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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement delivered on: 05th November, 2015

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Crl M C No.5440/2014

JAI BHAGWAN

..... Petitioner

Represented by: Dr Nirmal Chopra, Adv

Versus

STATE (GOVT OF NCT DELHI) & ANR

..... Respondents

Represented by: Ms. Meenakshi Chauhan,
APP for the State with SI
Kuldeep Yadav PS
Connaught Place, New
Delhi.
Mr.Sanjeev Narula and
Mr. Ajay Kalra, Advs. for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby quashing the criminal proceedings against him pending before learned Metropolitan Magistrate arising out of the FIR No.126/2003 registered at Police Station Connaught Place, New Delhi for the offences punishable under Sections 420/409/468/471 of the IPC.

2. Learned counsel appearing on behalf of petitioner submitted that aforesaid case was registered on the complaint of respondent No.2 on

the allegations that petitioner/accused opted for voluntary retirement scheme and same was accepted as per office order No.25/2001 dated 16.01.2001. Accordingly, he was relieved from the service of respondent No.2 vide office order dated 17.01.2001. Since, the petitioner opted for voluntary retirement, therefore, he was not required to serve 90 days' notice as per the term of the appointment. On the contrary, he was paid 3 months notice period salary amounting to Rs.35,271.60/- vide order dated 17.01.2001. The petitioner was also paid a sum of Rs.7,01,461/- under the terms of the voluntary retirement scheme. This amount beside others included Rs.4,82,045.20/- as ex-greua and three months notice pay towards voluntary retirement service compensation; gratuity amount of Rs.1,23,377/-; leave encashment amount of Rs.76,268.80/-; and service award of Rs.14,250/-. He was also paid provident fund accumulation to the tune of Rs.4,23,602/-. In this way, at the time of retirement petitioner was paid a total sum of Rs.11,25,063/-. However, had the respondent No.2 knew about his joining the Excise and Taxation Department, Government of Haryana, his application for VRS could not have been considered by respondent No.2 and he would not have been granted the VRS with all benefits thereof. Thus, petitioner dishonestly and fraudulently by concealing the fact that he was still under the employment with the complainant joined another government office i.e. Excise and Taxation Department, Government of Haryana at Karnal on 04.10.2000 as Taxation Inspector by claiming himself as Jai Bhagwan Prashar and also started claiming all benefits attached to said post. He also changed his signatures. He kept on attending the office of

respondent no.2 after 04.10.2000 till 17.01.2001 barring 30.10.2000, 01.11.2000 and 12.01.2001.

3. It was also revealed during course of investigation that petitioner whose address was mentioned in column No.4 of the charge sheet had applied to respondent No.2 for VRS on 16.01.2001 and was given all benefits thereof. After retirement, he gave an affidavit to respondent no.2 wherein it was averred that he had not taken any employment in any company after retirement; whereas he had joined the Excise and Taxation Department, Government of Haryana even prior to his retirement which he did not inform the respondent no. 2 before applying for VRS in order to cheat it. Thus, he wrongfully and deliberately gave a false affidavit and caused a wrongful loss to the tune of Rs.7,01,461/-.

4. Learned counsel appearing on behalf of petitioner submitted that this Court vide order dated 27.05.2009 passed in RFA No.553/2004 titled as ***M/s P E C Limited vs Mr.Jai Bhagwan*** held as under:-

“16. So, from the pleadings of the parties, it stand clearly established, that the appellant has not specifically denied the issuance of “No Objection Certificate” nor it took the plea that “No Objection Certificate” issued by it, is a forged document.

17. Respondent has placed and proved on record his application, seeking “No Objection Certificate” which is Ex.DW-3/F1 dated 28th September, 2000. In pursuance of this application, he was issued “No Objection Certificate” vide letter dated 28th September, 2000, which is Ex.DW-3/F2, duly signed by A.S.Rajouria, Personal Manager of appellant’s

company, who has also been examined by the respondent, as his witness as, DW-4.

18. DW-4 A.S.Rajouria, in his examination-in-chief has stated that he has not issued any certificate/NOC to Sh.Jai Bhagwan certifying his date of joining dated 11th April, 2001 and Ex.DW3/F2 does not bear his signatures. However, in the same breath, he admitted, it as correct that this is a pad of PEC, which is Ex.DW3/F2 and on 28th September, 2000, he was working as personal manager, PEC.

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21. I have compared the disputed signatures of DW-4 Mr.A.S.Rajouria on Ex.DW3/F2, with his admitted signatures on his deposition recorded by the trial court.

22. I find that both these signatures are similar and appears to be of one person alone.”

5. Learned counsel further submitted that petitioner had never concealed anything from either of the departments, thus, the proceedings against petitioner may be quashed.

6. Learned counsel appearing on behalf of respondent No.2 / complainant submitted that aforesaid order passed by this Court was qua the recoveries sought by respondent No.2 against petitioner, for which he challenged the same by the said order, this Court allowed the aforesaid petition filed by the petitioner. Here the case is entirely different. The police investigated the matter and petitioner has been

chargesheeted therefor. Learned Trial Court after framing of charge against petitioner also examined four witnesses out of total ten witnesses. Therefore, the present petition is liable to be dismissed.

7. I have heard learned counsel for parties.

8. It is not in dispute that learned Trial Court passed a detail order on the point of charge vide order dated 19.07.2013. Accordingly, learned Trial Court came to the conclusion that prima facie offences of cheating by using false documents and dishonestly delivery of property, i.e. Rs.11,25,063/- is made out against petitioner.

9. Being aggrieved the petitioner filed the Criminal M C No.3288/2013 whereby challenged the order dated 19.07.2013 before this Court, however the same was dismissed for non prosecution. It is pertinent to mention here that no steps were taken by petitioner to get the said petition revived, rather he preferred to file the instant petition seeking quashing of the criminal proceedings arising out of the FIR No.126/2003. The charges were framed against petitioner on 11.10.2013 for the commission of offence punishable under Section 420 of the IPC and during trial four witnesses of respondent No.2 have already been examined before learned Trial Court.

10. The main allegations against the petitioner is that he had filed a false affidavit dated 30.01.2001 with respondent No.2 whereby falsely averred that he had not taken up any employment with any other company at the time of taking voluntary retirement from the services of respondent No.2. The petitioner is further accused of furnishing

another false affidavit dated 05.02.2001 in the office of Excise and Taxation Department, Government of Haryana wherein he also sworn on oath that he is not employed elsewhere. Thus, the petitioner had cheated and defrauded respondent No.2 by furnishing false and fake certificates from time to time for availing various benefits viz medical benefit; availing of leave, voluntary retiral benefits; leave encashment, gratuity amount etc which he would not have been entitled to otherwise.

11. It is also pertinent to mention here that respondent No.2 had filed a civil suit for recovery of Rs.8,08,347/- from the petitioner which includes the amount of Rs.6,51,211/- which was illegally and fraudulently received by petitioner. The said suit was dismissed vide judgment dated 06.09.2004. The respondent No.2 agitated the said matter upto the Supreme Court, but could not succeed. The case in hand against the petitioner is not for recovery of said money, however, the observations made by this Court in the RFA noted above, is not of any help to petitioner.

12. The trial pending against petitioner before learned Trial Court is at the advance stage. Moreover, the order on charge was challenged by petitioner in this Court by way of Criminal M C No.3288/2013, which was dismissed in default for non-prosecution.

13. In view of above facts, finding no merits in the instant petition, same is accordingly dismissed with no order as to cost.

Crl.M.A.No.18555/2014 (Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

NOVEMBER 05, 2015

M/JG