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## Rekha Jangra Vs State of Punjab

CRM No. M-24659 of 2011 (O and M)

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 25, 2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 195, 340, 482#Penal Code, 1860 (IPC) â€”  
Section 120B, 384, 389, 420#Prevention of Corruption Act, 1988 â€” Section 13(2), 7

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Advocate:** P.S. Ahluwalia, for the Appellant; Harsimrat Rai, DAG, Punjab, for the Respondent

**Final Decision:** Allowed

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### Judgement

Sabina, J.

Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") seeking quashing of FIR

No. 115 dated 24.08.2010 (Annexure P-1) under Sections 420 and 120-B of the Indian Penal Code, 1860 (in short "IPC"),  
registered at Police

Station Fatehgarh Sahib, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom. Learned counsel for the  
petitioner has

submitted that petitioner had furnished surety bonds qua accused-Satish Kumar who was facing trial in FIR No. 39 dated  
11.07.2006 u/s 389,

384 and 120-B, IPC and Section 7, 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau,  
Patiala.

During the pendency of the trial, petitioner came to know that due to inadvertence in the affidavit submitted by her, it had been  
wrongly mentioned

that she was the owner of plot which had been already sold by her. In this regard, petitioner moved an application on 04.05.2010  
to furnish fresh

surety bonds. The said application was dismissed by the Special Judge vide order dated 04.05.2010 (Annexure P-3). Thereafter,  
FIR in question

was registered against the petitioner u/s 420 and 120-B IPC. Allegations leveled against the petitioner are that she had submitted  
a false affidavit in

the Court. In this regard, FIR could not have been registered against the petitioner in view of the bar imposed by Section 195 Cr.P.C.

2. Learned counsel for the petitioner has placed reliance on C. Muniappan and Others Vs. State of Tamil Nadu, wherein it was held as under:-

The test of whether there is evasion or non-compliance of Section 195 Criminal Procedure Code or not, is whether the facts disclose primarily and

essentially an offence for which a complaint of the Court or of a public servant is required. In Basir-ul-huq and Others Vs. The State of West

Bengal, and Durgacharan Naik and Others Vs. State of Orissa, , this Court held that the provisions of this Section cannot be evaded by describing

the offence as one being punishable under some other sections of Indian Penal Code, though in truth and substance, the offence falls in a category

mentioned in Section 195 Criminal Procedure Code Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong

label on it.

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Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has

not been complied with. The complaint must be in writing. The provisions of Section 195 Criminal Procedure Code are mandatory. Non-

compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such

complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

3. Learned counsel has also placed reliance on the decision of this Court in CRM No. M-12010 of 2012 decided on 24.08.2012 wherein it was

held as under:-

The essential ingredients to proceed with complaint u/s 195 as laid down by Section 340 is that the Court has to form an opinion that it is

expedient in the interest of justice that such an enquiry should be made into any offence. It is not sufficient that false affidavit has been given in the

Court which necessitate initiation of inquiry. No doubt that the petitioner has given two affidavits in criminal proceedings in the Court of law.

However, at the time of entertaining the complaint made by the complainant, the Court has to record a finding that affidavit was false and also that

it was the interest of justice, further enquiry should be made. It is not necessary that in every case where false affidavit or statement has been given

in the Court proceedings, the Court has to refer the matter for further enquiry against the person who has given a false affidavit.

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Applying the law laid down by Hon"ble the Supreme Court to the facts to the present case, the investigating agency proceeded against the

petitioner on the letter sent to the Superintendent of Police, the proper course should have been that the Court of District and Sessions Judge

should have passed an order expressing its opinion that it was in the interest of justice to make preliminary enquiry on the issue of filing false

affidavit in the Court straightway directing the Superintendent of Police to initiate the criminal proceedings and registered FIR is not in accordance

with law.

4. Learned State counsel, on the other hand, has opposed the petition.

5. In the present case, admittedly petitioner had stood surety for accused Satish Kumar. Admittedly, Satish Kumar never absented during trial and

has been convicted by the Trial Court in the FIR registered against him. Although, petitioner while submitting her affidavit at the time of furnishing

surety bonds had mentioned that she was owner of the plot which had already been sold by her but she had herself moved an application on

04.05.2010 to furnish fresh surety bonds on coming to know about the mistake. Thus, petitioner never had the intention to commit the offence of

cheating as she had herself moved an application to furnish fresh surety bonds. However, the said application was dismissed by the Special Judge

vide order dated 04.05.2010 (Annexure P-3). Although in the present case, learned counsel for the petitioner has raised the argument that FIR

could not be lodged against the petitioner in view of the bar imposed by Section 195 Cr.P.C., be that as it may, in the facts and circumstances of

present case, no offence u/s 420 IPC can be said to have been committed by the petitioner. Rather petitioner wanted to correct the mistake

committed by her at the time of furnishing of the surety bonds which leads to the inference that the petitioner never had the intention to commit the

offence of cheating. Accordingly this petition is allowed. FIR No. 115 dated 24.08.2010 (Annexure P-1) under Sections 420 and 120-B IPC,

registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom are quashed.