

[2023] 10 S.C.R. 917 : 2023 INSC 466

SHRI SUKHBIR SINGH BADAL

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v.

BALWANT SINGH KHERA AND ORS.

(Criminal Appeal No. 1116 of 2023)

APRIL 28, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Representation of People Act, 1951 – s. 29-A(5) – Sikh Gurudwaras Act, 1925 – Penal Code, 1860 – ss. 420, 463, 465, 466, 467, 468, 471 r/w s. 120B, 191, 192 – Code of Criminal Procedure, 1973 – ss. 202, 204, 315, 482 – A private complaint was filed by the respondent no.1-original complainant u/ss. 463, 465, 466, 467, 468, 471, 191, 192 of IPC against the appellants – It was alleged in the complaint that while complying with the requirements of s.29-A(5) of the Representation of People Act, 1951 an affidavit was filed before the Election Commission of India (ECI), which conflicted with the affidavit/undertaking given to the Gurudwara Election Commission (GEC) – The said affidavit was sworn by the then president of SAD stating that the Party was adhering to the principle of secularism – Under the Sikh Gurudwaras Act, only Sikhs can become voters or contest elections to SGPC – That this restricts membership along religious lines and cannot be said to be secular – It was alleged that the Constitution submitted to GEC in conformity with the Sikh Gurudwaras Act is contrary to the one submitted to ECI – It was alleged that the SAD had filed a false Constitution with ECI to gain recognition as a political party – Trial Court passed summoning orders against the appellants to face the trial for the offences u/ss. 420, 465, 466, 467, 468, 471 r/w s.120B IPC – Aggrieved by the summoning order, the appellants filed an application before the High Court u/s. 482 Cr.P.C seeking quashing of the complaint as well as the summoning order – The High Court dismissed the said application and has refused to quash the criminal proceedings as well as the summoning order – On appeal, held: The ingredients for the offence of cheating are not at all satisfied as there is no question of deceiving any person, fraudulently or dishonestly to deliver any property to any person and therefore, even on bare reading of the averments and allegations in the complaint, no case even remotely for the offence u/s. 420 IPC is

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- A *made out – For the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person and therefore, making the false documents is sine qua non – In the instant case, no false document has been produced and what was produced was the Memorandum and no other documents were produced – Even according to the original*
- B *complainant, the Memorandum and the claim made at the time of registration of the Party that it has adopted a Memorandum accepting the secularism, the same was contrary to the Constitution of the Party produced before the Gurudwara Election Commission – Making a false claim and creating and producing the false document*
- C *both are different and distinct – Looking to the averments and allegations in the complaint and even the material/evidence collected/recorded during the course of the inquiry and even assuming the complaint’s averments to be true, the ingredients of the offence punishable u/ss. 420, 465, 466, 467, 468, 471 are not at all made out – Under the circumstances, the entire criminal proceedings*
- D *including the summoning order passed by the trial Court are quashed.*

Allowing the appeals, the Court

- HELD: 1. Looking to the averments and allegations in the complaint, it is not appreciable at all, how the appellants are**
- E **alleged to have committed the offence of cheating. The ingredients for the offence of cheating are not at all satisfied. There is no question of deceiving any person, fraudulently or dishonestly to deliver any property to any person. Therefore, even on bare reading of the averments and allegations in the complaint, no case even remotely for the offence under Section 420 IPC is**
- F **made out. [Para 5.6][932-D-E]**

- 2. As per Section 463, “whoever makes any false documents, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or**
- G **implied contract, or with intent to commit fraud or that fraud may be committed”, he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public**

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or to any person. Therefore, making the false documents is *sine qua non*. In the present case, no false document has been produced. What was produced was the Memorandum and no other documents were produced. Even according to the original complainant, the Memorandum and the claim made at the time of registration of the Party that it has adopted a Memorandum accepting the secularism, the same was contrary to the Constitution of the Party produced before the Gurudwara Election Commission. Making a false claim and creating and producing the false document both are different and distinct. [Paras 5.8, 5.9][932-H; 933-A-B; 934-B-C]

3. Looking to the averments and allegations in the complaint and even the material/evidence collected/recorded during the course of the inquiry and even assuming the complaint's averments to be true, the ingredients of the offence punishable under Sections 420, 465, 466, 467, 468, 471 are not at all made out. Under the circumstances to continue the criminal proceedings against the appellants – accused arising out of the complaint and to face the trial by the accused as per the summoning order is nothing but an abuse of process of law and court and this is a fit case to quash the entire criminal proceedings arising out of the complaint filed by the respondent including the summoning order passed by the learned Trial Court. [Paras 5.11, 6][934-E-F; 935-A-B]

Sardar Sarup Singh and Ors. v. State of Punjab and Ors. AIR 1959 SC 860; *S. R. Bommai and Ors. v. Union of India and Ors.* (1994) 3 SCC 1 : [1994] 2 SCR 644; *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [1954] SCR 1005; *Birla Corporation Limited v. Adventz Investments and Holdings Limited and Ors.* (2019) 16 SCC 610 : [2019] 7 SCR 655; *Mohammed Ibrahim and Ors. v. State of Bihar and Anr.* (2009) 8 SCC 751 : [2009] 13 SCR 1254; *Sunil Bharti Mittal v. Central Bureau of Investigation* (2015) 4 SCC 609 : [2015] 1 SCR 377; *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Ors.* (2015) 12 SCC 420 : [2015] 4 SCR 841 – referred to.

A	<u>Case Law Reference</u>		
	[1994] 2 SCR 644	referred to	Para 3.5
	[1954] SCR 1005	referred to	Para 3.5
	[2019] 7 SCR 655	referred to	Para 3.10
B	[2009] 13 SCR 1254	referred to	Para 3.11
	[2015] 1 SCR 377	referred to	Para 3.11
	[2015] 4 SCR 841	referred to	Para 3.11

C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1116 of 2023.

From the Judgment and Order dated 27.08.2021 of the High Court of Punjab & Haryana at Chandigarh in CRM-M No. 54161 of 2019.

With

D Criminal Appeal Nos.1118 and 1117 of 2023.

E K.V. Viswanathan, R.S. Cheema, Sr. Advs., Ms. Nandini Gore, Sandeep Kapur, Virinder Pal Singh, Ms. Aditi Bhatt, Ms. Tahira Karanjawala, Ms. Niharika Karanjawala, Ms. Apoorva Pandey, Arjun Sharma, G.g. Kashyap, Rose Verma, Ms. Sanya Dua, Yash Dubey, Ms. Tarannum Cheema, Akash Singh for M/s. Karanjawala & Co. Advs. for the Appellant.

C.U, Singh, Sr. Adv., Prashant Bhushan, Ms. Indira Unninayar, Ms. Mudrakshi, Advs. for the Respondents.

The Judgment of the Court was delivered by

F **M. R. SHAH, J.**

G 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 54161 of 2019 by which the High Court has dismissed the said application filed under Section 482 Cr.P.C. and has not quashed and set aside the summoning order passed by the learned Trial Court summoning the appellants herein – original writ petitioners under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC and other subsequent proceedings arising therefrom, the original accused – appellants herein have preferred the present appeals.

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2. The facts leading to the present appeal in nutshell are as under:- A

2.1 Initially, a private complaint was filed by the respondent No. 1 herein – original complainant before the learned ACJM, Hoshiarpur being Complaint No. 23 of 2009 for the offences under Sections 463, 465, 466, 467, 468, 471, 191, 192 of IPC, 1860 against Shri Sukhbir Singh Badal, Shri Sukhdev Singh Dhindsa, Shri Surinder Singh Shinda and Dr. Daljit Singh Cheema. B

At this stage, it is required to be noted that at the relevant time, Shri Parkash Singh Badal, one of the accused now, was not arrayed as an accused.

2.2 It was alleged in the complaint that while complying with the requirements of Section 29-A(5) of the Representation of People Act, 1951 (hereinafter referred to as “Act, 1951”), an affidavit was filed in the shape of an undertaking with the Election Commission of India (ECI), which conflicted with the affidavit/undertaking given to the Gurudwara Election Commission (GEC). C D

2.3 It was alleged that the said affidavit was sworn by Shri Parkash Singh Badal, the then President, Shiromani Akali Dal (SAD) stating that the Party was adhering to the principle of secularism. Under the Sikh Gurdwaras Act, 1925, only Sikhs can become voters or contest elections to Shiromani Gurudwara Prabandhak Committee (SGPC). That this restricts membership along religious lines and cannot said to be secular. It was alleged that the Constitution submitted to GEC in conformity with the Sikh Gurdwaras Act, 1925 is contrary to the one submitted to ECI as it shows that the Party is engaged in religious activities while giving an undertaking to ECI that it shall bear allegiance to the principles of secularism. That the SAD had no right to function as a political party as its office bearers are non-secular. Therefore, the SAD has filed a false Constitution with ECI to gain recognition as a political party. E F

2.4 That the learned Trial Court held the inquiry under Section 202 Cr.P.C. and recorded the statement of the concerned witnesses. The original complainant filed an application before the learned Trial Court with a prayer that Shri Sukhbir Singh Badal and Dr. Daljit Singh Cheema be summoned as witnesses and asked to produce the documents asked for. It was further submitted that the complainant does not want to pursue the complaint against H

- A them and their names be stuck down from the title of the complaint.
- 2.5 The said application was filed on 06.04.2011. By order dated 26.08.2011, the learned Trial Court ordered the aforesaid two persons to be summoned as witnesses along with the record. That the primary revision application before the first revisional court –
- B learned Sessions Court came to be dismissed observing that the revision is not maintainable against an interlocutory order and that no order has been passed by the learned Trial Court on the application dated 06.04.2011 of the complainant as regards not pursuing the complaint against them. That the complainant again
- C filed an application dated 04.07.2014 before the learned Trial Court in Complaint No. 23 of 2009 submitting that he does not want to pursue the application dated 06.04.2011.
- 2.6 The second application dated 06.08.2014 filed by the appellants herein - original writ petitioners under Section 315(1)(a) and (b) of Cr.P.C. before the learned ACJM came to be dismissed. The
- D appellants herein filed revision application before the High Court seeking quashing of the orders passed by the learned Trial Court by which they were summoned as witnesses, which came to be disposed of by the High Court, setting aside the summoning of the witnesses while allowing the record to be submitted through duly
- E authorized person. That thereafter the inquiry proceeded further and the evidence of the relevant witnesses came to be recorded.
- 2.7 That after a period of 09 years after the original complaint, the complainant moved an amendment application on 28.04.2017 for amendment of the complaint, seeking to introduce substantial
- F changes to the complaint as well as five more persons to be added as accused and certain offences were also to be added in the complaint. Shri Parkash Singh Badal came to be added as an accused in the amendment sought. The said application for amendment came to be dismissed by the learned Trial Court vide order dated 07.06.2017.
- G 2.8 The original complainant challenged the said order dated 07.06.2017 before the High Court, which was subsequently withdrawn with liberty to approach the Trial Court. That on 08.08.2017, the original complainant – respondent No. 1 herein filed second application for amendment. The complainant's second
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application for amendment of the complaint again came to be dismissed by the learned Trial Court vide order dated 09.11.2017. That thereafter by order dated 04.11.2019, impugned before the High Court, the learned Trial Court passed summoning orders against the appellants to face the trial for the offences under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC. At this stage, it is required to be noted that by the said summoning order, even Shri Parkash Singh Badal, who was not arrayed as an accused in the complaint, has now been arrayed as an accused, has been summoned to face the trial for the aforesaid offences.

2.9 Feeling aggrieved and dissatisfied with the summoning order, the appellants herein preferred the present application before the High Court under Section 482 Cr.P.C. seeking quashing of the complaint as well as the summoning order dated 04.11.2019. By the impugned judgment and order, the High Court has dismissed the said application and has refused to quash the criminal proceedings as well as the summoning order. Hence the present appeals.

3. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that the complaint impugned before the High Court is as such nothing but an abuse of process of law and the court and therefore, the Hon'ble High Court ought to have quashed the criminal proceedings arising out of the complaint filed by the respondent No. 1.

3.1 It is submitted that the complaint dated 20.02.2009, filed by the respondent No. 1, has been filed belatedly after 20 years of the registration of the Party and in fact after the respondent No. 1 failed in his attempt to get the registration of the Party cancelled. It is submitted that Section 29-A of the Act, 1951 was inserted by way of amendment, with effect from 15.03.1989. This amendment, *inter alia*, prescribed that a political party Memorandum seeking registration, shall either file a Memorandum or the Rules and Regulations of the Body (namely the Constitution), by whatever name called, containing the specific provision that the Association or Body shall bear true faith and allegiance to the principles of Socialism, Secularism and Democracy. It is submitted that Section 29-A did not require an amendment to the Constitution.

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- A 3.2 It is submitted that the Shiromani Akali Dal (Badal) [SAD(B)] applied for registration under the said provision by way of an application dated 14.08.1989. The registration of SAD(B) was challenged through a reference letter sent by the respondent No. 1, Balwant Singh Khera to the Election Commission of India. After receiving the comments of SAD(B), the Secretariat of the ECI informed the counsel for respondent No. 1 that the challenge was not sustainable. The order passed by the ECI was intimated vide communication dated 10.01.2008.
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- C 3.3 It is submitted that thereafter having failed to get the registration of the Party cancelled, the respondent No. 1 has lodged the present complaint dated 20.02.2009, which is belatedly filed after 20 years of the registration and is nothing but an abuse of process of law and court.
- D 3.4 It is submitted that the very premise of the complaint was that the undertaking given to the ECI while complying with Section 29-A of the Act, 1951 conflicted with the Constitution submitted to the Gurudwara Election Commission insofar as the Party was engaged in religious activities, while giving false declaration on secularism. It is submitted that according to respondent No. 1, as per the Constitution of the Shiromani Gurudwara Prabandhak Committee, only a person believing in Sikhism and a particular religion can contest the election. It is submitted that as per the respondent No. 1, the clauses in the Constitution of the Party cannot be said to be believing in secularism and therefore, according to respondent No. 1, while submitting the declaration under Section 29-A of the Act, 1951, a false and contrary claim was made, it is submitted that as such the aforesaid has no substance.
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- G 3.5 It is submitted that the management of a religious place is a secular act. The Sikh Gurdwaras Act, 1925 is concerned with better management of the gurdwaras and participating in elections for Shiromani Gurudwara Prabandhak Committee (SGPC) is not a non-secular act. It is submitted that even while believing in a particular religion, a person / Party can be secular. Reliance is placed on the decisions of this Court in the case of **Sardar Sarup Singh and Ors. Vs. State of Punjab and Ors., AIR 1959 SC 860; S.R. Bommai and Ors. Vs. Union of India and Ors., (1994) 3 SCC 1; and Commissioner, Hindu Religious**
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Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005. A

3.6 It is submitted that being religious is not antithetical to secularism. One can be religious as well as secular in outlook. It is submitted that Party's membership is open to all. It is submitted that therefore, the basis on which the complaint is filed with itself is baseless. B

3.7 It is further submitted by Shri Viswanathan, learned Senior Advocate appearing on behalf of the appellants that even otherwise on merits also, no case is made out for the offence for which the learned Trial Court has summoned the appellants to face the trial, namely, under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC. C

3.8 It is submitted that so far as the offence of cheating alleged is concerned, no offence of cheating as defined in Section 415 IPC, is made out. It is submitted that the ingredients for the offence of cheating has not been made out. It is submitted that even in the complaint, offence under Section 420 IPC was not even mentioned. Later, a proposed amendment with a view to introduce Section 420 IPC and to add the more persons as accused was made, which came to be rejected by a speaking order. The matter was taken to the Hon'ble High Court but the criminal revision was withdrawn. The second application for the same relief moved before the Learned Magistrate was also dismissed by just a well-reasoned order. D E

3.9 It is submitted that even the offence of forgery has not been made out. It is submitted that there is no reference to any specific document either in complaint or in the preliminary evidence. It is submitted that there is no allegation and/or a case is made out that any false document was created and produced. It is further submitted that as such the appellants had absolutely no role in filing of the application for registration. It is submitted that Parkash Singh Badal was not the President of the Party at the time of making the application. Neither Sukhbir Singh Badal nor Daljit Singh Cheema was holding any office for the Party at that time. It is submitted that even otherwise, there was no false affidavit nor any forged document had been attached alongwith the application F G H

- A for registration, which was made in accordance with law. It is submitted that a careful perusal of Section 29-A of the Act, 1951 would show that a political party seeking registration could either file its Constitution or a Memorandum incorporating the declaration that it shall bear true faith and allegiance to the principle of
- B Secularism. It is submitted that the copy of Constitution was not attached and only a copy of the Memorandum adopted by the Party, in terms of Section 29-A of the Act, 1951 was attached with the application. It is submitted that therefore, the ingredients of cheating, forgery are not at all made.
- C 3.10 It is further submitted by Shri Viswanathan, learned Senior Advocate appearing on behalf of the appellants that so far as Parkash Singh Badal is concerned, the mandatory requirement of inquiry under Section 202 Cr.P.C. has not been followed before issuance of summons. It is submitted that neither, Parkash Singh
- D Badal was arrayed as an accused in the complaint nor at the time of inquiry he was cited as an accused. It is submitted that therefore, in absence of any mandatory inquiry under Section 202 Cr.P.C., the summoning order is vitiated. Reliance is placed on the decision of this Court in the case of **Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and Ors., (2019) 16 SCC 610.**
- E 3.11 It is further submitted that while considering the revision application, the High Court has not properly appreciated and/or considered that the summoning order was vitiated because of the failure to consider the question as to whether the application
- F discloses the commission of the offences alleged or the ingredients of the offences. Reliance has been placed on the decisions of this Court in the case of **Mohammed Ibrahim and Ors. Vs. State of Bihar and Anr., (2009) 8 SCC 751** (Paras 13-14, 21); **Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609** (Para 48); and **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Ors., (2015) 12 SCC 420** (Para 20).
- G 3.12 Making above submissions, it is prayed to allow the present appeals.
- H 4. While opposing the present appeals, Shri Prashant Bhushan, learned counsel and Shri C.U. Singh, learned senior counsel have made the following submissions:-

4.1 That in the facts and circumstances of the case and considering the material on record and/or evidence recorded during the course of the inquiry under Section 202 Cr.P.C. and therefore, when the learned Trial Court was satisfied that a *prima facie* case is made out against the accused for the offences under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC, neither the learned Trial Court has committed any error in summoning the accused to face the trial for the aforesaid offences nor the Hon'ble High Court has committed any error in disposing the revision application.

4.2 It is submitted that as such the impugned order passed by the High Court is just within the parameters of the limitation of the High Court while exercising the powers under Section 482 Cr.P.C. and thereafter when the Hon'ble High Court has dismissed the revision application and has refused to quash the summoning order and the criminal proceedings while exercising the limited jurisdiction under Section 482 Cr.P.C., the same may not be interfered with by this Court.

4.3 It is further submitted by Shri Prashant Bhushan, learned counsel appearing on behalf of the original complainant that the case is a serious one of fraud, forgery and cheating committed by the accused – appellants herein in order to obtain the registration of the Shiromani Akali Dal (Badal), as a political party. It is submitted that the witnesses have stated that a fabricated document presenting it as the Party's "Memorandum" or "Rules and Regulations" was submitted to the Election Commission of India in order to project compliance with Section 29-A of the Act, 1951 and thereby, obtained registration and its benefits.

4.4 It is submitted that as per the witnesses examined during the course of inquiry, Shri Parkash Singh Badal had issued instructions to the concerned persons to file such document.

4.5 It is submitted that the petitioners- appellants herein Shri Parkash Singh Badal had submitted a different Constitution before the Gurdwara Election Commission (GEC), which was in conformity with the Sikh Gurdwaras Act, 1925 to seek election to the Shiromani Gurdwara Prabandhak Committee (SGPC). It is submitted that the eligibility criteria to contest the election of the SGPC and the undertakings before the ECI and GEC are contrary

- A to each other. It is submitted that therefore, a secular image as a political party was being projected before the ECI, while before the GEC, it was projected that only restricted membership of only adult Singhs and Singhnis / baptized Sikhs, was permitted. It is submitted that, thus, a falsified Constitution was knowingly filed
- B by the appellants before the ECI. It is submitted that the continuing nature of fraud and the roles of appellants have also been brought out by the witnesses and through evidence collected during the inquiry collected through the pre-summoning stage before the learned Magistrate's Court, resulting in its summoning order.
- C 4.6 It is further submitted by Shri Prashant Bhushan, learned counsel appearing on behalf of the original complainant that at the stage of summoning, the allegations in the complaint alone are required to be considered and it is required to be considered whether the allegations in the complaint disclose cognizable offences committed by the appellants or not. It is submitted that a
- D complaint only sets the law into motion, whereas, it is on the basis of evidence recorded in accordance with Section 200 Cr.P.C., that a Magistrate's court is dutybound and empowered to pass a speaking order under Section 203 Cr.P.C. or Section 204 Cr.P.C. It is submitted that on the basis of the material/evidence collected/
- E recorded during the course of the inquiry, the Magistrate's Court decides to summon or not to summon those involved in the offences. It is submitted that, therefore, once on the basis of the material collected during the course of the inquiry, if the Magistrate is satisfied that a *prima facie* case is made out against the accused, summoning order be issued against the accused to face the trial.
- F 4.7 It is submitted that in the present case by submitting the false claim of secularism just contrary to the relevant clauses in the Constitution of the Party, a clear case is made out for the offence under Section 415/420 IPC. It is submitted that it is a clear case of cheating and dishonest inducement. It is further submitted by
- G the learned counsel appearing on behalf of the original complainant that even the case for forgery is made out. It is submitted that as per the definition of forgery, "whoever makes any false documents with intent to commit fraud or that fraud may be committed by such persons is said to have committed the offence of forgery". It is submitted that therefore, in the present case, a clear case of
- H forgery has been made out.

4.8 Now, so far as the submission on behalf of the appellants, more particularly, by the appellant – Parkash Singh Badal that as he was originally not named in the complaint and even at the time of inquiry under Section 202 Cr.P.C., he was not named in the inquiry and therefore, the summoning order is vitiated on the ground that the mandatory requirement of inquiry under Section 202 Cr.P.C. has not been complied with, is concerned, it is submitted that on the basis of the material / evidence collected during the course of inquiry, if the Magistrate finds that a person not named in the complaint has also committed the offence, the Magistrate is always justified in summoning that person as an accused. It is submitted that even otherwise on non-compliance of the requirement under Section 202 Cr.P.C. of holding the inquiry, the summoning order on merits cannot be said to have been vitiated. Shri Bhushan, learned counsel appearing on behalf of the original complainant made elaborate submissions on what can be said to be secularism and/or whether the appellants believed in secularism or not and/or the Party believes in secularism or not. However, for the reasons hereinabove, we do not propose to go into such larger question and therefore, we are not dealing with the same elaborately.

4.9 Making above submissions, it is prayed to dismiss the present appeals.

5. Heard the learned counsel for the respective parties at length. We have also perused and considered the averments and allegations in the complaint dated 20.02.2009 as well as the application and the Memorandum annexed with the application filed for registration of the Party, while submitting the application under Section 29-A of the Act, 1951. We have also gone through the summoning order passed by the learned Trial Court.

5.1 At the outset, it is required to be noted that the appellants herein are summoned by the learned Trial Court to face the trial for the offences under Sections 420, 465, 466, 467, 468, 471 read with Section 120B IPC.

5.2 The main allegation in the complaint was that in the year 1989 and as per the Constitution prevailing at the relevant time, i.e., in the year 1989, Shiromani Akali Dal (Badal) was engaged in non-secularism but they contested and got seats in the elections to the

A SGPC, therefore, the Memorandum annexed with the application for registration under Section 29-A of the Act, 1951 was false.

5.3 From the material on record, more particularly, the application for registration of the Shiromani Akali Dal (Badal) under Section 29-A of the Act, 1951, it appears that as per the requirement under Section 29-A, that a political party should deal in secularism and socialism, a Memorandum to that effect was produced. Neither the “Constitution” of the Party nor any other “Rules or Regulations” were produced. It was stated in the application that the Party had adopted a Memorandum to the effect that “Shiromani Akali Dal (Badal) 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”. What was produced was the copy of the Memorandum. In light of the above, the offence for which the accused are summoned to face the trial are required to be considered.

D 5.4 Appellants are summoned to face the trial for the offences under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC. The relevant provisions are as under:-

E **“420. Cheating and dishonestly inducing delivery of property.**—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

F **465. Punishment for forgery.**—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

G **466. Forgery of record of Court or of public register, etc.**—Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court

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of Justice, or a register of birth, baptism, marriage or burial, or A
a register kept by a public servant as such, or a certificate or
document purporting to be made by a public servant in his
official capacity, or an authority to institute or defend a suit, or
to take any proceedings therein, or to confess judgment, or a
power of attorney, shall be punished with imprisonment of either B
description for a term which may extend to seven years, and
shall also be liable to fine.

Explanation.—For the purposes of this section “register”
includes any list, data or record of any entries maintained in the
electronic form as defined in clause (r) of sub-section (1) of C
Section 2 of the Information Technology Act, 2000.

467. Forgery of valuable security, will, etc.—
Whoever forges a document which purports to be a valuable
security or a will, or an authority to adopt a son, or which
purports to give authority to any person to make or transfer D
any valuable security, or to receive the principal, interest or
dividends thereon, or to receive or deliver any money, movable
property, or valuable security, or any document purporting to
be an acquittance or receipt acknowledging the payment of
money, or an acquittance or receipt for the delivery of any
movable property or valuable security, shall be punished with E
imprisonment for life, or with imprisonment of either description
for a term which may extend to ten years, and shall also be
liable to fine.

468. Forgery for purpose of cheating.— Whoever
commits forgery, intending that the document or electronic F
record forged shall be used for the purpose of cheating, shall
be punished with imprisonment of either description for a term
which may extend to seven years, and shall also be liable to
fine.

471. Using as genuine a forged document or G
electronic record.—Whoever fraudulently or dishonestly uses
as genuine any document or electronic record which he knows
or has reason to believe to be a forged document or electronic
record, shall be punished in the same manner as if he had forged
such document or electronic record.”

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A 5.5 Now, so far as the offence under Section 420 of the IPC is concerned, “whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person,.....” shall be said to have committed the offence of cheating and shall be punished. Cheating is defined under Section 415 IPC, which reads as under:-

B **415. Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

C Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

D 5.6 Looking to the averments and allegations in the complaint, it is not appreciable at all, how the appellants are alleged to have committed the offence of cheating. The ingredients for the offence of cheating are not at all satisfied. There is no question of deceiving any person, fraudulently or dishonestly to deliver any property to any person..... Therefore, even on bare reading of the averments and allegations in the complaint, no case even remotely for the offence under Section 420 IPC is made out.

E 5.7 Now, so far as the offence under Section 465 is concerned. As per Section 465, “whoever commits forgery shall be punished for the offence under Section 465”. Forgery is defined under Section 463, which reads as under:-

F **“463. Forgery.**—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

G 5.8 Therefore, as per Section 463, “whoever makes any false documents, with intent to cause damage or injury, to the public or

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to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed”, he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is *sine qua non*. Identical question came to be considered by this Court in the case of **Mohammed Ibrahim & Ors. (supra)**. While interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it is observed and held as under:-

“13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

A In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

B 5.9 In the present case, no false document has been produced. What was produced was the Memorandum and no other documents were produced. Even according to the original complainant, the Memorandum and the claim made at the time of registration of the Party that it has adopted a Memorandum accepting the secularism, the same was contrary to the Constitution of the Party produced before the Gurudwara Election Commission. Making a false claim and creating and producing the false document both are different and distinct.

D 5.10 Now, so far as the offences under Sections 466, 467, and 468 IPC are concerned, on the face of it, it cannot be said that any case is made out for the said offences. Section 466 is with respect to forgery of record of court or of public register. Section 467 is with respect to forgery of valuable security, will etc. Section 468 relates to forgery for the purposes of cheating. Section 471 will be applicable in case of using as genuine a forged document.

E 5.11 Looking to the averments and allegations in the complaint and even the material/evidence collected/ recorded during the course of the inquiry and even assuming the complaint’s averments to be true, the ingredients of the offence punishable under Sections 420, 465, 466, 467, 468, 471 are not at all made out.

F 5.12 At this stage, it is also required to be noted that even the application under Section 29-A of the Act, 1951 was made as far as back in the year 1989 and thereafter even the respondent No. 1 filed the complaint before the ECI, which came to be dismissed by the ECI and thereafter the present complaint has been filed in the year 2009, i.e., after a period of 20 years from the date of filing of the application for registration under Section 29-A of the Act, 1951, which was made in the year 1989.

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H 6. In view of the above and for the reasons stated above, and even assuming the complaint’s averments to be true, do not make out the ingredients of the offences, for which the learned Trial Court has passed the summoning order.

Under the circumstances to continue the criminal proceedings against the appellants – accused arising out of the complaint and to face the trial by the accused as per the summoning order is nothing but an abuse of process of law and court and this is a fit case to quash the entire criminal proceedings arising out of the complaint filed by the respondent No. 1 including the summoning order passed by the learned Trial Court. A B

7. In view of the above and for the reasons stated above, present appeals succeed. The impugned judgment and order passed by the High Court dismissing the revision application is hereby quashed and set aside.

The order passed by the Trial Court dated 04.11.2019 summoning the appellants – accused to face the trial for the offences under Sections 420, 465, 466, 467, 468, 471 read with 120B IPC is hereby quashed and set aside. C

Present appeals are accordingly allowed. However, before parting, we may observe that we have set aside the summoning order on the aforesaid grounds only and we have not expressed anything on the Constitution of the Party - Shiromani Akali Dal (Badal) and the present order shall not affect the pending proceedings before the High Court of Delhi, which is reported to be pending against the order passed by the ECI. D

With these observations, present appeals are allowed. E

Ankit Gyan
(Assisted by : Abhishek Pratap Singh and Mahendra Yadav, LCRAAs)

Appeals allowed.