In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-29444 of 2015

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Date of decision:25.4.2016

Jagdish Kumar Jindal

.....Petitioner

v.

Ravi Doda

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. B.D. Sharma, Advocate for the petitioner.

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<u>Inderjit Singh</u>, <u>J</u>.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of impugned order dated 24.10.2013 (Annexure-P.3) passed by the learned Judicial Magistrate Ist Class, Faridkot, whereby the complaint of the petitioner titled as "Jagdish Kumar Jindal Vs. Ravi Doda" RT-242 of 02.07.2011/16.09.2013 for the offences under Sections 166, 403, 406, 409 IPC was illegally dismissed and the impugned order dated 12.02.2015 (Annexure-P.4) whereby the revision filed by the petitioner against the order dated 24.10.2013 was illegally dismissed by the learned Additional Sessions Judge, Faridkot.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that the present petitioner filed a complaint against Ravi Doda for the offences under Sections 166, 403, 406, 409 IPC. The brief facts of the complaint, which were noted by the learned Judicial Magistrate Ist Class, Faridkot, are as under:-

> "The case of the complainant is that complainant retired on 28.2.2009 from State Bank of Patiala, Kotkapura, as Deputy Manager. Accused was Manager of State Bank of Patiala, who has since been transferred to Patiala. On 18.8.2001, Shashi Jindal daughter of complainant applied for an education loan of Rs.400000/- to SBOP Faridkot Branch. Complainant was kept as an applicant of the loan in his capacity as guardian of Shashi Jindal. Loan was sanctioned and necessary agreement containing terms and conditions of the loan were got executed by the bank. The loan was repayable in 84 monthly installments beginning from 1.4.2008 by Shashi Jindal alone. The complainant was not at all obligated to repay the loan either jointly or severely in terms of clause No.4 or any other clause of the agreement. No other terms and conditions or clauses of the loan agreement dated 18.8.2001 are applicable to the complainant. All the terms and conditions are meant for the student Shashi Jindal only. Clause 5(v) of the agreement was applicable and enforceable only during the period of course of study of the student. Her MBBS course started in September 2001 and continued upto 31.3.2007. After this date, clause 5(v) became infructuous and therefore redundant. Further this clause was merely an enabling and discretionary clause for the

bank and was subject to the happenings of certain specific contingencies as enumerated in the clause and that too within the above mentioned period of study. But no such contingencies ever materialized during the course period and as such, the remedies of this clause were not available to the bank after 31.3.2007. The loan file was transferred to Kotkapura Branch without consent or information of the borrowers from Guru Har Sahai Branch, where it was being maintained in December 2008. The bank has no authority to transfer any loan account without the consent of the borrowers. The salary of the officers of SBOP was revised w.e.f. 1.11.2007 and thus, complainant was entitled to arrears of salary w.e.f. 1.11.2007 to 28.2.2009 against his services rendered to the bank prior to his retirement from the service. The complainant was and is still maintaining an SB account No.55091844519 with SBOP Kotkapura. The head office of the bank credited this SB account with Rs.92307.36 on 14.7.2010 being the amount of arrears of salary payable to the complainant with certain implied directions of accused and constituting him as agent of the Head Office for payment of arrears of salary to the complainant. Further accused was not only under obligation to give the above information to the complainant under rules of their own bank relating to the deposit accounts, but also this was the mandate of the above directions. However, accused withheld this information from the complainant with an oblique motive. The relationship between the complainant and the bank is not that of ordinary creditor or debtor relationship. The amount was not deposited by the complainant in his SB account but was deposited by the Head Office of the bank by using above said SB account as a mode of payment of arrears of salary to the complainant. The head office never gave any information to the complainant regarding this deposit. The amount was deposited as special arrangement under which the accused was constituted trustee of the complainant for property of Rs.92307.36 with obligation to supply the information regarding the receipt of this property to the complainant and to pay the same to him or to apply it in accordance with his instructions. Still further, accused marked a lien for Rs.100000/- against the SB account of complainant on 14.7.2010 itself. Such a lien does not transfer the property or right of legal ownership. The accused continued to have dominion over this property. Accused being a public servant disobeyed the direction of law with a view to cause injury to the complainant. The accused misappropriated and disposed of a sum of Rs.92000/- from personal SB account of the complainant by transferring it to education loan in the name of Shashi Jindal on 19.7.2010 dishonestly despite having full knowledge that he had no authority to do so in terms of loan agreement dated 18.8.2001. Accused never issued any notice asking the complainant as to why the amount of Rs.92000/- may not be appropriated. The complainant came to know about the transfer of Rs.92000/- on 24.7.2010 when he received a registered letter written by the accused. Complainant filed reply to the notice on 24.7.2010. Earlier when complainant visited the Bank on 19.7.2010 for the purpose of withdrawing Rs.15000/- from his saving Bank account, accused handed over a copy of letter and asked the complainant for noting its contents which the complainant did under protest and without prejudice to his other rights. Complainant immediately wrote a letter dated 19.7.2010 to accused regarding illegality of his action of having marked a lien of Rs.100000/- on his saving bank account, but no reply was furnished by the accused. Further, on the one hand accused transferred the aforesaid amount of Rs.92000/- on 19.7.2010, but on the other hand, he sought permission of the Controlling Authority for allowing the accused to effect above transfer again on 19.7.2010. Thus, he even kept his own Controlling Authority in dark. Complainant preferred a complaint before District Consumer Disputes Redressal Forum, Faridkot, on 3.8.2010 which was partly accepted on 12.1.2011 with a direction to accused to refund amount of Rs.92000/- along with interest @9% p.a. from the date of its transfer i.e. 19.7.2010 till the actual payment and also to pay Rs.2000/- as litigation expenses within a period of one month from the date of receipt of copy of order. Both complainant and accused preferred appeal against the said judgment of the District Consumer Disputes Redressal Forum, Faridkot, which is still pending. In the above circumstances, accused has committed offences punishable under Sections 166, 403, 406, 409 of IPC. Hence, the present complaint was filed by the complainant against accused for offence under Sections 166, 403, 406, 409 of IPC."

After the preliminary evidence, the complaint was dismissed and the accused was not summoned.

The learned Judicial Magistrate Ist Class, Faridkot, on the basis of preliminary evidence held that the daughter of the complainant applied for education loan of ₹4 Lacs with State Bank of Patiala, Faridkot Branch and the complainant signed the document in capacity of guardian. The learned Judicial Magistrate Ist Class, Faridkot, held that a perusal of the terms of the agreement shows that as per clause 5(v), the Bank was entitled to recover the loan from the guardian, if any adverse report against the academic progress of the loanee student comes to the knowledge of the bank or on her failure to clear any of the exams or otherwise and no such eventuality took place as per the complainant's version. The Court on the basis of evidence held that there is nothing on the record to suggest that the alleged acts done by the accused were for his illegal personal enrichment. The act was done on behalf of the Bank. The Bank is not an accused. If at all these facts are presumed as correct, then the alleged gain is for the Bank. The Court below also discussed the law laid down by the Hon'ble Supreme Court regarding obtaining the sanction as the accused is a public servant and sanction is necessary, but no sanction has been taken under Section 197 Cr.P.C.

I have gone through the impugned orders passed by the learned Judicial Magistrate Ist Class, Faridkot, as well as by the learned Additional Sessions Judge, Faridkot. No illegality has been committed by the Courts below.

Therefore, finding no merit in the petition, the same is dismissed.

April 25, 2016.

(Inderjit Singh)
Judge

hsp