(2015) 02 P&H CK 0404

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Misc. No. M-5695 of 2011 (O&M) and S-1820-SB of 2010

Sarabjit Rai		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Feb. 18, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 195(1)(b), 196, 197, 197(1)
- Penal Code, 1860 (IPC) - Section 120-B, 148, 149, 193, 194

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Advocate: Sunil Chadha, Senior Advocate and Kirpal Singh, for the Appellant; Ritu Punj, A.A.G, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Daya Chaudhary, J.
By this judgment, two cases i.e. Crl. Misc. No. M-5695 of 2011 and Crl. Appeal No. S-1820-SB of 2010 shall stand disposed of as common question of law is involved in both the cases. However for the sake of convenience, the facts are being extracted from Crl. Misc. No. M-5695 of 2011.

2. The present petition has been filed under Section 482 Cr.P.C. for quashing of summoning order dated 12.1.2010 passed in Criminal Complaint No. 3 dated 12.1.2010 titled as "State Vs. Amar Singh and others" as well as all subsequent proceedings arising therefrom.

3. Briefly, the facts of the case are that FIR No. 46 dated 11.6.1996 was registered for murder of one Jagseer Singh under Sections 364, 302, 201, 148 and 149 IPC at Police Station Bhadaur against five persons, namely, Nachhattar singh @ Khanda, Sira @ Jagsir Singh, Amarjit Singh, Nikka Singh and Surjit Singh. All the aforesaid accused persons faced trial and ultimately were convicted vide judgment dated 18.7.1998 passed by Additional Sessions Judge, Barnala for the commission of offences

punishable under Sections 364, 302, 148, 149 and 201 IPC and sentenced to undergo life imprisonment. Aggrieved by the said judgment of conviction and order of sentence dated 18.7.1998, all the five accused persons preferred a common appeal i.e. Crl. Appeal No. 322-DB of 1998 before this Court. During the pendency of said appeal, an application was moved on behalf of all the accused persons stating therein that Jagseer Singh, the alleged deceased, for which the accused were tried and convicted is still alive and hence a false case was registered against them. Crl. Appeal No. 322-DB of 1998 was allowed, conviction and sentence was set aside and the accused were acquitted of all the charges framed against them vide judgment dated 23.9.2009. Their conviction as well as sentence was set aside. The accused were also awarded compensation to the tune of Rs. 20 lacs each vide aforesaid judgment. SHO, Police Station Bhadaur, District Barnala was directed to register FIR afresh on the basis of statement of Nachhatar Singh @ Khanda, investigate the same and to proceed as per law. A direction was also issued to the trial Court to initiate the proceedings under Section 340 Cr.P.C. against various persons including petitioner-Sarabjit Rai. Thereafter, FIR No. 171 dated 18.12.2008 was also registered under Sections 420, 195, 211, 465, 467, 468, 471 and 120-B IPC against as many as 13 persons at Police Station Raikot, which was challenged before this Court and the same was, however, quashed vide aforesaid judgment i.e. 23.9.2009.

4. Feeling aggrieved from the aforesaid judgment dated 23.9.2009 passed by this Court, the same was challenged by the State by way of filing SLP (Criminal) No. 9427/2009 before Hon''ble the Apex Court, which was dismissed vide judgement 16.12.2009. It was observed at the time of dismissal of said appeal that the criminal case to be filed pursuant to the direction issued shall be considered without being influenced by the observation made in the order passed by this Court. In pursuance to directions issued vide aforesaid judgment dated 23.9.2009, the Additional Sessions Judge, Barnala directed to file a complaint under Sections 420, 120-B, 193, 194, 195 and 196 IPC vide order dated 9.1.2010 against all the persons involved in the offence. In consequence to the said order, complaint dated 12.1.2010 was filed before the Court of Illaqa Magistrate against as many as 14 persons including the petitioner and summoning order was passed.

5. Mr. Sunil Chadha, learned senior counsel for the petitioner contends that four persons, namely, Nachhatar Singh @ Khanda, Amarjit Singh, Nikka Singh and Surjit Singh were cited as witnesses but none of them stepped into the witness box for recording their preliminary evidence. Even during investigation name of the petitioner does not figure anywhere in the statement of witnesses. Learned senior counsel further submits that as per directions issued by Hon''ble the Apex Court the criminal case was to be registered without being influenced by the observations made by this Court, whereas, the observation made in the judgment dated 23.9.2009 was taken into consideration. Learned senior counsel also submits that with regard to same subject matter, two separate inquiries were conducted by the department and in both the inquiries, he was found innocent. Even the complainant

party did not level any allegation against petitioner while recording their statements in departmental proceedings. Learned senior counsel also submits that the impugned summoning order is totally non-speaking and has been passed without giving any reasons therein and without even recording the statement of the complainant in the preliminary evidence. To support his above contentions, learned senior counsel has also relied upon the judgments of Hon''ble the Apex Court in cases of State of Orissa through Kumar Raghvendra Singh and others Vs. Ganesh Chandra Jew 2004 2) RCR (Criminal) 663 , Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another, AIR 2004 SC 4174 : (2004) 6 JT 323 : (2004) 6 SCALE 550 : (2004) 8 SCC 31 : (2004) 1 SCR 400 Supp : (2004) AIRSCW 4643 : (2004) 6 Supreme 41 , State of Goa Vs. Babu Thomas, AIR 2005 SC 3606 : (2005) CriLJ 4379 : (2005) 12 JT 204 : (2005) 7 SCALE 659 : (2005) 8 SCC 130 : (2005) 1 SCR 712 Supp : (2005) 2 UJ 1405 : (2005) AIRSCW 4845 : (2005) 6 Supreme 547 , K. Kalimuthu Vs. State by D.S.P., AIR 2005 SC 2257 : (2005) CriLJ 2190 : (2005) 3 CTC 313 : (2005) 11 JT 48 : (2005) 4 SCC 512 : (2005) 3 SCR 1 : (2005) 1 UJ 710 : (2005) AIRSCW 2039 : (2005) 3 Supreme 173 , Sankaran Moitra Vs. Sadhna Das and Another, AIR 2006 SC 1599 : (2006) 4 JT 34 : (2006) 3 SCALE 414 : (2006) 4 SCC 584 : (2006) AIRSCW 1004 : (2006) AIRSCW 1695 : (2006) 2 Supreme 454 : (2006) 4 Supreme 645 , Goondla Venkateswarlu Vs. State of A.P. and Another, (2008) 230 ELT 202 : (2008) 9 JT 521 : (2008) 11 SCALE 707 : (2008) 9 SCC 613 , P.S. Rajya Vs. State of Bihar, (1996) 4 AD 627 : (1996) 6 JT 480 : (1996) 4 SCALE 344 : (1996) 9 SCC 1 : (1996) 2 SCR 631 Supp , Om Parkash and others Vs. State of Jharkhand Through the Secretary, Department of Home, Ranchi-1 and another 2012 (4) RCR (Criminal) 662, Lokesh Kumar Jain Vs. State of Rajasthan, (2013) 3 JCC 2131 : (2013) 9 JT 360 : (2013) 13 JT 516 : (2013) 3 RCR(Criminal) 763 : (2013) 8 SCALE 455 : (2013) 11 SCC 130 : (2013) 3 SLJ 61 and of Karnataka High Court in V.B. Raikar Vs. State by Karnataka Lokayukta Police, Madikeri, Kodagu District 2004 (2) RCR (Criminal) 150, in support of his contentions.

6. In addition to arguments advanced by Mr. Sunil Chadha, learned senior counsel, Ms. Tanu Bedi while appearing for petitioner in Crl. Appeal No. S-1820-SB of 2010 submits that mandatory provisions provided under Section 340 Cr.P.C. have not been followed. Learned trial Court while passing impugned order has not taken into consideration the fact as to whether the petitioner had given any false evidence in the Court or not. Without holding any preliminary inquiry, the trial Court could not even arrive at a conclusion that the petitioner was involved in the offence. Learned trial Court has also not formed any opinion that any offence is made out under Section 195(1)(b) Cr.P.C. The proceedings were conducted at the back of the petitioner, whereas, he was never summoned and was afforded any opportunity of hearing before passing of the impugned order which is in gross violation of natural justice. For initiating proceedings under Section 340 Cr.P.C., the Court is to satisfy itself that a prima facie case is made out. Learned counsel further submits that the trial Court has been influenced by the observations made by this Court, whereas, it is a settled principle of law that opinion of any superior Court should not influence

the opinion of lower Court merely on the basis of observation. Learned counsel also submits that there is no evidence that the petitioner had ever connived with other accused or has ever cheated Nachhatar Singh and others. i.e. the accused of the previous case or has led any kind of false evidence with dishonest intention. Learned counsel also submits that the petitioner discharged his official duty and he was duty bound to register the case. The previous sanction of State Government was mandatory but the provisions under Section 197 Cr.P.C. have not been followed. It is also the contention of learned counsel that Section 195 Cr.P.C. is not applicable with regard to offences under Section 420, 120-B IPC and the institution of complaint under the aforesaid sections by taking the aid of Section 340 Cr.P.C. is not maintainable and the same is liable to be set aside. Learned counsel has also relied upon the judgments of Hon''ble the Apex Court in the cases of Shreekantiah Ramayya Munipalli Vs. The State of Bombay, AIR 1955 SC 287 : (1955) CriLJ 857 : (1955) 1 SCR 1177 , Matajog Dobey Vs. H.C. Bhari, AIR 1956 SC 44 : (1955) 28 ITR 941 : (1955) 2 SCR 925 , State of Maharashtra Vs. Dr. Budhikota Subbarao, (1993) 1 Crimes 1124 : (1993) 3 JT 373 : (1993) 2 SCALE 36 : (1993) 3 SCC 71 : (1993) 2 SCR 300 , Gauri Shankar Prasad Vs. State of Bihar and Another, AIR 2000 SC 3517 : (2000) CriLJ 4031 : (2000) 4 JT 613 : (2000) 3 SCALE 386 : (2000) 5 SCC 15 : (2000) AIRSCW 3135 : (2000) 3 Supreme 358 , Rakesh Kumar Mishra Vs. The State of Bihar and Others, AIR 2006 SC 820 : (2006) CriLJ 808 : (2006) 1 JT 1 : (2006) 1 SCALE 15 : (2006) 1 SCC 557 : (2006) 1 SCR 124 : (2006) AIRSCW 189 : (2006) 1 Supreme 14 , Sankaran Moitra Vs. Sadhna Das and another (2006) 2 Supreme Court Cases (Cri) 358 , Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, AIR 1997 SC 3400 : (1997) CriLJ 4059 : (1997) 3 Crimes 301 : (1997) 7 JT 695 : (1997) 5 SCALE 667 : (1997) 7 SCC 622 : (1997) SCC(L&S) 1784 : (1997) 3 SCR 705 Supp : (1997) AIRSCW 3478 : (1997) 8 Supreme 178 , State of Madhya Pradesh Vs. Sheetla Sahai and others (2009) 8 Supreme Court Cases 617 , M.S. Sheriff Vs. The State of Madras and Others, AIR 1954 SC 397 : (1954) 1 SCR 1144 , K. Karunakaran Vs. T.V. Eachara Warrier and Another, AIR 1978 SC 290 : (1978) CriLJ 339 : (1978) 1 SCC 18 : (1978) SCC(Cri) 32 : (1978) 2 SCR 209 , Pritish Vs. State of Maharashtra (2002) 1 Supreme Court Cases 253 , Chajoo Ram Vs. Radhey Shyam and Another, AIR 1971 SC 1367 : (1971) CriLJ 1096 : (1971) 1 SCC 774 : (1971) SCC(Cri) 331 : (1971) SCR 172 Supp , Dr. S.P. Kohli, Civil Surgeon, Ferozepur Vs. High Court of Punjab and Haryana, AIR 1978 SC 1753 : (1978) CriLJ 1804 : (1979) 1 SCC 212 : (1979) SCC(Cri) 252 : (1979) 1 SCR 722 : (1978) 10 UJ 870 , Har Gobind and Others Vs. State of Haryana, AIR 1979 SC 1760 : (1979) CriLJ 1334 : (1979) 4 SCC 482 : (1980) SCC(Cri) 98 : (1979) 11 UJ 661 , Omkar Namdeo Jadhao and others Vs. Second Additional Sessions Judge, Buldana and another, (1996) 1 AD 477 : AIR 1997 SC 331 : (1997) CriLJ 369 : (1996) 1 Crimes 20 : (1996) 1 JT 247 : (1996) 1 SCALE 252 : (1996) 1 SCR 158 : (1997) AIRSCW 88 : (1996) 1 Supreme 359 , State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, AIR 2004 SC 2179 : (2004) CriLJ 2011 : (2004) 2 CTC 467 : (2004) 4 JT 52 : (2004) 3 SCALE 608 : (2004) 8 SCC 40 : (2004) 1 SCR 504 : (2004) AIRSCW 5256 : (2004) AIRSCW 1926 : (2004) 2 Supreme 757 : (2004) 6 Supreme 509 , Rakesh Kumar Mishra Vs. The State of Bihar and Others, AIR

2006 SC 820 : (2006) CriLJ 808 : (2006) 1 JT 1 : (2006) 1 SCALE 15 : (2006) 1 SCC 557 : (2006) 1 SCR 124 : (2006) AIRSCW 189 : (2006) 1 Supreme 14 and of Patna High Court in Dhup Narain Singh Vs. The State 1954 Crl. L.J. 97 (Patna), in support of her contentions.

7. Learned counsel for the respondent-State contends that the summoning order passed by the trial Court is well reasoned and no interference is required in the present petition. Learned counsel further contends that no sanction to prosecute was required to be obtained in this case as the petitioners were not discharging their official duties. She has also relied upon the judgments of Hon''ble the Apex Court in the cases of Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, AIR 1998 SC 1524 : (1998) CriLJ 1242 : (1997) 4 Crimes 314 : (1997) 9 JT 365 : (1997) 7 SCALE 282 : (1998) 1 SCC 205 : (1997) 5 SCR 524 Supp : (1998) AIRSCW 544 : (1997) 10 Supreme 101 , Raj Kishor Roy Vs. Kamleshwar Pandey and Another, AIR 2002 SC 2861 : (2002) CriLJ 3780 : (2002) 3 Crimes 67 : (2002) 6 JT 48 : (2002) 5 SCALE 471 : (2002) 6 SCC 543 : (2002) 2 UJ 1153 : (2002) AIRSCW 3254 : (2002) 5 Supreme 190 , Pritish Vs. State of Maharashtra 2002 (1) ALL MR (Cri) 732, Parkash Singh Badal and another Vs. State of Punjab and others 2006 (4) Crimes (SC) 388 and Fakhruzamma Vs. State of Jharkhand and another 2014 (1) AIR Jhar R. 433, in support of her contentions.

8. Heard the arguments advanced by learned counsel for the parties and have also gone through the summoning order as well as other documents available on file.

9. The summoning order has been challenged mainly on the ground that accused-petitioners should have been heard before filing of the complaint and preliminary inquiry should have been conducted by the summoning Court. The alleged act was in discharge of official duties and mandatory provisions as required under Section 340 of Cr.P.C. have not been followed.

10. This issue was dealt by Hon''ble the Apex Court in Pritish''s case (supra), wherein, it was held that preliminary enquiry by Court under Section 340 of Cr.P.C. is not to decide the guilt or innocence of the party against whom proceedings are to be conducted before the Magistrate. At this stage, the summoning Court is to see whether offence is made out or not. It has also been held that there is no statutory requirement that Court should give an opportunity of hearing to the accused before filing of the complaint. It is to be seen only on the basis of formation of opinion by the Court that the accused has committed the offence or not. Chapter XXVI of the Cr.P.C. contains "provisions as to offences affecting the administration of Justice". Section 340 of the Cr.P.C. Consists of four sub-sections and only Section 340(1) is relevant for resolving the controversy in hand, which is reproduced as under:-

"When upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which

appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate."

11. A perusal of this sub-section makes it clear that for the purpose of formation of an opinion by the Court, it is expedient in the interest of justice that an inquiry should be made into the offence, which appears to have been conducted. For formation of such opinion, the Court is empowered to hold a preliminary inquiry but even without conducting such preliminary inquiry, the Court can form such an opinion on the basis of which it appears to the Court that an offence has been committed. On formation of such an opinion, it is not mandatory that Court should make a complaint. It does not mean that the Court should as a matter of course, make a complaint but it is only the decision on the basis of formation of such opinion, in case the Court thinks that it is necessary to conduct a preliminary inquiry to reach to a finding, it is upon the Court to do so but in absence of such preliminary inquiry the opinion formed by the Court is not vitiated. Hon''ble the Apex Court in Pritish''s case (supra) has held as under:-

"9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so,

though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

12. The term "inquiry" as defined in Section 2(g) of the Cr.P.C. and "satisfaction of the Court" are also mentioned in para 10 of aforesaid judgment of Hon''ble the Apex Court in Pritish''s case (supra), which is reproduced as under:-

"10. Inquiry is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a magistrate or court". It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Sec. 2(x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code. 11. Section 238 of the Code says that the magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the magistrate has to proceed to conduct the trial. Until then the inquiry continues before the magistrate."

13. The second submission made by learned counsel for the petitioners that no previous sanction to prosecute was obtained before passing the summoning order or initiation of proceedings under Section 340 Cr.P.C. In case, any complaint is there against the officer and allegations levelled against him do not relate to his official

duties then no sanction to prosecute is required at the time the summoning order is passed. This protection is provided to the public servant when the alleged act is done in discharge of his official duties but in case the officer commits an act in course of his/her service but not in discharge of his/her duty and without any justification then the bar under Section 197 of the Cr.P.C. is not attracted. The observation made by Hon''ble the Apex Court in Bakshish Singh Brar Vs. Gurmej Kaur 1988 (1) RCR (Criminal) 35 SC reads as under:-

"40. It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasized that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

"41. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have bee committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within

the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not immediately get attracted on institution of the complaint case.

14. Similarly, Hon''ble the Apex Court in the case of P. Arulswami Vs. The State of Madras, AIR 1967 SC 776 : (1967) CriLJ 665 : (1967) 1 SCR 201 has held as under:-

".....It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

15. While passing of summoning order, the following order was passed:-

"That from the evidence got recorded in the trial Court, which has been detailed above, it is evident that even though Jagsir Singh son of Sukhdev Singh was alive, even then Sukhdev Singh complainant as well as eye witness Amar Singh and witnesses Gurdev Singh, Mukhtiar Singh, Karnail Singh, Surjit Kaur, Bikkar Singh, Gurdev Singh son of Chuhar Singh, Jeet Singh son of Chuhar Singh, ASI Darshan Singh, SI Sarabjit Rai have deposed and fabricated evidence viz-a-viz murder of Jagsir Singh son of Sukhdev Singh and also some of them had identified the dead body. Even Mukhtiar Singh had given last seen account. Karnail Singh and Jangir Singh are witnesses of extra judicial confession. Recoveries of weapons of offence had been effected by ASI Darshan Singh and SI Sarabjit Rai, Gurdev Kaur wife of Sukhdev Singh and Balwinder Singh @ Binder son of Sukhdev Singh are mother and brother of so called deceased Jagsir Singh. All the aforesaid persons hatched well planned conspiracy, in connivance with each other and secured conviction of five innocent persons, who were sentenced to undergo punishment of life imprisonment after giving their false statements to the police and also before the court of the then learned Additional Sessions Judge, Barnala. As such aforesaid persons as detailed in the head note of the complaint are liable to the prosecuted under Section 420, 120-B, 193, 194, 195, 196 IPC."

16. In view of the facts as well as law position explained above, there is no merit in the contention raised by learned counsel for the petitioners and both the petitions

being devoid of any merit are hereby dismissed.