

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1685 of 2007 (O&M)

Date of decision : 21.4.2016

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Rekha Rani

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. O.P. Kamboj, Advocate for the petitioner.

Mr. Yogesh Gupta, Assistant Advocate General, Punjab.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? |] | Yes |
| 2. To be referred to the Reporters or not? |] | |
| 3. Whether the judgment should be reported in the Digest? |] | |

P.B. Bajanthri, J.

In the instant Criminal Revision Petition, petitioner has questioned the validity of the trial Court decision dated 22.8.2006 passed in Criminal Case No. 9-1/14-5/2003, by which the petitioner has been convicted under Section 409 IPC and sentenced to undergo rigorous imprisonment for 6 months and she was also sentenced to pay a fine of Rs.2,000/- and in default of payment of fine, the convict was to further undergo imprisonment for 20 days. In Criminal Appeal No. 56 of 2006, the trial Court decision dated 22.8.2006 has been affirmed on 8.9.2007, by the Sessions Judge, Ferozepur.

- 2) Brief story of the prosecution is that petitioner applied for STD/PCO i.e. ISD, Public Call Office for installation at near Bus Stand, Malwal, District Ferozepur. An agreement was entered into

between the Telegraph Authority and the petitioner on 12.6.2000. The petitioner was required to collect the amount of calls made at the PCO and to deposit the same with the Telegraphic Authority – department after deducting her commission and these deposits of revenue collected were payable against the bill issued after 15 days by the Telegraphic Authority – department. The petitioner was the licensee. The petitioner failed to deposit a sum of Rs.25,772/- collected for the period from 31.12.2000 to 15.12.2001. The aforesaid amount was not remitted by the petitioner. The matter was investigated and the FIR was filed. The petitioner was arrested on 26.4.2003 and she was released on bail. Challan was presented in the Court of Illaqa Magistrate. She was charge sheeted under Section 409 of IPC. Since she did not plead guilty, trial was proceeded.

(3) The prosecution in order to prove the charge, examined PW-1 SI Gurmit Singh, PW-2 Narinder Kumar Sharma, PW-3 G.S. Gill, General Manager, Telecommunication Department. The petitioner was examined under Section 313 Cr.P.C. in which she had denied the incriminating evidence appearing against her in prosecution evidence and pleaded her innocence. However, she has not lead any evidence in her defence.

4) The trial Court, while appreciating the evidence on record, convicted the petitioner, while sentencing her to undergo rigorous imprisonment for 6 months and also sentenced her to pay a fine of Rs.2,000/- under Section 409 IPC. The sentence was confirmed by the Sessions Court, Ferozepur.

5) Learned counsel for the petitioner submitted that the petitioner is holder of a license to run PCO on commission basis, as is evident from agreement dated 12.6.2000. Title of the agreement is “Installation, Maintenance and Operation”. The allegation is that petitioner failed to deposit the amount collected through PCO to the department for a particular period i.e., a sum of Rs.25,772/-. It was further alleged that petitioner forged 14 receipts and those receipts were found false. Under Section 409 of IPC, an agent of the Government is liable for prosecution and not a licensee. Licensee is different from agent. Therefore, department wrongly initiated criminal proceedings against the petitioner under Section 409 of IPC. The agreement executed between the petitioner and the department is under the Indian Telegraph Act, 1885 (for short “IT Act”). Section 7B relates to arbitration of disputes. Extract of Section 7B is reproduced here in :-

“7B. Arbitration of disputes.—(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either

specially for the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court.]”

If there is any dispute between the department and Telegraphic Authority, the matter will be decided through arbitration. In the present case, dispute is relating to non-payment of a sum of Rs.25,772/-, which was collected by the petitioner by running PCO. During the period from 31.12.2000 to 15.12.2001 the petitioner temporarily misappropriated the said amount. If Section 7B of the IT Act was invoked, the arbitrator would have decided the issue. That apart, the petitioner has remitted the due amount of Rs.25,772/- on 7.3.2003. There is a delay in remitting the amount. At the best, department-Telegraphic Authority could have acted under Section 20A of the IT Act, which relates to Breach of condition of license. Section 20A is reproduced herein :-

“**[20A. Breach of condition of license.—**If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for

every week during which the breach of the condition continues.]”

6) In view of the above legal position initiating criminal proceedings under Section 409 of IPC is totally false and it was not warranted. The petitioner has been unnecessarily subjected to criminal proceedings and she was compelled to undergo for a period of 1 month and 4 days in the jail. The very initiation of criminal prosecution is impermissible having regard to the nature of the agreement executed between the petitioner and the Telegraphic Authority – department.

7) Per contra, learned counsel for the State submitted that no doubt the agreement between the petitioner and department is relating to installation, maintenance and operation of PCO and the petitioner is a licensee and the respondent department is licensor. Ultimately, the petitioner was an agent since she was getting commission while running the PCO . Therefore, Section 409 of IPC is attracted and there is no infirmity in launching criminal proceedings against the petitioner under Section 409 of IPC, so also conviction ordered by the trial Court and it is affirmed by the Sessions Court.

8) Heard learned counsel for the parties.

9) Agreement dated 12.6.2000 entered into between the petitioner and respondent – Telegraphic Authority – department is in respect of “Installation, Maintenance and Operation” of PCO. The agreement is between the licensee and the licensor. The petitioner was

running PCO on behalf of Telegraphic Authority and getting a commission after depositing some amount etc. Learned counsel for the petitioner rightly pointed out that if there is any breach of agreement action should have been taken under Section 7B and Section 20A of the IT Act, namely, Arbitration of Disputes and Breach of condition of license. In the agreement nowhere it is stated that the petitioner is an agent, so as to attract Section 409 of IPC. That apart, Section 409 of IPC is relating to Criminal breach of trust by public servant, or by banker, merchant or agent. The petitioner do not fall under any one of the category. The petitioner did not have any property of the department – Telegraphic Authority, therefore Section 409 of IPC is not attracted in the present case. On the contrary in the agreement it was made clear that IT Act and Rules are applicable. Extract of para 15 and 16 of the agreement is reproduced herein:-

“15. All the operations of the licensee or his employees with respect to provisions, maintenance and operation of payphones will be subject to the provisions of the Indian Telegraph Act & Rules.

16. Any dispute arising regarding the provisions of this licence shall be settled through arbitrations as provided under Section 7 (b) of the Indian Telegraph Act.”

(10) In view of these facts and circumstances, the sentence awarded by the trial Court vide judgment and order dated 22.8.2006 and affirmed by the Sessions Court on 8.9.2007, are set aside.

April 21, 2016
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(P.B. Bajanthri)
Judge