

CRM-M-31776 of 2021

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31776 of 2021

Date of decision: 20.02.2023

Samar Sajan

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. G.S. Sandhu, Advocate, for the petitioner.
Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of FIR No.22 dated 09.02.2016 under Sections 420/406 IPC, registered at Police Station Civil Lines, Bathinda, District Bathinda, and order dated 04.06.2018 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Bathinda, along with all subsequent proceedings arising therefrom.

Brief facts of the case are that respondent No.2-complainant Nirver Singh moved an application before SSP, Bathinda submitting therein that Manoj Kumar borrowed an amount of Rs.7,00,000/- from him in January 2015 and he assured that he would pay the said amount in 4-5 months, but Manoj Kumar has not returned the said amount within stipulated period. Then respondent No.2 demanded his money from him, but accused Manoj Kumar adjourning the matter on the pretext of lame excuses and said that he would pay the same in 1-2 months. But he has not returned the same. His son

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Samar Sajan (petitioner) also used to assure the complainant to repay the above said amount after some time. In August, 2015, both the accused persons met the complainant at Bathinda and he demanded his money. Then the accused issued a cheque no.292554 dated 04.09.2015 of an amount of Rs.7,00,000/-, but they telephonically informed him not to present the cheque in the bank for some time and they would pay the said amount in cash. After 20-25 days, they again telephonically asked him to not to present the cheque in the bank. Ultimately, in the first week of November, accused said the complainant to present the cheque in the bank. Then the complainant presented the cheque on 04.11.2015, but the cheque was dishonoured. Then, the accused said the complainant to present the cheque on 23.11.2015, but on the said date, the cheque was again dishonoured. Thereafter, the accused persons told him that they wanted to cheat him and threatened him that if he would complain against them, they would implicate him in false criminal cases. He finally prayed for taking action against the accused persons. On the said application, inquiry was conducted and after inquiry FIR in the present case was registered against petitioner and his father Manoj Kumar. Petitioner was granted anticipatory bail by this Court vide order dated 30.03.2016 passed in CRM-M-7595 of 2016. Thereafter, he left country for Canada and was declared proclaimed person by the trial Court vide order dated 04.06.2018.

Learned counsel for the petitioner submits that co-accused Manoj Kumar, father of the petitioner, faced full length trial in the aforesaid FIR and the Judicial Magistrate Ist Class, Bathinda, vide

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judgment dated 01.11.2018 has acquitted him by observing that no offence under Section 420, 406 IPC is made out. The operative part of the judgment reads as under: -

“23. Hence, it is proved on record that the accused borrowed an amount of Rs.7 lac from the complainant and did not pay the same. The transaction which was happened between complainant and accused was a loan transaction, therefore accused person can not be held liable for offence of cheating. Offence of cheating is not made out unless it is shown that there was a fraudulent or dishonest intention right at the beginning of transaction. Mere failure to keep up promise subsequently, such culpable intention, right at the beginning, when he made the promise, cannot be presumed. There is no allegation either in application Ex.P-B moved to SSP Bathinda on the basis of which criminal law was set into motion and the FIR was registered against the accused or none of the prosecution witness has deposed in their deposition that right at the beginning, there was a fraudulent or dishonest intention on the part of the accused. In the absence of these allegation in the deposition of prosecution witnesses, no offence under section 420 IPC is made out. Reliance can be placed on 2008 (3) Criminal Court Cases 148 (Allahabad).

24. Supra, it has proved on record that accused borrowed an amount of Rs 7 lac from complainant, therefore ingredient of entrustment is also missing. Hence, offence under section 406 IPC also not made out.

25. Thus, there is no iota of evidence on record to give finding that accused Manoj Kumar has cheated upon the complainant. Consequently, this Court acquits the accused Manoj Kumar of the charge against him. The personal bonds and the surety bonds stand discharged. The case

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property, if any, be disposed of under rules after awaiting the result of appeal/revision, if any. File be consigned to the record room.”

Learned counsel for the petitioner has submitted that aforesaid judgment has attained finality as no appeal was filed by the State. Learned counsel for the petitioner has submitted that petitioner had travelled abroad to pursue higher studies at Centennial College, Toronto, Ontario, therefore, he could not obtain permission of the Court and was declared proclaimed offender vide order dated 04.06.2018 (Annexure P-2). Learned counsel has argued that perusal of the judgment of acquittal qua other accused would show that a finding has been recorded by the trial Court that no offence under Sections 406, 420 IPC has been made out. Learned counsel has, thus, argued that even if petitioner is directed to face trial, no purpose will be served as the judgment of acquittal dated 01.11.2018 has virtually concluded that no offence under Sections 406, 420 IPC has been made. He further submitted that in the parallel proceedings initiated at the instance of respondent No.2-complainant under Section 138 of the Negotiable Instruments Act, 1881, the matter has been compromised vide compromise deed dated 05.12.2018 and on the basis of the said compromise co-accused, father of the petitioner, was acquitted by learned Presiding Officer, National Lok Adalat, Bathinda, vide order dated 08.12.2018. He further submits that the petitioner was falsely implicated in the present FIR as allegation in the FIR is that the father of the petitioner had taken a loan of Rs.7,00,000/- in the year 2015 from respondent No.2 and he had promised to repay the loan amount

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within 4-5 months but he could not repay and father of the petitioner issued a cheque bearing No.292554 dated 04.09.2015 of an amount of Rs.7,00,000/- in favour of respondent No.2 and since the matter has been settled between the parties and co-accused Manoj Kumar has already been acquitted vide judgment dated 01.11.2018 and even the proceedings initiated under Section 138 of the NI Act at the instance of respondent No.2 have been concluded with the acquittal of co-accused Manoj Kumar on the basis of compromise, therefore, no fruitful purpose would be served in continuing the proceedings against the petitioner in the instant FIR.

Learned counsel for the petitioner has relied upon ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab 2011(2) RCR (Criminal) 453***, wherein this Court has held that even in case where an accused has absconded and was declared a proclaimed offender and has not faced the trial but co-accused have been acquitted, the prosecution of the co-accused can be quashed under the inherent power of the High Court under Section 482 Cr.P.C. Similar view has been taken by this Court in ***Deepak Vs. State of Punjab 2015 (6) RCR (Criminal) 353***.

Learned State counsel, on instructions from Investigating Officer, has submitted that the petitioner who was on bail left the country without prior permission of the Court and therefore, he was declared a proclaimed offender. However, it was not disputed that the judgment of acquittal dated 01.11.2018 has attained finality.

After hearing learned counsel for the parties, I find merit in the present petition.

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A perusal of judgment dated 01.11.2018 shows that the trial Court has recorded a finding while acquitting co-accused Manoj Kumar that no offence is made out under Section 420, 406 IPC and there is no *iota* of evidence on record to give finding that co-accused Manoj Kumar cheated upon respondent No.2-complainant. Once the father of the petitioner, who had taken the loan and issued a cheque, has been acquitted and the matter has been compromised between the father of the petitioner and respondent No.2-complainant and the petitioner did not play any role, therefore, no fruitful purpose would be served by putting the petitioner on trial again which would be a futile exercise and misuse of process of law.

Accordingly, the petition is allowed. FIR No.22 dated 09.02.2016 under Sections 420/406 IPC, registered at Police Station Civil Lines, Bathinda, District Bathinda, and order dated 04.06.2018 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Bathinda, whereby petitioner was declared proclaimed offender, along with all subsequent proceedings arising therefrom are quashed, subject to payment of costs of Rs.50,000/- to be deposited with the Punjab and Haryana High Court Lawyers' Welfare Fund, within a period of one month from today.

20.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No