

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16992-2016 (O & M)

Date of decision: 07.12.2022

Jagdeep Singh Momi

... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amit Dhawan, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.337 dated 18.10.2007 registered under Sections 409, 120-B IPC at Police Station Division No.4, Jalandhar and all consequential proceedings arising therefrom including the report under Section 173(2) Cr.P.C. (Annexure P-1) qua the petitioner only.

2. The brief facts as emanating from the pleadings are that on 16.12.2005, the Sessions Judge, Jalandhar, passed an order under Section 446 Cr.P.C. holding that one Gurdeep Singh, son of Mukhtiar Singh, who had appeared as a surety for accused-Harmitter Singh son of Harbans Singh had given an undertaking to pay a sum of Rs.15,000/- to the State as penalty if the aforesaid Harmitter Singh failed to appear in the Court.

3. Despite service of notice to surety Gurdeep Singh, he did not

appear intentionally, and therefore, the bond furnished by him was forfeited

to the State and he was held liable under Section 446 Cr.P.C. and was ordered to pay a sum of Rs.15,000/- by 12.01.2006. A copy of the order dated 16.12.2005 is attached as Annexure P-1 to the petition.

4. Subsequently, on 03.06.2006, the Sessions Judge, Jalandhar issued warrants of attachment to Tehsildar, Tarn Taran, District Amritsar against the surety-Gurdeep Singh in proceedings initiated under Section 446 Cr.P.C. It was directed that if the aforesaid Gurdeep Singh did not deposit a sum of Rs. 15,000/- i.e. penalty amount, then his moveable property was to be attached.

5. On receipt of the warrants of attachment, the petitioner being the Tehsildar passed an order dated 13.06.2006 directing the Kanungo Naushera Pannua i.e. the concerned officer to give details of the immoveable property of Gurdeep Singh to ensure compliance of the order passed by the Court. A copy of the said order dated 13.06.2006 is Annexure P-2.

6. Subsequently, the petitioner is stated to have again issued a letter dated 20.06.2006 to Gurvinder Singh @ Gurbrinder Singh, Kanungo, Naushera Pannua (the co-accused of the petitioner) to recover the amount of Rs.15,000/- from Gurdeep Singh and submit the challan form in the office. A true copy of the said letter dated 20.06.2006 is attached as Annexure P-3 to the petition.

7. Thereafter, the Sessions Judge, Jalandhar, issued fresh warrants of attachment to Tehsildar, Tarn Taran, District Amritsar against the surety-Gurdeep Singh in proceedings under Section 446 Cr.P.C. It was directed that if Gurdeep Singh did not deposit Rs.15,000/- i.e. the penalty amount, then his property was to be attached and sold. A copy of the warrants of

8. Meanwhile, Gurbrinder Singh @ Gurvinder Singh i.e. the concerned Kanungo sought a report from the concerned Patwari regarding the moveable and immoveable properties of Gurdeep Singh. On this, a report dated 20.11.2006 was received from the concerned Patwari that the recovery of Rs.15,000/- had been forwarded to the Kanungo-Gurvinder Singh @ Gurbrinder Singh (co-accused of the petitioner). Thereafter, on 26.11.2006, a report was received from Gurbrinder Singh @ Gurvinder Singh asking as to under which head the recovered amount of Rs.15,000/- was to be deposited. As per the petitioner, he verbally directed the *halqa* Kanungo to deposit the same in the Court. A copy of the proceedings dated 17.11.2006, 20.11.2006, 26.11.2006 and 27.11.2006 is attached as Annexure P-5.

9. The case of the petitioner is that he was under the impression that the penalty amount recovered from Gurdeep Singh had been deposited in the Court.

10. Thereafter, the petitioner received letters dated 23.12.2016 and 08.02.2007 from the District & Sessions Judge, Jalandhar to deposit the recovered amount of Rs.15,000/-. As per the petitioner, he forwarded the said letters to the Kanungo for deposit of the recovered amount with the Court.

11. Ultimately, a show cause notice dated 09.08.2007 was issued to the petitioner by the Sessions Judge, Jalandhar asking him as to why a criminal case be not registered against him for misappropriating the penalty amount. The petitioner was asked to be present before the Court on

13.09.2007. A copy of the show cause notice dated 09.08.2007 is attached as Annexure P-6 to the petition.

12. On receipt of the said notice, the petitioner issued a letter dated 27.09.2007 to his co-accused/Kanungo Gurbrinder Singh @ Gurvinder Singh and sought his explanation for not depositing the recovered amount of Rs.15,000/- with the Court. A copy of the letter seeking explanation for the same dated 27.09.2007 is attached as Annexure P-7 to the petition. Another letter was issued by the petitioner on 17.10.2007 to his co-accused/Gurbrinder Singh @ Gurvinder Singh to come present alongwith Rs.15,000/- in the Court of Sessions Judge, Jalandhar on 18.10.2007 as per the directions of the Court. A copy of the said letter dated 17.10.2007 is attached as Annexure P-8 to the petition.

13. On 18.10.2007, the petitioner in compliance with the directions of the Sessions Judge, Jalandhar, appeared before him alongwith co-accused/Gurbrinder Singh @ Gurvinder Singh, the then Kanungo. Even at that stage, Gurbrinder Singh @ Gurvinder Singh did not deposit the recovered amount of Rs.15,000/-. The District and Sessions Judge, Jalandhar, therefore, passed an order of the even date directing the officer in charge of Police Station Division No.4, Jalandhar to register an FIR regarding embezzlement of Rs.15,000/- by the petitioner and his co-accused Gurbrinder Singh @ Gurvinder Singh leading to the registration of the present FIR No.337 dated 18.10.2007 under Section 409,120-B IPC at Police Station Division No.4, Jalandhar. A copy of the said FIR is attached as Annexure P-9 to the petition.

14. During the course of investigation, sanction for prosecution was granted qua Gurbrinder Singh alone and a report under Section 173 Cr.P.C. came to be presented against him on 21.03.2008. However, the petitioner was not challaned as no sanction for prosecution was accorded qua him.

Thereafter, the Financial Commissioner, Punjab, vide letter dated 18.08.2011 addressed to the Additional Director General of Police, Crime, Punjab, declined grant of sanction holding that the petitioner had not committed any offence whatsoever. A copy of the letter dated 18.08.2011 is attached as Annexure P-10 to the petition.

15. Subsequent to the retirement of the petitioner on 30.06.2012, the investigating agency presented a challan under Sections 409 and 120-B IPC against him on 24.02.2016 without seeking sanction for prosecution. A copy of the challan is attached as Annexure P-11 to the present petition.

16. Thereafter, the present petition came to be filed wherein notice of motion was issued on 17.05.2016 and a reply dated 19.09.2016 was filed on behalf of the respondent-State by way of an affidavit of Dev Dutt Sharma (PPS) Assistant Commissioner of Police, Central Jalandhar.

As per the said reply, a supplementary challan was submitted against the petitioner post his retirement and the sanction was not required as the petitioner was no longer in Government service. It is the case of the State that the petitioner had failed to deposit Rs.15,000/- in the Court and embezzled the same in connivance with the Gurbrinder Singh @ Gurvinder Singh.

17. The learned counsel for the petitioner contends that the

time was the amount of Rs.15,000/- ever received by him. In fact, the petitioner had taken immediate steps to ensure the compliance of the directions issued by the Court so that the recovered penalty amount may be deposited with the Court. Various letters and reminders to that effect were issued to his co-accused Gurbrinder Singh @ Gurvinder Singh. However, it was his co-accused who had retained the said amount. The petitioner had even issued a letter dated 29.07.2007 to his co-accused Gurbrinder Singh @ Gurvinder Singh seeking his explanation for non-deposit of the amount of Rs.15,000/- with the Court. He had, thereafter, sent a letter dated 17.10.2007 to his co-accused to come present in Court with Rs.15,000/-. Despite these letters, the said amount was not deposited by his co-accused/Gurbrinder Singh @ Gurvinder Singh and not by him. Further, once sanction for prosecution was declined qua the petitioner, the question of filing a report under Section 173(2) Cr.P.C. against the petitioner after he had superannuated did not arise in view of the judgments passed in the cases of 'Raghunath Anant Govilkar versus State of Maharashtra and others, 2008(1) RCR (Criminal) 1042' and 'State of Punjab versus Labh Singh, 2015(3) SCC (Cri.) 601'. He, thus, contends that the FIR and report under Section 173(2) Cr.P.C. and all proceedings arising therefrom are liable to be quashed in the interest of justice.

18. The learned counsel for the State while referring to the reply dated 19.09.2016 contends that during the course of investigation, it was revealed that the petitioner in connivance with his co-accused Gurbrinder Singh @ Gurvinder Singh had defalcated the amount of Rs.15,000/- and had not deposited the same with the Court. Even though sanction for prosecution

superannuated, absence of sanction did not stop the investigating agency from presenting a report under Section 173(2) Cr.P.C. Even otherwise, for an offence under Section 409 IPC, no sanction for prosecution under Section 197 Cr.P.C. was required. He, however, fairly concedes that the recovery of Rs.15,000/- was effected from the co-accused of the petitioner, namely, Gurbrinder Singh @ Gurbinder Singh and there was no evidence that the said amount was ever recovered by the petitioner from the surety.

19. I have heard the learned counsel for the parties at length.

20. A perusal of the FIR, report under Section 173(2) Cr.P.C. and the material on record would show that the amount of Rs.15,000/- was received by the co-accused of the petitioner and was never ever handed over to the petitioner. In fact, pursuant to the arrest of the petitioner and his co-accused, the recovery was effected from his co-accused, namely, Gurbrinder Singh @ Gurbinder Singh.

A perusal of the letters dated 27.09.2007 (Annexure P-7) and 17.10.2007 (Annexure P-8) would show that the petitioner was repeatedly asking his co-accused, namely, Gurbrinder Singh @ Gurbinder Singh, Kanungo to explain as to why the said amount had not been deposited and appear in the Court alongwith Rs.15,000/- so that the same could be deposited in pursuant to the show cause notice of the Court. These letters would conclusively establish that the petitioner had absolutely no role to play in the defalcation of the said amount. It was his co-accused alone who had received the money and not deposited the same. Even otherwise, there

is absolutely no evidence on record to establish conspiracy between the

petitioner and his co-accused Gurbrinder Singh @ Gurvinder Singh under Section 120-B IPC.

As regards the contention raised by the learned counsel for the petitioner that once sanction had been declined under Section 197 Cr.P.C., the report under Section 173(2) Cr.P.C. could not be presented even post the retirement of an accused, it may be pointed out that for the commission of an offence under Section 409 IPC, sanction for prosecution under Section 197 Cr.P.C. is not required. A perusal of the judgments in Raghunath Anant Govilkar and State of Punjab (supra) as cited by the learned counsel for the petitioner itself would show that while it is true that sanction for prosecution under Section 197 Cr.P.C. for commission of offences under the IPC is required even post-requirement of an accused, however, for an offence under Section 409 IPC, no sanction for prosecution is required as it is settled that it is not a part of one's official duty to commit an offence under Section 409 IPC. Having said that, on facts, a perusal of the letter dated 18.08.2011 (Annexure P-10) whereby sanction has been declined would show that the Additional Director General of Police, Crime, Punjab has considered the entire evidence on the file and had come to the conclusion that the petitioner had not defalcated the amount. On the contrary, the recovery had been effected from his co-accused, namely, Gurbrinder Singh @ Gurvinder Singh and, in fact, the petitioner had called for an explanation from his co-accused vide letter dated 27.09.2007 (Annexure P-7) for not depositing the amount in the Court. Thus, a superior officer did come to the conclusion that sanction was not to be accorded for prosecution, based on the evidence available on the file even though, strictly speaking, sanction for prosecution under

Section 409 IPC was not required.

Keeping in view the aforementioned facts, the pendency of the proceedings qua the petitioner are nothing but an abuse process of the Court and are liable to be quashed.

21. Thus, the present petition is allowed and the FIR No.337 dated 18.10.2007 registered under Section 409, 120-B IPC at Police Station Division No.4, Jalandhar and all consequential proceedings arising therefrom including the report under Section 173(2) Cr.P.C. (Annexure P-1) are hereby quashed qua the petitioner only.

December 07, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No