

CRM-M-37839-2020

Date of Decision:29.01.2021

Hans Raj

.....Petitioner

Vs.

State of Punjab and another

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Chander Shekhar Singal, Advocate,
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conference.

By this petition, the petitioner seeks quashing of FIR No.34, dated 04.04.2019, registered at Police Station Sadar Banga, District SBS Nagar, alleging therein the commission of offences punishable under Sections 420 of the IPC and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012 as also Section 24 of the Emigration Act, 1983.

On 18.11.2020, the following order had been passed by this court:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

Learned counsel for the petitioner submits that the FIR has been wholly falsely registered against the petitioner after 13 years of the occurrence, only due to some enmity. However, as to what the cause of the enmity is, she is unable to answer.

Simply because the FIR has been registered 13 years after the alleged occurrence, notice of motion is issued, with Mr. Sandeep Singh Deol, learned DAG, Punjab, accepting notice on behalf of respondent no.1, at the asking of the court, with respondent no.2 to be served by way of normal process, as also through the SHO, Police Station Sadar Banga, District SBS Nagar.

Learned State counsel submits that as per his instructions, the petitioner actually took Rs.4.5 lacs to send the son of the complainant to Greece but actually sent him to Egypt, where he was arrested; and after his return from Egypt, in fact the petitioners' whereabouts were not traceable due to which the FIR was not registered.

Adjourned to 06.01.2021.

The SSP, SBS Nagar, is directed to get the affidavit of a gazetted officer filed in reply to the petition, giving therein in detail the reason for the delay in lodging of the FIR, and the date on which the complaint was made, also stating therein the evidence gathered during investigation (other than the bare statement of the complainant) as regards proof of money given by the complainant to the petitioner.

In the meanwhile, if charges have already not been framed by the trial court, till the next date of hearing only and specifically, the charges be not framed by that court. However, this order would naturally be subject to modification upon the affidavit of the SSP being filed and considered.

It is made clear that any request for an adjournment made on behalf of the counsel for the petitioner on the next date of hearing, would entail 'automatic' vacation of the interim order, with no further order required to be passed in that regard."

Thereafter, as recorded in the order dated 13.01.2021, learned State counsel had submitted that even the report under Section 173 of the Cr.P.C. has been submitted before the competent court, with the next date of hearing before that court being 05.02.2021.

A reply on behalf of the State, by way an affidavit of the DSP, Sub Division, Banga, is on record, wherein it is stated that the matter was inquired into by the DSP and after conducting a detailed inquiry, including by joining the Sarpanch of Village Jandiala, it was found that in fact a panchayat had been convened where the petitioner had agreed to pay Rs.50,000/- to the complainant and had agreed to pay the remaining amount of money also that was taken by him (stated to be Rs.4.80 lakhs).

However, that money was never returned, with the petitioner also having admitted (as contended) before the inquiry officer that he did owe the said money to the complainant (on account of it having been taken from him on the promise of sending the complainants' son to Greece).

As regards the delay in lodging the FIR, it is stated in paragraph 3 of the affidavit, that the complainant had stated that he was continuously visiting the house of the petitioner to get his money back, but the petitioner

first kept lingering the matter on, on one pretext or the other; and thereafter he was not found present in his house for a continuous period of 4 years; and subsequently, in 2011, the complainant found that the petitioner in village Boparai, P.S. Gorayan, District Jalandhar, where he again assured him that he would return the money in installments but with him still having failed to do so.

Eventually, a complaint dated 20.08.2018 was filed by the complainant (i.e respondent no.2 herein), stating therein that he had been duped of Rs.4.80 lakhs by the petitioner.

Having considered the matter though of course there is a huge delay in lodging the complainant, with the money stated to have been taken by the petitioner (even as per the complaint), in the year 2006; however, the allegation in the FIR being of the commission of offences punishable under Section 420 of the IPC, Section 13 of the Punjab Prevention of Human Smuggling Act, 2012 and Section 24 of the Emigration Act, 1983, firstly, the said provisions are to be noticed, which read as follows:-

Indian Penal Code:-

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Act of 2012:-

13. Penalties. - (1) Whoever, contravenes the provisions of this Act or keeps or uses the device for human smuggling, shall be punished with imprisonment for a period not less than three years, which may extend to seven years and with fine which may extend to five lakh rupees.

(2) Whoever attempts to commit any offence punishable under this Act or causes such offence to be committed and in such attempt, does any act towards the commission of the offence, shall be liable to punishment specified for the commission of the offence under this Act.

(3) Whoever abets or is a party to a criminal conspiracy to commit any offence punishable under this Act, shall, if that offence be not committed in consequence of such abetment or criminal conspiracy, be punished with punishment for a term, which 'may extend to one fourth part of the longest

term and with fine provided for such offence under this Act.

(4) Whoever, having been convicted of an offence under any provision of this Act, is again convicted of an offence under the same provision, shall be punishable, for the second, and for each' subsequent offence, with double the penalty, provided for that offence.

Act of 1983:-

24. Offences and penalties.

(1) Whoever—

- (a) except in conformity with the provisions of this Act emigrates; or
- (b) contravenes the provisions of section 10 or section 16; or
- (c) by intentionally furnishing any false information or suppressing any material information obtains a certificate or a permit or an emigration clearance under this Act; or
- (d) without lawful authority makes or causes to be made any alteration in any certificate or permit or in any document or endorsement by way of emigration clearance issued or made under this Act; or
- (e) disobeys or neglects to comply with any order of the Protector of Emigrants under this Act; or
- (f) collects from an emigrant any charges in excess of the limits prescribed under this Act; or
- (g) cheats any emigrant, shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees: Provided that in the absence of any special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees.

(2) Whoever attempts to commit any offence under sub-section (1) shall be punishable with the punishment provided for such offence under that sub-section.

(3) Whoever contravenes any term or condition subject to which any emigration clearance has been given under this Act, shall, if no other punishment is provided elsewhere in this Act for such contravention, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

(4) Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(5) Whoever, having been convicted of an offence under any provision of this Act is again convicted of an offence under the same provision, shall be punishable, for the second and for each subsequent offence, with double the penalty provided for that offence.

Thus, with punishment of upto 7 years having been provided for in the context of an offence punishable under Section 420 IPC itself, even the bar contained in Section 468 of the Cr.P.C., as regards limitation for taking cognizance of an offence would not apply, with the said provision reading as follows:-

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

- (2) The period of limitation shall be-
- (a) six months, if the offence is punishable with fine only
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
- (3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

Consequently, without making any comment on the actual merits of the case, for or against the petitioner, with the report under Section 173 Cr.P.C. also having been presented to the competent court, this petition is dismissed.

Naturally, the competent court concerned would go into the allegations made, and the report under Section 173 Cr.P.C., and pass appropriate orders thereafter, keeping in mind that this court has not made any observation whatsoever on the merits of the case, as regards either the case of the complainant or the petitioner, i.e. the accused.

January 29, 2021

dharamvir/

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES
Whether Reportable : YES