

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

CRR No.2681 of 2008 (O&M)
Date of decision: 23rd August, 2016

Baldev Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Brijender Kaushik, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

This is a criminal revision petition preferred by Baldev Singh, one of the accused/convicts who along with his co-accused Naresh Kumar, Om Parkash, Manohar Singh, Baljinder Singh and Prem Singh were earlier tried in case got registered by way of FIR No.30 dated 19.03.2004 under Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (in short, 'the Prisoners Act') and sections 420/467/468/471/120-B IPC pertaining to Police Station Sadar Ambala. The Court of learned Judicial Magistrate 1st Class, Ambala City through judgment dated 11.09.2007 found the accused Manohar Singh guilty of commission of offences under Sections 420, 465, 468, 471 IPC read with Section 120-B IPC, Section 120-B IPC and Section 9 of the Prisoners Act, similarly Baldev Singh present petitioner and Baljinder Singh were convicted for offences under Sections 465,

468, 471 IPC read with Section 120-B IPC. Accused Manohar Singh was sentenced to undergo RI for 3 years and to pay a fine of Rs.5000/- for offence under Section 420 IPC and in default of payment of fine to further undergo RI for 3 months. He was also sentenced to RI for 2 years each under Sections 465, 468, 471 IPC read with Section 120-B IPC, whereas under Section 120-B IPC he was sentenced to undergo RI for 1 year. Under Section 9 of the Prisoners Act, accused Manohar Singh was sentenced to undergo RI for 3 years and to pay a fine of Rs.5000/- and in default whereof to further undergo RI for 3 months. Accused Baljinder Singh and Baldev Singh were sentenced to undergo RI for 3 years and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo RI for 3 months each for offences under Sections 468, 471 IPC read with Section 120-B IPC. Both of them were further sentenced to undergo RI for 2 years for offence punishable under Section 465 IPC whereas under Section 120-B RI for 2 years was awarded to them. All the sentenced were ordered to run concurrently.

The same was assailed by the convict Baldev Singh, Manohar Singh and Baljinder Singh in two separate appeals which were disposed off together by the Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Ambala and through impugned judgment dated 29.07.2008 whereby both the appeals by the three convicts were dismissed upholding the judgment of conviction qua them. It is the same very findings which are subject matter of assailment before this Court.

Upon hearing Mr. Brijender Kaushik, Advocate for the petitioner and Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of the respondent/State and on perusal of the records.

It was on letter Ex.PA of Superintendent, Central Jail, Ambala addressed to the District Magistrate, Ambala that one Manohar Singh who was in the jail was released on parole on 03.02.2004 for a period of four weeks and was supposed to surrender in jail on 03.03.2004 at 10.00 a.m. after expiry of this concession of parole but he failed to surrender leading to registration of the present case. During the course of investigation, it transpired that the accused in his parole application has given false and wrong affidavit and even certificate attached with his application for such a prayer was also a forged document prepared by him in connivance with his co-accused.

It was thereafter on completion of investigations, the accused were chargesheeted under Sections 8 and 9 of the Prisoners Act and sections 420, 467, 468, 471, 120-B IPC to which they pleaded not guilty and had claimed trial.

Prosecution at the trial examined PW-1 Risal Singh, PW-2 HC Balwant Rai, PW-3 Assistant Superintendent Jaswant Singh, PW-4 Sub-Assistant Superintendent Ram Lal, PW-5 Harshvardhan (Senior Scientific Officer), PW-6 SI Babu Ram, PW-7 SI Y.S. Rathore, PW-8 HC Naresh Kumar the investigating officer, PW-9 Satnam Singh Reader and PW-10 Surjit Singh Ex.Sarpanch; and in the process proved documents Ex.PA; Ex.PB; Ex.PW3/A; Ex.PW4/A; Ex.PW5/A to

Ex.PW5/G; Ex.PW6/D to Ex.PW6/F; Ex.PW8/A to Ex.PW8/I. The accused denied the allegations and in their defence examined DW1 Gurmukh Singh and thereafter closed the evidence leading to passing of the judgment of conviction.

The very golden principle of criminal jurisprudence that the onus to prove its case always rests upon the prosecution and the prosecution cannot be allowed to take undue benefits of the weaknesses of the defence, has not been put to question by the learned State counsel. Thus, by this rule of law, as laid down in **1976 CLR 116(SC) 'Partap v/s State of Uttar Pradesh'** onus lay heavily upon the prosecution to prove its case against the accused beyond shadow of reasonable doubt. It is not denied in any manner by learned counsel for the petitioner that at the relevant point of time Manohar Singh son of Amarjit Singh was in judicial custody and was released on parole on 03.02.2004 for a period of four weeks. It could not be displaced even by learned counsel for the petitioner and is well elicited in the prosecution evidence especially testimonies of PW3 Assistant Superintendent Jaswant Singh and PW4 Sub-Assistant Superintendent Ram Lal and through Expert PW5 Harshvardhan, Senior Scientific Officer that when papers of parole were submitted and the certificate bearing signatures of the Sarpanch Gurnam Singh as has been proved by the handwriting expert did not belong to Gurnam Singh and has been alleged to be forged and were in fact written by Baldev Singh. To the very query of the Court, as has been discussed by the Courts below in para 30 of the judgment of the learned

Magistrate and also forms part of the findings of the impugned judgment, the alleged Gurnam Singh has never been examined in the prosecution evidence, thus a vital piece of evidence, a link in the prosecution story certainly has gone missing which goes to the very roots of the prosecution story and thus, undermines the same.

It is nobody's proven case that in this nefarious design, accused Naresh Kumar and Om Parkash stood as sureties and Manohar Singh was the accused who was lodged in jail for whom this parole was sought and that the rubber stamp of Gurnam Singh was prepared by accused Prem Singh whereas Baljinder Singh forged the signatures of Manohar Singh who too as per these findings has not been examined as a witness of the prosecution thus, another serious lacunae that has cropped up, whereas the present petitioner is alleged to have forged signatures of Gurnam Singh. The sureties Naresh Kumar and Om Parkash and so the alleged fabricator of the rubber stamp of Gram Panchayat have been acquitted and thus let off the hook, are matters of serious consequence bringing about that part of the prosecution story has not been accepted by the learned trial Magistrate and therefore, has its own repercussions on the prosecution story.

The very contentions that are sought to be vociferously put forth by learned counsel for the petitioner Mr. Brijender Kaushik, Advocate are that the only allegations against him are that he has forged signatures of Gurnam Singh and thus, in the absence of examination of Gurnam Singh as a prosecution witness who was of vital importance and

the very testimony of PW5 Harshvardhan shows as per his opinion Ex.PW5/H that he has compared Hindi writing by way of signatures of Gurnam Singh on the questioned document with the specimen signatures of Baldev Singh and has opined on the basis of the same that there was no divergence observed between the questioned and standard signatures when the own admission of learned State counsel bears out that the admitted signatures/handwriting of said Gurnam Singh have never been brought on the records nor taken for the purposes of comparison and barely because the Hindi writing of Baldev Singh petitioner is akin to that in the questioned as well as specimen handwriting, is no conclusive unimpeachable evidence to bear out the guilt of this person.

There is no other evidence on the records against the petitioner which could be brought to the notice of the Court by the learned State counsel. Merely because Manohar Singh the undertrial had made his confession Ex.PB before the police of the alleged nexus of each of them cannot be legally and legitimately termed as reliable piece of evidence in view of the bar of Section 25 of the Evidence Act which lays down that confession made before a police officer cannot be considered legitimately as a piece of legal evidence, an another remiss in the prosecution story.

The alleged certificate purported to have been got prepared which has led to the release of detainee Manohar Singh has never been used in any Court and was only submitted with the application before the competent authority which was to grant parole. The allegations of

forgery levelled against the revision petitioner for which the petitioner has been punished for commission of offence under Section 465 IPC is not established beyond any doubt and the very element of forgery defined under Section 463 IPC read with Section 464 IPC carries with it the essentialities of making, signing, sealing or executing the document or its part with the intention so that it could be believed to have been issued by the authority of such a person. In the present case as per the allegations that Baldev Singh has forged signatures of Gurnam Singh and on account of what has been detailed and discussed above non-proving of forgery of signatures of Gurnam Singh either by the expert or non-examination of Gurnam Singh in the Court to establish it so, certainly to the mind of this Court does not makes such a document which has led to release of the detainee on parole, to be termed to be forgery and thus, offence under Section 465 IPC and consequently Sections 468 and 471 IPC are not established by any means against the revision petitioner and consequently the element of criminal conspiracy does not survive by any means.

Looking from another angle, the impugned judgment on close look shows that it could not by any means be termed as a judgment in terms of Section 353/354 of the Cr.P.C. as the very mandatory prerequisites and contents of a judgment as to the reasons leading to these conclusive findings are nowhere elucidated from the impugned judgment of learned first appellate Court. How the learned Court has reached this conclusion upholding the findings of the learned trial

Magistrate is more based on non-reasoning than on any substantial issues raised before the concerned Court. Moreover, the acquittal of accused Prem Singh, the fabricator of rubber stamp of the Gram Panchayat which is alleged to be affixed on the certificate in question, further has its adverse bearing on the outcome of this case of the prosecution. In the light of what has been detailed and discussed above, the impugned findings certainly are wrong interpretation of evidence and the law and has resulted in immense prejudice to the case of the petitioner and the findings being illegal and perverse needs to be set aside qua the petitioner by way of acceptance of the present revision petition and consequently the petitioner is hereby acquitted of the offences for which he has been convicted by giving him benefit of doubt.

The revision petition stands allowed in those terms. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

August 23, 2016

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No