IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.5528 of 2014 (O&M)
Date of decision: 19th January, 2016

Harpal Singh

… Petitioner

Versus

State of Punjab and another

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Jashandeep Singh, Advocate
for the petitioner.

Mr. J.S. Brar, Asstt. Advocate General, Punjab
for respondent No.1.

None for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Harpal Singh, who happens to be one of the accused in case got registered by way of FIR No.177 dated 09.11.2013 under Section 408 IPC pertaining to Police Station Sarabha Nagar, District Ludhiana (Annexure P1), has filed instant petition under Section 482 Cr.P.C. seeking quashment of the FIR and all subsequent proceedings thereto.

Heard Mr. P.S. Hundal, Senior Advocate assisted by Mr.Jashandeep Singh, Advocate representing the petitioner and

Mr.J.S. Brar, Asstt. Advocate General, Punjab on behalf of the State/respondent No.1.

The brief allegations that stems out of the arguments and the records are that petitioner Harpal Singh was Honorary Secretary-cum-Cashier of Gaurav Cooperative House Building Society Limited, Agar Nagar, Ludhiana (in short 'the Society') which is a registered one bearing Registration No.1707 dated 24.03.1986 and remained so till 30.06.1990. The complainant in his complaint alleged that he had booked a plot measuring 400 square yards with the Society in the name of his wife and had paid. Consequent upon his application moved in the year 1989 a sum of ₹20,000 vide receipt No.742 dated 02.01.1989 and ₹10,410 vide receipt No.666 dated 25.09.1989, in all totaling to ₹30,410 and they were issued membership No.182. It is further alleged that after the entire amount was received by the petitioner, who was then Honorary Secretary-cum-Cashier of the Society, instead of depositing the amount in the accounts of the Society, he usurped it to his own benefit. It is subsequent on discovery of this fraud the petitioner moved complaints dated 21.02.2012 under PR No.548 dated 01.03.2012 and thereafter dated 24.08.2013 before the police, that the present case was got registered.

The contentions of learned counsel for the petitioner, Mr.P.S. Hundal, Senior Advocate assisted by Mr.Jashandeep Singh, Advocate that the complainant has moved the police after almost 14 years, have been sought to be rebutted by the learned State counsel.

Though by virtue of Section 468 Cr.P.C., the Statute had provided a bar for taking cognizance after the period of limitation and which deals only for offences which provides imprisonment for a term exceeding one year but not exceeding three years and by virtue of Section 469 Cr.P.C. lays down the commencement of period of limitation in relation to an offender and which enumerates that it shall commence on the date of the offence, or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer whichever is earlier, or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. Section 472 Cr.P.C. enunciates that in case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Reverting back to the instant case, it is not disputed by the two sides that the complainant had paid the amount in question and was allotted membership number and thus, enabling him to claim a plot in the Society by virtue of the membership. It is nobody's case that the applicant was not successful in the allotment but what reflects from the allegations prima-facie shows that after the receipt of payment and thereafter the officials responsible for running the affairs of the Society including the petitioner Harpal Singh, who remained Honorary Secretary-cum-Cashier of the Society upto 30.06.1990, have deceptively and surreptitiously embezzled this amount and in spite of the best efforts of the complainant had sought to project that after relinquishment of the charge, the records were handed over to his successor and which, as has been sought to be argued by learned State counsel, has never seen the light of the day. Thus, it is in no manner a case where it was evident as to the commission of offence when the membership was allotted in the year 1989 and it is a subsequent event which came to the knowledge and was discovered by the complainant after it was revealed by him of this deception that the accused have played upon him.

Payments have been made by virtue of demand drafts, as has been agitated on behalf of the respondent and thus, no cause to deny this fact. Since the allegations are as to embezzlement by a Secretary of the Society in his capacity as a Cashier and which offence provides imprisonment for seven years and fine. Thus, the plea of limitation does not holds good.

Though no definite definition has been assigned to the word 'Continuing Offence' in Section 472 Cr.P.C. however, with the case law a definite definition has come to crystallize as was considered in **'State of Bihar v. Deokaran Nenshi and another' 1973 AIR (SC) 908** and was subsequently reiterated by the Hon'ble Supreme Court of India in **'Y. Abraham Ajith and others v.**

Inspector of Police, Chennai and another' 2004(3) RCR (Criminal) 988 holding that continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed, and thus, the present case clearly falls within the definition of 'Continuing Offence' as from it gives fresh cause of action to the complainant.

Moreover, exercise of powers under Section 482 Cr.P.C. for quashment of the FIR is something of a rarity and only in exceptional cases, this Court is supposed to exercise the same to meet the ends of justice. A bare perusal of the averments made in the petition by the petitioner, who has sought to take refuge of this Court for getting off the hook for his criminal act, does not deserves sympathy of the Court. There is no merit in the instant petition and the same as such being devoid of any merit deserves dismissal and is thus dismissed.

(FATEH DEEP SINGH)
JUDGE

January 19, 2016
rps