IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No. 228 **CRM-M-13819-2018 (O&M)**
Date of decision : 27.01.2023

Ramesh Chand ..... Petitioner

VERSUS

State of Haryana and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kunal Dawar, Advocate, for the petitioner.

Mr. Deepak Grewal, DAG, Haryana

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SUDHIR MITTAL, J. (Oral)

The petitioner is an Advocate practising in the District Courts at Faridabad. He has been named as an accused in FIR No.207 dated 11.08.2022, registered at Police Station, S.G.M Nagar, Faridabad, under Sections 419, 420, 467, 468, 471 and 120-B IPC. Subsequently, charges have been framed against him under Sections 419, 420, 467, 468, 471 read with Section 120-B IPC vide order dated 18.10.2016. Revision petition against the same has been dismissed vide order dated 14.02.2018 and thus, the present petition has been filed for quashing of the said orders.

Learned counsel for the petitioner has submitted that one Rashid and Rafiq executed a sale deed dated 07.04.2008 in favour of Surinder Kumar Duggal and Satish Kumar Sangwan. Rafiq was impersonated by one Azruddin. The land could not have been sold as it had been acquired way back in the year 1989. The petitioner was attesting witness No.1 of the sale deed in his capacity as an Advocate. A perusal thereof shows that he had identified witness No.2 only. He was not aware that Azruddin aforementioned was an imposter nor was he aware of the fact that land being sold had been acquired. Even, the main accused Rashid has not implicated the petitioner in his disclosure statement, a copy of which is on record as Annexure P-4. Thus, there is no credible evidence regarding the role of the petitioner in the entire incident or that he was a part of the conspiracy and thus, framing of charges against him is illegal and unjustified.

Learned State counsel has submitted that selling of acquired land was a clear case of forgery. In his disclosure statement, the main accused, namely, Rashid has stated that the sale deed was executed by virtue of conspiracy of all the accused persons. The petitioner is one of the accused and thus, he has rightly been charged.

It may be noticed that learned State counsel has not denied the fact that in the sale deed, the petitioner has identified only witness No.2 who has identified the executants.

The disclosure statement of the main accused, namely, Rashid is on record as Annexure P-4 and a perusal thereof clearly shows that he has not named the petitioner as a member of the conspiracy. The petitioner is only an attesting witness of the sale deed, a perusal of which shows that he has identified witness No.2 only in the capacity of an Advocate. The disclosure statement of main accused-Rashid does not implicate the petitioner in any manner. Thus, even *prima facie* evidence is not available on record and charges as aforementioned could not have been framed as it is settled law that at the time of framing of charges, there must be adequate evidence on record, which shows that more than a *prima facie* case is made out against the accused person. The revisional Court has consequently erred in dismissing the revision petition. Reliance by learned counsel for the petitioner upon Hira Lal Jain Vs. Delhi Administration, 1973 (3) SCC 398 is apposite. In the said case, applications were filed by the accused persons for compensation for some land which had been acquired. The applications were accompanied by *vakalatnamas* filed by the appellant therein. In the said applications, it had been averred that the applicants were the rightful claimants. These applications had been verified by the appellant therein as an Advocate. Fraud came to light after the real owners made a complaint. Charge was framed against the appellant under Section 120-B IPC. The Supreme Court held as under:-

> '9. Admittedly, the appellant has neither impersonated nor committed any forgery.
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> The real charge against him is that of conspiracy under Section 120B IPC, but there is no *prima facie* evidence in respect of this charge. The documentary evidence only shows that the appellant made applications on behalf of the other accused, that he filed his *vakalatnamas* and that he identified them as the real claimants.
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> It is well known that the main income of many Lawyers in the District Courts is derived from the work of identifying persons and sureties in the Courts.
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> The other accused must have told the appellant that they were the real claimants. He believed them and agreed to act for them. It seems to us that he did nothing beyond what a Lawyer is authorised to do in a Court of Law. There is no evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants. Again, there is no evidence whatsoever that there was any concert between him and the other accused antecedent to the filing of the applications and *vakalatnamas* in

Court by him. In the absence of such evidence, it cannot be said that there is *prima facie* evidence for the offence of conspiracy against him.'

In this case also, there is no evidence on record connecting the petitioner with the co-accused and thus, the aforementioned judgment is applicable.

In view of above, the petition is allowed. Impugned orders dated 18.10.2016 (Annexure P-5) and 14.02.2018 (Annexure P-7) are quashed.

(SUDHIR MITTAL)
JUDGE

27.01.2023
Ramandeep Singh

Whether speaking / reasoned Yes
Whether Reportable No