IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.17175 of 2014 (O&M)
Reserved on:08.12.2023
Pronounced on:15.12.2023

B.S. Pahuja and others ... Petitioners

Versus

Surinder Singh Kundu and another ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate for
Mr. Mandeep Singh, Advocate
for the petitioners.

Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Mandeep Singla, Advocate
Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, Advocate
for respondent No.1.

Mr. Vikas Bhardwaj, AAG, Haryana.

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HARPREET SINGH BRAR, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of complaint No.606 dated 09.08.2012 under Sections 167, 182, 418, 420, 467, 468, 470, 120-B IPC (Annexure P-4) pending before the Judicial Magistrate 1st Class, Hisar as well as the order of summoning dated 19.12.2013 (Annexure P-5) and all subsequent proceedings arising therefrom.

2. In brief, the facts are that respondent No.1-complainant joined the Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as HVPNL) on 10.05.1999 after his superannuation from the Indian Navy. From the day respondent No.1 joined his duties, petitioner No.1 harassed and humiliated him

as he refused to fulfil his illegal demands. On this account, petitioner No.1 started nourishing grudge against respondent No.1. The respondent No.1 was marked absent on 06.12.2005 at 7.30 AM by petitioner No.1, despite the fact that duty hours were to begin from 9 A.M. However, the matter was dropped thereafter in the absence of any cogent evidence. Further, petitioner No.1 made adverse remarks in the ACR of the respondent No.1 for the period of 2005-2006 recording his integrity as doubtful, however, said remarks were also expunged by the higher authorities. On 28.06.2009, petitioner No.1 along with others conducted a surprise checking of 200 KV BBMB Jindal Feeder, Hisar and filled up the *pro forma* regarding violation of Power Regulating Measure in which under column No.10, he mentioned the name of Officer-in-Charge as Er. B.R. Chahal, 58E/220 KV Sub Station BBMB, Hisar. However, petitioner No.1 along with other accused persons hatched a conspiracy and fabricated another report against the *pro forma* provided by the HVPNL in which he bifurcated Column No.10 into 10-A and 10-B and mentioned the name of respondent No.1 in Column No.10-B as Officer-in-Charge of 220 KV line (Annexure P-3). Based on the said fabricated report, respondent No.1 was issued a show cause notice under Rule 8 of the HSEB Employees (P&A) Regulations 1990 proposing strict disciplinary action against him and 220 KV Sub Station of BBMB, Hisar was also added in the said show cause notice which, in fact, was not the part of the surprise checking conducted on 28.06.2009 at 10 AM. Ultimately, respondent No.1 was punished with stoppage of three annual increments with cumulative effect. When respondent No.1 came to know about the forged and fabricated report prepared at the instance of accused persons, he approached the Superintendent of Police, Hisar and submitted complaint dated 05.06.2012 but no action was taken thereon. It is in this backdrop, the instant complaint was filed wherein the petitioners were summoned vide the impugned order dated 19.12.2013.

3. Learned counsel appearing for the petitioners *inter alia* makes the following arguments:-

(i) A perusal of the impugned complaint (Annexure P-4) would indicate that the petitioner No.1 and petitioner No.4 were posted and residing beyond the area in which Magistrate exercising his jurisdiction has passed the summoning order and issued process under Section 204 Cr.P.C. Admittedly, the recourse to Section 202 Cr.P.C., which is mandatory in nature has not been taken. In the absence of the enquiry as envisaged under Section 202 Cr.P.C., the summoning of the petitioners is *per se* bad in law and on this ground alone, the impugned summoning order is liable to be set aside. The petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Abhijit Pawar Vs. Hemant Madhulkar Nimbalkar and another 2017 (1) RCR (Criminal) 405; Udai Shankar Awasthi Vs. State of UP. and another (2013) 2 SCC 435.***

(ii) A perusal of the complaint indicates that the ingredients of forgery as provided under Sections 463 and 464 IPC are clearly missing. No document or electronic record is forged, hence, summoning of the petitioners under Sections 467, 468 and 471 IPC cannot be justified. Similarly, essential ingredients of cheating are clearly missing and the summoning of the petitioners under Section 420 IPC is not sustainable either. Reliance in this regard is placed upon para 18 of the judgment passed by the Hon'ble Supreme Court in ***Deepak Gaba and others Vs. State of Uttar Pradesh and another 2013 (1) RCR (Criminal) 650***, which is reproduced as under:-

> *"18. Section 471 of the IPC is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or electronic record. This Court in Mohd. Ibrahim and Another (Supra), has elucidated that the condition precedent of an offence under Section 471 of the IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471 of the IPC, it has to be proven that the document was "forged" in terms of Section 470, and "false" in terms of Section 464 of the IPC. Section 470 lays down that a document is 'forged' if there is: (i) fraudulent or dishonest use of a document as genuine; and (ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one. Section 470 defines a forged document as a false document made by forgery. As per Section 464 of the IPC, a person is said to have made a 'false document': (i) if he has made or executed a document claiming to be someone else or authorised by someone else; (ii) if he has altered or tampered a document; or (iii) if he has obtained a document by practising deception, or from a person not in control of his senses. Unless, the document is false and forged in terms of Sections 464 and 470 of the IPC respectively, the requirement of Section 471 would not be met."*

(iii) The bone of contention between the parties is the checking report Ex.P6. The respondent No.1 has alleged that the petitioners have shown him as Officer-in-Charge only to spoil his career and deprive him of the promotions. The specific stand of the respondent No.1 in the complaint was that he was not the Officer-in-Charge at the relevant date is belied from the information supplied by the competent authority under the Right to Information Act vide memo No.Ch-05/TSHH-321/R71 dated 31.07.2015, which is available on record as Annexure P-10. The name of respondent No.1 is clearly shown posted as SSE at 220 KV IA, HVPNL, Hisar from 06.01.2009 to 01.07.2010. As such, the whole edifice of the case set up by the respondents falls flat on the ground.

(iv) The factum of respondent No.1-complainant, Surinder Singh Kundu, being Incharge of 220 KV IA in District Hisar from 06.01.2019 was admitted in CWP No.22962 of 2012 (Annexure P-6) filed by respondent No.1 challenging the office order dated 10.04.2012 (Annexure P-7). The Managing Director, HVPNL, Panchkula has initiated the disciplinary action after duly verifying the veracity of the checking report Ex.P6 and punishment of stoppage of three annual increments without cumulative effect was inflicted upon respondent No.1. The petitioners had conducted the inspection and prepared the checking report Ex.P6 in discharge of their official duties. As such, sanction under Section 197 Cr.P.C. was necessary before summoning and issuance of process under Section 204 Cr.P.C. The learned trial Court has not applied its judicious mind, as the petitioners could not have been summoned without the valid sanction under Section 197 Cr.P.C. Reliance in this regard is placed upon the judgment passed by the Hon'ble Supreme Court in ***P.K. Choudhury Vs. Commander, 48 BRTF (GREF) 2008 (2) RCR (Criminal) 482.***

(v) Petitioners are entangled in vexatious and malicious litigation to wreck vengeance due to private spite. Reliance in this regard is placed upon the judgment passed by the Hon'ble Supreme Court in ***State of Haryana and others Vs. Ch. Bhajan Lal and others AIR 1992 SC 604.***

4. Per contra, learned Senior Counsel representing respondent No.1 submitted that petitioner No.1 in order to spoil the career of respondent No.1 had made adverse remarks in the ACR for the period 2005-2006, by recording his integrity as 'doubtful' but said adverse remarks were expunged by the higher authorities. As such, petitioner No.1 had misused his office to cause loss to respondent No.1. On 28.06.2009, petitioners conducted a surprise checking and filled up the *pro forma* qua violation of power regulating measures and under Column No.10, mentioned Er. B.R. Chahal as the Officer-in-Charge. All petitioners, after hatching a conspiracy with each other, intentionally fabricated another report and made two parts of Column No.10 i.e. 10-A & 10-B, which is against the prescribed *pro forma* to add the name of respondent No.2 as Officer-in-Charge. Due to the interpolations made by the petitioners, a disciplinary action was taken against respondent No.1. In this regard, reliance has been placed upon information obtained under the Right to Information Act, 2005 in

which the respondent No.1 was shown posted as SSE at 220 KV Sub Station, HVPNL I.A., Hisar from 28.08.2008 to 30.06.2010. As such, on 28.06.2009 when the surprise checking was conducted, respondent No.1 was not posted at the place shown in the checking report Ex.P6 and the facts and circumstances of the present case clearly indicate that the sanction is not required. Reliance was further placed upon the judgments passed in ***Amod Kumar Kanth Vs. Association of Victim of Uphaar Tragedy and another 2023 (3) RCR (Criminal) 856*** and ***Kala Ram Kansal Vs. State of Punjab and another, CRM-M No.47422 of 2019 decided on 15.05.2023, Law Finder Doc Id #2239265.***

5. Having heard learned counsel for the parties and after perusing the record of the case as well as the case laws cited, this Court would like to examine the necessary ingredients constituting the offence of cheating as defined under Section 415 IPC as well as forgery as defined under Section 463 and 464 IPC. Sections 415, 463 and 464 IPC are reproduced as under:-

> ***"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".*
>
> *Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.*
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> ***463. Forgery. -*** *Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

***464. Making a false document**. —A person is said to make a false document or false electronic record—*

First —Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

6. The essential ingredients for commission of offence of cheating are:- deception and inducement to deliver any property to any person or to consent that any person shall retain any property. There must be an intention to induce a person to do or omit to do anything which he would not have done or omitted if he were not so deceived, and the act or omission must have caused or was likely to cause damage or harm to that person in body, mind, reputation or property. Further, to attract the offence of forgery, there must be a false document or false

electronic record made with an intention to cause damage or injury to the public or to any person.

7. A perusal of the record indicates that ingredients for the offence of cheating are not satisfied. There is nothing on record to show that the petitioners have deceived any person fraudulently or dishonestly to deliver any property to any person. Therefore, a bare reading of the averments and allegations in the complaint would show that no case for offence under Section 420 IPC is made out. An inspection of Sections 463 and 464 IPC would indicate that there must be making of a false document with an intention to cause damage or injury to the public or any person. Making of the false document is *sine qua non* for launching prosecution under Sections 467, 468, 471 IPC. A bare perusal of the allegation contained in the complaint shows that it is not a case where the petitioner dishonestly or fraudulently made a document with an intention of causing it to be believed that the document was made by some other person. Neither is it a case where the petitioners have dishonestly or fraudulently altered a document in any material part thereof without lawful authority nor have they dishonestly or fraudulently caused any person to sign, execute or alter a document knowing that such person by reason of: (i) unsoundness of mind; (ii) intoxication and (iii) deception practiced upon him, would not understand the contents of the documents or the nature of the alteration. Thus, the offence of forgery is only attracted; if a person: (i) made or executed a document claiming to be someone else or authorized by someone else; (ii) materially altered or tampered a document; (iii) procured a document by deception from a person, who is not in control of his senses. A perusal of the record indicates that in CWP No.22962 of 2012 (Annexure P-6), respondent No.1 has admitted being Officer-in-Charge on 28.06.2009 when the surprise inspection was done and checking

report Ex.P6 was prepared and he has been chargesheeted and awarded punishment by the punishing authority on the basis of checking report Ex.P6.

8. A two Judge Bench of the Hon'ble Supreme Court in ***Mir Nagvi Askari Vs. Central Bureau of Investigation (2009) 15 SCC 643*** speaking through Justice S.B. Sinha, has held as under:-

> "*166. .....However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Vimla (Dr.) v. Delhi Admn. AIR 1963 SC 1572 : 1963 Supp (2) SCR 585]. Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside."*

A two Judge Bench of the Hon'ble Suprme Court in ***Sheila Sebastian Vs. R. Jawaharaj and another (2018) 7 SCC 581*** speaking through Justice N.V. Ramana has held as under:-

> *"26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.*

27. A reasonable doubt has already been thoroughly explained in Latesh v. State of Maharashtra [Latesh v. State of Maharashtra, (2018) 3 SCC 66 : (2018) 2 SCC (Cri) 235] wherein "reasonable doubt" has been enunciated by this Court as (at SCC p. 83, para 46) "a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis.

28. In this case at hand, the imposter has not been found or investigated into by the officer concerned. Nothing has been spilled on the relationship between the imposter and Respondent 1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the courts to ensure that suspicion does not take place of the legal proof. In this case, the trial court as well as the appellate court got carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e. PoA as a fraudulent and forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability."

9. Reliance can also be placed on ***Arun Bhandhari v. State of Uttar Pradesh (2013) 2 SCC 693***, wherein a two Judge bench of the Hon'ble Supreme Court, speaking through Justice Dipak Misra, made the following observations:

"20. In ***G.V. Rao v. L.H.V. Prasad and others, 2000(2) RCR (Criminal) 290 : (2000)3 SCC 693****this Court has held thus:*

> *"7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in* ***Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 Supreme Court 575*** *a guilty intention is an essential ingredient of the offence of cheating. In*

> *order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in* ***Mahadeo Prasad v. State of W.B., AIR 1954 Supreme Court 724*** *that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."*

10. In view of the aforesaid facts and circumstances, complaint No.606 dated 09.08.2013 (Annexure P-4) as well as the summoning order dated 19.12.2013 (Annexure P-5) and all subsequent proceedings arising therefrom, are quashed qua petitioners. The instant petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

December 15, 2023
Pankaj* Whether speaking/reasoned Yes/No
Whether reportable Yes/No