

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

Date of decision : 20.02.2020

(I) CRA-S-153-SBA-2005 (O&M)

The State of Punjab

...Appellant

Versus

Naresh Kumar

...Respondent

(II) CRM-A-373-MA-2004 (O&M)

Gopal Krishan

...Appellant

Versus

The State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A.A. Pathak, Addl.A.G., Punjab,
for the appellant(s) in CRA-153-SBA-2005.

Mr. K.S. Lakhanpal, Advocate,
for the applicant/appellant(s) in CRM-373-MA-2004.

Mr. Suvir Sidhu, Advocate,
for accused-respondents, Naresh Kumar & Sunil Kumar.

JITENDRA CHAUHAN, J.

The captioned two appeals are being disposed of by this single judgment, having arisen out of the common impugned judgment dated 15.05.2004 passed by learned Additional Sessions Judge, Patiala (hereinafter referred to as 'the appellate Court') whereby, conviction of the accused-respondent under Sections 468, 471 and 420 of the Indian Penal Code (for

short, 'the IPC'), recorded by the Court of learned Sub Divisional Judicial Magistrate, Nabha, vide judgment dated 17.04.2002, was set aside.

Brief facts of the present case as noticed in para No.2 of the judgment passed by the appellate Court are as under:-

“2. *The police of police station Kotwali, Nabha presented a challan for the offences under Sections 420, 468, 471, 120B IPC against accused Naresh Kumar and his brother Sunil Kumar. The complaint was made by Gopal Krishan to the Administrator Municipal Council Nabha to the effect that Naresh Kumar got printed duplicate/false octroi receipts of M.C. Nabha and made false entries in these receipts regarding alleged payment, sent those fake receipts to various firms including Kesarbani & Company Sehsoan District Allahabad and others and thereby charged thousands of rupees as octroi on the items sent to Nabha by that firm and mis-appropriated the same to his own use. The amounts were charged by Naresh Kumar as octroi without actually paying the same. While forging the octroi receipts he also took the help of his brother Sunil Kumar. Both of them entered into criminal conspiracy and have cheated the complainant Gopal Krishan and Municipal Committee Nabha of thousands of rupees. He prayed for taking strict legal action against accused Naresh Kumar and his brother Sunil Kumar.*”

The complaint moved by Gopal Krishan was forwarded by the Sub Divisional Magistrate (S.D.M.), Nabha vide letter Ex.PW.9/B for

registration of criminal case and investigation thereon. On the reference made by the S.D.M. Nabha, a formal FIR, Ex.PW.11/A was recorded. Sanction to prosecute Naresh Kumar and Sunil Kumar for the offences punishable under Sections 420, 468, 471 read with Section 120-B IPC was also obtained from the District Magistrate Patiala vide order Ex.PW.11/B.

Accused Naresh Kumar and Sunil Kumar were arrested and challan against them was presented in the Court.

Meanwhile, a criminal complaint was also instituted by Gopal Krishan accused against Naresh Kumar wherein he alleged that firm Naresh Kumar Gopal Krishan was a partnership firm, in which the complainant and the accused were the owners. Business of the firm on behalf of the complainant was being managed by his father Dewan Chand. The accused had been maintaining the accounts of the firm. The profits from 27.2.1983 to 30.5.1985 were calculated to Rs.73608-74 and were shared by the complainant and the accused. In order to cause loss to the complainant, the accused took away the account books and started proclaiming himself to be the sole proprietor of M/s Naresh Kumar Gopal Krishan and also sent representation to the Income Tax Department and postal department to this effect. He also charged octroi on the material supplied by the firm to Ratna Zarda Supply Corporation Delhi and other firms on the basis of false octroi receipts.

Vide order dated 16.7.1988, the complaint and the challan cases were clubbed and further proceedings were recorded in the police challan.

After completion of investigation and upon presentation of *challan*, the accused were charge-sheeted for the offences punishable under Sections 120-B, 468, 471 and 420 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined HC Gurnam Singh as PW-1; Sarajudin as PW-2; Kamal Kumar as PW-3; Dev Raj as PW-4; Vidya Sagar as PW-5; Mewa Singh as PW-6; Dina Nath as PW-7; Onkar Nath as PW-8; Sumir Kumar as PW-9; Hari Om as PW-10; ASI Hari Singh as PW-11; Gopal Krishan, complainant as PW-12 and Sahib Singh as PW-13.

Thereafter, statements of the accused under Section 313 Cr.P.C were recorded and entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication. It was submitted that the dispute is with regard to ownership of firm, M/s Naresh Kumar Gopal Krishan of which Naresh Kumar has been held to be the sole proprietor and due to his grouse, the complainant has filed a false complaint. In defence, they examined Advocate J.D. Chopra as DW-1.

After considering the entire facts and circumstances of the case and appreciating the evidence brought on record, learned trial Court convicted accused Naresh Kumar under Sections 468, 471 and 420 IPC and sentenced him to undergo RI for a period of two years and to pay fine of ₹1,000/- under Section 468 IPC; to undergo RI for a period of two years and

to pay fine of ₹1,000/- under Section 471 IPC; and to undergo RI for a period of one year and to pay fine of ₹1,000/- under Section 420 IPC; with default stipulations. Co-accused Sunil Kumar was acquitted of the charges framed against him by extending benefit of doubt.

Feeling aggrieved, convict Naresh Kumar preferred two appeals before the appellate Court which were decided vide common impugned judgment dated 15.05.2004, which were accepted and the conviction and sentence of the appellant were set aside.

Hence, the instant appeals.

Heard learned counsel for the parties and carefully perused the lower Court records.

The allegations against the accused, in nutshell are that the accused hatched a criminal conspiracy in order to forge and fabricate octroi receipts.

In support of the prosecution version, the prosecution has examined PW-2, Sarajudin; PW-3 Kamal Kumar; PW-5 Vidya Sagar; and PW-6 Mewa Singh, all Octroi Clerks of M.C. Nabha, who have categorically stated that the receipts in question were neither issued by M.C. Nabha nor the amount of those receipts was deposited with M.C. Nabha. Hence, the receipts were forged and fabricated documents. In addition thereto, the prosecution has also examined Dina Nath, owner of M/s Kesarbani & Company, Suhason, District Allahabad as PW-7. He has stated that the accused used to octroi for goods by sending them the receipts along with

covering letters and in turn, he used to make the payment on the basis of such receipts. Most of the covering letters bear the signatures of accused Naresh Kumar. The amount was paid to the accused by adjustment and refund in the next bill. During investigation, it was found that amounts of those receipts, Mark A to D, were never deposited with the MC Nabha.

It has been argued on behalf of the accused that it was the transporter engaged by the accused who forged the receipts. However, it is improbable that every transporter employed for the job committed forgery. Moreover, the accused has not named even one such transporter to prove his innocence. Thus, the trial Court was well within its powers to presume that in fact, there was no other person except the accused, who had committed the forgery.

At this stage, learned counsel contends that the accused is more than 65 years of age and having no prior criminal history. Thus, he prays for a lenient view in the matter of sentence.

In view of the above, this Court feels that judgment of conviction recorded by learned trial Court is based on correct appreciation of the evidence brought on record by the parties and the same deserved to be upheld. It is ordered accordingly. Consequently, the instant appeals are accepted; the impugned judgment of acquittal of accused-Naresh Kumar, passed by learned appellate Court is set aside.

As regards respondent Sunil Kumar, there is no evidence worth the name to connect him with the alleged offence. Learned trial Court rightly

acquitted him of the charges by extending benefit of doubt. Even neither the State nor complainant Gopal Krishan chose to file appeal before the appellate Court against the acquittal of respondent-Sunil Kumar.

Nonetheless, considering the fact that the FIR was lodged on 14.2.1987, accused-respondent Naresh Kumar has suffered protracted trial and has not repeated the offence, this Court is inclined to take a lenient view in the matter of sentence.

In the circumstances, the accused-respondent is released on probation of good conduct for a period of one year on furnishing probation bonds in the sum of ₹50,000/- with one surety in the like amount. He shall also deposit fine of ₹25,000/- with the M.C. Nabha, within a period of 45 days from the date of receipt of certified copy of the judgment. He shall keep peace and be of good behaviour during this period and shall not repeat the offence. In case of any breach of the terms and conditions of the bonds, the order of probation shall be deemed to be withdrawn and he shall be taken into custody to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

20.02.2020

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Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No