

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

**Criminal Misc. No.M-39800 of 2015
Date of Decision: 05.04.2016**

Tara Chand

...Petitioner(s)

Versus

Raghunath & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. Vivek Khatri, Advocate
for the petitioner.

HARI PAL VERMA J.(Oral)

Petitioner-Tara Chand son of Fateh Chand, resident of House No.3, Vikas Colony, Kaimri Road, Hisar has filed the present petition under Section 482 CrPC impugning the order dated 17.2.2014 passed by learned Judicial Magistrate Ist Class, Hisar (Annexure P-1), whereby the complaint filed by the petitioner under Sections 409/218/467/468/471/120-B IPC was dismissed, as well as order dated 29.10.2015 passed by learned Sessions Judge, Hisar (Annexure P-2), whereby the revision

petition filed against the aforesaid order dated 17.2.2014 has also been dismissed.

Briefly stated, the petitioner-complainant who is retired draftsman from PWD(B&R) department had filed a complaint alleging therein that the accused-respondents had embezzled the diesel amounting to Rs.75,071/- from 13.5.2009 till 31.5.2011 and they had prepared false record. It has been alleged in the complaint that respondent no.2 was allotted a government jeep bearing No.HR-20R-5901 for the period from 13.9.2009 till 31.5.2011 for performing the government works. Respondent No.1 - Raghunath was posted as driver of the said jeep. The log-book of the said jeep was to be maintained by respondent no.2. The tank of the jeep had a capacity of 65 litres. It was alleged that the accused persons had fraudulently filled up the log book by showing the balance diesel above the limit of 65 litres in the said jeep. There were irregularities in maintaining the log book. The log book was not regularly filled up and the same was prepared afterwards in pursuance of the criminal conspiracy by the accused persons.

Complainant examined PW-1 Krishan Kumar, Clerk working in the office of XEN and PW-2 Ved Parkash, Divisional Accountant. The complaint was sent for further enquiry under Section 202 CrPC vide order dated 6.4.2013 and report was received in the trial Court on 30.5.2013. Learned Magistrate

dismissed the complaint vide order dated 17.2.2014 observing as under:-

“6. On perusing the Log Book Ex.P2, it is clear that the balance of oil was shown in column No.8 of the Log Book by measuring the same through an assumed milage rate of 12 Km. per litre. The said fact has further been corroborated by the report submitted by the investigating agency under Section 202 Cr.P.C. As per the report, the driver of the government jeep was made responsible for the milage of the jeep by putting responsibility upon him to give account of the oil as per the milage of 12 Km per litre. I have started perusing the Log Book Ex.P2 from its very inception i.e. from 13.05.2009. As per the Log Book, the initial fuel in the oil tank was shown nil and a fuel of 69 litres was filled up in the Jeep. On 13.05.2009, the said jeep was stated to have travelled 285 Km. and by applying the assumed milage of 12 Km per litre, the consumption was shown as 24 litres and balance fuel was shown as 45 litres. On the next date of traveling i.e. 15.05.2009, the entry of fuel in tank was taken from the previous entry of balance shown in the previous column and a fresh balance in the oil tank is calculated by assuming its milage as 12 Km. per litre. Therefore, the main contention of the learned counsel for the complainant that the balance of fuel was shown as 1728 litres on 28.03.2009 in the oil tank i.e. above the capacity of the oil tank, is having no merits as the said balance was not shown on physical verification but only by applying the assumed milage @ 12 Km per litre.

Therefore, the possibility that the alleged government jeep was not giving the assumed milage of 12 Km per litre and might have been giving some lower milage cannot be ruled out. The complainant had never proved or pleaded that the entries shown in column No.2 and 3 with regard to the place and time of departure and with regard to the place of inspection has wrongly been mentioned. He has not brought any record that the concerned officials had not travelled/visited those places on the given date and had filled up the Log Book only for embezzling the amount for oil consumed during those travelling. His whole case is based upon the fact that a balance of 2033 litres was shown in the oil tank of the government jeep while his capacity is only 65 litres. As above discussed the said balance was not shown as per the physical verification, but by calculating the deficit by applying the assumed milage at @ 12 km per litre. On perusal of the Log Book Ex.P2, it is also clear that the officials of the rank of XEN, SDE of Hisar Range as well as of Jind region used to travel in the alleged government jeep by making the respective entries with regard to their travelling. On perusing the inquiry report under Section 202 Cr.P.C., it has come to my notice that the alleged jeep bearing No.HR-20R-5901 was used in the government work and the same was giving a lower milage @ 10 Km per litre for the reason of its ill-maintenance. The department has already initiated the recovery proceedings against the responsible driver Raghunath (accused No.1) for the deficiency due to higher consumption of the

fuel in the said jeep as he was made responsible to make account of the consumption of the fuel @ 12 km. per litre. The amount of Rs.48,000/- has stated to have already been recovered from the driver Raghunath (accused no.1).”

The petitioner-complainant preferred revision petition against the aforesaid order dated 17.2.2014, however, the learned Additional Sessions Judge, Hisar dismissed the same vide order dated 29.10.2015 observing as under:-

*“14. So far as, the case law **Madan Lal Verma's case (Supra)** [Madan Lal Verma v. A.S. Ranga 2007(2) RCR (Criminal) 218] cited by learned counsel for the complainant-revisionist, wherein it has been held that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance is not at all disputed but in this case prior sanction to prosecute the public servants under Section 197 Cr.P.C. is necessary, which has not been obtained by the complainant revisionist before filing the complaint. As such, the abovesaid case law is also not attracted to the facts of the present case.*

15. So far as this argument of the counsel for the complainant revisionist that accused-persons in conspiracy of each other had prepared false and fabricated log book Ex.P2 by showing the balance diesel in the jeep on different dates as 110 Ltr. to 2034 Ltr. though the vehicle was having capacity of 65 Ltrs. is concerned, the same is devoid of merits because the balance in the log book was not shown as per the

actual consumption. The balance was given by adopting a formula to the effect that average mileage of the vehicle was @12 kilometers per litre and by adding the actual entitlement of the diesel. It could be a wrong method of calculation adopted by the respondents for which they cannot be criminally liable. Had they conspired together they would not have shown balance diesel in said way in the log book. It is also pertinent to mention here that even in the enquiry conducted by the police under Section 202 Cr.P.C. the respondents have been exonerated. Even otherwise, the department had initiated the departmental proceedings against the driver-Raghunath and held him responsible for the deficiency due to higher consumption of fuel in the said vehicle. It is needless to mention here that an amount of Rs.48,000/- had already been recovered from the said Raghunath for the abovesaid lapse on his part. Thus, I find no illegality or infirmity in the impugned order passed by the learned trial Court and does not require any interference.”

Still aggrieved, the petitioner-complainant has filed the present petition under Section 482 CrPC impugning the order dated 17.2.2014 passed by learned Judicial Magistrate Ist Class, Hisar (Annexure P-1) as well as order dated 29.10.2015 passed by learned Sessions Judge, Hisar (Annexure P-2).

Learned counsel for the petitioner has referred to letter dated 17.8.2011 (Ex.P1) issued by respondent no.2, Sub Divisional Engineer, to respondent no.1, jeep driver, ordering

recovery of an amount of Rs.75,071/- stating that respondent no.1 is habitual of not completing the log book of the aforesaid vehicle, but still the Courts below have not taken into account the aforesaid fact and dismissed the complaint. Learned counsel further argued that it is proved on record that respondents have caused loss for an amount of Rs.75,071/- to the State exchequer and in order to conceal the aforesaid loss, they have made false and bogus entries in the log book of the aforesaid vehicle.

I have heard learned counsel for the petitioner.

Learned trial Court while having recourse to Section 202 CrPC, has got an enquiry report from the police and has come to conclusion that the vehicle in question was used for government work and the same was giving lower mileage @ 10 kms. per litre for the reason of its ill-maintenance and the department itself has already initiated recovery proceedings against the responsible driver Raghunath, respondent no.1 for deficiency due to higher consumption of the fuel in the said jeep, as he was made accountable for consumption of fuel @ 12 Kms. per litre and in this manner, the loss caused to the State has already been recovered from the driver Raghunath. Moreover, prior sanction to prosecute the respondents was also not obtained, as per the provisions of Section 197 Cr.P.C. Thus, the very contention raised on behalf of the petitioner that the respondents embezzled the diesel amounting to Rs.75,071/- is untenable.

In this view of the matter, this Court do not find any merit in this petition.

Dismissed.

April 05, 2016
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(HARI PAL VERMA)
JUDGE