IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-7658-2016

Reserved on: 11.07.2017
Pronounced on : 19^{th}.07.2017

Sukhpal Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Puja Chopra, Advocate for the petitioner.

Mr. BS Baath, DAG, Punjab.

RAMENDRA JAIN, J.

1. The petitioner along with one Bachitter Singh, was booked in a case bearing FIR No. 20 dated 02.03.2010 (Annexure P-1), registered under Sections 408, 465, 467, 468, 471 and 120-B of the Indian Penal Code (for short 'IPC') at Police Station Kotbhai, District Muktsar, on the allegations of misappropriation, cheating, criminal breach of trust and forgery. During investigation, petitioner was found innocent and, thus, was kept in column No. 2 of the final report under Section 173 Cr.P.C. However, the petitioner was summoned by the learned trial Court, during trial under Section 319 Cr.P.C., vide order dated 12.11.2013 (Annexure P-2). The petitioner challenged the said order in revision, but the same was dismissed vide order dated 01.05.2014 (Annexure P-3). The petitioner also challenged the order dated 13.05.2014 (Annexure P-6, Colly.) for charge-sheeting him in a revision. The same was accepted vide order dated 03.11.2014 (Annexure P-8). Resultantly, the charge-sheet Annexure P-6 (Colly.) was

set aside. The trial Court was directed to hear the petitioner afresh on the charge. The learned trial Court, after rehearing the petitioner, framed charges under Sections 420, 408, 465, 467, 468 and 471 read with Section 120-B IPC vide order dated 05.02.2015 (Annexure P-4, Colly.). The petitioner again challenged the said order Annexure P-4 (Colly.) by way of revision, but the same was dismissed by the Reversional Court vide order dated 08.01.2016 (Annexure P-5).

2. Now, through the instant petition under Section 482 Cr.P.C., the petitioner has sought quashing of FIR (Annexure P-1) and all other consequential proceedings arising therefrom; summoning order Annexure P-2; order Annexure P-3 dismissing the revision against the summoning order; orders framing charge and charge-sheet Annexure P-4 (Colly.) and order Annexure P-5 dismissing the revision petition against the orders framing charges and charge-sheet.

3. Learned counsel for the petitioner contends that there was no allegation against the petitioner regarding misappropriation, criminal breach of trust, cheating and forgery. The petitioner was exonerated in the departmental enquiry proceedings conducted against him on the similar allegations on the basis of which charges have been framed against him. The petitioner was not posted at the bank branch, where the alleged offence was committed and, therefore, he was not liable to be charge-sheeted under Sections 420, 408, 465, 467, 468 and 471 read with Section 120-B IPC. He further contends that the interpolation in the cheque of converting the amount from ₹ 64,686/- to ₹ 3,64,686/-, if any, was done by Bachittar Singh, because the petitioner was not the custodian of the disputed cheque. Rather, it was only Bachittar Singh, who was in possession of the same and

had presented it in the bank branch at Kotli Ablu.

4. On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the petitioner.

5. I have given my anxious consideration to the submissions made by learned counsel for the parties.

6. According to charge-sheet Annexure P-4 (Colly.), there are two allegations against the petitioner which reads thus:-

(i) That he in criminal conspiracy with Bachittar Singh withdrew ₹ 3,64,686/- instead of ₹ 64,686/- from the account of Co-opeartive Society and, thus, committed criminal breach of trust by forging the resolution and cheque purported to be a valuable security and, thus, cheated the society with an intention to cause loss to it.

(ii) That the petitioner had withdrawn ₹ 5 lakhs from the account of Malkeet Kaur without her consent.

7. As far as allegations of withdrawal of ₹ 5 lakhs from the account of Maleekt Kaur is concerned, in the considered opinion of this Court, the same has wrongly been framed because Malkeet Kaur is none else, but mother of the petitioner, who during investigation of the case had submitted an affidavit (Annexure P-16) before the Investigating Officer, to the effect that on 24.06.2009, the amount of ₹ 5 lakhs was transferred/credited from her account No. 806 to account No. 85, with her consent. The said affidavit has been made part of the final report under Section 173 Cr.P.C.

8. Qua the allegations of misappropriation, criminal breach of trust, cheating and forgery by withdrawal of ₹ 3,64,686/- on 25.06.2009, by

committing forgery and interpolation in the cheque in dispute, the petitioner has alleged that he was not posted on the given date in the concerned Branch of Kotli Ablu. According to joining report dated 24.06.2009 (Annexure P-9), the petitioner on his promotion had joined head office as Senior Manager, on the preceding date of the presentation of cheque i.e. 24.06.2009 and thus, was not in any way involved in any criminal conspiracy, embezzlement etc. with Bachittar Singh. Further attendance register of employees for the month of June, 2009 (Annexure P-10, Colly.) relating to the concerned branch where the alleged fraud or forgery etc. was committed shows that the petitioner was relieved from there on 24.06.2009, to join the head office. From the office note dated 25.06.2009 (Annexure P-13), the sanction was accorded by the petitioner to keep two drivers on contract basis in the bank. From the above documents, the presence of the petitioner in the concerned branch on 25.06.2009 (the date on which the cheque in dispute was presented in the bank) is not proved.

9. Now, it has to be seen that whether the petitioner was custodian of the cheque in dispute in which the amount of ₹ 64,686/- was forged and converted to ₹ 3,64,686/-.

10. Undisputedly, the petitioner was not in-charge of any of the affairs of branch of Co-operative Society at Kotli Ablu, to which the cheque in dispute belonged. It was also not in dispute that Bachittar Singh was the ex-secretary of the aforesaid society on the relevant date and thus, it can safely be said that the forgery/interpolation in the cheque in dispute was done by none other than Bachittar Singh. No evidence has been brought on the record to show that the petitioner at any pointy of time was in the knowledge of alleged forgery and interpolation in the cheque by Bachittar

Singh and the petitioner in connivance of Bachittar Singh, permitted him to withdraw an amount of ₹ 3,64,686/- instead of ₹ 64,686/-.

11. In the light of above discussion, this Court is of the considered opinion that the petitioner was wrongly summoned and charge-sheeted by the trial Court to face trial under Sections 420, 408, 465, 467, 468 and 471 IPC. Accordingly, the instant petition is allowed and FIR No. 20 dated 02.03.2010 (Annexure P-1) and all the consequential proceedings arising therefrom; summoning order dated 12.11.2013 (Annexure P-2); order dated 01.05.2014 (Annexure P-3) dismissing the revision filed by the petitioner against the summoning order Annexure P-2; orders dated 05.02.2015 Annexure P-4 (Colly.) framing charges and charge-sheet against the petitioner and order dated 08.01.2016 (Annexure P-5) dismissing the revision against the orders framing charges and charge-sheet only qua the petitioner are hereby quashed. The petitioner is accordingly ordered to be discharged. It is clarified that the trial shall carry on against Bachittar Singh.

July 19, 2017 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable **Yes/No**