

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

**CRM-M-17680-2017
Date of decision: 30.08.2019**

Makhan Lal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. K. S. Dhillon, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the order dated 26.08.2013, passed by the Chief Judicial Magistrate, SAS Nagar (Annexure P-15) and order dated 27.08.2013 (Annexure P-17) as well as order dated 02.02.2015 (Annexure P-18), passed by the trial Court framing charge under Sections 181, 193, 199 and 200 of the IPC in a complaint filed under Section 340 Cr.P.C. It is also prayed that the order dated 15.02.2017 (Annexure P-19), passed by the revisional Court, dismissing the revision filed by the petitioner, be also set aside.

Brief facts of the case are that one Angrej Singh filed a Criminal Complaint Case No. 200 dated 29.08.2006, titled as ***Angrej Singh vs. Angrej Kaur and others*** including her daughter-in-law Jasbir Kaur and her parents. The said complaint was filed under Sections 384, 506, 120-B and 34 of the IPC. The trial Court, vide judgment dated 18.04.2013 (Annexure P-1), acquitted all the accused persons and directed them to furnish personal as well as surety bonds under Section 437-A Cr.P.C.

Thereafter, all the accused persons submitted their personal/surety bonds as per Section 437-A Cr.P.C. However, since accused No. 1 Angrej Kaur had died, she did not file any surety. Darshan Kaur stood surety for Sukhbir Singh, Manjit Singh stood surety for Hardial Singh, Jagdeep Singh stood surety for Harbans Kaur, petitioner Makhan Lal stood surety for Jasbir Kaur and Gursharan Kaur stood surety for Harmanjeet Singh. The personal and surety bonds, submitted by Jasbir Kaur, are relied upon by the petitioner as Annexure P-2 and P-3.

The accused persons were also directed to file affidavit for their appearance in Court. While filing such affidavit, inadvertently and due to oversight of typist or counsel representing the petitioner, the same was typed in the name of surety instead of accused and submitted in the Court along with personal bond and surety bond. Copy of the affidavits, filed by the sureties, are Annexure P-4 to P-8. Thereafter, the complainant filed three applications under Section 340 IPC read with Section 195 Cr.P.C. against surety Darshan Kaur etc. before the trial Court on the ground that they have filed a wrong affidavit. The trial Court, while observing that the mistake was neither intentional nor deliberate, dismissed the said applications, vide order dated 26.04.2014. Thereafter, Angrej Singh filed three separate appeal which were dismissed by the Additional Sessions Judge, Mohali, vide judgment dated 30.05.2015.

Learned counsel for the petitioner submits that petitioner Makhan Lal has stood surety for accused Jasbir Kaur, though the similar applications, filed by Angrej Singh against Darshan Kaur etc. under Section 340 Cr.P.C., were dismissed by the trial Court, however, vide impugned order dated 26.08.2013, the trial Court allowed the application under

Section 340 Cr.P.C. qua the petitioner, even without affording opportunity of hearing to the petitioner. In pursuance thereof, the Chief Judicial Magistrate has filed a complaint under Section 181, 191, 193 and 200 of the IPC. Thereafter, without recording the preliminary evidence, charges were framed against the petitioner, vide impugned order dated 02.02.2015. The petitioner preferred a revision, however, the same was dismissed by the revisional Court, vide impugned order dated 15.02.2017.

Learned counsel for the petitioner has further argued that all the accused were acquitted in the original complaint filed by Angrej Singh, vide judgment dated 18.04.2013 and the only requirement was to furnish affidavit in view of Section 437-A Cr.P.C. and while furnishing the same, the petitioner appeared as a surety for accused Jasbir Kaur, however, inadvertently, in the affidavit, filed by the counsel, due to typographical mistake, in place of the name of Jasbir Kaur, it was stated that petitioner Makhan Lal stands acquitted, whereas the petitioner has never faced any trial and he was not the accused in the complaint filed by Angrej Singh.

Learned counsel for the petitioner has relied upon ***Amarsang Nathaji as Himself and as Karta and Manager vs. Hardik Harshadbhai Patel and others, 2017 (1) R.C.R. (Criminal) 92***, wherein it has been held by Hon'ble Supreme Court that in every case it is not expedient to initiate proceedings under Section 340 Cr.P.C., on merely filing of a false affidavit, when a plausible explanation has been given with regard to such mistake.

Learned counsel for the petitioner has further argued that the aforesaid mistake was neither intentional nor deliberate and it was a bona fide mistake which occurred on account of typographical error and since the petitioner was not an accused in the original complaint, filed by Angrej

Singh, therefore, mere mentioning in the affidavit that the petitioner has been acquitted by the trial Court has no relevance as this declaration was to come from Jasbir Kaur, which in fact is a part of record.

Learned State counsel has argued that there is sufficient evidence on record to frame charge against the petitioner and, therefore, the trial Court, vide impugned order dated 26.08.2013, has rightly allowed the application filed under Section 340 Cr.P.C., subsequent to which, a complaint was filed against the petitioner under Sections 181, 193, 199 and 200 of the IPC, in which the petitioner was summoned and thereafter the charge was framed.

In reply, learned counsel for the petitioner has referred to order dated 26.08.2013, a perusal of which, shows that the same was allowed only after hearing the applicant/complainant Angrej Singh who appeared in person and even without affording any opportunity of hearing to the petitioner or issuing notice to him.

Learned counsel for the petitioner has, thus, argued that recording of finding by the trial Court that the petitioner has given a false declaration in the said affidavit is contrary to well settled principles of law.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:

(1) The petitioner has shown his bona fide that the incorrect declaration in his affidavit that he was acquitted by the trial Court is apparently an inadvertent typographical mistake as he was never an accused in the original complaint filed by Angrej Singh and in fact it is accused Jasbir Kaur for whom, he stood surety.

(2) The proceedings, in which the affidavit of the petitioner was

filed, were only collateral proceedings under Section 437-A Cr.P.C., in which personal/surety bonds were to be furnished subsequent to acquittal of the accused persons and there was no intention on the part of the petitioner to file an incorrect affidavit.

(3) Moreover, Hon'ble Supreme Court in *Amarsang Nathaji's case (supra)* has already held that not in every case, proceedings under Section 340 Cr.P.C., are to be initiated on merely filing of a false affidavit, when a bona fide reason has been given for the error occurred.

Therefore, in view of the above discussion, the present petition is allowed and impugned orders dated 26.08.2013 (Annexure P-15), dated 27.08.2013 (Annexure P-17), dated 02.02.2015 (Annexure P-18) and order dated 15.02.2017 (Annexure P-19) are hereby set aside.

30.08.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No