

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 281

Criminal Revision No.100 of 2015
Date of Decision: *December 07, 2016*

Rakesh Sharma

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: Mr. V.S. Rana, Advocate, for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana for
respondent No.1 – State.

Mr. L.R. Sharma, Advocate, for respondent Nos.2, 3, 5 and 6.

None for respondent No.4.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated December 22, 2014 passed by the Additional Sessions Judge, Ambala whereby the trial court has been directed to frame charge against the accused for commission of offences under Sections 406, 420, 407, 379, 120-B IPC.

2. The brief facts of the case are that instant case stands registered on the basis of statement of complainant – Jeet Singh (respondent No.4), who has alleged that he is working under a registered forest contractor Rajinder Singh Chandel to look after his work at village Masaur,

P.O. Kuthera, Tehsil Ghumarwin, Bilaspur (H.P.). They sent Khari heart wood of 4.8885 cubic meter amount to ₹ 4,50,000/- to M/s Chandan Wood Product on January 16, 2012 through truck bearing registration No.HP-24A-7595 belonging to Mustak Ali, being driven by Hem Raj. He also sent his munshi Satish Kumar with the truck. Satish Kumar informed him that on January 17, 2012 at about 2:30 AM, when they reached near village Saha, a Tavera car stopped in front of their vehicle. There were three persons. Two persons in civil dress came out and asked them to show the documents. Munshi Satish Kumar showed all the documents of permitted goods. They snatched the documents and asked munshi to accompany them in their vehicle to police station. Out of the aforesaid two persons, one sat in the truck and asked the driver to follow their vehicle. Thereafter, they left munshi at Panchkula main road and asked him to reach police station, Panchkula at 10:00 AM for release of the truck including goods. He went to Police Post, Sector 2, Police Station, Sectors 5, 10 and Chandi Mandir but could not find the truck. He came to know that police officials did not seize any vehicle. On his statement, FIR was registered. Accused Hem Raj and Roop Lal were arrested and after completion of investigation, final report under Section 173(2) Cr.P.C. was presented. Later on accused Rajinder and Ashok Kumar were also arrested and supplementary challan was presented.

3. During the course of arguments on charge, counsel for the complainant argued that total six persons were involved in the incident as per disclosure statement dated November 27, 2012 suffered by accused Roop Lal. Co-accused Pankaj and Vipin were yet to be arrested. Separate proclamation proceedings were initiated against them.

4. The trial court found that though, accused were booked under Sections 406, 420, 407, 379, 120-B IPC, however, from the perusal of challan, accompanying documents and contentions raised by the State as well as counsel for complainant, a prima facie case under Section 395 IPC is made out, which is exclusively triable by the court of Sessions. Therefore, the lower court committed the case to the court of Sessions Judge, Ambala vide order dated December 17, 2014.

5. The Additional Sessions Judge, Amabla, while discussing Sections 383, 390, 391 and 395 IPC, came to the conclusion that alleged crime committed by the accused do not come within the domain of Section 395 IPC, rather accused committed an act of cheating by impersonation pretending themselves to be police officials under hatching criminal conspiracy with an act of criminal breach of trust and theft by taking possession of truck loaded with wooden without using any type of force on a public road and thus, no case under Section 395 IPC is made out. The court found that a prima facie case for commission of offence under Sections 406, 420, 407, 379, 120-B IPC is made out against the accused, to which, they are required to be charge-sheeted. Consequently, the case file was remitted to the court of Judicial Magistrate 1st Class with the direction to frame charges against accused for commission of aforesaid offences of Indian Penal Code.

6. Learned counsel for the petitioner has contended that a bare perusal of the final report and accompanying documents reveals that prima facie case under Section 395 IPC is made out against the accused persons. Additional Sessions Judge has ignored the factum of allegations and remitted the case to the trial court with the observation that no offence is made out under Section 395 IPC.

7. Learned counsel has contended that petitioner is sole proprietor of firm M/s Sharma and Company, a duly authorized supplier of Khair Hard Wood. The firm is engaged in business of supplying Khair Wood to various persons/firms including M/s Chandan Wood Product, Village Asawarpur, Bahalgarh, District Sonapat. Rajinder Singh Chandel is the main private contractor, who has been permitted by the Government of Himachal Pradesh to cut Khair trees. Jeet Singh – respondent No.4 is a sub contractor of khair wood, who has been given a special power of attorney by Rajinder Singh Chandel to transport/carry the khair wood. Petitioner has entered into agreements with M/s Chandan Wood Product and Jeet Singh. As per the terms & conditions of agreement(s), Jeet Singh – respondent No.4, for certain commission, took the responsibility to transport/carry and deliver khair wood, purchased by petitioner, to M/s Chandan Wood Product in Sonapat. Jeet Singh loaded 4.8885 cubic meter khair wood for delivering the same to M/s Chandan Wood Product on behalf of petitioner. Therefore, status of petitioner is that of a seller, status of M/s Chandan Wood Product is that of a buyer and status of respondent No.4 – Jeet Singh is that of a carrier/transport. Jeet Singh, in connivance with few persons, got the loaded truck hijacked/stolen from Saha in Haryana and lodged an FIR No.7 dated January 24, 2012 against the driver of truck. In this manner, Jeet Singh, alleged complainant, firstly cheated the petitioner and then entered into a compromise with accused Roop Lal and Hem Raj. They approached this Court through Criminal Miscellaneous No.M-10299 of 2012 which was dismissed on October 30, 2012. Petitioner assisted this court as convener in the aforesaid petition. Roop Lal and Hem Raj again filed Criminal Miscellaneous No.M-37024 of 2012 for quashing the FIR on the basis of

compromise with Jeet Singh, wherein, petitioner has been impleaded as party on his request, vide order dated October 29, 2014.

8. Learned counsel for the petitioner has further contended that there are allegations of hijacking of truck by accused and respondent No.4. The trial court, prima facie, found that offence under Section 395 IPC is made out and triable by the court of Sessions. However, the Additional Sessions Judge has committed an error by remitting the case to the court of Judicial Magistrate 1st Class with the observation that no offence under Section 395 IPC is made out. Learned counsel has further contended that total seven persons are involved in the present case whereas the police has presented the challan only against four persons and against two other persons, namely, Pankaj Kumar and Vipin Kumar, proclamation proceedings are going on.

9. Learned counsel for the petitioner has contended that Section 391 IPC clearly states that When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”. This fact has not been considered by the Additional Sessions Judge while remitting the case to the court of Judicial Magistrate 1st Class with direction to frame charges under Sections 406, 420, 407, 379, 120-B IPC against the accused persons. Thus, the impugned order passed by the Additional Sessions Judge, Ambala is not only illegal but has been passed in a casual manner, and is liable to be set aside.

9. Learned counsel for the respondents have vehemently opposed the instant petition while submitting that all the facts & circumstances have been carefully gone through by the Additional Sessions Judge while passing the order. The Additional Sessions Judge has gone through each and every aspect of the case and has rightly remitted the case to the court of Judicial Magistrate 1st Class. The instant petition being devoid of any merit is liable to be dismissed.

10. This court has given an anxious thought to the rival submissions made by learned counsel for the parties and gone through the record available.

11. If the entire statement of complainant Jeet Ram is taken into consideration, no force was used while taking over possession of truck by the occupants of Tavera vehicle. Accused Roop Lal suffer disclosure statement dated November 27, 2012 regarding involvement of six persons, however the same cannot be relied upon being contrary to the version of complainant Jeet Ram who has stated that there were five persons inside the Travera car. The accused persons committed an act of cheating by impersonation pretending themselves to be police officials and theft by taking possession of the loaded truck, without using any type of force on a public road. A perusal of Sections 383, 390, 391 and 395 IPC makes it crystal clear that the alleged crime committed by the accused does not fall within the purview of Section 395 IPC. Moreover, when the trial court formed an opinion that a prima facie case under Section 395 IPC is made out against the accused, then, it was required for the court to take accused in custody under Section 395 IPC. However, neither accused were taken into custody under Section 395 IPC nor recorded any plausible reasons as to on

what basis, it formed the opinion that prima facie case under Section 395 IPC was made out. However, from the perusal of final report and accompanying documents, a prima facie case for commission of offence under Sections 406, 420, 407, 379, 120-B IPC is made out against the accused, to which, they were required to be charge-sheeted, as required under Section 228 Cr.P.C.

12. In the light of what has been discussed above, order dated December 17, 2014 passed by the Judicial Magistrate 1st Class, Ambala is not sustainable in the eyes of law and order dated December 22, 2014 passed by the Additional Sessions Judge, Ambala is absolutely in consonance with the legal proposition and is hereby upheld. Consequently, there is no merit in the instant petition and the same is accordingly dismissed.

December 07, 2016

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**(Jaspal Singh)
Judge**

Whether Speaking or Non-speaking

: Yes/No

Whether Reportable or not

: Yes/No