IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revn. No.4433 of 2016 (O&M)

Date of Decision: March 06, 2017

Ganesh Kumar Bansal son of Shri Jaswant Rai ....Petitioner

Versus

State of Punjab ....Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.KS Dadwal, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 28.9.2016 passed by the learned Additional Sessions Judge, Ludhiana in terms of which an application moved by the petitioner under Section 227 of the Code of Criminal Procedure seeking his discharge in case FIR No.2 of 21.2.2012, under Sections 406, 420, 467, 468, 471, 120-B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, Ludhiana has been declined.

2. Suffice it to notice that the petitioner was working on the post of Assistant Controller, Finance and Accounts in the office of Civil Surgeon, Ludhiana at the relevant point of time. He now stands superannuated. Allegations, in a nut-shell against the petitioner and other co-accused, are of having forged and

tampered with the Government orders regarding allocation of budget and sanction of Government funds to the office of Civil Surgeon, Ludhiana.

3. Learned counsel appearing for the petitioner submits that the petitioner retired on 30.9.2011 and continuation of prosecution would amount to an abuse of process of law. Learned counsel has even referred to certain excerpts of a report dated 16.2.2010 submitted by a Special Investigation Team (SIT) to contend that a finding has been recorded holding the petitioner to be not involved. It is also argued that there were glaring discrepancies in the budget allotment letters issued from the head office and on account of such discrepancies in the letters pertaining to Ludhiana District which were received in the office during the financial years 2004-2005 and 2005-2006 that the petitioner is being harassed and for no fault. Contention raised is that the mis-deed, if any, was at the hands of the officials of the Director, Health Services Punjab and not by the petitioner. Learned counsel argues that as per settled law if anything is done with due care and caution, then it would be presumed that such act has been done in good faith and cannot attract criminal prosecution. Yet another contention raised is that the inflated budget figures were not utilized rather the same lapsed and, as such, there was no question of wrongful gain accruing to the petitioner or any wrongful loss having been caused. It is submitted that under no circumstances can it be construed that there has been any mis-appropriation.

4. Learned counsel for the petitioner has been heard at

length and the pleadings on record have been perused.

5. The scope and ambit of exercise of power under Sections 227 and 228 of the Code of Criminal Procedure came to be examined by the Hon'ble Supreme Court in "State of Bihar v. Ramesh Singh", AIR 1977 SC 2018. It was held as follows:

> *"Under Section 226 of the Code while opening the case for the prosecution, the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which:-*
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> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial*

the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

6. In the facts of the present case, it would be apposite to take note that Civil Writ Petition No.20047 of 2011 by way of public interest came to be filed in this Court and wherein

directions had been sought to register a criminal case against the present petitioner and another, on the basis of the enquiry report dated 16.2.2010 submitted by the Special Investigation Team (SIT). Present petitioner was impleaded as party-respondent No.5 in Civil Writ Petition No.20047 of 2011. Such petition was disposed of by a Division Bench of this Court on 12.1.2012 and the following observations were recorded:

> *"We have perused the report of the Special Investigation Team which explicitly records commission of illegal acts by the respondents No.5 and 6. In fact, such acts, prima facie, amount to commission of cognizable offences. If that is so, the concerned authority in the State Government is duty bound to register a FIR against the respondents No.5 and 6 and investigate the same and take necessary action against them in accordance with law. We, therefore, direct the respondents No.3 and 4 to act accordingly and ensure that on the basis of the report of the SIT steps are taken for registration of a FIR and for due investigation of the same. Thereafter, action in accordance with law will be taken against all who may be found to be involved. This will dispose of the Public Interest Litigation.*
>
> *12.1.2012 Sd/-*
> *(RANJAN GOGOI)*
> *CHIEF JUSTICE*
>
> *Sd/-*
> *(MAHESH GROVER)*
> *JUDGE"*

7. This Court has perused the impugned order dated 28.9.2016 declining the application filed by the petitioner under Section 227 of the Code of Criminal Procedure seeking discharge. The allegations against the present petitioner and co-accused have been duly noticed in the following terms:

> ".......The allegations against accused Ganesh Kumar Bansal, Assistant Controller (Finance and Accounts), and Superintendent Satish Kumar in nutshell were that at the relevant time they were working in such capacities in the office of Civil Surgeon, Ludhiana. They had got encashed the bills of material supplied under the head of Office Expenses by violating rules. They did not encash these bills under the correct heads. They alleged that these were encashed on the basis of Budget Allotment letters. The Inquiry Officers found that while issuing Budgets under different heads, the Authority had instructed them that the pending bills of Water, Electricity and Sewerage be encashed under this head and remaining amount be spent on those items. But these accused wrongly interpreted the meaning of these letters from Directorate and got encashed the bills of other items. They also had forged these budget allotment letters by changing the budget money figures. In one such letter dated 15.7.2005 relating to office expenses, they changed the figure ₹4 lacs to ₹9 lacs. In letter dated 11.3.2005 for office expenses, they changed the figure ₹62 lacs to ₹72 lacs.

In another letter the money allocated was ₹17,85,000/- but was altered to ₹27,85,000/-. Similarly, in another letter the figure ₹4000/- was changed to ₹40,000/-. Another figure ₹16,000/- was changed to ₹1,60,000/-. In budget allotment sanctioned from head office, the figure ₹8,10,01,990/- was changed to ₹8,31,81,990/- all by forgery. They committed similar forgeries in such letters and got inflated amounts encashed from the Treasury."

8. The reasoning adopted by the Court to decline the application for discharge filed by the petitioner has been couched in the following terms:

"It is settled proposition of law that even suspicion is enough to frame charge against accused. In the case in hand there is quite a prima facie and bulky evidence for the purpose on file. There are innumerable documents showing commission of forgeries with impunity by the accused party. It though may be matter of evidence as to whether the accused party had received such budget allotment letters as such from the Directorate but so far as there is no denial on record that these documents travelled from the office of Civil Surgeon, Ludhiana to the Local Treasury for encashment. Without re-iterating the facts of the case contained in the abovesaid report Annexure-5 submitted by SIT, it is relevant to note here that the abovesaid file No.2 contains may such

documents showing blatant criminal mis-conduct on the part of accused whereby they allegedly tampered with these budget allotment figures and changed their digits as well as words into inflated figures. For example in one letter the amount of ₹ 1 lac was converted into ₹3 lacs, in another letter the amount of ₹1,03,000/- was changed to ₹2,03,000/-. In another letter the amount totalling ₹8,10,01,990/- was changed to ₹8,31,81,990/-. In another letter the amount ₹27 lacs was converted to ₹37 lacs changing the total from ₹7,21,51,541/- to ₹7,32,51,541/-. In another letter, the amount of ₹4 lacs was changed into ₹9 lacs. In another one, the figure ₹93,000/- was converted to ₹4,93,000/-. There also is no document on record to reflect that the purchase committee, headed by Civil Surgeons, ever had raised demands of medicines/other items from concerned offices. This committee acted simply on the demand raised by the Store Keeper. Misuse of authority, misuse of allocated funds for other purposes than permitted and then unauthorized, blatant forgery/tampering of amounts in abovesaid letters prima facie was done by present four accused with the then Civil Surgeons Dr.S.N.Tiwari and Dr.Rajinder Kaur."

9. In the considered view of this Court, the impugned order has been passed strictly in terms of the parameters governing exercise of power under Section 227 of the Code of

Criminal Procedure and as laid down by the Apex Court in Ramesh Singh's case (supra).

10. No case for interference in exercise of the revisional jurisdiction is made out.

11. Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

March 06, 2017
SRM

Note: *Whether speaking/reasoned?* *Yes/No*

Whether Reportable? *Yes/No*