

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

**Crl. Misc. No. A-96 of 2022
Date of decision : 26.07.2022**

Pyara Ram

....Applicant/Appellant

versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Dhruv Gupta, Advocate
for the applicant.

RITU BAHRI, J.

CRM-11690-2022

For the reasons mentioned in the application, delay of 379 days in filing the present application is condoned.

The application stands allowed.

CRM-A-96-2022

The present application has been filed by the applicant against the judgment dated 13.12.2018 passed by learned Sub Divisional Judicial Magistrate, Ratia, District Fatehabad, vide which accused were acquitted of the charges framed against them in a complaint bearing No. 19-1C of 2014 under Sections 418/420/409/467/468/471/477-A/204/218/294/120-B IPC.

Brief facts of the case as noticed by the Court below reads as under:-

“The case of complainants is that they are members of Gram Panchayat, Badalgarh (Ratia); that the accused no. 1 was Sarpanch of Gram Panchayat, Badalgarh, and the accused no. 2 (husband of accused no. 1) used to represent himself as Sarpanch in all the Panchayat proceedings; that the accused nos. 1 to 4 were authorized to carry on numerous works under Mahatma Gandhi

National Employment Guarantee Scheme (in short the said scheme); that the accused persons were authorized to prepare job cards of needy persons under the said scheme; that the accused persons, in terms of their conspiracy, have prepared false job cards i.e of Anganwari worker (Kesari Devi), of shopkeeper (Krishan Lal), of farmer (Satpal), of driver (Binder Singh) etc; that the accused persons made incorrect entries (attendance sheet) in the alleged job cards; that the accused persons have also opened bank accounts of aforesaid persons for usurping government funds; that the accused persons have usurped thousands of rupees by transferring the same in the alleged accounts of aforesaid persons on the basis of alleged jobs card thereby causing wrongful loss to the Government; and that when they inquired the matter from the accused, they have threatened them with dire consequences. In these circumstances, the accused be summoned to face trial for commission of alleged offence (s) under Sections 120-B/204/218/294, 409, 418, 420, 467, 468, 471, and 477A of the Penal Code.

In their preliminary evidence, the complainants have examined Sh. Pyara Ram (Cw-1), and they have tendered various job cards and other documents and closed their preliminary evidence.

Thereafter, the Ld. Predecessor Court vide its order dated 10.09.2015 has summoned the accused nos. 1 and 2 to face trial for commission of offence(s) punishable under Sections 409, 420, 467, 468, 471, 477-A and 120-B of the Indian Penal Code, and the complaint qua accused nos. 3 and 4 was dismissed. On notice, accused nos, 1 and 2 have appeared and applied for, and obtained, bail.

On finding prima-facie case, both the accused persons were charge sheeted for the offences punishable under Sections 120-B, 420 r/w 120-B, 467 r/w 120-0, 468 r/w 120-B , 471 r/w 120-B and the accused no. 1 was charge sheeted under Section 409 r/w 120-8 and 477-A of the Penal Code vide order dated 26.10.2018, to which they pleaded not guilty and claimed trial.

In after-charge evidence, Sh. M.L. Beniwal, Advocate for the

accused has made a statement that he does not want to further cross examine any witness in after charge evidence. Thereafter, in view of the said statement, the learned counsel for the complainant has closed after charge evidence vide statement dated 26.10.2018.

Thereafter, statements of the accused persons under Section 313 Cr.PC were recorded wherein they have denied each and every incriminating evidence them. They have stated that present complaint is false and frivolous; that the complainant has filed the complaint due to political rivalry as his wife fought the election of Panch and lost; that they have not prepared any false document; that they have not misappropriated any fund; and that they will lead evidence in their defence. However, no defence evidence is led and the same is closed vide statement dated 13.12.2018.

The Lower Court after going through the entire evidence acquitted the accused of the charges framed against them. It has been observed that there is nothing on record either oral or documentary, which reflects that there was any entrustment by the complainant to the accused persons or any of the accused of any property, movable or immovable or with any dominion over the property, or that there was a misappropriation or conversion of any property by the accused to their own use or that such conversion or retention of the property, if any, must be against or in violation of any direction or law prescribing the mode in which such trust is to be discharged or of any legal contract made touching the discharge. Even otherwise, it is not the case of the complainant that the money transferred to Kesari Devi, Krishan, Satpal etc bank accounts was withdrawn or usurped by the accused persons. Reference was made to case of '**Narender Singh and anr. Vs. State of M.P** 2004 (3) RCR Criminal 613 wherein Hon'ble Supreme Court of India held that prosecution of innocence is a human right and burden of proof remains on the prosecution. Similarly, in '**Sachan Pal vs. Phani Pal and another**, 2004 (1) RCR Criminal 211, the Hon'ble Supreme court of India held that prosecution can succeed by

substantially proving the version of it alleges. It must stand on its own legs and cannot take advantage of the weaknesses in defence cases". In this case, Hon'ble Supreme Court held that "if two views are possible on the evidence adduced in the case, one pointing to the guilty of the accused and the other to his innocence, the view which is favourable to the accused should be adopted".

After hearing learned counsel for the applicant at length, the present application deserves to be dismissed, as it was not the case of the complainant that the accused were authorized to do each and every activity under the said scheme. It is not the case that the accused operated the alleged back accounts of Kesari Devi, Krishan, Satpal etc or any of the accused have received the entire money deposited in that accounts. Under the said scheme, money is directly transferred into bank account and not handed over in cash.

Learned counsel for the applicant has not been able to point out any other evidence which the lower Court has misread or which can lead to conviction of the accused. Thus, the accused have rightly been acquitted by the Court below.

Accordingly, the application stands dismissed

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

26.07.2022
G Arora

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