

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

CRR No. 3366 of 2017 (O&M)

Date of decision: 01.10.2019

Savita

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Varun Gupta, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

CRM-30471-2019

Heard.

Allowed as prayed for.

CRM-30474-2019

Prayer in this application is for recalling the order dated 16.09.2019, passed by this Court, whereby the revision petition was dismissed for non-prosecution.

Heard.

In view of averments made in the application, supported by an affidavit of Mr. Varun Gupta, Advocate, counsel for the petitioner, the application is allowed and the order dated 16.09.2019 is recalled. The revision petition is ordered to be restored to its original number and stage and let it be taken up for hearing today itself.

CRM-29909-2017

Prayer in this application is for condonation of delay of 15 days

in filing the revision.

For the reasons stated in the application, the same is allowed and the delay of 15 days in filing the revision is hereby condoned.

CRR-3366-2017 (O&M)

Prayer in this revision is for setting aside the judgment of acquittal dated 29.07.2015, passed by the trial Court, as well as the judgment dated 01.06.2017, passed by the lower appellate Court, vide which the appeal filed by the complainant/petitioner was dismissed.

Brief facts of the case are that in the year 1997, accused/respondent No. 2 Ram Singh was the Sarpanch of the Gram Panchayat Faizalipur and accused/respondent No. 3 was the then BDPO. As per the allegations in the FIR, both the accused persons had hatched a criminal conspiracy to cheat the government and in pursuance of the same, a resolution dated 10.09.1997 was forged by the accused and Rs. 1600/- were withdrawn from Central Cooperative Society Bank, Ateli in the year 2006. Complaint, in this regard, was forwarded by the then BDPO to Superintendent of Police, Narnaul and the FIR was registered.

During investigation, the attested copy of the disputed resolution and the cheque were taken into police custody. The accused were arrested and their statement under Section 161 Cr.P.C. was recorded. Thereafter, on completion of investigation, challan against both the accused persons was submitted before the Court. On finding a prima facie case, charge under Sections 420, 467, 468, 471 and 120-B of the IPC was framed against the accused persons, to which they pleaded not guilty and claimed trial.

Thereafter, the prosecution, in order to prove its case, examined Attar Singh, retired Development Officer as PW1, Jaswant Singh, Branch Manager as PW2, ASI Raj Kumar as PW3, Puran Chand as, retired Branch Manager as PW-4, Savita Devi as PW-5, Inspector Satbir Singh as PW6, retired ASI Ramswarup as PW7, HC Satish Kumar as PW8, retired SI Nand Lal as PW9, Naresh Kumar Pankaj, BDPO as PW10.

Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded to which they pleaded innocence and false implication. In defence, the accused examined Bishamber, Chowkidar as DW1.

The trial Court, thereafter, acquitted the accused persons-respondent Nos. 2 and 3 of the charge framed against them. The operative part of the judgment reads as under:

“14 After hearing both the sides concerned and taking into consideration the evidence produced on record and other available record of the case, this Court do not agree with the arguments of learned PP for the Station and learned counsel for complainant that the prosecution has proved conspiracy, cheating, forgery and used of forged document as genuine. This Court also disagree with the arguments addressed that the burden has ever shifted upon the accused to prove their innocence because the cardinal principle of criminal jurisprudence always speaks that in the matters of criminal trial the onus is always upon prosecution to substantiate its case beyond shadow of reasonable doubt. 15 Undoubtedly, the accused have passed the disputed resolution dated 10.9.1997 and the said resolution was used by them for withdrawal of Rs.1600/- by dint of cheque. The attested copy of the cheque is Ex.PW1/A. However, the conspiracy in case in hand is not of the used of disputed

resolution and withdrawal of Rs.1600/- but the gist of the conspiracy revolves around the nature of the resolution either been genuine or forged. 16 The prosecution to substantiate its case examined PW-1 Attar Singh, Officer of the Bank, he deposed that cheque Ex.PW1/A (photocopy) was submitted to the bank for withdrawal of Rs.1600/- by the then Sarpanch namely Ram Singh and the cheque was accompanying of the resolution attested by co-accused namely Shyam Kumar. PW-2 Jaswant, another Manager of the Bank deposed that application Ex.PW2/A was moved by Investigating Officer and this witness recorded his report Ex.PW2/B with certificate Ex.PW2/C. PW-3 ASI Raj Kumar has delivered the special reports to Illaqa Magistrate and other concerned officers. PW-4 Puran Chand is another Manager of the Bank and he also deposed that on demand of police attested copies of the disputed resolution and cheque were given by him. 17 Though these witnesses have stated with regard to the submission of the disputed resolution along with the cheque to the Bank and attested photocopies copies of those documents were also given to the Investigating Officer vide recovery memo Ex.PW6/A but the version of the above mentioned witnesses is neither relevant nor material in any manner on the aspect of the forged or genuine nature of the disputed resolution. None of these witnesses have ever been associated in any manner in the proceeding of Gram Panchayat and therefore, they have no knowledge to state that the said resolution was either genuine or was forged either by accused or anyone else. 18 In remaining witnesses, PW-5 Smt.Savita is the star witnesses of prosecution being she was the then Panch of Gram Panchayat and as per prosecution version her thumb impression were got forged by the accused over the

disputed resolution dated 10.9.1997. She in witness box stated that no meeting of Gram Panchayat was ever attended by her. Accused forged the disputed resolution and they withdraw Rs.1600/-. 19 Learned defence counsel has not disputed and denied that PW-5 was the then Panch of Gram Panchayat. It is also not disputed and denied that the resolution in question was containing the thumb impression of this witness. Though it is another aspect that the said thumb impressions were either genuine or forged. However, this fair admission on the part of defence side do not substantiate by itself the case of prosecution. Here, the prosecution was having ample opportunity to secure the original resolution from the concerned Bank and then to seek the specimen thumb impression of PW-5 for the purpose of comparison of the thumb impression of disputed resolution. The prosecution, however, never bothered to either seek the original copy of resolution or to ask PW-5 to give her specimen thumb impression. The prosecution has withheld the best part of evidence and therefore, adverse inference has to be drawn with regard to the allegations of prosecution that the thumb impression of PW-5 over the disputed resolution were of forged nature. 20 Moreover, production of some photocopy of disputed document goes to prove the case of prosecution qua the allegations of forgery and the consequential cheating. The Hon'ble High Court in case ***Budh Ram vs. State of Haryana 2010(2) RCR(Criminal) 352*** held that offence of forgery can only be proved on production of original disputed document. The prosecution in case in hand has neither produced the proceeding book of Gram Panchayat nor the original copy of disputed resolution has been shown the light of the day. Therefore, the version of prosecution of forgery has been vitiated in this

way. 21 In remaining witnesses of prosecution PW-6 is Inspector Satbir and he proved that certain part of investigation was completed by him. PW-7 Ram Swaroop is relating to the registration of FIR Ex.PW7/B. PW-8 HC Satish Kumar has been associated with PW-6 during the investigation. As discussed above, none of these witnesses is relating to the body of the then Gram Panchayat and the version of these witnesses do not throw light in any manner on the aspect of the alleged forgery of the disputed resolution. 22 PW-9 Nand Lal is formal witness of prosecution and similar version of PW-10 Naresh Kumar Pankaj who identified the signature of complainant over complaint Ex.PW7/A. The original complainant never appeared before the Court to state as to how he had satisfied himself with regard to the registration of the FIR of the case in hand against present accused. The referred letter in complaint to the Superintendent of Police has also not been produced before the Court even for the purpose of perusal as what was found by the Deputy Commissioner being the supervising authority of the Panchayat and its body. No inquiry was conducted in any manner nor the same has either been claimed or produced before this court to show that in departmental proceeding the accused were ever found even prima-facie guilty for commission of the offences of cheating and forgery as well criminal conspiracy. 23 DW1, the Chowkidar of the village stated specifically and categorically that the said withdrawn amount of Rs.1600/- was paid to him by the then Sarpanch and receipt Ex.DX was executed by him in this regard. The prosecution never protested with regard to genuineness of the receipt Ex.DX. If for the sake of arguments, the proceeding conducted and completed by accused is not according to rules of Gram Panchayat and

the same is suffering from some kind of procedural infirmity no case for cheating and misappropriation as well as forgery can be inferred only on the basis of procedural infirmity or irregularity on the part of both accused. Reliance in this regard on behalf may be placed upon ***C.Chenga Reddy vs. State of Andhra Pradesh 1996(3) RCR 793 SC, Inderjit Singh vs. State of Punjab 1995(3) RCR 75 SC.*** 24 In view of the discussions made above, this Court has no option except to conclude that the prosecution has failed to prove its case beyond shadow of all reasonable doubt. Granting benefit of doubt to the accused, they stand acquitted. Their bail bonds and surety bonds furnished stand discharged. File be consigned to the record room after due compliance.”

Thereafter, petitioner/complainant filed an appeal challenging the aforesaid judgment of acquittal, however, the same was dismissed by the lower appellate Court, vide judgment dated 01.06.2017.

Learned counsel for the petitioner has argued that in fact a complaint was given by the BDPO to the police that the private respondents/accused, in conspiracy with each other, has forged a resolution of Gram Panchayat, on which thumb impressions of petitioner/complainant Savita were shown, whereas she never attended any such meeting nor has put her thumb impressions on the said resolution.

Learned counsel for the petitioner further submitted that on the basis of the resolution dated 10.09.1997, authorizing the accused persons to withdraw Rs. 1600/- from the bank, they have caused loss to the government and have done cheating with the petitioner.

Learned counsel for the petitioner has further argued that the petitioner has proved on record that the said resolution, which was in fact a

fake resolution, was acted upon by the accused persons and they had withdrawn the amount though it bears the fake thumb impressions of petitioner Savita, who was also a Panch during that tenure when one of the accused was Sarpanch.

Learned counsel for the petitioner has further argued that the trial Court has not recorded any specific finding whether the thumb impression of the petitioner on the said resolution was genuine or forged.

After hearing learned counsel for the petitioner, I do not find any ground to differ with the concurrent findings of both the courts below.

Apparently, the petitioner has neither examined any handwriting expert to compare the disputed thumb impression on the said resolution with her standard thumb impression to prove that on the resolution, the thumb impression of the petitioner was fake.

The petitioner even failed to prove that she was not present when the said resolution was passed as it bears the signatures of some other Panches as none of them was examined to prove the fact that her thumb impressions are fake.

Even otherwise, both the courts below have recorded a finding that as per statement of DW1 Bishamber Chowkidar, it is proved that in pursuance of the resolution, the Sarpanch had withdrawn an amount of Rs. 1600/-, which was paid to him and in lieu thereof, he executed the receipt Ex. DX. The prosecution has never disputed the validity of the receipt Ex. DX, which is part of the Panchayat record and, therefore, the amount of Rs. 1600/-, which was withdrawn by the Panchayat for making payment to DW1, was duly accounted for.

Therefore, finding no illegality or infirmity in the concurrent findings recorded by both the courts below, the present petition is hereby dismissed *in limine*.

01.10.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No