IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

222 **CRM-A-1197-MA-2014 (O&M)**
Date of Decision: 17.05.2022

CAPT. SURJEET SINGH

... Applicant

Versus

CAPT. D.S. GAIRE AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Sanjay Jain, Advocate
for the applicant-complainant.

Mr. Vikas Singh and Mr. Adesh Pannu, Advocates
for respnodent No.1.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Satyendra Chauhan
for respondents No.4, 6 and 7.

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VINOD S. BHARDWAJ, J. (ORAL)

This is an application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') seeking leave to file an appeal against the order of acquittal passed vide impugned judgment dated 13.03.2014 by the Judicial Magistrate Ist Class, Gurgaon (hereinafter referred to as 'trial Court'.)

2. The brief facts leading to the filing of the present case are that the complainant had instituted the complaint in question against the respondents-accused persons pointing out that the applicant-complainant and the respondent-accused were members of Indian Air Lines Pilots Cooperative House Building Society Ltd., Gurgaon. The respondents-accused persons were the office bearers of the Managing Committee of the said Society. It is alleged

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that on 09.10.1998, a notice was issued by the respondent-accused persons, as per which, a General Body Meeting of the Society was convened on 25.10.1998 at 11.00 AM in the office of the Society. Further, the said meeting was held on the date fixed and that the respondents-accused persons had presided over and chaired the meeting so convened. It is also alleged that a total of 126 persons are claimed to have attended the said meeting and signatures of all the members, who were present, have to be compulsorily obtained. It is alleged that the name of Capt. S.P. Khandewal was mentioned at Sr.108 and that of Capt. R.S. Jalaan was mentioned at Sr.118 and that of Mrs. Grace W. Peena was mentioned at Sr. No.117 and that the name of Parkash Wati Gupta was mentioned at Sr. No.120. It is alleged in the said complaint that the aforesaid four persons were not present at the time when the General Body Meeting was held and their signatures have been forged or have been obtained after the meeting had come to an end, because these persons were not present at the time when the meeting was held and they were away for their personal works. It is, thus, alleged that the respondents-accused persons prepared forged documents showing the presence of 126 members, when the resolution dismembering the applicant-complainant, was passed and their membership was assigned to somebody else and that the documents being a forged one, the proceedings that have ensued as result thereof are vitiated.

3. In the preliminary evidence, the applicant-complainant himself appeared as PW1 and also examined Harish Chand as PW2, Capt. Balraj Krishan as PW3 and R.P. Sharma as PW4.

4. Upon finding *prima facie* allegations against the accused, the

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respondents-accused persons were summoned for commission of offence punishable under section 420 and 468 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). Upon being summoned, the respondents-accused persons appeared before the Court. Pre-charge evidence was recorded wherein as many as six witnesses were examined by the applicant-complainant in support of his case. The charges for the offences punishable under Sections 420, 468, 470, 471, 120-B of the IPC were framed against the respondents-accused persons, to which they pleaded not guilty and claimed trial.

5. Learned counsel appearing on behalf of the applicant-complainant has placed reliance upon the testimonies of the prosecution witnesses to contend that it has gone uncontroverted and duly established that two of the aforesaid four persons namely Capt. R.N. Jalaan mentioned at Sr. No.118 and Capt. S.P. Khandewal mentioned at Sr. No.108 were out of the country on the date of meeting. He further submits that Capt. S.P. Khandewal was on OD Flight 1 C-186/657 on 24.10.1998 DEL-BCM-CCJ and Operated 1 C-997 of 24.10.1998 Ex.Call Cutt and Night Stopped at Bahrain and Operated 1 C-998 of 26.10.1998 (SOI) Flight IC-406 to Delhi) and Capt. R.N. Jalaan operated 1 C-727 to Singapore on 24.10.1998 and night stopped at Singapore. He operated 1 C-728 from Singapore to Calcutta on 28.10.1998. It is thus argued that the signatures of the aforesaid two pilots in the attendance register on the meeting of 25.10.1998 were forged in connivance with the respondents-accused persons. Reference is made to the relevant extract of the statements of prosecution witnesses which reads thus:

> *"PW1 Harish Chander deposed that he identifies the signatures of T.R. Rama Chanderan on the letter dated 6.9.1999 as he had worked with T.R. Rama Chanderan for*

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eight to ten years. He further deposed that he himself has no personal knowledge of this letter and he has not got the original of this letter in the court today. In his cross-examination he has stated that he has not got any document in original including the letter dated 21.9.1999 in court today. He has further denied any knowledge about documents mark A and B and as such both these documents are not proved on the file.

PW2 Vinod Kumar deposed that he has got the original copy of the case title S.S. Panesar Vs. Managing Committee in the Indian Airlines Cooperative House Building Society which was decided on 22.6.1999 He has deposed that he has no knowledge about the fact whether any appeal was preferred against the said order to the Joint Secretary Cooperative Society, Chandigarh or whether that order was stayed by the said authority. He has further deposed that he has no personal knowledge about the present case.

PW3 Balraj Bhasin deposed that he had attended a meeting dated 12.12.1996/97 as a member of the society. He has further deposed that he does not remember whether he had signed the attendance register in that meeting or not. He has further deposed that the meeting dated 12.12.1996 was not null and void and it was attended by 65 members. In his cross-examination stated that a total of 65 members attended the meeting and the remaining names were added. He further deposed that the members whose names were added, he has no knowledge about the same. He further deposed that he also does not know as to which of the accused forged the signatures of which of the members.

PW4 Rajesh Bharti has deposed that he has brought the summoned record for the years 1982 till 31.3.2006 which pertains to Indian Airlines Cooperative House Building

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Society and are exhibited from PW4/A to Ex. PW4/T. In his cross-examination stated that he has no personal knowledge either of the record or the present case.

PW5 Brij Lal Arora deposed that he was the manager of the society in the meeting dated 25.10.1998. On that date all the accused persons constituted the management committee. He further deposed that as per the records Capt. A.S. Malli and Capt. D.S. Gaire had signed the register at the end. He further deposed that as per their record the general body meeting dated 25.10.1998 was attended by 126 members. He further deposed that prior to the commencement of every meeting the management committee attendance register is always kept at the gate and only after the commencement of the meeting the attendance register was kept at the stage. He further deposed that at the time of meeting dated 25.10.1998 the entire record of the society as well as meeting was in the possession of then President.

In his cross-examination he has deposed that the complainant 'Capt. Panesar was expelled from the society on the ground of anti society acting to the working against the interest of the society. He further deposed that a total of 97 votes were casted in favour of expulsion of the complainant from the membership of the society. He further deposed that the four votes were casted against the expulsion of the complainant and remaining were neutral votes. It is pertinent to mention that this witness is a complainant witness who himself in his cross-examination has deposed that expulsion of the complainant from the membership was rightfully made by 97 votes of the member of the meeting and he himself deposed that the meeting was attended by 126 members which is contrary to the allegations of the complainant."

6. Upon conclusion of the evidence of the applicant-complainant,

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the entire incriminating material was put to the accused persons under Section 313 of the Cr.P.C., who denied the said allegations and claimed that they were innocent and have been falsely implicated in the false case.

7. Upon consideration of the rival submissions advanced by the learned counsel for the parties and upon consideration of the material produced before the trial Court, it was held by the Judicial Magistrate Ist Class, Gurugram that the applicant-complainant failed to prove that the respondents-accused persons have committed the forgery of the attendance register and thereby causing the offence of cheating against the applicant-complainant. The respondents-accused persons were accordingly acquitted of the charges framed against them.

8. Aggrieved of the said judgment of acquittal, the present application has been filed seeking leave to prefer an appeal.

9. Learned counsel for the applicant-complainant has contended that the trial Court has miserably failed to take note of the evidence led by the applicant-complainant, which clearly establishes that the said two pilots were not present in the country on 25.10.1998 and that the letter duly obtained from the office of Air India was proved on record through leading evidence of PW2 Harish Chand, as the author of the said letter namely Shri P.R. Ramachandran had already died. It is thus submitted that when the aforesaid two persons were not in the country as on the date when the meeting of the General Body of the Society was held, there was no occasion or circumstance under which the signatures of the said two persons could be affixed on the attendance slip of the meeting. He thus submits that the resolution so adopted in the aforesaid General Body Meeting stands vitiated on account of the aforesaid act of fraud.

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He further submits that the trial Court did not examine the report of the said evidence and has not discussed the same at all and has passed the judgment without taking into consideration the relevant, crucial and integral evidence brought on record.

11. Per contra, the learned Sr. Counsel appearing on behalf of the respondents-accused persons has contended that the present appeal is bereft of merits and there is no illegality, perversity or mis-appreciation by the trial Court. It is pointed out that the entire case of the complainant is that the signatures of two of the members of the society on the attendance slip are stated to be appended later in point of time. However, there is nothing on evidence to suggest as to how and in what manner the applicant-complainant have been the part of the said conspiracy or had got the signatures appended. He points that it is a straight point of dispute either in the complaint or through the evidence so led that the signatures appended against the names of the aforesaid two persons are in any manner forged. The same at best is a case where the said persons have ante-dated their signatures later in point of time. He contends that in the absence of any allegation to establish that the said signatures were ante-dated at the asking of or under conspiracy or at the behest of the respondents-accused persons, the criminal liability of any such act cannot be fastened upon the respondents-accused and it would at best have certain civil ramifications, for which the complainant has already taken recourse to by raising a challenge to the resolution before the appropriate authorities under the Multi State Cooperative Societies Act 2002. It is further argued that the authors of the said signatures have never disputed the signatures or have alleged any forgery of their signatures. He further lays

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emphasis that as per the attendance register, there was a total 126 members and that for the purpose of passing of a resolution 2/3rd of the members present and voting must have approved on the resolution so passed. The 2/3rd strength of the total membership would come to 82 members and that it is brought on record that 97 persons, who were present at the meeting, had cast their vote for ouster of the complainant. He contends that even if the signatures of the said two members are not given any weightage, yet, it would not have any bearing on the final resolution. It is thus contended that there is no occasion or reasons for the respondents-accused persons to have indulged in the commission of any such offence. It is also pointed out that the necessary ingredients of the offences are not made out and that there is no illegality in the judgment passed by the Court below. He further submits that the letter claiming to have been issued by the Air India Authorities has not been proved in accordance with law. Mere production of the said documents on record does not amount to proving the contents thereof. It was incumbent upon the applicant-complainant to prove that the said persons were not in the country as on the said date.

12. I have considered the arguments advanced by learned counsel appearing on behalf of the respective parties and have gone through the record with the able assistance.

13. The point in controversy boils downs to the criminal liability of the respondents-accused persons as a result of the signatures figuring on the attendance register in the General Body Meeting held on 25.10.1998. Before proceeding further it would be essential to refer to the statutory provisions for which the respondents-accused persons have been charged sheeted:

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Section 23 of IPC*. "****Wrongful gain****". —"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. "Wrongful loss".*

Section 24 of IPC*. "****Dishonestly".*** *—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".*

Section 25 of IPC "Fraudulently"*. —A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.*

Section 415. Cheating.— *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

Section 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.*

Section 463. Forgery.*— [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter*

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into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464 Making a false document. *—[A person is said to make a false document or false electronic record— First —Who dishonestly or fraudulently—*

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the

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document or electronic record or the nature of the alteration.]

Section 465. Punishment for forgery.*—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Section 468. Forgery for purpose of cheating.*—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Section 471. Using as genuine a forged document or electronic record.*—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."*

14. In order to establish the commission of offence punishable under Section 420 of the IPC, the necessary ingredients as prescribed under Section 415 of the IPC are to be satisfied. A perusal of the same shows that in order to attract the said offence, it must be established that there is a person, who is dishonestly or fraudulently induced to deliver any property to the other person on the basis of an information known to the person to be false and incorrect. It must also be established that in the event of the correct information being known, the person cheated would not have parted with his property. Hence, delivery of property and a dishonest intention or inducement must be there. A mere affixation of signatures of the aforesaid two members of the Society on the attendance register of the General Body Meeting would not amount to

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satisfying the necessary ingredients with respect to the applicant-complainant as he is neither the person deceived nor the person who has been induced to deliver any property. The signatures, if any, relate to the said two persons and it is also not disputed or established on record that the signatures are forged. Per contra, the claim is to the extent that the signatures were appended by the authors thereof at a later date. The applicant-complainant cannot claim to be a person who has been induced to deliver any property as a result of any misrepresentation or fraudulent act committed against him. The offence in question can be attracted only at the behest of the person who is so deceived. The person so deceived in the instant case would at best be the pilots whose signatures have been alleged to be forged.

15. While referring to the provisions of Sections 468, 470 and 471 of the IPC, it is essential to satisfy the ingredients as have been prescribed under Section 463 and Section 464 of the IPC. It is integral that in order to attract the said penal provisions, there should be a making of a false document. Making of a false document is prescribed under Section 464 of the IPC and necessarily requires dishonest and fraudulent making of the said document. There is nothing on record to suggest that the respondent-accused persons had infact made or prepared the said false documents. In the event of the authors of the signatures having come at a later date or later in point of time and appended the ante-dated signatures and in the absence of any evidence to suggest that the said act was committed by the said two persons at the instance of or on the asking of the respondents-accused persons, the respondents-accused persons cannot be alleged to have acted in a dishonest or fraudulent manner. Hence, in the absence of the necessary ingredients prescribed under Sections 463 and

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464 of the IPC being satisfied, the offences punishable under Sections 468, 470 and 471 of the IPC could not be attracted.

16. It would be necessary to submit herein that a document being an outcome of a illegality or irregularity is separate and distinct from suggesting that the persons sought to be tried as accused have committed the offence. Assuming for the sake of arguments and conceding to the same that the said signatures were actually forged, yet, the respondents-accused persons could not have been held liable unless the *mens rea* and *actus reus* on the part of the respondents-accused is established and brought on record. Culpability of a criminal offence cannot be drawn on the basis of inferences. It is a matter to be established beyond shadow of a reasonable doubt. Suspicion, howsoever, grave is not a substitute for evidence and proof. Even otherwise there is nothing on record to suggest that the respondents-accused persons have derived any advantage or that they would have been put to any disadvantage in the absence of those two signatures not having been appended on the attendance register. The case file also fails to establish that the respondents-accused persons had any personal motive or grudge against the applicant-complainant and had a malicious and mischievous intent to oust or dismember the applicant-complainant. There is thus no motive and in the absence of *mens rea,* the criminal liability of any such act that was done without the knowledge, approval, participation or intention of the respondent-accused persons cannot be fastened against them.

17. While considering an appeal preferred against a judgment of acquittal, the presumption of innocence in favour of the respondents-accused is further strengthened and a greater degree of proof is required to be

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established by the complainant than from suggesting the necessary inference to be drawn on the collective reading of the evidence. Even otherwise, the appellate Court would step in and set aside the judgment passed by the trial Court only in case the findings recorded by the trial Court are perverse, illegal, infirm or the conclusion drawn by the trial Court is uncorroborated, unsupported and is not based upon objective assessment of the material or evidence brought on record. In case, the view held by the trial Court is a possible view, such opinion formed by the trial Court shall not be upset by the appellate Court merely because any other view is also a possible view. I find that there is no infirmity in the judgment so passed and it does not suffer from misappreciation or misreading of the evidence adduced on record. The opinion formed by the trial Court is certainly a possible and probable one. Finding no illegality or infirmity, the instant application alongwith accompanying appeal is, hereby, dismissed and the judgment dated 13.03.2014 passed by the trial Court is affirmed.

18. Needless to mention that anything observed herein above is without prejudice to any right of the respective parties to agitate their claims before any other authority/forum.

(VINOD S. BHARDWAJ)
JUDGE

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

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