IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3020-2017
Date of decision:-31.10.2017

Vinod Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Raman Sharma, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

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H.S. MADAAN, J.

This revision petition is directed against the judgment dated 17.8.2017 passed by learned Additional Sessions Judge, Gurugram vide which he had dismissed an appeal against judgment of conviction and order of sentence dated 23.12.2014 passed by Judicial Magistrate Ist Class, Gurgaon (now Gurugram), vide which she had convicted accused Vinod Kumar for the offences under Sections 420, 467, 468 and 471 IPC and sentenced him as under:

Offence under Section	Sentence Awarded
Section 420 IPC.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo imprisonment for a period of six months.
Section 467 IPC.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for a period of six months.
Section 468 IPC.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-and in default thereof, to further undergo imprisonment for a period of six months.
Section 471 IPC.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-and in default thereof, to further undergo imprisonment for a period of six months.

All the sentences were ordered to run concurrently.

The accused-convict – Vinod Kumar, who is the petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence passed by Judicial Magistrate Ist Class, Gurgaon (now Gurugram) and judgment in appeal passed by Additional Sessions Judge, Gurugram be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that M/s Koutons Retail Ltd. - complainant in this case had current bank account No.2751 at Indian Overseas Bank, Connaught Place, New Delhi; that this account was meant for making payments to vendors/suppliers of the company; that in middle of December, 2008 while the bank entries were being re-verified with voucher and bills and other supporting documents, following payments were found to be withdrawn from their bank account No.2751 with Overseas Bank:

(i) Ms.Mahesh, Cheque No.172136, amount of Rs.7,68,000/- cheque dated 16.6.2008 date of encashment 16.6.2008.

(ii) M/s Rohit Barclays Bank Pnc. Delhi Branch Nehru Place, cheque No.175788 Rs.13,20,000 dated 7.7.2008 date of encashment 9.9.2008.

(iii) Mr.Rohit Chand Barclays bank Plc Delhi Branch cheque No.203894, Rs.13,50,000/- cheque dated 1.10.2008.

(iv) Ms.Anil Kumar Barclays Bank PLC, Delhi branch Nehru Place, cheque No.171580 dated 16.6.2008 date of encashment 3.7.2008,of amount Rs.6,43,000/-.

(v) Mahesh Kumar, Oriental Bank of Commerce, Connaught Place, cheque No.172567 dated 21.10.2008 date of encashment 22.10.2008 of amount Rs.19,50,000/-.

(vi) Anil Kumar Barclays Bank PLC Delhi, Branch Nehru Place, Rs.2,03,880/- date of encashment 22.10.2008.

The books of account were verified and it came out that cheque Nos.172136, 175788, 203894, 171580, 172567 and 203880 were neither issued by the company nor signed by any authorized signatories. However, those cheques were issued from the cheque-book issued to the complainant - company. The complainant had not dealt with any of the persons named therein. The amount of cheques encashed in the name of Mahesh Kumar were through account No.50432151032220 with the Nirankari Colony, Delhi Branch of Oriental Bank of Commerce. In that way the complainant - company had been cheated of an amount of Rs.64,81,000/- by fraudulent withdrawals by accused persons by forging the name of payee, amount and signatories of Deputy Managing Director Mr.Gurmeet Singh Sawhney.

On this complaint having been submitted by the complainant formal FIR was registered. The case was investigated. Accused Vinod Kumar and Som Kumar were arrested on 16.1.2009, accused Pankaj was also arrested. Vinod Kumar and Som Kumar had suffered disclosure statements. Thereafter, accused Raj Kumar, Manish Kumar, Kanshi Nath were arrested. Specimen signatures and handwriting were sent to FSL. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurgaon, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Gurgaon (now Gurugram) finding that charge for offence under Sections 420, 467, 468 and 471 and 120-B IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as twenty three witnesses i.e. PW1 Raj Kumar

Malhotra, Senior Manager of OBC Bank, PW2 Vijay Singhani, Relationship Manager of Ashok Vihar Delhi, PW3 Deepak Gupta, Sales Manager, Excess Bank, PW4 Srikant, Branch Service Head, Barckley Bank, PW5 Vinti Sharma, Officer OBC Bank, PW6 Ramesh Chand, Chief Manager IOB Bank, PW7 Hemant Kumar, PW8 Charanjeet, Assistant General Manager, PW9 Raghubir, PW10 Sanjay Soni, Bank Manager, PW11 G.S. Potli, Manager of OBC Bank, Nirankari Colony, PW12 Kailash Chand, PW13 Ravinder Yadav, PW14 Demy, ESC ICICI Bank, PW15 Sanjay Chauhan, PW16 Manoj Dhingra, Property Dealer, PW17 Satender Kumar, PW18 Anil Kumar ASI, PW19 Prem Chand SI, PW20 SI Preet Singh, PW21 Dinesh Kumar, PW22 SI Dayanand and PW23 Constable Sujjan Singh.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Gurgaon (now Gurugram) convicted and sentenced accused Vinod Kumar as mentioned supra whereas acquitted co-accused, namely Manoj, Som Kumar, Manish, Kanshi Nath, Pankaj and Raj Kumar.

The appeal preferred against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Gurgaon (now Gurugram) was also decided against the accused by learned

Additional Sessions Judge, Gurugram, which left petitioner – accused Vinod Kumar aggrieved and he has filed the present revision petition.

Notice of the revision petition was issued to the State, which has put in appearance through counsel.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and I find that as regards the conviction part, there is no illegality or infirmity with the judgments passed by the Courts below. The prosecution had successfully proved its charge against the accused by oral as well as documentary evidence. It stood established on the record that Vinod Kumar while working as Accountant in the complainant – company had taken out cheques from the cheque-book and had forged signatures of the authorized signatories on the cheques, which he presented for encashment and successfully got those encashed in the sum of Rs.71,56,000/-. The forgery by accused Vinod Kumar is clearly proved from the report of FSL since the disputed signatures of authorized signatory of the company on the cheques in question which were Q37 to Q43 were found to tally with specimen handwriting of such accused i.e.S16 and S17, S23, S24, S26 etc. He was found to be beneficiary of those cheques. He was clever enough in opening the accounts in different names and then receiving the cheque amounts. It stands proved on record that Vinod Kumar, Accounts Executive was handling the account department of complainant and used to make payment by vouchers to the suppliers. He was in employment from January, 2008 till September, 2008 and thereafter he absented. He was custodian of the cheque-book of company. After his absence, on checking it came out that Rs.64,80,000/- had been withdrawn from the bank by presenting seven cheques, which were found missing from the record by the company and were in possession of Vinod Kumar. Those cheques Ex.PA1 to Ex.PA7 were found to carry forged signatures of authorized signatory which tallied with specimen signatures of Vinod Kumar as per report of FSL Ex.PX.

The Courts below after proper appraisal of evidence and correct interpretation of law have reached the conclusion that charge against the accused Vinod Kumar stood proved. There is no illegality or infirmity with the impugned judgments, rather those are based on sound reasonings. I do not see any reasoning to disagree with the same.

At the end, learned counsel for the petitioner prayed that some relief be granted to the petitioner in sentence inasmuch as he has already undergone one year of sentence of imprisonment out of substantive sentence of imprisonment of two years awarded to him. He has pressed into service an authority by a Co-ordinate bench of this Court i.e. ***Lal Singh Versus State of Haryana, 2017(2) Law Herald 1648*** in that regard.

However, keeping in view the facts and circumstances of the case i.e. the accused being an employee of the complainant – company stealing cheques from the cheque-book entrusted to him in his official capacity and then by way of committing forgery withdrawing a sum of rupees more than Rs.70 lacs indeed committed breach of trust reposed in him besides committing heinous crime of forgery, fabrication and cheating, no leniency can be shown to him. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly.

31.10.2017 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No