judgment under Section 248 Cr.P.C. considering the various provisions and pointing out three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 Cr.P.C., in Raj Kumar Agarwal v. State of U.P. and another 1999 Cr.LJ 4101, Justice B.K. Rathi, the learned Single Judge of the Allahabad High Court held as under:-
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> > "8…….As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In

my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. PC., however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, …… At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

9. A bare reading of Sections 203 and 204 Cr.P.C. shows that Section 203 Cr.P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such' requirement under Section 204 Cr.P.C. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality."(emphasis supplied) We fully endorse the above view taken by the learned Judge.

21. In para (21) of Mehmood Ul Rehman, this Court has made a fine distinction between taking cognizance based upon charge sheet filed by the police under Section 190(1)(b) Cr.P.C. and a private complaint under Section 190(1)(a) Cr.P.C. and held as under:-

"21. Under Section 190(1)(b) CrPC, the Magistrate has

> the advantage of a police report and under Section 190 (1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1) (a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."
>
> 22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is "there is sufficient ground for proceeding….."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is " there is ground for presuming that the accused has committed an offence….. ". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C."

33. In similar circumstances, in **Bhushan Kumar & another Vs. State (NCT of Delhi) & another 2012 (2) SCC (Crl) 872**, it has been held that once a Magistrate has exercised its discretion to summon

the accused, it is not for the High Court to substitute its own discretion for that of the Magistrate or to examine the case on merits, while placing reliance upon **Smt.Nagawwa Vs. Veeranna Shivalingappa Konjalgi & others (1976) 3 SCC 736**. Moreover, it is to be noticed that it is settled principle that a second complaint can also be filed which was also noticed by the Magistrate himself while dismissing the application on two occasions wherein it has been mentioned that in case of new fact coming by way of subsequent event, it had created a new cause of action in favour of the complainant which may be prosecuted by the complainant by way of filing a separate complaint.

34. In **Mahesh Chand Vs. B. Janardhan Reddy & another 2003 (1) SCC 734**, the Apex Court came to the conclusion that a second complaint could be entertained where the previous order was passed on an incomplete record or on the misunderstanding of the nature of the complaint and new facts which could not have, with reasonable diligence, been brought on record in the previous proceedings. Resultantly, the second complaint which had been filed by the complainant, after the closure report which had been accepted of the police in the FIR case in which the criminal complaint was also disposed of, the High Court had quashed the second complaint. The Apex Court allowed the SLP of the complainant by coming to the conclusion that there is no statutory bar in filing a second complaint on the same facts and the Magistrate could have taken cognizance and issued process since the previous order was passed on a incomplete record. The said

judgment would be squarely applicable to the facts and circumstances of the present case.

35. In the present case, as noticed, during the evidence, sufficient material has come on record to show the involvement of petitioner No.2 regarding his role which was in the form of oral depositions by the office bearers and officials of the party itself and in the form of independent witnesses from the office of the Gurdwara Election Commission and the Election Commission of India, both from Chandigarh and Delhi. Thus, in the opinion of this Court, even if petitioner No.2 was not specifically arrayed as accused/respondent in the original complaint but once material has come on record, prima facie, showing his involvement being the office bearer of the party concerned and in filing of the undertakings wherein contrary stands were taken and the fact that resolution incorporated the issue of secularism, was not passed by the House but the impression given was to the contrary, there was sufficient material for the Magistrate to summon petitioner No.2. As noticed, petitioner has been named in the original complaint and his name has figured both in the evidence, oral and documentary. Counsel for the respondent has rightly relied upon Section 465 Cr.P.C. to submit that the order passed by the Court of competent jurisdiction is not liable to be reversed on an irregularity in the complaint during the enquiry or any other proceedings of the Court and only if there was failure of justice, the Court would interfere. Reliance can be placed upon the judgment of the Apex Court in **State of Madhya Pradesh Vs. Bhooraji**

2001 Supreme Court Reports 128, which was the case where the Apex Court interfered and set aside the order of the Division Bench of the High Court wherein it had been held that the trial was without jurisdiction since case had not been committed by the Magistrate. It was, accordingly, held that merely because in view of the judgment which had come by the Apex Court holding that committal procedure is necessary for the specified Code under the SC & ST Act, the High Court had wrongly set aside the conviction on technical ground.

36. Similar is the view taken by this Court in **State through Deputy Chief Controller of Imports & Exports, Ludhiana Vs. P.C.Aggarwal 1997 Criminal Law Journal 4254**, while setting aside the order of the Ld.Addl. Sessions Judge, it was held that the name of the accused had been mentioned in para No.26 of the complaint but he had not been arrayed as an accused. It was held that the omission is inadvertent and the accused could not take advantage of the same and the whole of the complaint is to be taken note of, if a logical conclusion is to be arrived at and a typographical mistake would not mean that the said person was not an accused. The said judgment would cover the issue on all squares. Relevant portion of the judgment reads as under:

> "16. In these circumstances, one has to see if there is a prima facie case or not. In the complaint, in paragraph 26 the name of Shri P.C. Aggarwal respondent has not been mentioned. But he had been arrayed as an accused in the complaint itself. This omission clearly is inadvertent. The respondent cannot take advantage of the same. The whole of the complaint has to be seen and logical conclusions arrived at. A typographical

> mistake cannot be magnified to assert that Shri P.C. Aggarwal is not an accused. When specific allegation has been made, there is no justification for the learned Additional Sessions Judge to mention the said fact as if there was no material against him."

37. It is also pertinent to take into consideration the letter dated 19.03.1996 (Annexure P-3) which has been issued by the Election Commission of India wherein it recognized the fact that the Shiromani Akali Dal (Badal) was merged with Shiromani Akali Dal and resultalntly, on the merger, the Shiromani Akali Dal (Badal) was no longer in existence as separate party. A copy of the said communication was sent to Shri Parkash Singh Badal, President of the the Shiromani Akali Dal and thus, the moot question is as to who was the President of the Shiromani Akali Dal (Badal). It is on the basis of the evidence led by the complainant that sufficient material had come on record in the enquiry before the Magistrate, who has, thus, summoned the petitioners. The Apex Court has time and again reiterated that the Magistrate is not a silent spectator at the time of recording of preliminary evidence and summoning the accused. Reliance can be placed upon **Pepsi Foods Ltd. & another Vs. Spl. Judicial Magistrate & others (1998) 5 SCC 749**. Relevant para reads as under:

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate

> summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

38. Similar view has been taken in **Krishna Lal Chawla & others Vs. State of Uttar Pradesh & another 2021 (2) RCR (Criminal) 300**, wherein the role of the lower judiciary was commented upon regarding the frivolous litigation which was being filed. Relevant portion of the judgment reads as under:

> "20. It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in 'fact-finding' owing to the adversarial nature of our justice system. However, Section 165 of the Indian Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation."

39. Thus, if the said observations are to be taken into consideration, it is the duty of the Magistrate to keep in mind the provisions of Section 190 Cr.P.C. and the evidence which the complainant has led at the time of enquiry. On the sufficiency of material on record, she has come to the conclusion that the offence has been committed and once that criteria is satisfied, the Magistrate could issue summons, calling upon a person to file response. Therefore, the Magistrate was well justified in examining all the material which was placed before it in the form of statements of witnesses from the concerned offices and also from the statements of the complainant and his witnesses who had deposed in terms of the complaint which was in essence holding out that by putting forward two Constitutions, the accused had committed offences of cheating, by holding out that it was a political party and not a religious party and was adhering to the principles of secularism.

Issue No. (b):- Whether on the face of it, no offence is made out and the complaint is liable to be quashed qua all the petitioners, to secure the ends of justice and also on the issue of delay.

40. As noticed, the Senior Counsels have vehemently submitted that even on the reading of the complaint itself, no offence would be made out since the registration process was never done by any of the petitioners while referring to the filing of the application with the Election Commission of India. It is submitted that in the application for registration, it was specifically mentioned that at that point of time, Shri

Jagdev Singh Talwandi was the President and not petitioner No.2. Secondly, the application had been given by Manjit Singh Calcutta, the Secretary of the SAD (Badal) on 14.08.1989 and which had been signed by other office bearers but not by the petitioners. It has also been vehemently contended that as per Section 29-A(3)(5), a Memorandum can also be submitted to contain specific provision that the political party or Association of Body is to bear true faith and allegiance to the Constitution of India and the principles of secularism and democracy. It is submitted that the requisite Memorandum had been attached which was also signed by Manjit Singh Calcutta and it mentioned that the party had adopted the Memorandum and it was in the year 1989 and the complaint had been filed after a period of 20 years on 20.02.2009 and is likely to be quashed on this ground also. It is submitted that there is no violation of Section 29-A and the petitioners were not associated in the said filing and there is no explanation for the delay. It is submitted that the summoning order only related to the amendment and it is on a complaint which itself had not been allowed to be brought on record and that no offence was made out.

41. Reliance was placed upon the judgment of the Apex Court in **State of Karnataka Vs. L.M.Muniswamy & others (1972) 2 SCC 699**, that once it was a lame prosecution, the very nature of the material on which the prosecution was based, would justify the quashing, in the facts and circumstances. Reliance was placed upon judgment in Pepsi Foods Ltd. (supra) to submit that summoning was serious matter and criminal

law should not be set in motion as a matter of course. It was submitted that the Magistrate should have carefully scrutinized the evidence and taken into consideration the allegations in the complaint before having issued the summoning orders. Similarly, reliance is placed upon the judgment in **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. & others (2006) 6 SCC 736** that in a case of false and frivolous litigation, the relief of quashing should be allowed. Reliance was again placed upon **Suresh Vs. Mahadevevappa Shivappa Danannava & another (2005) 3 SCC 670** wherein on account of delay of 10 ½ years, the complaint was held liable to be dismissed on the ground of inordinate delay and laches.

42. The arguments raised by Senior Counsels for the petitioners on the merits of the case, though are attractive at the first blush, but not liable to be accepted. It has been time and again held by the Apex Court that interference under Section 482 Cr.P.C., is only to be done in the rarest of rare case and where exceptional circumstances are made out. In **Kurukshetra University & another Vs. State of Haryana & another (1977) 4 SCC 451**, a Three Judge Bench of the Apex Court had held that the statutory power is to be exercised sparingly and with circumspection and in rarest of rare case.

43. The said view was followed in **State of Bihar & another Vs. Shri P.P.Sharma & another 1991 (2) SCT 397**, wherein it was held that the Court is not to look into the evidence at the quashing stage under Section 482 Cr.P.C. and cannot decide on the basis of affidavits in criminal proceedings and thus, set aside the order of the High Court

which had quashed the criminal proceedings.

44. Senior Counsels for the petitioners, though has tried to bring the case within the purview of Clauses 1, 3, 5 & 7 of the judgment passed in **State of Haryana Vs. Bhajan Lal (1992) Supp. (1) SCC 335** that the allegations made in the complaint could not be taken on the face value and do not constitute an offence or so disclose any offence and that there was no sufficient ground for proceeding against them and it is maliciously instituted proceeding. In **Janata Dal Vs. H.S.Chowdhary 1992 (4) SCC 305**, it was held that legitimate prosecutions cannot be stifled by exercising the inherent powers under Section 482 Cr.P.C. It was further noticed that if the facts are extremely incomplete and hazy and the evidence not collected and produced and where issues involved are of great magnitude, the powers should be exercised. Similar view has also been taken in **State of Karnataka Vs. M. Devendrappa 2002 (1) RCR (Crl.) 480**, **M/s Zandu Pharmaceutical Works Ltd. & others Vs. MD Sharaful Haque & another 2004 (4) RCR (Crl.) 937, State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568** and **Inter Mohan Goswami Vs. State of Uttaranchal (2007) 12 SCC 1**.

45. In **Sonu Gupta Vs. Deepak Gupta & others 2015 (3) SCC 424**, a Three Judges Bench of the Apex Court set aside the order of the High Court which had set aside the summoning order in a complaint case by holding that the merits of the defence and other submissions cannot be taken into consideration at the time of summoning of the accused where it was pertaining to a criminal complaint filed out of matrimonial

proceedings but where offence under Sections 468 & 471 Cr.P.C. were alleged to have been committed. It was held that the accused may seek discharge to show that the materials were insufficient for framing of charge. Relevant para of the judgment reads as under:

> "8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

46. In the present case, it has already been noted above in discussion regarding the structure of the Cr.P.C. and the fact that there are several stages yet to be passed by the complainant himself. Similarly, opportunity would come to the petitioners to reply at the stage of Sections 244 & 245 Cr.P.C. and it would be open to the petitioners to cross-examine the witnesses produced under Sections 244 & 246 (4)

Cr.P.C. and dig holes in the case of the complainant. The charge also is only liable to be framed if the Magistrate comes to the conclusion that accused has committed an offence after he puts in appearance and the complainant produces all the necessary evidence under Section 244 Cr.P.C. The power of discharge under Section 245 is also liable to be exercised by the Magistrate after all the evidence has been taken and if he comes to the conclusion that no case is made out even if the evidence is taken as unrebutted and would not warrant the conviction of the accused.

47. Reliance can be placed upon **Ajoy Kumar Ghose Vs. State of Jharkhand & another 2009 (14) SCC 115** wherein the difference of procedure in the trial of warrant case on the basis of a police report and those instituted other than on the police report, were kept in mind. It was, accordingly, held by the Apex Court that in warrant trial instituted other than the police report, on the appearance of the accused, the Magistrate has to hear the prosecution and take all such evidence in support which is to be considered before charge. If unrebutted and could not warrant conviction, the Magistrate can then discharge the accused at that stage under Section 245 Cr.P.C. Charge is to be framed under Section 246(1) and the complainant would get second opportunity to lead evidence unlike the warrant trial or police report and where there is only one opportunity. Relevant portion of the judgment reads as under:

> "14. However, in a warrant trial instituted otherwise than on a police report, when the accused appears or is brought before the Magistrate under Section 244(1) Cr.P.C., the Magistrate has to

hear the prosecution and take all such evidence, as may be produced in support of the prosecution. In this, the Magistrate may issue summons to the witnesses also under Section 244(2) Cr.P.C. on the application by prosecution. All this evidence is evidence before charge. It is after all this, evidence is taken, then the Magistrate has to consider under Section 245(1) Cr.P.C., whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him. On the other hand, if he is satisfied about the prima facie case against the accused, the Magistrate would frame a charge under Section 246(1) Cr.P.C. The complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the charge. Of course, under Section 245(2) Cr.P.C., a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

15. Essentially, the applicable Sections are Section 244 and 245 Criminal Procedure Code, since this is a warrant trial instituted otherwise than on police report. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) Criminal Procedure Code or to summon its witnesses under Section 244(2) Criminal Procedure Code. This did not happen and instead, the accused proceeded to file an application under Section 245(2) Criminal Procedure Code, on the ground that the charge was groundless.

16. Now, there is a clear difference in Sections 245(1) and 245(2) of the Criminal Procedure Code. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the

accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) Criminal Procedure Code.

17. The situation under Section 245(2) Criminal Procedure Code is, however, different. There, under sub-Section (2), the Magistrate has the power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led. However, for discharging an accused under Section 245 (2) Criminal Procedure Code, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the Court or the evidence is led under Section 244 Criminal Procedure Code. The words appearing in Section 245(2) Criminal Procedure Code "at any previous stage of the case", clearly bring out this position. It will be better to see what is that "previous stage".

18. The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Criminal Procedure Code is completed or any stage prior to that. Such stages would be under Section 200 Criminal Procedure Code to Section 204 Criminal Procedure Code. Under Section 200, after taking cognizance, the Magistrate examines the complainant or such other witnesses, who are present. Such examination of the complainant and his witnesses is not necessary, where the complaint has been made by a public servant in discharge of his official duties or where a Court has made the complaint or further, if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 Criminal Procedure Code. Under Section 201 Criminal Procedure Code, if the Magistrate is not competent to take the cognizance of the case, he would return the complaint for presentation to the proper Court or direct the complainant to a proper Court. Section 202 Criminal Procedure Code deals with

the postponement of issue of process. Under sub-Section (1), he may direct the investigation to be made by the Police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 202(1)(a) Criminal Procedure Code, the Magistrate cannot given such a direction for such an investigation, where he finds that offence complained of is triable exclusively by the Court of sessions. Under Section 202(1)(b) Criminal Procedure Code, no such direction can be given, where the complaint has been made by the Court. Under Section 203 Criminal Procedure Code, the Magistrate, after recording the statements on oath of the complainant and of the witnesses or the result of the inquiry or investigation ordered under Section 202 Criminal Procedure Code, can dismiss the complaint if he finds that there is no sufficient ground for proceeding. On the other hand, if he comes to the conclusion that there is sufficient ground for proceeding, he can issue the process under Section 204 Criminal Procedure Code. He can issue summons for the attendance of the accused and in a warrant-case, he may issue a warrant, or if he thinks fit, a summons, for securing the attendance of the accused. Sub-Sections (2), (3), (4) and (5) of Section 204 Criminal Procedure Code. are not relevant for our purpose. It is in fact here, that the previous stage referred to under Section 245 Criminal Procedure Code normally comes to an end, because the next stage is only the appearance of the accused before the Magistrate in a warrant-case under Section 244 Criminal Procedure Code. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Criminal Procedure Code, where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Criminal Procedure Code, and if he comes to the

> conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him. The situation under Section 245(2) Criminal Procedure Code, however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Criminal Procedure Code. and till the completion of the evidence of prosecution under Section 244 Criminal Procedure Code. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Criminal Procedure Code, makes an application for discharge."

48. In such circumstances, it would not be appropriate for this Court to go into the merits of the case to that extent which counsels for the petitioners are submitting and which have already been noticed under issue No.(a), that sufficient material has come on record wherein two contrary stands have been taken regarding the constitution of the political party and whether it has adopted the principles of secularism or is still a religious party. It has also come on record that the SAD had been contesting the seats to the Delhi Sikh Gurudwara Prabandhak Committee and both father and the son, Shri Parkash Singh Badal and Sukhbir Singh Badal, vide letters dated 09.12.2006 (Ex.CW-6/A), dated 02.01.2013 (Ex.CW-6/B) and dated 07.02.2017 (Ex.CW-6/C) have written to the Director, Gurdwara Elections, that they are fielding candidates to the Members of the Delhi Sikh Gurudwara Management Committee, as per various notifications which have been placed on record and produced by

the concerned officials and petitioner No.1 is the office bearer as a Secretary.

48. It is, thus, apparent that under Section 14 of the Delhi Sikh Gurdwara Rules, 1973, symbols are to be allotted to recognize religious parties under Sub-rule (3). The same read as under:

> "14. Symbols. - (1) The Director shall, by notification in the Delhi Gazette, specify the reserved symbols to be allotted to the recognized religious parties recognised under sub-rule (3) and the free symbols to be allotted to other candidates who are not set up by any recognised religious party at elections and the conditions for allotment of symbols.
>
> (2) Where at any such elections, more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols, made in the nomination paper first delivered and in case of rejection of that, the choice given in the subsequent nomination paper will be considered.
>
> (3) The Director may, by notification in the Delhi Gazette, recognize the religious parties fulfilling the conditions for allotment of reserved symbols to be allotted to a candidate at elections, set up by the said religious parties, subject to the following conditions, namely:-
>
> (a) the religious party should be registered society under the Societies Registration Act, 1860 at least one year before the date of expiry of the term of the Delhi Sikh Gurdwaras Management Committee;"

50. It is not disputed that on the one hand, memorandum had been submitted with the Election Commission of India which was followed up with the proposed amendment showing that the party has adopted the principles of secularism. The said amendment is also stated not to be recorded for in the resolution books as per the record which had

been produced by CW-3, who is none but the official of the SAD, the party in question. It is, in such background, the complainant has been able to allege that there is substance in the allegations of cheating, forgery and fabrication. Therefore, it would not be appropriate to stifle the enquiry and the complaint, at this stage. Reliance can again be placed upon Afroz Mohammed Hasanfatta (supra) that the only thing which is to be seen, at this stage, is that whether the Magistrate was justified in summoning the accused and whether there was sufficient ground available before proceeding and it would not be for this Court to go into the merits and demerits of the case, at this stage.

51. The issue of delay can also be taken into consideration that it is not only filing of the Memorandum of 1989, which is the subject matter of consideration but even thereafter, the resolution was passed on 03.03.2000 and there was a copy of the proposed amended Constitution signed by petitioner No.1. Petitioners No.2 & 3 have been shown as office bearers of the party in question, as per Ex.PW-2/B and petitioner No.2 was also signatory to the forwarding letter on 25.11.2003. The complaint was, thus, filed on 20.02.2009 and on 19.02.2008 (Ex.CW-3/9), amendment made in the Constitution of SAD was also forwarded to the Election Commission of India by Sukhbir Singh Badal. Vide Ex.CW-6/C dated 07.02.2017, forwarding letter of Manjit Singh GK, President of the Shiromani Akali Dal, he communicated to the Director, Directorate of Gurudwara Elections, New Delhi and submitted Form-A of 46 candidates for all wards who were contesting the

Gurudwara Elections and the said form has been signed by petitioner No.3, Sukhbir Singh Badal. In such circumstances, this Court is of the opinion that the summoning order dated 04.11.2019, as such, cannot be stated to be perverse in any manner. The Magistrate, vide detailed consideration, running into 23 pages, has discussed all the evidence threadbare to prima facie come to the opinion that there is sufficient ground to proceed against the petitioners. The same is based on scanning all the documentary evidence, as has been discussed above.

52. The involvement of the petitioners being at the helm of the party, is apparent on the face of the record and it would not lie in the mouth of counsels for the petitioners that the summoning order is not justified, in any manner or that the Learned Magistrate had not applied its mind. As a matter of fact, it has also come on record that as per the Committee set up for amendment on 01.01.2004, petitioner No.1 was the Secretary, which was passed in pursuance of the resolution dated 03.03.2000 and was recommended by petitioner No.1. Thus, the allegations does not pertain only to 1989 but are running over several years. It is, in such circumstances, once sufficient evidence has come on record, the necessity had arisen to the complainant to amend the complaint, in view of the law settled by the Apex Court in S.R.Sukumar (supra) and Kunapareddy @ Nookala Shanka Balaji (supra) that before summoning, the said procedure can be followed. Reliance can also be placed upon the judgment in **Sudarshanacharya Vs. Purushottamacharya & another 2012 (9) SCC 241** that on account of

delay in the trial, proceedings cannot be quashed.

53. Similarly, in **Vinod Raghuvanshi Vs. Ajay Arora & others 2013 (10) SCC 581**, the Apex Court, while going through case laws, came to the conclusion that the prosecution cannot be shut out only on account of delay which was of 5 years in the said case since the proceedings had been initiated in the year 2008 and the allegations were of the year 2003 regarding dispute in the partnership. It was also noticed that quashing of the proceedings would amount to killing a stillborn child and there are no compelling circumstances to do so, in the present case. The said judgment would be fully applicable to the case of the present case since the case herein also is at the initial stage. After the summoning order dated 04.11.2019, the present petitioners have immediately rushed to this Court by filing the present petition on 16.12.2019. Keeping in view the fact that there is alternative and efficacious remedy available to the petitioners during the trial, as noticed above, it would, thus, be not appropriate for this Court to exercise its extraordinary jurisdiction under Section 482 Cr.P.C.

54. At the time of pronouncement of the judgment, Mr.Ashok Aggarwal, Senior Counsel took the plea that keeping in view the age of petitioner No.2, he be exempted from personal appearance before the Trial Court. Resultantly, keeping in view the prayer which has been made and which has also not been objected to by the counsel opposite, Mr.Ish Puneet Singh, since the prayer made is reasonable and also since petitioner No.2 is now stated to be around 92 years old, the same is

allowed. Accordingly, the Magistrate shall not insist on his appearance, except at the stage where it is mandatorily required.

Accordingly, in view of the above discussion, the present petition is dismissed.

27.08.2021 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No