

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**234****CRR-948-2014 (O&M)****Date of decision: 13.09.2023**

Kewal Krishan Gupta

....Petitioner

V/s

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGAPresent: Mr. N.S.Sodhi, Advocate,
For the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

Mr. Samarth Sagar, Advocate,
For respondent No.4.

ARUN MONGA, J. (Oral)

Petitioner Kewal Krishan Gupta (now deceased represented by his LRs) has filed this petition challenging the judgment/order dated 07.03.2014 Annexure P-1 passed by the learned Additional Sessions Judge, Jalandhar, thereby accepting the revision petition against and setting aside the order dated 19.07.2013 passed by the learned Judicial Magistrate Ist Class, Jalandhar whereby charges were framed against of private respondents No. 2,3 and 4 for offences under sections 420/409 read with section 120B of IPC and consequently discharging them.

2. Facts first.

2.1. FIR dated 01.09.2007 Annexure P-2 was registered at Police Station, Division No. 2, Jalandhar under sections 409/406/420/120B IPC on the complaint of Kewal Krishan Gupta (since deceased). It was alleged that Varun Syal, his brother Karan Syal and their father Vinod Syal (since deceased) had, by false and dishonest representations, allured the complainant to invest money in their companies (Syal Finance Limited; Syal Investment Private Limited, Syal

Leasing Limited and Modern General Finance Limited) with option of refund of amount when desired. Accordingly, the complainant and his family members invested sums aggregating Rs. 12.50 lacs with them. However, when approached for refund, they refused to do so and threatened the complainant if he would approach the police. After investigation, the local police submitted challan Annexure P-14 against 10 persons, including the three private respondents No. 2, 3 and 4 herein for their trial for the offences under sections 409/406/120B IPC.

2.1. The learned Magistrate vide order dated 19.07.2013 found that a prima facie case was made out and framed charges against them all for these offences. The three private respondents No. 2,3 and 4 herein namely Meenu Khanna w/o Sunil Kumar, Radhika d/o Sarup Khanna and Prem Parkash Sagar filed Criminal Revision against the said order dated 19.07.2013. The learned Additional Sessions Judge, Jalandhar passed the impugned order dated 07.03.2014 Annexure P-1 accepting the revision, setting aside the learned Magistrate's order dated 19.07.2013 and discharging the private respondents. Aggrieved, the petitioner (since deceased now represented through LRs) sought quashing of the order dated 07.03.2014 Annexure P-1 passed by the learned Additional Sessions Judge, Jalandhar.

3. I have heard the learned counsel for the petitioner, private respondent No. 4 and the learned State counsel and with their able assistance have gone through the record.

4. The contentions raised herein and canvassed before me by the learned counsel for the petitioner and supported by the learned State counsel are that:

(a) Three earlier petitions for quashing the FIR had been dismissed by this Court vide orders dated 21.05.2008 Annexure P-12, dated 30.08.2012 Annexure P-8 and dated 30.04.2013 Annexure P-13. Private

respondents No. 2,3 and 4 had concealed these facts while filing the revision petition in the learned Sessions Court.

(b) The grounds for filing the revision petition in the learned Sessions Court were the same as in the three earlier petitions which had been dismissed by this Court vide orders dated 21.05.2008 Annexure P-12, dated 30.08.2012 Annexure P-8 and dated 30.04.2013 Annexure P-13.

(c) The learned Sessions Judge wrongly discharged the private respondents herein on the basis of statements (Annexure P-10) of Bhim Sain and Pargat Singh; even though according to them, whenever they used to come to the office and deal with regard to transaction of receipts, they used to obey the orders of Karan Syal and Varun Syal.

(d) The learned Sessions Court exceeded its jurisdiction and acted illegally while discharging the private respondents herein.

5. Learned counsel for private respondent No. 4 has contested these submissions and argued in support of the impugned order.

6. Annexure P-3 is the reply filed by respondent No. 1 to the application of private respondents herein for their discharge. Impugned order Annexure P-1 shows that the complainant's counsel was present to assist the learned Additional Public Prosecutor for the State when the court heard the arguments. The State and/or the complainant could also have very well pointed out that the facts about the earlier petitions for quashing the FIR which had been dismissed by this Court.

7. That apart, orders dated 21.05.2008 Annexure P-12, dated 30.08.2012 Annexure P-8 and dated 30.04.2013 Annexure P-13 show that the earlier petitions were dismissed as withdrawn and were not decided on merits.

8. Aforesaid orders did not preclude the private respondents herein from filing a fresh petition in the learned Sessions Court for their discharge. In such circumstances, there seems no justification now to set aside the impugned order merely because the private respondents No. 2,3 and 4 herein had not disclosed the factum and fate of aforesaid earlier petitions filed in this Court while filing the revision petition in the learned Sessions Court.

8.1 As stated above, the earlier petitions were dismissed as withdrawn and were not decided on merits. That did not preclude the private respondents

herein from filing a fresh petition in the learned Sessions Court for their discharge even on the same grounds as in the earlier petitions, which had been dismissed as withdrawn.

8.2 The gist of statements Annexure P-10 of Bhim Sain and Pargat Singh as pointed out by the learned counsel for the petitioner pertains only to Karan Syal and Varun Syal. The same does not in any way connect the private respondents herein with the crime. I, therefore find no substance in the argument that the impugned order for the discharge of private respondents passed by learned Sessions Judge is erroneous, in the face of these statements Annexure P-10 of Bhim Sain and Pargat Singh.

8.3 Impugned order is premised, *inter alia*, on the following reasons:

“3. XXX XXX

In the entire complaint there are no allegations against the revision petitioners. The names of the revisions petitioners were added during investigation done by the investigating officer wherein it has been mentioned that in order to fulfill the majority of the directors, the names of the revision petitioners have been mentioned in the list of directors. As per the statement of Bhim Sain under section 161 of Cr.P.C. and the statement of Pargat Chand, Bhupinder Bhatia under Section 161 of Cr.P.C. the present revision petitioners are the dummy directors. They had no money transaction with the company. They were not being paid any salary, nor they had ever attended the meeting nor they were called to attend the meeting. They were not having any power to deposit the amount or to withdraw the same. They have been made the directors just to fulfill the norms of RBI. Thus, from the complaint report under Section 173 Cr.P.C. the statement of the witnesses under section 161 of Cr.P.C. and documents, it is clear that the revision petitioners were dummy directors and they had no say and no role in the running of the company.

XXX XXX

Only the persons or the officers of the company who were in charge of the company and responsible to the firm can be fastened with criminal liability-sleeping partners particularly the lady accused person who do not take any part in the day to day account or discharge of business of the firm of company cannot be prosecuted. In the present case also there are no allegations even prima facie case to show that the revision petitioners were discharging day to day business of the company. Rather it has been alleged that they had no money transaction and no role to play but the learned trial court has not considered these facts and has erred in holding that prima facie case is made out against the revision petitioners to frame charge against them. The order passed by the learned trial

Court is illegal and liable to be set aside. Accordingly, the revision filed by the revision petitioners is accepted and the revision petitioners are discharged.”

8.4 I am inclined to agree with the view as aforesaid taken by the learned Sessions Judge.

9. Taking an overall view of the matter, I am unable to accept the contention that learned Sessions Court exceeded its jurisdiction and acted illegally while passing the impugned order dated 07.03.2014 Annexure P-1 discharging the private respondents herein.

10. The aforesaid reasons are recorded in support of the short order dated 13.09.2023 dismissing the petition.

11. Pending application/, if any, also stand disposed of.

13.09.2023
vandana

(ARUN MONGA)
JUDGE

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