

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

**CRM-M-3937-2017
Date of decision:21.05.2018**

Anil Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Shubhankar Baweja, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana
for respondent No.1.

Mr. Virendra Rana, Advocate
for respondent No.2.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 482 of the Criminal Procedure Code ('Cr.P.C.' - for short) has been filed for quashing of FIR No.248 dated 23.07.2011 under Sections 419, 420, 467, 468, 471, 120-B of the Indian Penal Code ('IPC' - for short) registered at Police Station Sohna, Gurgaon (P-1).

Initially, an FIR No.248 dated 23.07.2011 was registered by respondent No.2 against the petitioner and after investigation the police submitted report under Section 173 Cr.P.C. against the accused persons

and charges have already been framed by the learned Trial Court and the case is going on for prosecution evidence, but the petitioner was declared innocent by the Police and was put in column No.2 of the report under Section 173 Cr.P.C..

Another FIR No.338 dated 28.06.2011 under Sections 420, 467, 468, 471 and 120-B IPC was registered at Police Station Civil Lines, Rohtak on the basis of complaint of respondent No.2 and after investigation report under Section 173 Cr.P.C. has been submitted against the petitioner and other co-accused.

The sole contention raised by the learned counsel for the petitioner is that on the same set of allegations, already an FIR No.338 dated 28.06.2011 was registered at Police Station Civil Lines, Rohtak and after investigation the petitioner was found innocent by the police and he was put in column No.2 of the challan and as such the continuation of the proceedings on the basis of present FIR No.248 dated 23.07.2011 registered at Police Station Sohna, Gurgaon will amount to “double jeopardy” in view of the provisions of Section 300 of the Cr.P.C. and thus the same is liable to be quashed along with all consequential proceedings.

On the other hand learned State counsel as well as learned counsel for respondent No.2 have opposed the prayer on the ground that allegations in both the FIR are not similar; rather distinct and as such provisions of Section 300 Cr.P.C. are not attracted to the facts of the present case and as such the petition is liable to be dismissed.

Heard both sides and perused the paper-book.

Brief facts of the case are that FIR No.338 dated 28.06.2011

was registered at Police Station Civil Lines, Rohtak against the petitioner and other co-accused on the basis of complaint made by respondent No.2 and after investigation report under Section 173 Cr.P.C. was submitted against co-accused of the petitioner, but he (the petitioner) was found innocent and his name was put in column No.2 of the report. It is necessary to mention here that complainant/respondent No.2 also got registered another FIR No.248 dated 23.07.2011 at Police Station Sohna, Gurgaon and after investigation the police has submitted a report under Section 173 of the Cr.P.C. against the petitioner and other co-accused and case is pending for trial before learned Sub-Divisional Judicial Magistrate, Sohna, Gurgaon.

Before proceedings further in the matter it is necessary to reproduce the contents of both the FIRs mentioned above registered on the basis of statements of Smt. Sheela widow of Ishwar caste Rajput resident of village Gharauthi District Rohtak-respondent No.2 for proper adjudication of the matter in controversy and which are as under:-

FIR No.338 dated 28.06.2011 under Section 420, 467, 468, 471 and 120-B IPC registered at Civil Lines, Rohtak	FIR No.248 dated 23.07.2011 under Sections 419, 420, 467, 468, 471, 120-B IPC registered at Police Station Sohna, Gurgaon
It is submitted that I Sheela Devi w/o late Shri Ishwar Singh caste Rajput, is resident of village Gharauthi, District Rohtak and the daughter of village Bondshi District Gurgaon. My father has transferred 6 kanals 6 marlas land to me in my favour and I am the owner of the same. I have been cheated by Sumer S/o Narayan caste Rajput resident of village Gharauthi, who has got opened a false account in Axis Bank, in connivance with the Manager of the Bank, by	Statement of Smt. Sheela widow of Ishwar caste Rajput resident of Gharauthi, District Rohtak aged 45 years. Stated that she is resident of above mentioned address and belongs to village Bhondsi, District Gurgaon, I was married with Ishwar s/o Panni, Rajput r/o Gharauthi, about 28 years back. My eldest son is Ravinder, younger to him is daughter Poonam, younger to her is son Jitender and younger to him is Ashok Kumar son. My father had three sons, eldest Vijender, Kirpal,

preparing the false sale deed, in respect of land and deposited RS.32 lacs in that account. Money has been withdrawn by presenting some other lady as Sheela Devi and by putting my false thumb impression. In this job of preparing the false documents, opening the fake account, withdrawing the money by presenting a fake lady, in connivance with the Bank Manager, Ram Bhagat Son of Bhartu, Sanjay s/o Mange, Sumer, Anil S/o Ram Narayan, Ramesh s/o Suraj Bhan Depot Holder and Sube Singh S/o Rajender, caste Rajput, resident of Kalinga District Bhiwani have harassed our family a lot by preparing fake documents and by cheating us. Strict legal action may be taken against them. That the Axis Bank is situated at Ashoka Mor, Delhi Road, Rohtak.	Virender and I am younger to Vijender. My father Khajan Singh had ancestral land measuring 31 kanals 10 marlas situated in village Bhondsi. After death of my father above land was inherited by my three brothers and me and the same was reflected in revenue record by patwari. About 10 days back, 2-3 persons came from our village Bhondsi and they told that your land has been sold and whether you have received money, upon which my son Ravinder went at Halqa Patwari of Village Bhondsi then he (Patwari) told that Sheela Devi had given a power of Attorney to Gajraj Singh and on the basis of that he (Gajraj Singh) got registered a sale deed No.656 dated 12.05.2011 in favour of his wife Suresh. Now I have seen the photocopy of Vasika No.421 dated 11.05.2011 duly registered in the office of Sub-Registrar Nodia, U.P., on which my photograph is not there neither I have sold my land, nor received any money. Devender r/o village Bhondsi and Sonu @ Jitender s/o Rajbir r/o village Gharauthi, have affixed their photographs and appended their signatures on the power of attorney. The photograph which reveals the name of Sonu is in fact of Sumer s/o Narayan caste Rajput r/o Gharauthi, District Rohtak and I have seen the account opening form of the Axis Bank, Rohtak and upon which my photograph has been affixed. Neither I had gone to Axis Bank Rohtak, nor had withdrawn any money from Axis Bank. I used to sign in Hindi. After making enquiry when I went to Axis Bank along with my ration card then Manager told me that a women named Sheela had came to the bank with the same Ration Card and after verification of said Sheela
--	--

	her account was opened. Then after coming back to home, I enquired about this in the village and came to know that Sanjay s/o Mange Ram, Anil S/o Ram Narayan, Sumer s/o Narayan R/o Gharauthi in conspiracy with other persons had got prepared a forged power of attorney and on the basis thereof got registered a forged and fabricated sale deed in favour of Gajraj r/o Kadarapur in Noida, U.P. and after opening a fake bank account in Axis Bank, Rohtak while affixing my photographs has withdrawn all the amount of Rs.30 lacs. I am having a BPL card and in the month of March, my son Ashok had gone to depot holder Ramesh s/o Surajbhan r/o Dhrauti while carrying the BPL card for getting wheat, but Ramesh had said that a survey is to be conducted regarding BPL card and he kept the BPL card with him. Since my BPL Card was prepared in the year 2008, in which group photo of my family was affixed from which Ramesh along with above Sanjay, Anil and Sumer got prepared my duplicate photograph from the photograph and also got attested fraudulently by Rambhagat Ex-Sarpanch and got opened a bank account and usurped 1 crore 38 lacs from Gajraj. When I verified from present Sarpanch of village namely Omwati and compared the stamp then came to know that there was no stamp of Omwati, but on thumb impression the name of Omwati was written. Legal action be taken against the above persons. Sd/- Sheela
--	---

Perusal of the FIRs reproduced hereinabove clearly reveal

that allegations in both the FIRs are not the same; rather distinct as the prime allegation in the first FIR No.338 dated 28.06.2011 is regarding the opening of fake bank account in Axis Bank at Rohtak and usurpation of an amount of Rs.32 lacs by impersonating the complainant. Whereas in the FIR in question i.e. FIR No.248 dated 23.07.2011, the allegations are levelled in details regarding the procurement of power of attorney dated 11.05.2011 on behalf of the complainant by accused Gajraj Singh and consequent sale deed dated 12.05.2011 in favour of his wife regarding land measuring 6 kanals 6 marlas belonging to the complainant situated in village Bhondsi Police Station Sohna District Gurugram. Still further in the subsequent FIR No.248 dated 23.07.2011, the entire modus-operandi of the accused including that of by petitioner has been depicted. There is one more important aspect of the matter, that land in question is situated within revenue estate of village Bhondsi police Station Sohna and the FIR in question has been registered and trial against petitioner alongwith other co-accused is pending before the jurisdictional Court.

Even otherwise, this is an admitted fact that in FIR No.338 dated 28.06.2011, the petitioner was neither tried; nor acquitted by the Court of competent jurisdiction; rather he was found innocent by the police only during investigation and his name was put in column No.2 of the report under Section 173 Cr.P.C.. Thus mere finding the petitioner as innocent during investigation by the police and putting him in column No.2 of the challan can neither be termed as a trial by a Court of competent jurisdiction; nor the same can be construed as an acquittal of the petitioner within the parameter of Section 300 of the Cr.P.C..

Resultantly, it is fallacious to argue that provisions of Section 300 of the Cr.P.C. can be attracted in such a scenario, rather Section 300 of the Cr.P.C. envisages that there should a trial by Court of competent jurisdiction and the person should have been either acquitted or convicted of the offence and only in that eventuality the subsequent trial is barred. Since in the present case the situation is entirely different as for the sake of repetition, neither there was trial of the petitioner; nor he was acquittal by the court of competent jurisdiction in FIR No.338 dated 28.06.2011 registered at Police Station Civil Lines, Rohtak and to support the above reasoning the reference can be made to the judgment rendered by Hon'ble Supreme titled as **Ravinder Kaur vs. Anil Kumar, Criminal Appeal No.457 of 2008 decided on 09.04.2015** and relevant part of the same reads as under:-

“Learned counsel for the respondent, while opposing the prayer made on behalf of the appellant vehemently contended, that the present proceedings were not maintainable against the respondent, in the light of Section 300 of the Criminal Procedure Code. In this behalf, it was the submission of the learned counsel for the respondent, that it was not open to the appellant to raise a claim against the respondent, so as to subject the respondent to a trial again, on the same facts as in the earlier complaint, even for an offence, other than the one, with reference to which the earlier complaint was filed (under Section 376 of the Indian Penal Code). To examine the veracity of the contention raised by the learned counsel for the respondent, Section 300 of the Code of Criminal Procedure is being extracted hereunder:

“300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code.

Explanation:- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.”

Having perused Section 300, we are satisfied, that the submission advanced at the hands of the learned counsel for the respondent, namely, that Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified. Our above determination is based on the fact, that the respondent had not been tried, in furtherance of the previous complaint made by the appellant, under Section 376 of the Indian Penal Code. The contention of the learned counsel for the appellant, that the respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. Based on the above factual contention, learned counsel for the appellant had placed emphatic reliance, on the explanation under Section 300 of the Criminal Procedure Code. The explanation relied upon, clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. In this view of the matter, we are in agreement with the contention advanced at the hands of the learned counsel for the appellant. We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open to the appellant, to press the accusations levelled by her, through her second complaint, referred to above”.

In view of the facts and circumstances discussed hereinabove, particularly the fact that land in question which is the subject matter of fraudulent transfer is situated within the revenue estate of village Bhondsi

Police Station Sohna, Gurugram as well as law laid down by Hon'ble Supreme Court in case titled as **Ravinder Kaur (supra)** this Court is left with no other alternative except to dismiss the present petition and as such the same is dismissed.

21.05.2018
Gaurav Sorot

(MAHABIR SINGH SINDHU)
JUDGE

Whether reportable?	Yes
Whether reasoned / speaking?	Yes