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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44862-2016 [O&M]
Date of Decision : July 10 , 2019

Jasbir Singh Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. D.S. Pheruman, Advocate,
for the petitioner.

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

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 88 dated 28.10.2015 (Annexure P/4) under Sections 420, 409, 467, 468, 471 IPC and Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act") registered at Police Station Shahpur Kandi, District Pathankot.

2. Facts relevant for the purpose of decision of the present petition; that the petitioner was working as Clerk in the office of Government Senior Secondary School, Badhani, during the period from 30.08.2000 to 7.1.2011, when a complaint was filed by Veena Kumari, Principal of Government Senior Secondary School, Badhani (hereinafter referred to as "the School") and on the basis of that, FIR No. 3 dated

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7.1.2011 (Annexure P/1) under Sections 409, 467, 468, 471 IPC and Section 13(2) of the Act was registered at Police Station Division No.2, Pathankot. Challan was submitted and charges were framed by the Court and after trial, the accused was convicted and sentenced to undergo Rigorous Imprisonment for 5 years and fine to the tune of Rs.24.00 Lakhs vide its order dated 19.2.2015. The allegations against the petitioner in the said FIR No. 3 dated 7.1.2011 were regarding withdrawal of amount from GPF accounts of the employees of the School in connivance with the officials of Treasury Office by forging the signatures. Subsequently, the Education Department issued orders for 100% audit of the said school for the period from 1.4.2002 to 31.08.2010 and as per the Audit report, apart from GPF amount, the salary bills had been tempered with and an amount of Rs. 5,16,113/- was found to have been withdrawn in excess after preparing separate total of bills, which were 29 in number. In all these matters, the present petitioner had withdrawn the amount after tempering with the cheques and that fact had been disclosed in the Audit report. On that basis, present case bearing FIR No. 88 dated 28.10.2015 (Annexure P/4) was registered under Sections 420, 409, 467, 468, 471 IPC and Section 13(2) of the Act at Police Station Shahpur Kandi, District Pathankot.

3. Learned counsel for the petitioner contended that the registration of FIR No. 88 dated 28.10.2015 is complete mis-use of process of the Court because once the petitioner stood convicted and sentenced by learned trial Court vide order dated 19.2.2015, against which he had filed appeal, no subsequent FIR could be registered for the same

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alleged embezzlement and there is complete bar as per Section 300 of the Code of Criminal Procedure because a person once convicted or acquitted cannot be tried for the same offence. As per Section 300 Cr.P.C. no criminal case could be registered on the same facts. On this point, reliance was placed on the judgment from Hon`ble Apex Court in **T.T.Antony Vs. State of Kerala, 2001(3) R.C.R. (Criminal) 436** and judgment from Co-ordinate Bench of this Court in **Mahant Amar Dass Vs. State of Punjab and another, 2006(1) R.C.R. (Criminal) 971.**

4. State of Punjab in its reply had given the complete details of facts indicating the subject matter of allegations against the present petitioner for which the petitioner was tried against FIR No. 3 dated 7.1.2011 (Annexure P/1) and there after he was convicted and sentenced vide order dated 19.2.2015. As per the reply filed by the State, 100% audit of the said school was ordered and at that time, it came to the notice that the petitioner had embezzled some more amount other than the GPF bills and that embezzlement was on account of tempering of salary bills after preparing separate bills and in the present case the total embezzled amount was to the tune of Rs.5,16,113/-.

5. At the time of arguments, learned State counsel contended that the matter in the present case bearing FIR No. 88 dated 28.10.2015 (Annexure P/4) and the matter relating to FIR No. 3 dated 7.1.2011 (Annexure P/1) is entirely different and independent to each other. The allegations in the present case are regarding misappropriation of amount by the petitioner by forging salary bills. It is not a question of double jeopardy and applicability of Section 300 of Cr.P.C. Rather, the matter in

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previous FIR (Annexure P/1) and the present FIR (Annexure P/4) is different, independent and separate from each other. As such, the present petition is liable to be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that there is no dispute on the fact that the earlier case bearing FIR No. 3 (Annexure P/1) was registered on 7.1.2011 for embezzlement on account of withdrawal of GPF amount of certain employees of the School by the petitioner and the matter was investigated and after trial, the petitioner was convicted and sentenced vide order dated 19.2.2015. Thereafter, the present FIR No. 88 dated 28.10.2015 was registered and that was completely on different allegations and different facts. The earlier FIR No. 3 dated 7.1.2011 was with regard to withdrawal of excess amount from the GPF accounts of certain employees of the School. Subsequently, FIR No. 88 dated 28.10.2015, which is the subject matter of the present petition, is with regard to withdrawal of excess amount on account of salary bills having been prepared and withdrawn by the petitioner though for the same period. But that fact had come to the light only when 100% audit of the School was ordered by the Education department. However, at any rate, it was not the subject matter of investigation in earlier FIR No. 3 dated 7.1.2011.

7. As the allegations against the petitioner are very serious in nature and include offence punishable under Section 409 IPC as well, the present case would not be attracted by the provisions of Section 300 Cr.P.C. because the trial of case in earlier FIR No. 3 dated 7.1.2011 was

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with regard to different allegations, that is, with regard to excess withdrawal of GPF amount of the employees and the subsequent FIR No. 88 dated 28.10.2015 is with regard to excess withdrawal of salary amount and forgery of cheques etc. It is significant to mention here that FIR No. 88 was registered on 28.10.2015 and investigation on the basis of that was done only after conclusion of trial in earlier FIR No. 3 dated 7.1.2011 on 19.2.2015. In the light of these facts, the judgments from Hon`ble Apex Court and Co-ordinate Bench of this Court relied upon by learned counsel for the petitioner are distinguishable on facts from the facts of case in hand because in this case :-

- (i). the allegations in FIR No. 3 dated 7.1.2011 and FIR No. 88 dated 28.10.2015 are entirely different as the earlier FIR was registered on 7.1.2011 for withdrawal of GPF amount of the employees whereas the present FIR No. 88 dated 28.10.2015 is regarding excess withdrawal of salary amount in connivance with officials of the Treasury Office after forging the cheques.
- (ii). FIR No. 3 was registered on 7.1.2011 and investigation was done and trial concluded in the said case on 19.2.2015 when the petitioner was convicted and sentenced, whereas present FIR No. 88 was registered on 28.10.2015 with different allegations.

8. In view of the above discussion, present petition for quashing of FIR No. 88 dated 28.10.2015 (Annexure P/4) under Sections 420, 409 (wrongly mentioned as 408 in the headnote and prayer of the petition), 467, 468, 471 IPC and Section 13(2) of the Prevention of Corruption Act, 1988

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registered at Police Station Shahpur Kandi, District Pathankot is without any merit and the same stand dismissed.

(SHEKHER DHAWAN)
JUDGE

July 10, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes