

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

Crl. Misc. No.M-21399 of 2015 (O&M)

Date of Decision: 14.10.2015

Mohinder Pal Kapoor

....Petitioner

Versus

Nagar Mal Superintendent Circle Stamp Depot,
Ludhiana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Naveen Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.33950 of 2015

This is an application for placing on record Annexure P-6 (colly.).

Criminal Misc. Application is allowed and Annexure P-6 (colly.) is taken on record.

Crl. Misc. No.M-21399 of 2015

The present petition has been filed under Section 482 Cr.P.C for quashing of order dated 16.09.2008 (Annexure P-2) passed by the trial Court in complaint No.38/1 dated 17.04.1995 titled as ***“Mohinder Pal Kapoor vs Nagar Mal”*** filed under Sections 420/468/471 IPC and order dated 26.11.2014 passed by the Additional Sessions Judge, Ludhiana.

Briefly, the facts of the case are that the petitioner-complainant filed the said complaint against the respondent on the allegation that the respondent had forged and tampered with the mail list and used the same in the proceedings against the petitioner. The respondent was summoned by the trial Court vide order dated 31.10.2000 for offence punishable under Sections 465 and 471 IPC to face trial. Complainant-petitioner was asked to lead pre-charge evidence. Meanwhile, the respondent filed a quashing petition bearing **Criminal Misc. No.M-42435 of 2007** before this Court, which was disposed of vide order dated 01.09.2008 with a direction to the trial Court to dispose of the issue with regard to framing of charge within a period of 15 days from the date of order on the basis of evidence before the Court. The trial Court discharged the respondent vide order dated 16.09.2008 and the complaint was dismissed, which amounts to acquittal of the respondent.

Aggrieved with the said order, the petitioner filed a revision petition i.e **CRR No.318 of 2010**, which was disposed of by this Court to avail the remedy of revision before the Court of Sessions at Ludhiana. Thereafter, the petitioner filed a revision petition before the Court of Sessions at Ludhiana, which was also dismissed on 26.11.2014.

The petitioner, after losing the case before the two Courts below, has filed the present petition before this Court to challenge the judgments of both the Courts below by raising various grounds.

Learned counsel for the petitioner submits that there was sufficient material/evidence before the Summoning Court and charge should have been framed. He further submits that both the Courts below have not taken into consideration the enquiry report of the Inspector of the Department. Even the record available with the trial Court was not considered. Learned counsel for the petitioner also submits that from the

testimony of witnesses, it was proved on record that the copy of the mail list, which was attested by the respondent, does not tally with the original mail list prepared by the petitioner. It was only the respondent, who attested the copy of the mail list under his own signatures. The attested copy was used by the department in proceedings against the petitioner and as such, the respondent first forged the document and then signed the same and subsequently used it in the departmental proceedings. These facts were necessary to be taken into consideration. Learned counsel also submits that the trial Court has discharged the respondent on the ground of limitation, whereas, the complaint cannot be dismissed on the ground of limitation as Section 473 Criminal Procedure Code provides for extension of time.

Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in cases ***Shambhoo Nath Misra vs State of U.P. 1997(2) RCR (Criminal) 539*** as well as ***Bholu Ram vs State of Punjab and another 2012(2) Criminal Court Judgments 112***, in support of his contentions.

Heard the arguments of learned counsel for the petitioner and have also perused the judgments of both the Courts below as well as other documents available on the file.

The findings recorded by the trial Court in para No.8 of its judgments is reproduced as under :-

“8. I have carefully heard the respective contention of the parties and have perused the case file carefully. As noted above in brief, the sole grouse of the complainant is with regard to a mail list copy of which according to the complainant has wrongly been prepared by the accused. It is, however, not disputed that the accused prepared and issued such a copy of the mail list while discharging his official duties and

while performing his official functions. As per the provisions of Section 197 Cr.P.C., no cognizance of an offence can be taken against a public servant who is accused of any offence alleged to have been committed by him or her while acting or purporting act in the discharge of his or her official duties, except with the previous sanction of the Unit Government in the event of the accused concerned being in the employment of Central government and without the sanction of the State Government if the employee concerned happened to be in the employment of the State. The department of post in which the accused and the complainant were serving is a Central Government Department and in this way, the complainant as well as the accused were both serving under the Central Government. The alleged untrue copy of the mail list has been issued by the accused while performing his official duties and in discharge of his official functions. As a result, the protection of Section 197 Cr.P.C becomes available to him. On close perusal of the copy of Mark-AZ said to have been issued by the accused as well as mail list Ex. CW3/1, it is made out that all the contents of both the documents to tally with each other except the line with regard to three packets no.63, 66 and 67 sent in first mail. In the copy of Mark-AZ only the words 63, 66 and 67 are missing and in the respect of all other particulars the copy reflects the same particulars they appear in Ex.CW3/1. As such omission to mention three figures 63, 66 and 67 can in no way be termed to be the result of malafide and dishonest intention on the part of the accused since non-mention of these three figures in the copy Mark-AZ did not in any manner change or alter the nature of the contents of the document in any manner whatsoever, the net outcome being that 57 packets were sent while clarifying that in the 1st mail three excess packets/parcels had been dispatched. As

the accused had issued the copy of the mail list in discharge of his official duties while performing under Union Government, the prior sanction as required under Section 197 Cr.P.C was pre-requisite to take cognizance of the offence against the accused. However, in the case in hand, no such sanction is being pleaded or alleged to have been obtained by the complainant before filing the present complaint. Another aspect to be taken into consideration is that the accused in this case has been ordered to be summoned under Sections 465, 471 IPC which carry the imprisonment of two years at the maximum and thus as per provisions of Section 468 Cr.P.C., the cognizance of such an offence can be taken only within a period of three years. The alleged untrue copy, as per facts of the case, was issued by the accused in the year 1991, whereas, the present complaint has been filed by the complainant on 17.04.1995 i.e much after the expiry of three years period as provided under Section 468 Cr.P.C and hence the cognizance of offence under Sections 465 and 471 IPC, even otherwise cannot be taken against the accused after the expiry of four years of the alleged acts of the accused. Consequently, I am of the considered view that the complainant has failed to make out any ground for framing of charge against the accused who deserves to be discharged keeping in view the facts discussed hereinabove.”

Similarly, the Revisional Court dismissed the revision petition.

The relevant portion of the said judgment is reproduced as under :-

“18. However, from the factual position as disclosed in the complaint and from the pre-charge evidence as adduced by the complainant by examining Inderjit Sharma as PW1, Brij Mohan Mukhija as PW2 and Sh. Bant Ram as PW3, no ground is made out even for proceeding against accused under Sections

465 and 471 IPC. The sole grouse of the complainant is with regard to mail list, copy of which, according to the complainant has wrongly been prepared by the accused. It is not disputed that the accused prepared and issued such a copy of mail list while discharging his official duty and while performing his official functions. As per the provision of S. 197 Cr.P.C., no cognizance can be taken against a public servant, who is accused of any offence alleged to have been committed by him/her while performing his/her official duty, except with the previous sanction of the Union Govt. in the event of accused concerned being the employee of Central Govt. and without the sanction of the State Govt. if the employee concerned happened to be in the employment of the State. The department of Post in which the accused and complainant were serving is a Central Govt. Department and in this way, the complainant as well as the accused were both serving under the Central Department. The alleged untrue copy of the mail list has been issued by the accused while performing his official duties and in discharge of his official functions. From perusal of copy mark 'AZ' which has been issued by accused as well as mail list Ex.CW3/1, it is made out that all the contents of both the documents do tally with each other except the line three packets no.63, 66 & 67 sent in the first mail. In the copy mark 'AZ' on the word 63, 66 & 67 are missing and in respect of all other particulars, the copy reflects that same particulars as they appeared in Ex.CW3/1. As such omission to mention three figures 63, 66 & 67 can in no way be termed to be the result of mala fide and dishonest intention on the part of accused, since non-mentioning of these three figures in the copy mark 'AZ' did not any manner change or alter the nature of contents of the documents in any manner whatsoever. Moreover, Ex.D1 statement of complainant Mohinder Pal which is

in his own hand in which he mentioned that erroneously 63 bags were given in presence of worthy IPO instead of 63, but the mail list could not be corrected accordingly. The error detected and remaining bags dispatched in next available schedule. It is admitted that accused had issued the copy of mail list while discharging his official duty while performing under the Union Govt. the prior sanction as required u/s 197 Cr.P.C. was pre-requisite to take cognizance of the sanction against the accused. But in the present case, no sanction was obtained by the complainant. On the other hand, accused was summoned under Sections 465 and 471 IPC which carry the imprisonment of two years at the maximum and as per provision of 468 Cr.P.C., the cognizance of such offence can only be taken within a period of three years. In the present case, the copy was issued in the year 1991 and the complaint has been filed on 17.04.1995 after four years, which is clearly beyond the period of three years as stipulated under Section 468 Cr.P.C as a result of which no case for framing charge against the accused is made out.”

On perusal of findings recorded by both the Courts below, it is apparent that the respondent was discharging his official functions. The protection of Section 197 Cr.P.C was available to him. As per allegations of the petitioner, Mark-AZ as well as main list Ex. CW3/1 were issued by the respondent. The contents of both the documents were tallying with each other except the line with regard to three packets No.63, 66 and 67 sent in first mail. In the copy of Mark-AZ, only the words 63, 66 and 67 are missing, whereas, other particulars are the same as in Ex.CW3/1. At the most that can be an omission regarding mentioning of three figures, which cannot be said to be done with mala fide or dishonest intention on the part of the accused-respondent. The respondent had issued the copy of the

mail list in discharge of his official duties while working under the Union Government. Moreover, the maximum sentence for commission of offence under Sections 465/471 IPC can be of two years and as such, as per provisions of Section 468 Cr.P.C., the cognizance of such an offence can be taken only within a period of three years. The mail was issued by the respondent in the year, 1991 and the present complaint was filed by the petitioner on 17.04.1995 i.e after expiry of three years as provided under Section 468 Cr.P.C and as such, the cognizance of offence under Sections 465 and 471 IPC cannot be taken against the respondent after expiry of period of four years.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

14.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE