IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2892 of 2012 (O&M)
Decided on: 05.02.2018

Naresh Kumar

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Ms. Jasneet, Advocate
for Mr. L.M. Gulati, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

CRM No.56546 of 2012

Prayer in this application is for condoning the delay of 47 days in filing the revision petition.

Heard.

In view of averments made in the application supported by an affidavit of Naresh Kumar, the applicant/petitioner and in absence of any challenge to correctness of the averments set up in the application, the application is allowed and delay of 47 days in filing the revision petition stands condoned.

CRR No.2892 of 2012 (O&M)

Prayer in this revision petition is for setting-aside the impugned order dated 05.05.2012 passed by the trial Court vide which charges were framed against the petitioner under Sections 420, 467, 468 and 471 of the Indian Penal Code (in short 'IPC') in FIR No.50 dated 04.02.2009 registered under Sections 406, 420, 267, 468, 471 and 120-B IPC at Police Station Division No.4, District Jalandhar.

Brief facts of the case are that the petitioner – Naresh Kumar while working as a LIC agent, was holding S.A.S. Postal Agency. The petitioner as an agent of one late Sh. Dev Raj Bhatia, father of the complainant used to help him. The complainant – Kamlesh Bhatia was holding joint account with Dev Raj Bhatia in the post office in different accounts and on 04.06.2003, the petitioner on instructions from late Sh. Dev Raj Bhatia helped him in withdrawing the amount from the joint account of the complainant and her father and a total amount of Rs.3,98,000/- was withdrawn prematurely. The account held by the complainant along with her father was MIS account which could be closed prematurely on the asking of the account-holder and could be operated on either or survivor basis. Late Sh. Dev Raj Bhatia was the first holder of all the MIS accounts. It is further the case of the complainant that after withdrawal of the aforesaid amount, the petitioner as an agent reinvested the same by opening new MIS accounts in the name of her late father namely Sh. Dev Raj Bhatia and three real brothers namely Subhash Bhatia, Jatinder Kumar Bhatia and Vinod Bhatia and in total, as against Rs.3,98,000/- withdrawn on behalf of late Sh. Dev Raj Bhatia, an amount of Rs.4,07,000/- was reinvested.

It is further stated in the FIR that the amount more than Rs.20,000/- could not be withdrawn in cash and could be paid only by way of a cheque as per provisions of Section 269(T) of the Income Tax Act, 1961 (in short 'the IT Act') and, therefore, the petitioner while withdrawing the said amount and obtaining the same in cash has violated the provisions of the IT Act. It is further stated that father of the petitioner i.e. late Sh. Dev Raj Bhatia died on 05.12.2003 and in the meantime, the complainant has shifted to Faridabad. It was, thus, alleged in the FIR that the petitioner as an agent firstly has withdrawn the amount in connivance with the officials of the Postal Department. Secondly, he has withdrawn the amount in cash instead of receiving the same by way of a cheque without fulfilling all the formalities and fraudulently opened another account of his father late Sh. Dev Raj Bhatia with her three brothers namely Subhash Bhatia, Jatinder Kumar Bhatia and Vinod Bhatia. It was, thus, submitted in the FIR that the petitioner has defrauded the complainant with the amount which was deposited in the joint account held by the complainant along with her father. It is also stated that the complainant has also filed a consumer complaint before the District Consumer Disputes Redressal Forum, Jalandhar.

Before adverting to the submissions made by counsel for the parties, certain dates and events are relevant to be noticed herein.

As per the FIR, the amount was withdrawn on 04.06.2003, on the date when father of the complainant was alive and then reinvested the same in the joint account of Dev Raj Bhatia along with his sons namely Subhash Bhatia, Jatinder Kumar Bhatia and Vinod Bhatia. Late Sh. Dev Raj Bhatia died on 05.12.2003 and during his lifetime he never made any complaint to any authorities regarding the withdrawal of the amount, on his behalf or for the reinvestment made by opening new accounts along with his three sons.

In the meantime, the police submitted the report/challan under Section 173 Cr.P.C. on 04.02.2009 (Annexure P13) and the police on the basis of the investigation, while submitting the challan reported that the petitioner, cheated the department of post office by filling the money withdrawal form on 03.06.2003 regarding the joint account of Dev Raj Bhatia and Kamlesh Bhatia and prematurely withdrew the amount on 04.06.2003 without consent of the complainant – Kamlesh Bhatia. It was further stated that the petitioner received the amount in cash and, thus, has violated the provisions of Section 269(T) of the IT Act as the amount was not received by way of a cheque. Thereafter, he deposited the same in new accounts of brothers of the complainant namely Subash Bhatia, Vinod Bhatia and Jatinder Kumar Bhatia along with her father – late Sh. Dev Raj Bhatia and has caused financial loss to the complainant – Kamlesh Bhatia and has acted in a manner to give benefits to brothers of the complainant and has thus, committed fraud and, therefore, the present FIR under Sections 406, 420, 467, 468, 471 and 120-B IPC was registered on 04.02.2009. After registration of the FIR, the District Consumer Disputes Redressal Forum vide its order dated 29.04.2008 allowed the complaint.

Thereafter, the petitioner/Postal Department filed an appeal before the State Consumer Disputes Redressal Commission, Chandigarh and the said appeal was allowed vide judgment dated 26.11.2012. The operative part of the said judgment reads as follows:-

> ***"14.*** *In view of the above discussion, we are of the opinion that the learned District Forum did not correctly appreciate the legal points involved in the case and decided it without reference to the relevant Rules on the*

subject. We are, therefore, of the opinion that there was no deficiency in service on the part of the Ops in closing the MIS accounts and making the payment thereof to Dev Raj Bhatia with whom the complainant was a co-depositor in the said accounts. The withdrawals of the amounts and its reinvestment were therefore, only a paper transaction. The amounts were not paid to by unknown person but were redeposited by Dev Raj Bhatia along with one of his sons which is a strong proof to show that there was no forgery or fraud involved and the payment has been made to the right person who deserved it, if there was any forgery or fraud, committed in this transaction, the amount would not have been reinvested by Dev Raj Bhatia in his own name in the post office. The complainant therefore, cannot derive any benefit out of the closure of the accounts by Dev Raj Bhatia.

15. *We are therefore, of the opinion that the impugned order passed by the learned District Forum cannot sustain. The same is accordingly, set aside. The result is that the complainant was liable to be dismissed and has been wrongly allowed. The question of the complainant to get any interest or litigation costs, therefore, does not arise. Accordingly, the appeal i.e. First Appeal No.1097 of 2008 and 1035 of 2008 are allowed and the appeal i.e. First Appeal No.1178 of 2008 is dismissed. We accordingly dismiss the complaint.*

16. *The appellants had deposited an amount of Rs.25,000/- with this Commission at the time of filing of the appeal on 29.09.2008. This amount of Rs.25,000/- with interest, if any accrued thereon be refunded by the registry to OP No.1 to 4 appellants by way of a crossed/demand draft after the expiry of 45 days.*"

Later on, the complainant filed a revision before the National Consumer Disputes Redressal Commission, New Delhi vide judgment dated 13.09.2013, the revision was dismissed holding as under:-

> *"**4.** We agree with the view taken by the State Commission. It is Dev Raj Bhatia, the first account holder who had withdrawn the amount and re-deposited along with his son. No fraud has been committed. The money remained with the owner. The only contention raised by the appellant is that the amount of Rs.20,000/- or more could not be paid in cash. These are mere technicalities as the amount remained with the person to whom it belongs.*
>
> ***5.** Substantial justice has been done between the parties. No ground for interference is made out."*

The revision petition was filed on 21.09.2012 and personal appearance of the petitioner was ordered to be exempted vide order of even date and since then, the revision petition is pending. The learned State counsel has submitted that after framing of charge, no evidence is led.

Counsel for the petitioner has raised the following arguments:-

> *a. At the time when FIR was registered, the complainant herself has stated that a complaint was pending before the District Consumer Disputes Redressal Forum whereas the appeal was allowed by the State Consumer Disputes Redressal Commission vide judgment dated 26.11.2012 and the said order was upheld by the National Consumer Disputes Redressal Commission, New Delhi as noted hereinbefore and, therefore, in view of the finding recorded by the National Consumer Disputes Redressal Commission, New Delhi, no fraud has been committed, thus, framing of charge against the petitioner is illegal.*

b. Since the account of Dev Raj Bhatia was a joint account with his daughter i.e. the complainant, it being a MIS account, it can be closed prematurely by either of the depositor and the petitioner being an authorized representative of late Sh. Dev Raj Bhatia was competent to withdraw the said amount.

c. As per the wish of late Sh. Dev Raj Bhatia, the amount was withdrawn on 04.06.2003 and was reinvested in a joint account held by him along with his three sons and it was done as per his desire.

d. Late Sh. Dev Raj Bhatia never objected to withdrawal of the amount during his lifetime and it was with his consent that the amount was withdrawn.

e. Event the Postal Department has filed affidavit before the Consumer Court stating that no fraud has been committed by the petitioner as after withdrawal of the amount, new accounts were opened by Dev Raj Bhatia along with his three sons separately.

f. There is no mens rea on the part of the petitioner as it is not the case of the complainant that the petitioner has misappropriated the money of the complainant and it is admitted case that on receiving the amount of Rs.3,98,000/-, the amount of Rs.4,07,000/- was reinvested on the same day when the amount was withdrawn.

g. All the new accounts were opened under the signatures of Dev Raj Bhatia, a fact which is not disputed by the complainant.

h. The FIR was got registered after a delay of more than 05 years without giving any explanation of delay and the petitioner has not committed any fraud.

i. The violation of Section 269(T) of the IT Act do not attract registration of an FIR under Sections 406, 420, 267, 468, 471 and 120-B IPC as, only after a *competent authority under the Income Tax Act by holding a person guilty of committing the violation of the IT Act can direct further prosecution by way of filing a complaint.*

j. The complainant has not arrayed her own brothers, who are the beneficiaries of the amount withdrawn from the joint account as accused persons in FIR.

k. Even no employee from the Postal Department was arrayed as an accused, though, the complainant has stated that the petitioner has committed a fraud in connivance with official of the Postal Department.

In reply, counsel for the State has not disputed the factual position, however, has prayed for dismissal of the present revision petition on the ground that prima facie offences under Sections 420, 467, 468 and 471 IPC are made out and the trial Court has rightly framed the charge against the petitioner.

On the other hand, counsel for the complainant has stated that in fact the petitioner had no authority to withdraw the amount as the complainant never authorized him to withdraw the amount. It was further submitted that the amount was reinvested in the name of father and brothers of the complainant without any authority and no amount was given to the complainant.

After hearing counsel for the parties, I find merit in the present revision petition. On the face of it, the FIR registered against the petitioner do not make out a case punishable under Sections 420, 467, 468 and 471 IPC as it is the own case of the complainant that the petitioner as an authorized agent of her father had withdrawn the amount. In the FIR, the allegations are that the petitioner has withdrawn the amount in cash, which is not permissible as the amount beyond Rs.20,000/- is to be paid by way of a cheque and thus, the petitioner has violated the provisions of Section 269(T) of the IT Act. It is further alleged in the FIR that the complainant has approached the Consumer Forum for redressal of her grievance. At the time of submission of challan under Section 173 Cr.P.C, the police has formed an opinion on the premise that since the complaint filed before the Consumer Forum by the complainant has been allowed, therefore, prima facie offences for submission of challan before the Court is made out. However, it is a matter of fact that before framing of charge vide impugned order dated 05.05.2012, the National Consumer Disputes Redressal Commission, New Delhi has upheld the action of the Postal Department that the petitioner was authorized agent of late Sh. Dev Raj Bhatia and has the authority to withdraw the amount and reinvest the same.

Even otherwise, from the FIR or the report under Section 173 Cr.P.C., there is no allegation that the petitioner has used the amount withdrawn from the joint account for his personal benefit. The allegations are that from the joint account of the complainant and her father late Sh. Dev Raj Bhatia, the amount was withdrawn by the petitioner as an agent and on the same day, it was reinvested by opening another account of late Sh. Dev Raj Bhatia and his three sons i.e. real brothers of the complainant.

It is also clear from the bare perusal of the FIR that the complainant has not levelled any allegation against the her brothers who are the beneficiaries and in whose names the new accounts were opened. It is also clear from the FIR that late Sh. Dev Raj Bhatia, remained alive for a period of about 06 months when the amount was withdrawn and reinvested and had filled the forms for that purpose. He has never lodged any complaint with the police or any other authority that the petitioner has acted in an illegal manner or was not his authorized agent to do the aforesaid action of withdrawal and reinvestment of the amount.

There is an unexplained delay of about 05 years in registration of the FIR and on the face of it, it is a civil dispute in which the petitioner has lost upto the National Consumer Disputes Redressal Commission, New Delhi, which has recorded a finding that no fraud has been played with the complainant.

For the reasons stated above, the revision petition is allowed and the order dated 05.05.2012 framing charge against the petitioner under Sections 420, 467, 468 and 471 IPC is set-aside. However, it will be open for the complainant to file a complaint before the Income Tax Authorities, in accordance with law, if so advised.

05.02.2018 **(ARVIND SINGH SANGWAN)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No