

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

CRR-91-2010(O&M)

Date of decision:- 28.11.2017

Kulwant Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.P.P.S. Duggal, Advocate for the petitioner.

Mr.Kirat Singh Sidhu, DAG, Punjab.

Mr.S.S. Walia, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, facts of the case as per prosecution version are that complainant Kulwant Singh son of Sh.Kartar Singh, resident of village Rukna Begu, Tehsil and District Ferozepur, a farmer by occupation, required diesel; that his commission agent M/s Kamboj Commission Agent Noorpur Sethan/Rukna Begu issued a slip to him for release of 200 liters of diesel from M/s Ferozepur Service Station; that the complainant went there for taking delivery of diesel and gave slip dated 1.10.2004 at the petrol pump; that since the complainant and other farmers used to get petrol oil from that very petrol pump, they nursed a doubt that the petrol oil was being supplied less than shown/represented, as such the complainant had taken an instrument for measuring the diesel alongwith

him; that the complainant had noted the reading of the meter at the time of delivery of diesel, which was initially zero and thereafter went up to 200 liters as the diesel oil was being put in the drum; that the complainant was informed by petrol pump officials that 200 liters of diesel had been poured in the drum, however, when the complainant checked the quantity of the diesel in the drum with the instrument brought by him, it was found to be 185 liters only, hence there was shortage of 15 liters; that the complainant brought this fact to the notice of proprietor of the petrol pump; that then accused Sham Sunder took slip from the complainant and stated that it was for 185 liters diesel only thereby leaving balance of 15 liters; that the complainant asked from him as to why he had done so, which led to an altercation; that several people gathered at that place; that the complainant informed the print media besides lodging report with District Food and Supply Controller, who sent Ved Parkash, Food & Supply Officer to the spot, and he found that the quantity of diesel which was supplied to be 185 liters; that press correspondent also reached at the spot; that the matter was reported to the police in the form of a written complaint dated 11.5.2005 submitted by Kulwant Singh – complainant to SSP, Ferozepur seeking taking of action against Sham Sunder Aggarwal, Proprietor of M/s Ferozepur Service Station (petrol pump) near Octroi No.7, Ferozepur Cantt.

This written complaint formed the basis for registration of formal FIR. Thereafter, the matter was investigated and it transpired that Sham Sunder was owner of the petrol pump, whereas Mohinder Tiwari was employed there and both of them had connived with each other and

delivered 185 liters of diesel instead of 200 liters in order to cheat the complainant. As the investigation of the case progressed, Sham Sunder was found to be innocent, whereas Mohinder Tiwari was challaned, however, he was declared as a proclaimed offender. Challan was filed in the Court. Thereafter, statement of the complainant was recorded and an application under Section 319 Cr.P.C. for summoning of Sham Sunder as an additional accused was filed. Learned Chief Judicial Magistrate, Ferozepur in whose Court the case was pending, vide order dated 6.3.2007 summoned Sham Sunder as an additional accused to face trial.

Feeling aggrieved by the said order petitioner Sham Sunder had preferred a revision petition, which was disposed by learned Additional Sessions Judge, Ferozepur vide judgment dated 8.12.2008, resultantly the order passed by Chief Judicial Magistrate summoning Sham Sunder under Section 319 Cr.P.C. was set aside.

Feeling dissatisfied by the order passed by learned Additional Sessions Judge, Ferozepur, the complainant has filed a revision petition in this Court for setting aside of the impugned order, notice thereof was given to the respondents, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

It has to be kept in mind that though named in the FIR, accused Sham Sunder, proprietor of the petrol pump was found to be innocent by the investigating agency and was not sent up to face trial, rather his name was kept in column No.2. It was only during the trial that after recording statement of the complainant when the prosecution moved

an application under Section 319 Cr.P.C., which was allowed and he was ordered to be summoned as an additional accused and on his appearance had been charge-sheeted, though when challenged the said order of summoning and framing of charge had been set aside, leaving the complainant aggrieved. If we go through the order passed by learned Chief Judicial Magistrate, Ferozepur, he was of the view that Sham Sunder can be tried with Mohinder Tiwari because they had conspired to cheat the complainant, therefore sufficient grounds were made out to summon Sham Sunder. However, learned Additional Sessions Judge, Ferozepur did not find the order sustainable and came to the conclusion that no prima facie case against petitioner under Sections 420, 264, 265, 266, 120-B IPC was made out and that in the connected petition titled Sham Sunder Versus State of Punjab filed under Section 397(1) Cr.P.C. against the impugned order dated 6.3.2007 passed by the Court of learned Chief Judicial Magistrate, Ferozepur summoning petitioner – accused under Section 319 Cr.P.C. had been set aside vide separate judgment. I do not find anything wrong with the order passed by learned Additional Sessions Judge, Ferozepur.

Learned counsel for the revision petitioner has himself placed on file order passed by State Consumer Disputes Redressal Commission, Punjab vide which appeal filed by Sham Sunder owner of the petrol pump M/s Ferozepur Service Station, Ferozepur Cantt. against order dated 4.8.2005 of District Consumer Disputes Redressal Forum, Ferozepur had been allowed partly. The version of the appellant that some emergency vehicle had come and for that reason the appellant had stopped supplying

diesel to Rehrewala after 185 liters was disbelieved. The amount of cost of Rs.5,000/- awarded by the District Forum was converted into compensation for unfair trade practice adopted by the appellant. In that way, the appeal had been allowed partly.

However, this judgment cannot help the complainant in any manner because degree of proof in a criminal case is quite high as compared to degree of proof before a forum. The police had found Mohinder Tiwari to be guilty of offences, whereas it was not so as regards Sham Sunder owner of the petrol pump. Simply because of the reason that version of complainant before Consumer Forum has been accepted and that of Sham Sunder rejected, does not go to show that any criminal offence is disclosed against Sham Sunder.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done. The impugned order does not suffer from any such defect or infirmity.

Therefore, revision petition challenging that order cannot survive and is dismissed accordingly.

28.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No