260

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2140 of 2009
Date of Decision: 28.11.2016

Sunil Bali

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Ekta Thakur, Advocate for the petitioner.

Mr. Arjun Sing Yadav, AAG, Haryana.

*****

A.B. Chaudhari, J. (Oral)

Present revision petition was filed by the sole petitioner Sunil Bali against the impugned judgment of conviction dated 19.10.2007, passed by the trial Court and affirmed in the appeal vide judgment and order dated 12.08.2009, passed by the Additional Sessions Judge, Gurgaon.

Heard learned counsel for the rival parties.

It is the case of the prosecution that the petitioner Sunil Bali was Assistant Accountant with Omax Autos Limited, in custody with cheque and had utilized 5 cheques of the company and with the help of 2 cheques out of 5 had withdrawn a sum of Rs.1,56,000/- from the account of the company by opening a fake account in the name of M/s S.S. Traders.

The star witness of the prosecution was PW-3. The trial Court itself recorded a finding of fact in paragraph 21 which reads thus:

> *"As far as the role of accused 'Dharampal' is concerned at the very outset it is pertinent to mention that neither there is any allegations in the charge sheet nor there is any evidence on behalf of prosecution to prove the fact that accused 'Dharampal' before opening of account was aware of the fact that account is being opened in fictitious name. There is no iota of evidence to show that accused 'Dharampal' was aware of the fact that person who was opening the account in the bank as proprietor of M/s S.S. Traders is infact 'Sunil Bali' instead of 'Mohinder Talwar'. In my considered opinion, no allegations against the accused 'Dharampal' have not been substantiated for the commission of any offence. So much so, once the person namely Parkash was introducing the accused 'Sunil Bali' before the banker, in my considered opinion, there was no occasion for the accused. 'Dharampal to have any doubt about the identity of the accused 'Sunil Bali'. Moreover, in order to establish the above said fact, atleast it should have been proved by the prosecution that the account was opened in the bank and in the present case the most significant defect in the prosecution evidence is that the account opening form and the other vouchers related to deposit and withdrawal of money from the above said bank account being maintained in the name of M/s S.S. Traders have not been proved & exhibited as per requirement of law. Once the above said documents are not proved, in my considered opinion, no allegations is proved against the accused 'Dharampal'."*

In the above findings, it is held that opening of a fake account in the name of M/s S.S. Traders by Sunil Bali was not been proved. The trial Court, however, convicted the petitioner Sunil Bali for two reasons. The first reason was that PW-3 deposed that petitioner Sunil Bali was employee of the company. The second reason was that he also deposed that Sunil Bali embezzled the amount of Rs.1,56,000/- by utilizing two cheques out of five. This was of the prosecution evidence. The trial Court in paragraph 24 of the judgment added one more reason that counsel for the petitioner had given a suggestion that the money was paid back to the company by Sunil Bali, which proved his guilt. Thus, these are only reasons for recording conviction.

Upon hearing the learned counsel for the rival parties and perusal of the reasons recorded above, at the outset, I find that there is clear finding that the prosecution has failed to prove that Sunil Bali had opened the fake account in the name of M/s S.S. Traders.

Keeping in view the above findings of fact, the validity of order of learned trial Court recording conviction and reasons therefor will have to be examined. The prosecution witness PW-3 or other prosecution witnesses did not bring on record by proving the fact that petitioner had withdrawn the amount of Rs.1,56,000/- inasmuch as neither any witness of bank was examined nor any document was brought on record by the prosecution to substantiate any allegation against the petitioner. The trial Court merely accepted the evidence of PW-3 that it was Sunil Bali, who was employee and he had withdrawn the amount of Rs.1,56,000/-.

In my opinion, in the wake of negative finding about opening a fake account by petitioner that he had withdrawn the amount of Rs.1,56,000/- from that account cannot be reconciled. Apart from this fact, even independently, prosecution has failed to prove that petitioner

Sunil Bali had withdrawn the amount of Rs.1,56,000/-. Under Section 91 of the Evidence Act, if the documentary evidence is available, the prosecution cannot be allowed to rely on the parole evidence of the witness. The prosecution has not even collected and proved the documentary evidence from the bank or otherwise about all these aspects. The burden of proof cannot be shifted upon the accused and the prosecution must stand or fall on its own legs. The prosecution did not bring the required evidence but conducted the trial before the trial Court in a haphazard manner.

The benefit of doubt obviously goes to the accused. The reason given by the trial Court about the suggestion that the money was paid by Sunil Bali to the complainant is again lame. The reason is that no conviction can be recorded on such suggestion even it given that too vague in nature and without any specification about the money paid back to the company for what reason and on what account.

In my opinion, therefore, present petition must succeed as the prosecution has failed to prove its case beyond the reasonable doubt. Hence, the following order is passed:-

1) CRR No.2140 of 2009 is allowed.

2) Orders dated 19.10.2007 and 12.08.2009, both are quashed and set aside.

[A.B. CHAUDHARI]
JUDGE

28.11.2016
sachin

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No