IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.1638 of 2017

Date of Decision: June 01, 2018

Rajinder Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Arpan Sabharwal, Advocate for the Petitioner.

Mr. Luvinder Sofat , A.A.G. Punjab.

SUDIP AHLUWALIA, J.

This Revision is directed against the Judgment passed by the Ld. ASJ, Ludhiana dated 4.1.2017, vide which the earlier Judgment of conviction & sentences awarded to the Petitioner and his co-accused namely Sanjeev Kumar in the case arising out of IPC Challan No.38142/23.01.2010 delivered on 16.10.2015 was upheld after dismissing the appeal filed by the convict(s), who had been convicted of the offences under sections 420, 467, 468 and 471 of the IPC, for which they were sentenced to undergo Rigorous Imprisonment for two years each, except in case of the offence u/s 471 of the IPC for which the sentence was of RI for one year, apart from which various fines imposed for the aforesaid offences were also awarded.

2. The background of the matter is that the FIR was drawn up on the complaint of Shri Varinder Kumar, the then Superintendent, Post Office, Ludhiana in which he had requested for registration of an FIR with regard to fraud committed at Partap Nagar Post Office to the tune of Rs.16,14, 589/-. The allegations of the complainant were -

> *"that saving bank account no.8503050 was opened in Partap Nagar Post Office in the name of Jatinder Kumar son of Santosh Kumar on the introduction of one Chote Lal, which was a loan cheque account. On verification, both the depositor and introducer were found to be bogus. The said account was opened by Rajinder Kumar Verma, the then Sub Post Mater, Partap Nagar Post Office, Ludhiana, and he admitted the fact during the course of enquiry conducted by Dhanna Singh, ASPO North City, Ludhiana, by making statement dated 23.5.08 to the effect that he did not obtain any identification proof while opening the account, which was required as per rules. As per the enquiry report conducted by Shri Dhanna Singh, one Sanjeev Kumar was holder of SB account no.8501906 which was opened on 7.9.07 jointly with Smt. Savitri Devi. It was a cheque account and cheque book containing serial number 024651 to 024700 was issued to them. Sanjeev Kumar was also working as SAS agent with post office and he had been attending post office almost daily in connection with postal transaction. Sanjeev Kumar made two entries of Rs.2,00,000/- and Rs.1,50,000/- of deposit in the ledgers relating to account no.8503050 which was opened in the name of Jatinder Kumar. As per admission made by Sanjeev Kumar during the course of enquiry, he made bogus entries in the ledger on the directions of Rajinder Kumar Verma, the then Sub Post Master. Said Sanjeev Kumar then presented a cheque bearing no.024657 dated 15.5.08 (which was issued against SB account no.8501906 in the name of Sanjeev Kumar and Savitri Devi) amounting to Rs.3,45,000/- and the same was cleared on*

> *17.5.08 and the said amount was credited in the account of one Ankita Sharda in her HDFC account no. 10300100016510 and the depositor took the withdrawal of Rs.75,000/- through ATM,. A sum of Rs.2,70,000/- still stands in her account which was subsequently freezed by the bank authorities."*

3. In addition, certain other frauds allegedly committed by Sanjeev Kumar and the present Petitioner were also unearthed, the details of which have been individually mentioned in both the Judgments passed by the Ld. Courts below.

4. The Petitioner as well as his co-accused have been tried for the offence under Section 420 read with Sections 120-B, 467, 468 and 471 of the Indian Penal Code and after conducting the trial, they were found guilty, and awarded the sentences mentioned above. This Court has considered the written arguments filed by, and the submissions raised on behalf of the Petitioner as well as Ld. counsel appearing for the State, and has also gone through the available material in the Lower Court Records.

5. The basic point urged on behalf of the Petitioner is that he has been wrongly found guilty of the offences of forgery/cheating on the basis of insufficient evidence. It has been urged by Ld. counsel for Petitioner that undue reliance has been placed upon the report of the Departmental Inquiry/Disciplinary Proceedings conducted by the Petitioner's own Department in holding him guilty of the aforesaid offences, and that both the Ld. Courts below have ignored the settled legal position that the standard of proof to convict an accused in a criminal trial is much more strict than in case of a Civil/Departmental Proceedings in which the result

arrived at is on the basis of preponderance of probabilities. As such according to the Petitioner, holding him guilty of the criminal offences on the basis of Departmental Disciplinary/Inquiry Report conducted by his Department is untenable in the absence of sufficient and independent evidence required to be led in the criminal proceedings. It has also been highlighted that the Ld. Courts below while holding the Petitioner guilty on the basis of his alleged statement dated 23.5.2008 in which he had only admitted to the fact that the original account was opened without confirming the identity of the account holder, can by no means be interpreted as his being actually and consciously involved in the fraud which took place. It has further been highlighted that the account holder Surjit Kaur (PW-4) who deposed in support of the prosecution case, did not give any statement against the Petitioner nor identified him in Court. Similarly, it has been highlighted that according to PW2 Varinder Kumar, a fake account was found to have been opened in the name of one Ankita Chhabra by co-convict Sanjeev Kumar, but there is absolutely no link between the Petitioner and the said co-convict in the matter of opening such fake account, particularly considering that according to PW7 (Inspector Inderjit Singh) who admitted that he did not get the signatures of Petitioner verified with regard to documents concerning the Post Office, and even otherwise as per report of the FSL, the handwriting samples taken from him did not match with the signatures on the Withdrawal Forms, whereas specimen signatures of co-convict Sanjeev Kumar were found to completely match with the disputed signatures in the original forms.

6. At this juncture, a glance over the reasons for which the Ld. Trial Court found the present Petitioner guilty would appear to be in order. The relevant observations of the Trial Court in this regard are set out as below -

> *"14. However, in my opinion the prosecution has succeeded in its bid to prove its case beyond all doubts. The mainstay of the prosecution is the testimony of PW-1 Dhanna Singh which renders fortification to the prosecution version. His entire statement is in consonance and in conformity with the version as has been set out at the commencement of the judgment. He proved Ex.P-4 account opening form relating to the fake account of Jatinder Kumar and further after conducting the enquiry threadbare, he unearthed the scam relating to the withdrawal of huge money from different depositors by both the accused by forging the signatures on the withdrawal slip without making any relevant entry in the ledger book. He also proved the relevant withdrawal slips as well as the ledger entries which were bogus and finally deposed about the recording of statements of relevant witnesses. When tested on the anvil of cross examination he was subjected to the rigor of grueling and searching cross examination but the defence counsel failed to elicit anything which could fault or flaw his version given in the examination in chief. His entire statement is free from suspicions. The testimony of PW-1 proved the following facts beyond any vestige of doubt :*
>
> *(a) A fake account was opened by accused Rajinder Kumar in the name of Jatinder Kumar which was non cheque account.*
>
> *(b) A fake entry relating to deposit of Rs.3,45,000/- in the fake account of Jatinder Kumar was shown in the ledger by accused Sanjeev Kumar at the behest of accused Rajinder Kumar.*
>
> *(c) A joint account was opened in the name of Sanjeev Kumar and Smt. Savitri Devi and the cheque book was*

issued to the account holders by accused Rajinder Kumar without obtaining the signatures of Sanjeev Kumar and Savitri Devi.

(d) Accused Sanjeev Kumar issued a cheque of the amount of Rs.3,45,000/- from the fake account of Jatinder Kumar at the behest of accused Rajinder Kumar by using the cheque relating to joint account of Sanjeev Kumar and Savitri Devi and the said cheque was deposited in the fake account of Ankita Chhabra and after encashment a sum of Rs.75,000/- was drawn through ATM.

(e) A sum of Rs.16,14,589/- were withdrawn by both the accused by forging the signatures of the depositors without making relevant entries in the ledger.

15. The report of FSL Ex.PY confirms that the signatures of the depositors on the withdrawal slip were forged by accused Sanjeev Kumar. So far as initials of accused Rajinder Kumar on the withdrawal slips are concerned, it was opined by the FSL that no definite opinion can be given about the same. But as already said the testimony of PW-1 is indubitable proof of the connivance inter se both the accused relating to the forging of signatures of the depositors and relating to the opening of fake account in the name of Jatinder Kumar.

16. Upshot of my discussion is that accused committed an offcence falling in the domain of Section 420 read with Section 120-B IPC when they cheated the postal department. They also committed offence falling within the criminal trapping of section 467, 468 and 471 IPC when they forged the signatures on the withdrawal slips of the depositors when they made fake entries in the ledgers and opened fake account in the name of Jatinder Kumar. I thus convict both the accused for the offences for which they have been charged. Let they be heard on the quantum of sentence."

7. It is thus seen that both the Ld. Courts below determined the Petitioner guilty of the offences imputed to him in absence of any document to establish that he had personally committed any forgery, on the assumption that he was in active involvement/connivance with co-convict Sanjeev Kumar, against whom all the forgeries and even syphoning of money illegally was established. Essentially therefore, the Petitioner's culpability has been concluded in view of the fact that at the relevant time, he happened to be a Sub Post Master of the concerned Post Office, in which the aforesaid frauds were committed by Sanjeev Kumar. It is however, seen from the various admissions made by the Petitioner during the course of Departmental Inquiry, the report of which was led into evidence, that he had admitted having allowed the fake account to be opened without actual cross checking or verification, which according to him was not done due to 'heavy rush of work', although he admitted to the lapses on his part. Such statements of admission are on the record of the Ld. Trial Court at Pages 65, 80 and 89.

8. In any case, there is no evidence whatsoever on record to indicate that any part of the amounts allegedly withdrawn/defalcated by co-convict Sanjeev Kumar had actually passed on to the Petitioner himself. This coupled with the fact that there is also no evidence whatsoever of his having personally committed any forgery, would tend to support his statements made during the Enquiry Proceedings, that the lapses on his part were on account of 'heavy rush of work' and not due to any actual *mens rea*, although by no means, he can be absolved of his culpability in the nature of

gross criminal negligence in his capacity as Sub Post Master/Incharge of the concerned Post Office. So even while holding him guilty of the offence of cheating by presuming that he was a part of conspiracy actually given effect to by his co-convict Sanjeev Kumar, in the opinion of this Court, imposition of a comparatively lighter sentence from that awarded to Sanjeev Kumar may not be altogether inappropriate, since in any case, he has already lost his job following his conviction, and it has been represented that his family members are now facing virtual starvation after his dismissal and imprisonment.

9. In **'Guru Bipin Singh Vs. Chongtham Manihar Skngh' 1997(1) R.C.R. (Criminal) 127**, the Supreme Court had held -

> *"9. In view of all the above, we agree with Shri Jethmalani that the allegations made in the complaint, even if true, do not make out the case of forgery. Now, if forgery be not there, allegations under section 420 would fail because the allegation in para 5 of the complaint is that by "forging the said book" deception was caused and members of the public were induced to purchase the same. So, forgery is the principal allegation; cheating being a consequential offence. If forgery goes, cheating cannot stand. So, the complaint does not make out a case under any of the three sections, namely 420, 465 and 468. It may be pointed out that section 468 is intimately connected with sections 420 and 465."*

10. In **'N. Selvaraj Vs. Management, Kumbakonam City Union Bank Ltd. & Anr.' 2006(9) SCC 172**, it was observed by the Apex Court -

> *"6. It is contended by the learned counsel for the appellant that since the criminal court acquitted him, continuity of departmental enquiry is not justified and he should be directed to be paid all the backwages on the basis of the acquittal recorded by the criminal*

> *court. We are not at all convinced by this contention. By now, it is well settled principle of law that the standard of proof between the criminal trial and the departmental proceedings are quite different. In criminal trial the standard of proof is proved beyond all reasonable doubt, whereas in the departmental proceedings it is preponderance as probability which is taken into consideration. It is also to be noted that in continuation of the earlier order passed by this Court as referred above, the suspension of the appellant is continuing subject to the final decision that may be made on the basis of second enquiry. It is now well settled principle of law that pay and allowances including backwages will depend on the outcome of the second enquiry to be decided by the disciplinary authority in accordance with relevant financial Rules. See **(Managing Director ECII, Hyderabad and Ors. v. B. Karunakar & Ors. 1993(4)SCC 727).**"*

11. In addition, reliance has been placed upon the decision of a Coordinate Bench of this Court in '**Ravinder Singh Vs. State of Punjab' 2014(10) R.C.R. (Criminal) 2482,** in which case the Petitioners were convicted of the similar offences under Sections 419, 420, 467, 468 of the IPC and had been sentenced to suffer Rigorous Imprisonment for one year each, and six months for the offence under Section 120-B IPC, apart from imposition of fine. The Court by relying upon an earlier decision of the Supreme Court in **'R. Soundarajan v. Seed Inspector, Coimbatore and another' 2006(4) R.C.R (Criminal) 645** and **'Umrao Singh v. State of Haryana' 1981 AIR (SC) 1723** reduced the sentence of the Petitioners/convicts to the period already undergone by them which was for about four months, in view of the fact that they had faced the agony of criminal trial for more than 11 years.

12. From the Custody Certificate available in the record, it is clear that the Petitioner by now has undergone the agony of trial for ten years after the FIR was registered in 2008, and has already undergone actual detention for one year and four months. As such, while affirming the Judgments of Ld. Courts below, but in view of the above citations relied upon from his side, this Court is of the considered opinion that the sentence awarded to him, which is at par with that awarded to his co-convict Sanjeev Kumar, whose active involvement and role in the concerned offences was much more vigorous in comparison to that of the Petitioner, the ends of justice would be sub-served by reducing the sentence of imprisonment awarded to him for the period already undergone. There shall however, be no remission in the sentences for payment of fine as awarded by the Ld. Trial Court.

13. Disposed off with the above observations.

June 01, 2018 **(SUDIP AHLUWALIA)**
AS **JUDGE**

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No