IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-247-2021
Date of Decision: 26.05.2023

VISHAL @ VISHAL KHOKHAR

…Petitioner

Versus

STATE OF HARYANA

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. KeshavPratap Singh, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana
for the respondent-State.

HARSH BUNGER, J.

The petitioner has filed the present Criminal Revision Petition under Section 401 of the Code of Criminal Procedure (for short `the Cr.P.C.') seeking quashing of order dated 26.10.2020 passed by the learned Additional Sessions Judge, Panipat; whereby, the charges have been framed against the petitioner and his co-accused under Sections 406, 420, 384, 370, 120-B of the Indian Penal Code (for short `the IPC') and Section 24 of the Immigration Act.

2. Briefly, the case FIR No.449 dated 05.06.2020, under Sections 406, 420, 120-B, 370, 384 of the IPC and Section 24 of the Immigration Act, was registered at Police Station Model Town, Panipat, District Panipat, on the basis of a complaint submitted by one Sombir son of Sube Singh, who had stated that he was matriculate and had passed Polytechnic. It is further submitted by the complainant that he had gone to Cyprus on study visa and

came back to India in November-2018. As per the complainant, he was willing to leave for abroad in November and work over there and when he came to know that Vishal (petitioner) is indulged in sending youth to abroad; accordingly, in December-2018, he met Vishal at his house; whereupon, Vishal demanded a sum of Rs.48 lacs for sending him to U.S.A. in the month of November. However, the deal is stated to have been finalized for Rs.45 lacs. As per the complainant, in December-2018, he along with his brother-in-law (Jija) DalipKadiyan, went to the house of Vishal and gave him the passport of the complainant along with Rs.8 lacs; whereupon, Vishal assured him that he would get visa in near future. It is alleged in the complaint that on 28.12.2018, said Vishal gave a phone call to the complainant and informed him that his flight was scheduled in night and he may meet him at Delhi Airport and also bring the balance amount. As per the complainant, he arrived at Delhi Airport on 28.12.2018 in the evening, where he met Vishal along with a youngster and gave a sum of Rs.10 lacs to Vishal; whereupon, he was handed over the Air Ticket, booked for Ecuador along with his passport. It is alleged that after arriving at Ecuador, the complainant stayed there for few days and then he was brought to Quito by bus; where he met some lady, who showed his photograph in her phone and asked him to come along with her. It is alleged that the said lady brought the complainant upto Kelly, where another person was met who brought the complainant to Columbia via Turbo in a Taxi. On arriving at Columbia, it is alleged that another person met the complainant who sent him to Kyurgana through a boat. It is alleged that the complainant gave a phone call to Vishal and told him that he wanted to come back to India; however, Vishal refused his request. It is stated in the complaint that the complainant was made to stay in Kyurgana along with a group in a dilapidated house; where some armed persons had arrived and they were made to walk through the forest for about 5-6 days and they were left in Panama, where the complainant was arrested by the police and detained in the jail. As per the complainant, he contacted Vishal from jail and he was informed that another sum of Rs.3 lacs would be required for engaging a counsel and thereafter, the mother of the complainant allegedly gave a sum of Rs.3 lacs. It is stated that the complainant was released from jail after about 6-7 days and on coming out, he met another person who showed his photograph to him in his mobile and took him along with him and the complainant was left at Costa Rica, where, the police is again stated to have arrested the complainant and put him in jail. As per the complainant, the petitioner got released on bail after about 15-16 days and he again contacted Vishal, who demanded balance amount; whereupon, the complainant called his mother and got paid a sum of Rs.22 lacs to Vishal. It is stated that at Costa Rica, another person sent by Vishal met the complainant and the complainant was brought to Nikaragua (by sea); where again, he was arrested and confined in jail and was released about 22-23 days. As per the complainant, he along with other youngsters were left on the Mexico Border, from where they jumped over a wall and entered U.S. Border, where the complainant along with others were arrested by U.S. Border Control Police and put them in jail and thereafter, the complainant is stated to have been deported from U.S.A. Accordingly, the above-said case FIR was registered against Vishal Khokhar for alluring the complainant on the pretext of sending him abroad in November and grabbing a sum of Rs.43 lacs.

3. The above-said case FIR was investigated into and a final report under Section 173 of the Cr.P.C. was filed.

4. Thereafter, after considering the material available on record, the Court of Additional Sessions Judge, Panipat, passed an order dated 26.10.2020, framing charges against the petitioner (Vishal) and other co-accused under Sections 406, 420, 384, 370, 120-B of the IPC and Section 24 of the Immigration Act.

5. The petitioner has filed this petition, challenging the aforesaid order dated 26.10.2020 passed by learned Additional Sessions Judge, Panipat, framing charges against him.

6. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case as he is neither a travel agent nor is doing a business of sending people abroad and rather, he is an employee of ICICI Bank, G.T. Road, Panipat. It is stated that the petitioner had introduced the complainant to the travel agent through which the brother of the petitioner had also gone to USA in 2018; whereupon, the brother of the petitioner had applied for political asylum and ultimately on 19.05.2020, the brother of the petitioner was issued social security number by the Government of USA. It is submitted that the petitioner has nothing to do with the commission of offence as he had only introduced the complainant with co-accused Vijay and Max and the brother of the petitioner received a sum of Rs.21.50 lacs and out of the said amount, Rs.2 lacs had come to the share of the petitioner as commission.Learned counsel for the petitioner submits that the perusal of the FIR would indicate that the ingredients of Sections 384, 370, 406, 420, 120-B of the IPC are not made out and thus, the order passed by the trial Court, framing charges against the petitioner under

Sections 406, 420, 384, 370, 120-B of the IPC and Section 24 of the Immigration Act, is wrong and accordingly, the same is liable to be set aside.

7. Per contra, learned State counsel has opposed the prayer of the petitioner for quashing of impugned order dated 26.10.2020 passed by learned Additional Sessions Judge, Panipat; whereby, the charges have been framed against the petitioner and other co-accused. It is submitted by learned State counsel that at the time of framing of charges, a *prima facie* case against the petitioner is to be seen and the Court is not required to conduct a mini trial. It is submitted that there is sufficient material available on record to proceed against the petitioner and accordingly, the charges have been rightly framed against the petitioner and other co-accused. It is submitted that there no merit in this petition and accordingly, dismissal of the same has been prayed for.

8. I have heard learned counsel for the parties and have perused the impugned order dated 26.10.2020 passed by learned Additional Sessions Judge, Panipat, framing charges.

9. A perusal of the paper-book would reveal that the involvement of the petitioner in the alleged offence is *prima facie* borne out from the very pleadings/submissions made on behalf of the petitioner that he had introduced the complainant with his co-accused Vijay and Max, through whom, the brother of the petitioner had also gone to U.S.A and had obtained political asylum/social security number by the Government of U.S.A. Still further, it is admitted by the petitioner that his brother received a sum of Rs.21.50 lacs and out of the said amount, Rs.2 lacs had come to the share of the petitioner as commission.

10. The contention of the petitioner that from perusal of the FIR, the ingredients of Sections 384, 370, 406, 420, 120-B of the IPC are not made out, is bereft of any merit as an FIR can never represent the entire evidence of the case.

11. It is well settled that at the stage of framing of charge, the High Court should not exercise its power of revision by way of quashing the charges by confining its attention only to the recitals in the FIR. In this regard, reference can be made to the case of ***Tej Bir and another vs State of Haryana and another 2012(3) R.C.R. (Criminal) 308***.

12. It is equally well settled that the High Court is not to conduct a mini trial at the stage of framing of charge and that too, in revision filed against the order framing charges. In this regard, reference can be made to the judgment rendered in ***Mohan Lal vs The State of Rajasthan and another 2020(1) SCC (Cri) 444***.

13. When the facts of this case are considered in the light of the legal position as indicated above, no interference is required in the order dated 26.10.2020 passed by learned Additional Sessions Judge, Panipat; whereby, the charges have been framed against the petitioner. Accordingly, the present petition is dismissed being bereft of any merit.

14. All pending application/s, if any, shall stand closed.

May 26th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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