

CRM-M-31094-2014 (O&M)

Date of decision : February 28, 2019

Sanjay Kumar

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent: Mr. N.S. Bhinder, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for quashing of the FIR No.44 dated 30.1.2013 (Annexure P-1) under Section 409 IPC registered at Police Station City, Ambala.

Counsel for the petitioner submits that the petitioner was working as Additional Ahlmad in the Court of Shri B.M. Bajaj, the then Special Judge, Ambala, who had decided CBI case No.3 dated 16.11.1990/8.10.1999 titled as 'CBI Vs. S.V. Singh and others' in FIR No.44 dated 30.1.2013 on 7.2.1999. The allegation against the petitioner are that he has prepared a parcha yadsht, i.e. memo of remembrance which was meant for the purpose to know who had taken the file from the record room. The petitioner had taken the file as it was summoned in the Court and thereafter, it was never returned to record-room and was declared to be missing file.

Counsel for the petitioner further submits that, later on, on the basis of an enquiry the services of the petitioner were terminated on 11.11.2006. Counsel for the petitioner has further submitted that even an *ex parte* enquiry was conducted and on 3.8.2012. The Enquiry Officer found that the petitioner was working as an Additional Ahlmad in the Court of Shri B.M. Bajaj, the then Additional Sessions Judge, Ambala and he had deposited the aforesaid memo (*parcha yadsht*) of the case in the record room on 14.2.2000 and, later on, he did not deposit the original file and, therefore, he was held responsible for the loss of the file. Counsel for the petitioner has further submitted that, thereafter, the present FIR was registered on 31.1.2013 after a long lapse of time.

Subsequently, one other enquiry was conducted on the direction of the then District and Sessions Judge, Ambala regarding the articles, files and registers which were recovered from an unattended almirah and cupboard of the Ahlmad room and for the parties seeking explanation concerned officer, who had been to intimate about the locked almirah/cup-board which were attached to the Court of Shri Deepak Aggarwal, the then Additional Sessions Judge, Ambala. During the course of said enquiry, certain files were recovered from the almirah, including the missing file of case title CBI Vs. S.V. Singh and others for which the petitioner was held responsible. This enquiry was conducted by Shri Deepak Aggarwal, Additional Sessions Judge himself being Enquiry Officer vide report dated 17.3.2015.

Thereafter, another fact finding enquiry was conduct regarding articles recovered from the locked almirah lying in the Ahlmad room unattended, as it was intimated by the Presiding Officer that a wooden

almirah is lying unattended in the Ahlmad room No.6. In the said facts finding enquiry report it was mentioned at serial No.3 that the missing files CBI Vs. S.V. Singh and others for the loss of which the petitioner was held responsible and the present FIR was registered against him and his services were already terminated. In the concluding part of this enquiry only a warning was issued to other officials of the Court, i.e Ranjore Singh, Reader; Harish Pal, Ahlmad; Sonia Bhatia, Additional Ahlmad and Ms. Bharti Luthra, Ahlmad and they were warned to remain careful in future as 10 more files which were missing and assigned to these employees were also recovered. The counsel for the petitioner on the basis of these two enquiries has submitted that nothing has come on record that at any point of time the petitioner was incharge of the said almirah, from which ten other files were recovered and the other officials who were held responsible for the same, were only given a warning, whereas against the petitioner, the present FIR was registered.

Reply by way of affidavit of Assistant Commissioner of Police, Ambala as well as on behalf of the District and Sessions Judge, Ambala through its Superintendent is on record.

In the reply filed on behalf of the District and Session Judge, Ambala, in para 11 it is admitted that the file in question has been traced from the cup-board of the Ahlmad room of the Court of Shri Deepak Aggarwal, Additional District and Session Judge, Ambala. Further, in reply to para 12 (v) again it is admitted that the original file was recovered and the petitioner being an Criminal Ahlmad was the custodian of the file despite his transfer to Panchkula, he did not return the file.

Counsel for the petitioner has submitted that the petitioner was only an Additional Ahlmad attached to the Criminal Ahlmad of the Court of Additional Sessions Judge, who was the custodian of the record and there was no occasion for the petitioner to keep the file in manner that resulted in dismissal from service and facing the criminal trial which itself demonstrate that the petitioner was not in possession of the file and it was in possession of the Criminal Ahlmad of the Court.

Vide order dated 10.10.2014, it was directed that a specific reply be filed on behalf of the District and Sessions Judge, Ambala. In compliance thereto, an additional affidavit on behalf of the District and Sessions Judge, Ambala is filed, in which it is stated that on account of the loss of the file, the petitioner was held responsible in performance of his officials duties and his services were terminated.

Counsel for the petitioner has further argued that from the bare perusal of the FIR which was registered after a lapse of about 13 years from the date of the incident, the offence under Section 409 IPC is not made out as the instrument of the file cannot be termed as a property within the definition of Section 409 IPC.

Learned State counsel, on instructions from HC Harjinder Singh and on the basis of the reply filed by Assistant Commissioner of Police, Ambala has not disputed the factual position, as it stands admitted in the affidavit of Superintendent, Office of the District and Sessions Judge, Ambala that the file has been traced. However, in the enquiry it was found that the petitioner was in possession of the file and the same was not

rules/regulations/instructions and he had kept a Parcha Yadashat (memo of remembrance) and, therefore, being custodial of the file, he was held responsible and the present FIR was registered.

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

- (a) It is not disputed that on the date of incident, the petitioner was working as an additional Criminal Ahlmad under Criminal Ahlmad, who was over all Incharge and in whose possession the wooden almirah was there, which was checked after a long lapse of time, as it was lying unattended and from that almirah as many as eleven files were recovered, including the file relating to the petitioner which was lost. Therefore, even before registration of the FIR and after registration of the FIR, the police has not conducted a proper enquiry and never searched the almirah lying in the Court premises, which was in possession of the Criminal Ahlmad.
- (b) The petitioner, in lieu of the said loss of file, faced departmental action as is clear from the additional affidavit filed by the Superintendent, District and Sessions Judge, Ambala and after conducting a preliminary enquiry, the present FIR was registered and when the petitioner was held gross-negligent in performance of his official duties, he lost his right to continue in service on account of misplacement of the file of CBI Vs. S.V. Singh and others. Therefore, the petitioner has not only lost his job in 2006, but also faced criminal prosecution in the present FIR. Nothing has come on record

that after the file was recovered, either the police or the office of District and Sessions Judge has taken any action to move an application for cancellation of the FIR.

- (c) It is also apparent on record that the missing file of CBI Vs. S.V. Singh and others, was, in fact, a decided case which was summoned and, later on, it was misplaced. The police in the entire investigation has not tried to find out if any mischief was played by any of other employee who may have misplaced the file from the notice of the Court or from the Criminal Ahlmad in whose possession the said almirah was, to find out if such action for misplacing the file was *malafide*, so as to harass the petitioner. Needless to say, after the recovery of the file, no remedial measures were taken by the police or by the District and Sessions Judge to get the FIR cancelled.
- (d) It has also come on record that the other officials, who were also incharge of ten other missing files were given only a warning '*to be careful in future*' and neither FIR was registered against them nor any serious departmental action, like, imposing major penalty, was initiated, whereas, the petitioner not only lost his job but also faced the criminal prosecution for the similar action of misplacement of file.
- (e) In reply of the Assistant Commissioner of Police, Ambala as well as the District and Sessions Judge, Ambala, it is not disputed that the lost file was traced in the cub-board of the Criminal Ahlmad from the Court room of Shri Deepak Aggarwal, Additional Sessions Judge, Ambala, who is the

successor Court where the petitioner was working as additional Criminal Ahlmad and after he was transferred from that place to Panchkula, he never remained in possession of any record.

In view of the above, I find that the petitioner who has already suffered the major penalty of dismissal from service for the same action, after the file was traced, his prosecution in the impugned FIR is nothing but the misuse of process of law.

Accordingly, the petition is allowed and FIR No.44 dated 30.1.2013 under Section 409 IPC registered at Police Station City, Ambala is quashed and the subsequent proceedings arising therefrom are set aside.

(ARVIND SINGH SANGWAN)
JUDGE

February 28, 2019
satish

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO