

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

CRR No.3806 of 2014 (O&M)
Date of Decision: December 15, 2018

Kamal Sood

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Narula, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner against respondent State of Punjab, challenging the order dated 09.10.2014 passed by learned Special Judge, Ludhiana, vide which the application filed by the petitioner under Section 227 and 228 Cr.P.C. was dismissed and also order dated 14.10.2014 vide which, charges were framed against the petitioner.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that an application was filed under Sections 227 and 288 Cr.P.C. by accused-petitioner Kamal Sood. It is

mainly stated in the application that provisions of Prevention of Corruption Act (PC Act) and 409 IPC are not attracted because he is not a public servant and the allegations mentioned in the FIR, do not constitute any offence. It is further stated that applicant-petitioner did not act against the terms of the contractual obligation between Corporation of India and department of State of Punjab. There is no legal evidence to sustain the allegation that with co-accused Amar Nath, the payment of ₹2,64,000/- was made to petitioner without getting any work done. It is also stated that Amar Nath purchased articles without giving any advertisement. This allegation is without legal evidence. There is no evidence to sustain that the quotations submitted by Susalit Kumar Gupta were fake against the purchased material. It is further stated in the application that there is no substance that petitioner had not performed the contractual obligation properly and after expiry of contract period, left the machine in non-working condition. The allegation that petitioner has connived with Waryam Singh, Deputy Director, is without any basis. It is also stated that Vigilance Bureau, Ludhiana, verified the quotations and purchases were made from M/s EDP Systems, which was authorized sale and service centre. Addl. Secretary to Govt. of Punjab in his enquiry report has stated about his findings vide letter dated 06.05.2005 regarding maintenance contract. It is further stated that due procedure was followed and it cannot be made on the basis of relevant record that any fraud was committed. It is pleaded in the application that material collected during investigation does not disclose any cognizable offence. No legal substance quoted during investigation against the petitioner to sustain the allegations made in the FIR.

dismissed the application and charges were framed against the present petitioner under Sections 120-B and 409 read with Section 120-B IPC and other accused were charged under Section 409 IPC and Sections 13(1)(d) and 13(2) of the PC Act.

Aggrieved from the above-said orders, present revision petition has been filed.

From the perusal of the record, I find that FIR in the present case has been registered on the basis of secret information that a project was installed at Ludhiana in the year 1994. Thereafter, 4-AC compressors of the said project went out of order and in order to replace them with new ones, a sum of ₹51,480/- was got sanctioned from the government but instead of getting replaced the old compressors with new ones, the same were got repaired from a private firm M/s New Labh and not from an authorized firm. The expenditure on account of said repairs should have been about ₹20-22,000/- as per market value. After repairs, the said compressors again broke down and amount of repair i.e. ₹51,480/- was paid to the concerned firm without inspecting the compressors, whereas, cost of four new compressors was about ₹38,000/-. It is further in the FIR that during next summer season, again a sum of ₹15,700/- has been spent on account of repair of said ACs. It is in the FIR that contract for maintenance of the projects was given to Kamal Sood, contractor/proprietor of M/s EDP Systems by the then Manager Amar Nath as per his own proposal. During the period of said contract, no satisfactory work was ever done. The contractor mentioned fake visits. No spare part of any of the projects was ever replaced. In other words, during the contract period of one year, no

committee, without any research or verification and without informing other parties and by ignoring all rules and instructions, allotted contract to Kamal Sood, proprietor of M/s EDP Systems. After giving the contract, Kamal Sood, without performing any work, with the help of Waryam Singh, Deputy Director, caused a loss of ₹7.92 lakhs to the government. The recommendation for purchase of articles from the said contractor was made by Amar Nath Sharma. To obtain the supply order of articles, the proprietor of M/s EDP Systems Kamal Sood, in connivance, prepared two fake quotations, wherein, Sulalit Gupta had intentionally quoted higher rates as compared to Kamal Sood, so that the articles could be purchased from Kamal Sood only.

The perusal of the FIR itself shows that only allegation against the petitioner is that the contract for maintenance of project was given to Kamal Sood contractor/proprietor of M/s EDP Systems. The Vigilance Bureau got the report that no satisfactory work was ever done by him/firm. If that is the case that after giving annual maintenance contract etc., Kamal Sood contractor has not performed/done the work properly or satisfactorily, then it, prima facie, does not constitute an offence. At the most, his contract can be cancelled or he can be blacklisted. There is no particular as to how he has not performed his work. It is written that fake visits have been shown by the petitioner. No spare parts of any product purchased, were ever replaced. In the case of annual maintenance contract, contractor is to perform the duties as per the contract. If the contractor is also to supply the spare parts, he is to replace the damaged parts of the ACs etc., and if it is only regarding service, then he is to provide the services. There are no facts

prosecution to show that ACs and other articles etc. have been damaged or required maintenance and which are brought to the notice of the contractor, who has not repaired the same. If there is any negligence on the part of the officials that they have not informed the contractor regarding required maintenance etc., the petitioner cannot be held criminally liable. At the most, as per contract, action can be taken on civil side if he has not performed properly or payment can be stopped or he may be blacklisted etc. Furthermore, there is general allegation that Sulalit Gupta has given wrong quotation intentionally, so that contract can be given to Kamal Sood on higher rates.

Learned counsel for the petitioner placed reliance upon certificate Annexure P-1, which is issued by Chief Manager, Electronic Trade and Technology Development Corporation Limited (A Government of India Enterprise), wherein it is certified that M/s EDP Systems, SCO No.1086-87, 2nd Floor, Sector-22B, Chandigarh, has been appointed Sales and Support Centre at Chandigarh and adjoining areas. They were authorized to accept orders on their behalf and also books the orders for PC range of products. They were authorized to extend support during the warranty period and thereafter on entering into maintenance agreement with the customers. Learned counsel for the petitioner has placed reliance upon Annexure P-2, a letter written by ET & T Corporation Ltd. (A Government of India Enterprise) in which, it is written that some items are needed to expedite the installation of Brielle Press and it was also written that the items can be purchased from their authorized sales and support centre at Chandigarh directly, the address of which was given as 'EDP Systems, SCO

maintenance agreement between M/s EPS Systems and Department of Social Security and Women & Child Development, Punjab. As per this agreement, M/s EDP Systems agreed to service and maintain, subject to the terms and conditions contained in the agreement. Equipments were installed at Govt. Institute for Blinds, Jamalpur, Ludhiana, at the rates quoted against each equipment. Annexure P-5 is the letter written by Directorate of Social Security and Women & Child Development, Punjab regarding the performance of the maintenance contract.

At the time of framing of charge, the Court is only to see prima facie case. The Court is not to weigh the evidence at this stage but it is to be seen whether it is a case of some evidence or no evidence. The allegation against the present petitioner is only under Section 120-B IPC. There is no evidence on record of any type to show his connivance. The present petitioner is not a government servant, therefore, he cannot be charged under Section 409 IPC or under the PC Act. The contractor has right to give the quotations even on higher rates. It is for the officials of the department to purchase the articles or not. Similarly, an agreement is entered into between the officials of the Brielle Press etc. with the present petitioner/contractor. If there is any negligence on the part of the officials that they have not complied with the rules, the contractor is not to verify, whether the officials have complied with the rules or not. As already held, nothing has been shown which articles have been damaged or required maintenance and when the contractor was informed about the same and how the contractor has not done his work properly. Even otherwise, if there is breach of agreement regarding annual maintenance, civil remedy lies. In no

not doing the work properly.

In view of the above discussion, I find that at this stage, there is nothing on the record to show that any criminal offence has been committed by the present petitioner. If at all, there is any liability, remedy lies on civil side.

Therefore, finding merit in the present revision petition, the same is allowed. Present petitioner stands discharged of the offence under Section 120-B and 409 read with Section 120-B IPC.

December 15, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No