

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 385 of 2007**

Shahida Begum, w/o late Ajwant Ali, aged about 48 years, R/o. Khongapani, P.S. and tehsil Manendragarh, District Korla, Chhattisgarh.

---- Applicant

Versus

1. D.P. Patel, S/o Shri S.L. Patel, aged 53 years, Assistant Sub Inspector, Charcha, police Chowki Charcha, Baikuntpur, District Korla, Chhattisgarh.
2. State of Chhattisgarh, through District Magistrate, Korla, District Korla.

---- Respondents

For the Applicant	:	Smt. Fouzia Mirza, Advocate.
For the Respondent/ State	:	Shri Vijay Bhaduri, Deputy G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board**

03.01.2017

1. The applicant has brought this revision against the judgment dated 24.5.2007, passed in Criminal Revision No. 175 of 2006, by the Learned Second Additional Sessions Judge (F.T.C.), Manendragarh, District Korla, Chhattisgarh.

2. Facts of the case are, that on 23.07.2003, the applicant filed a written complaint in police station Manendragarh and on the basis of which, the First Information Report was registered on 06.10.2003 against Rahim Baksh, Lalla Babu @ Lala Prasad, Charuchand Naik and Vinay Kumar Choudhary under Sections 420, 467, 468/ 34 of the Indian Penal Code. The police investigated the case and presented the charge-sheet in the trial court for prosecution, in which only one accused Rahim Baksh was arrayed.

3. The complainant filed an application under Section 319 of the Cr.P.C. which was decided on 8.11.2005 by the trial court. By the said order, the application was allowed and all the persons mentioned in the First Information Report were arrayed as accused by the trial court. Apart from that, one show-cause notice was also issued against the Investigating Officer, D.P. Patel. Learned trial Court after considering the reply of the Investigating officer, passed an order on 2.5.2006, in which it was recorded that the explanation submitted is not satisfactory and the act of the Investigating Officer (IO) in the investigation of this case amounts to offence under Section 120A of the IPC. Cognizance was taken against the IO and the process was issued for his appearance.

4. The order dated 2.5.2006 was challenged in the revision before the Sessions Court, Manendragarh. The said revision petition was heard and decided by the Learned Second Additional Sessions Judge (F.T.C.), Manendragarh on 24.05.2007, whereby the revision petition was allowed and the order of the trial court dated 2.5.2006 was set aside.

5. The grounds in this revision petition are, that applicant - Shahida Begum is the only living wife of late Ajwant Ali, who had been in the service of S.E.C.L. The applicant was nominated in the service record by late Ajwant Ali hence she was entitled for C.M.P.F. amount and gratuity after the death of late Ajwant Ali. To deprive her from these benefits, Rahim Baksh procured a death certificate of Shahida Begum in connivance with accused Lala Prasad and the other co-accused persons Charuchand Naik and Vinay Kumar Choudhary and all of them have defrauded the complainant. Respondent No.1 while investigating the case, unlawfully and without any

basis omitted the names of accused persons, namely, Lala Prasad, Charuchand Naik and Vinay Kumar Choudhary from the charge-sheet. It is prayed that the order of Sessions Court be set aside and the order passed by the trial court be maintained in the interest of justice.

6. Learned counsel for the applicant submits that respondent No.1 in conspired with the other accused persons, has wrongly omitted their names while filing the charge-sheet. This is evident from the record of the trial court, that the complaint was lodged against all the accused persons. Statements of the witnesses also contained allegations against all the accused persons and even then, respondent No.1 arbitrarily, with a view to save the remaining accused persons, filed a charge-sheet against Rahim Baksh only. Thereafter, on an application filed by the applicant, the said error has been rectified, but the person responsible for committing such error is also needed to be prosecuted.

7. Considering the material available on record it is clear that FIR was lodged against the accused persons for the offence under Sections 420, 467, 468/ 34, 416, 471, 419 and 177 of the IPC, however, charge-sheet was filed only against accused Rahim Baksh. It is also clear that respondent No.1 is not a party to the offences charge-sheeted. In this case, it is necessary that there should be some evidence to show that the person proposed to be made an accused was a party to all the offences. It is not the case here. Hence, respondent No.1 cannot be said to be a conspirator in the offence charge-sheeted against accused - Rahim Baksh and three others.

8. Looking to the contents of the complaint, FIR and statements of the witnesses, it is very clear that respondent No.1 committed dereliction in duty and it appears *prima facie* that he intentionally aided the accused persons Lal Prasad, Charuchand Naik and Vinay Kumar Choudhary by illegally giving them protection from the prosecution. Under these circumstances, it was a matter to be dealt departmentally by approaching the department praying for suitable departmental action against respondent No.1. It is not a case where respondent No.1 has to be prosecuted as a conspirator for the offences charged.

9. In view of the above discussion, I find no merit in the revision petition. Accordingly, the revision petition is dismissed.

10. The record be sent back immediately to the trial Court to proceed with the trial.

Sd/-

(Rajendra Chandra Singh Samant)
Judge