

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

**CRM-M No.24391 of 2019
Decided on: 12.07.2019**

Satwinder @ Satinder

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Bajaj, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

As per the office report, the Lower Court record has not been received. However, the learned counsel for the petitioner has placed on record the photocopy of the certified copy of the Lower Court record, which is taken on record as 'Mark X'.

Prayer in this petition is for setting-aside the order dated 18.05.2019 (Annexure P-4) passed by the Lower Appellate Court vide which the application filed by the petitioner/accused for stay of conviction of the judgment dated 01.12.2014 and order of sentence of even date was dismissed. The petitioner was held guilty for commission of offence punishable under Sections 403 and 406 of the Indian Penal Code (in short 'IPC') and was sentenced to undergo imprisonment for a period of 02 years by the trial Court.

Brief facts of the case are that the petitioner, who is

proprietor of M/s. Balaji Communications is a distributor of M/s. Vodafone and similarly the complainant namely Rahul, is the owner of M/s. S.S. Distributors, is also a distributor of M/s. Vodafone. Both the petitioner and the complainant are having their account in Allahabad Bank Branch at Udyog Vihar, District Gurugram. On 27.09.2013, the complainant through his bank account transferred an amount of Rs.11 lacs in the account of M/s. Vodafone by way of RTGS, however, the bank inadvertently credited the same in the account of Vodafone by showing that it is credited by M/s. Balaji Communications. The complainant registered the present FIR with the allegations that the petitioner has refused to return the amount to him. After facing the full length trial, the petitioner was held guilty and was convicted for commission of offence punishable under Sections 403 and 406 IPC and was sentenced to undergo imprisonment for a period of 02 years, as noticed above.

The petitioner has filed an appeal before the Lower Appellate Court and his sentence was suspended, however, the petitioner moved another application for stay of conviction of the sentence which stands dismissed vide impugned order dated 18.05.2019, passed by the Lower Appellate Court.

Counsel for the petitioner has submitted that while dismissing the application, the Lower Appellate Court has erroneously held that on the asking of the complainant, the petitioner has stated that he would return the aforesaid amount but the same was not returned because the disputed amount was not credited in the bank account of the petitioner directly by the complainant. Counsel for the petitioner has

referred to the statement of PW-3 – Rahul, the complainant, who has specifically stated that he transferred an amount of Rs.11 lacs by way of an RTGS in the account of Vodafone from his Allahabad Bank account and due to the mistake of the bank, the same was credited in the Vodafone account of M/s. Balaji Communications instead of M/s. S.S. Distributors.

Counsel for the petitioner has further referred to the statement of PW-4 – Shahshikant Singh, Deputy Manager Vodafone, who has also stated on the same line and stated that the amount of Rs.11 lacs was received from the Allahabad Bank and the same was credited in the account of M/s. Balaji Communications and thereafter, 02 top-ups of Rs.9 lacs on 28.09.2013 and Rs.2 lacs on 30.09.2013 were transferred in the account of M/s. Balaji Communications.

Counsel for the petitioner has also referred to the statement of PW-5 – Dushyant Nagar, Manager of the Bank, who has stated that due to fault of a bank employee namely Poonam Gupta, the amount was transferred from the account of M/s. S.S. Distributors to M/s. Vodafone by posting that it is transferred in the account of M/s. Balaji Communications and in this regard, the communication was given to the petitioner and the complainant.

Even this bank employee i.e. Poonam Gupta, appeared as PW-2 and she has also stated so on the similar line admitting her fault.

Counsel for the State, on instructions from ASI Sanjeev Kumar has placed on record the photocopy of the account statement of Vodafone (V.O. order details) wherein there is no corresponding entry of Rs.9 lacs and Rs.2 lacs dated 28.09.2013 and 30.09.2013 as stated by

PW5, the Manager of Vodafone, as noticed above.

Counsel for the petitioner has also placed on record the bank statement of the petitioner to show that in fact on 27.09.2013, he has transferred the amount of Rs.6,00,056/- to Vodafone from his bank account and similarly, again on 30.09.2013, he has transferred another amount of Rs.4,50,028/- to Vodafone to show that during the same period, the petitioner had also transferred an amount of Rs.10.50 lacs and against that he was given e-top up.

Counsel for the petitioner has relied upon the judgment passed by this Court ***“Balbir Singh vs State of Punjab”*** 2008(2) RCR (Criminal) 53, to argue that it has been held by this Court that in case the conviction of an accused has an adverse affect on his civil rights, the same can be stayed subject to the final outcome of the appeal, in exceptional circumstances.

Even otherwise, on the face of it, from the allegations in the FIR and from the evidence on record, it is apparent that the allegations of cheating against the petitioner are not direct and it is a dispute whether the amount which was erroneously transferred by the Allahabad Bank in the Vodafone account of M/s. Balaji Communications (owned by the petitioner) though, it was to be credited in the Vodafone account of M/s. S.S. Distributors (owned by the complainant), being a primary mistake on the part of the Allahabad Bank, therefore, the complainant had a right to recover the same from Allahabad Bank or ask Vodafone for crediting the amount in his account and therefore, it will be a debatable issue, to be decided while disposing of the main appeal, whether the appellant has committed the

offence punishable under Sections 403 and 406 IPC.

Counsel for the State, has not disputed the oral evidence referred to by counsel for the petitioner, who has placed on record the photocopy of the Lower Court record.

For the foregoing reasons, the petition is allowed and the order dated 18.05.2019 passed by the Lower Appellate Court (Annexure P-4) is set-aside, the conviction of the petitioner shall remain stayed during the pendency of the appeal pending before the Lower Appellate Court.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

12.07.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No