IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-55268 of 2019
Date of Decision: *4.04.2022*

Amit Kumar

..... PETITIONER(S)

VERSUS

State of Haryana & another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Mr. Harkesh Manuja, Advocate, for the petitioner.

Mr. Amreek Singh Narwal, Deputy Advocate General, Haryana.

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Sant Parkash, J

CRM-41446 of 2021

The application under Section 482 Cr.P.C. for preponing the date in the main case is allowed.

Let the main case be put up for final hearing and disposal, today itself.

Main Case

The instant petition has been filed under Section 482 Cr.P.C. for quashing FIR No.814 dated 20.11.2019 (Annexure P-1) under Sections 120-B, 174, 406, 420 IPC registered with Police Station, Civil Lines, Karnal against the petitioner, alongwith consequential proceedings.

The present FIR has been registered at the instance of respondent No.2 – complainant. The petitioner joined as Data Entry Operator w.e.f. 20.04.2007 in the Forest Department with Divisional Forest Officer (Territorial), Karnal through Hartron Informatics Limited, Chandigarh. His services were regularized vide order dated 22.08.2014, however, it was withdrawn on 10.09.2014 (Annexure P-3). The petitioner and other similarly situated employees preferred Civil Writ Petition No.19224 of 2014 which was disposed of by this Court vide judgment dated 29.11.2014 (Annexure P-4) setting aside order dated 10.09.2014 and granting liberty to the Department to consider the matter afresh. Thereafter, on 01.09.2015, the claim of regularization of petitioner was rejected. The petitioner again preferred Civil Writ Petition No.21169 of 2015 challenging order dated 01.09.2015 wherein while issuing notice of motion, status-quo regarding his services was ordered to be maintained vide order dated 05.10.2015 passed by this Court. In compliance of this order, Forest Conservator, Central Circle, Rohtak directed the Divisional Forest Officer, Karnal to grant all benefits of service to petitioner - Amit Kumar vide order dated 29.01.2016. Thereafter, Deputy Forest Conservator, Circle Karnal, granted service benefits to the petitioner vide order dated 03.02.2016 in compliance of order dated 29.01.2016. However, vide subsequent order dated 01.03.2016 (Annexure P-10), the benefits granted to the petitioner vide order dated 03.02.2016 were ordered to be withdrawn by the Deputy Forest Conservator, Circle Karnal. The petitioner filed a COCP No.3206 of 2016 for non compliance of order dated 05.10.2015 passed by this Court in CWP No.21169 of 2015. In the interregnum, petitioner kept on marking biometric attendance and performing his duty as contractual employee.

Complainant alleged that petitioner had marked his biometric attendance in connivance with staff. An inquiry was ordered to be conducted by the Forest Conservator Research, Sub Division, Pinjor, wherein petitioner alongwith Babu Ram Sharma (retired Superintendent), were found to be involved. Accordingly, FIR in question was registered.

Learned counsel for the petitioner has submitted that no offence is made out against the petitioner as it was registered only to put pressure upon him to withdraw the contempt petition filed by him. It was already in the knowledge of the Department that petitioner had been working regularly in office and was allowed to mark his attendance through biometric. The registration of FIR is a total abuse of process of law and malafide act to overreach the order(s) passed by this Court. There is no explanation as to why the FIR was registered after delay of more than three years from the date of marking attendance through biometric. The motive behind registration of FIR was to disclaim the petitioner's claim for regularization and to avoid benefit of service. The dispute is purely of civil nature. The factum of marking attendance through biometric was always in the knowledge of the Department. The allegations contained in the FR do not constitute a cognizable offence.

Learned counsel for the respondent – State has opposed the prayer made in the petition and submitted that though the services of petitioner were not regularized, still he kept on marking his attendance through biometric mode. An inquiry was conducted wherein petitioner alongwith Babu Ram Sharma, the then Superintendent were found guilty. The petitioner has intentionally marked his attendance in order to extort money from the Department on the pretext of performing his duties despite the fact that his services were not regularized. Learned counsel further submitted that the established principle of quashing is that a the stage of cognizance, all that a Court is required to see, if prima facie an offence is made out and court should restrain itself from throttling legitimate prosecutions at the threshold and the law should be allowed to take its course.

I have heard learned counsel for the parties and perused the record.

Admittedly, the petitioner was an employee of Forest Department. Vide order dated 01.03.2016, the benefit of regularization of his services was withdrawn. Pendency of lis between the petitioner and the Department is also not disputed. FIR has been registered against the petitioner on the ground that petitioner continued to mark his attendance through biometric mode despite the fact that his service benefits had been withdrawn by the Department. In these facts & circumstances of the case, it can safely be held that the present FIR is nothing but a counter-blast to the litigation initiated by the petitioner against the Department, for not regularizing his services. Proceedings can be quashed where it is a clear abuse of the process of the law, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

Moreover, there is a delay of three years in registration of present FIR, which has not been explained by the prosecution. Besides, the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the petitioner. Moreover, the allegations contained in the FIR are purely contractual disputes of civil nature but the department given a criminal colour to it and breach of contract does not come within the purview of cheating as defined in IPC. There are no allegations in the complaint filed by respondent No.2 about the petitioner having fraudulent or dishonest intentions at the time of seeking regularization of his services. It is the duty of the Court to observe that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Therefore, it is imperative to examine the ingredients of offence under Sections, 174, 406,, 420 and 120-B IPC and whether the allegations made in the FIR, read on their face, attract those offences under the Penal Code.

Section 174 IPC reads as under:-

> "**174. Non-attendance in obedience to an order from public servant.-** Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceedings from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple

imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

It was never the case of respondent – department that petitioner ever absented from his duties or refused to accept any liability given by the department or refrained from abiding any order passed by the department. It is the case of prosecution that petitioner kept on marking his attendance through biometric mode at the time when he was not on pay rolls and had been relieved from the service on 08.09.2016. To the contrary, stand of the petitioner is that since COCP No.3206 of 2016 was pending adjudication before this Court, so he kept on attending the duties which fact was also in the knowledge of authorities of the Department also. In this view of the matter, it can be held that ingredients of Section 174 IPC are not satisfied.

So far as invoking of provisions of Section 406 IPC is concerned, in order to constitute offence punishable under Section 406, the prosecution has to prove essential ingredients of offence of criminal breach of trust as defined under Section 405 IPC. To scrutinize the ingredient(s) of criminal breach of trust, Sections 405 and 406 IPC are reproduced hereunder:-

"**405. Criminal breach of trust.—**Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.— A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

It is clear from the aforesaid that the ingredients in order to constitute a criminal breach of trust are; (1) entrusting a person with property or with any dominion over property, (2) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

Entrustment of property under Section 405 IPC is pivotal to constitute an offence. The words used are in any manner entrusted with property. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. A person who dishonestly misappropriates property entrusted to him contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punishable under Section 406 IPC. However, in the case in hand, prosecution has failed to prove any such type of entrustment to the petitioner as has been described above. As such, the essential ingredients of Section 405/406 IPC are not fulfilled.

As regards the proceedings under Section 420 IPC, this Court in Criminal Miscellaneous No.M-10219 of 2017 titled 'Navrattan

Garg & another vs. State of Haryana', while examining the ingredients of cheating, has held as under:-

> "So far as, invoking of provisions of Section 420 IPC is concerned, in order to constitute offence punishable under Section 420 IPC, the prosecution has to prove essential ingredients of offence of cheating as defined in Section 415 IPC. To scrutinize the ingredient(s) of cheating and its punishment, Sections 415 and 420 IPC are reproduced hereunder:-
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> > "**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".
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> > *Explanation.-* A dishonest concealment of facts is a deception within the meaning of this section.
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> > **420. Chating and dishonestly inducing deliver 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 fine."
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> A bare perusal of Section 415 IPC clearly depicts essential ingredients; (1) deception of any person; (2) (a) fraudulently or dishonestly inducing that person; (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person 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. As per Section 420 IPC, punishment, in case of fulfillment of above ingredients, shall be imprisonment for a term which may extend to seven years alongwith fine."

In the present case, allegations against the present petitioner are that he continued to mark his presence through biometric mode but it is very strange to note that how the said act on the part of the petitioner would constitute an offence under Section 420 IPC. It is not the case of the prosecution even that the petitioner has played fraud with the respondent – department or his act of getting his presence marked deceived anybody or induced a person to deliver any property or to give consent that person to retain that property. Even if the allegations are taken to be gospel truth, it cannot be inferred by any stretch of imagination that such act on the part of the petitioner would attract the provisions of Section 420 IPC as none of the ingredients is present.

So far as offence of criminal conspiracy is concerned, Section 120 IPC needs to be taken into account and it reads as under:-

> "120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,— (1) an illegal act, or
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> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
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> Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.
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> 120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

The ingredients of criminal conspiracy are; (1) two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means i.e. there must be at least two persons who conspire. However, a person may be indicted alone for the offence of criminal conspiracy if the other co-conspirators are unknown, missing or dead; (2) Joint evil intend to do an illegal act or an act that is not illegal by illegal mans is necessary. In the present case, this is the allegation that petitioner connived with one Babu Ram Sharma, the then Superintendent but the prosecution has failed to substantiate the connivance by any cogent evidence. To bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. From the facts of the present case, prosecution has failed to establish conspiracy by direct or indirect evidence. So, in my considered view, there is no *prima facie* case made out in respect of the alleged offence under Section 120-B IPC read with Section 420 IPC and therefore the process issued thereunder has to be quashed.

In the light of various circumstances narrated above coupled with the peculiar facts & circumstances of the case, this Court is of the considered view that petition deserves to be accepted. Ordered accordingly. FIR No.814 dated 20.11.2019 (Annexure P-1) under Sections 120-B, 174, 406, 420 IPC registered with Police Station, Civil Lines, Karnal against the petitioner, alongwith consequential proceedings, is quashed.

(Sant Parkash)
Judge

4th April, 2022
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No