2024:PHHC:122844-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Reserved on: 05.09.2024
Pronounced on: 18.09.2024

1. CRA-S-643-SBA-1998

THE STATE (THROUGH C.B.I.) .....Appellant

Versus

RAKESH KUMAR AND ORS. .....Respondents

2. CRR-1410-2005

SURJIT SINGH ....Petitioner

Versus

C.B.I. .....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Deepak Sabherwal, Senior Panel Counsel for C.B.I.

Mr. Vivek Dahiya, Advocate (legal aid counsel) for the respondents (in **CRA-S-643-SBA-1998).**

Mr. Gautam Dutt, Advocate for the petitioner (in **CRR-1410-2005).**

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SURESHWAR THAKUR, J.

1. Since the criminal appeal (supra) as well as the revision petition (supra), both involve common questions of facts and law. Therefore, they are amenable to be decided through a common order.

2. **CRA-S-643-SBA-1998** is directed by the appellant-CBI, against the verdict drawn on 15.12.1997, upon Case/challan No.

22T/26.04.85/11.01.1990 by the learned Special Judicial Magistrate, CBI, Patiala, wherethrough in respect of charges drawn for offences punishable under Sections 120-B, 420, 468 and 471 of the IPC, he made a verdict of acquittal qua accused Rakesh Kumar and Ravi Shankar.

3. **CRR-1410-2005 is** directed by the convict-petitioner Surjit Singh, for setting aside impugned order dated 15.07.2005 passed by the learned Additional Sessions Judge, Patiala, whereby the judgment of conviction and order of sentence dated 15.12.1997, as became passed by the learned Special Judicial Magistrate, CBI, Patiala, became upheld in respect of charges drawn for offences punishable under Sections 120-B, 420, 465, 467, 468 and 471 of the IPC. Resultantly, the concurrent verdicts of conviction and consequent thereto sentence(s) became pronounced qua accused Surjit Singh (petitioner herein) and qua Ram Pal (since expired).

4. Moreover, through a separate sentencing order drawn on 15.12.1997, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

1.	Accused/convicts Surjit Singh and Accused Ram Pal are sentenced.	To undergo R.I. for 6 months and to pay Rs. 500/- each as fine and in default of payment of fine to undergo R.I. for one month u/s 120 B IPC read with Sections 420, 467, 468 and 471 IPC.
2.	-do-	To undergo R.I. for one year and to pay Rs. 1000/- each as fine and in default of payment of fine to undergo R.I. for three months u/s 420 IPC.

3.	-do-	To undergo R.I. for two years and to pay Rs. 15000/- each as fine and in default of payment of fine to undergo R.I. for three months u/s 467 IPC.
4.	-do-	To undergo R.I. for one year and to pay Rs. 1000/- each as fine and in default of payment of fine to undergo R.I. for three months u/s 468 IPC.
5.	-do-	To undergo R.I. for one year and to pay Rs. 1000/- each as fine and in default of payment of fine to undergo R.I. for three months u/s 471 IPC.
6.	-do-	To undergo R.I. for one year and to pay Rs. 500/- each as fine and in default of payment of fine to undergo R.I. for one month u/s 465 IPC.

5. All the substantive sentences of imprisonment are ordered to run concurrently.

Factual background.

6. The facts of the case are that a written complaint was lodged by the Chief Regional Manager, State Bank of India, Regional Office, Punjab, with the allegation that Jasbant Singh, M/s Gupta Enterprises (India) and M/s Guru Nanak Traders have defrauded State Bank of India, Civil Lines, Ludhiana, through clearance of 73 forged bank drafts of State Bank of India to the tune of Rs. 54,50,784.20 and by withdrawing the said amount through withdrawal cheques to their current accounts opened with Punjab National Bank, Miller Ganj Branch, Ludhiana in the name of Jasbant Singh, M/s Gupta Enterprises (India) and M/s Guru Nanak Traders.

7. During investigation, it was revealed that between March 1983 to June 1983 at Ludhiana (Punjab), accused Sushil Kumar

Kaushal, Kuldip Kumar Mehta alias Vipan Mehta, Ram Pal, Surjit Singh alias Jasbant Singh, Rakesh Kumar, Tara Singh, Mohinder Nath Tiwari and Ravi Shanker were parties to a criminal conspiracy, with the object to cheat the State Bank of India by preparing/submitting forged demand drafts of State Bank of India in order to dishonestly and fraudulently withdraw lacs of rupees. In pursuance of the aforesaid criminal conspiracy, the above named accused persons opened three fictitious current accounts in Punjab National Bank, Miller Ganj Branch, Ludhiana. The first such current account No. 4015 was opened on 7.3.83 by Surjit Singh in the assumed name of Jasbant Singh by giving a false address as 226, Gambhir Market, Gill Road, Ludhiana. The second fictitious current account no. 4026 was opened on 9.4.83 by accused Kuldeep Kumar Mehta in the assumed name of M/s Gupta Enterprises (India), Over Lock Road, Ludhiana. The third fictitious current account No. 4030 was opened on 13.4.83 by accused Surjit Singh in the assumed name of M/s Guru Nanak Traders, Gambhir Market, Gill Road, Ludhiana. All the accused in pursuance of the criminal conspiracy deposited 74 counterfeit demand drafts of State Bank of India purportedly issued by various branches of State Bank of India and drawn at State Bank of India, Main Branch, Ludhiana in the aforesaid three fictitious accounts to the tune of Rs. 55,25,784.20 ps. Out of the said amount, the accused persons withdrew an amount of Rs. 48,68,810/- through various withdrawal cheques during the period April 1983 to June 16, 1983.

Investigation proceedings

8. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned learned Special Judicial Magistrate, CBI, Patiala.

Trial Court Proceedings

9. On finding a *prima facie* case, charge under Sections 120-B read with Section 420, 467, 468, 471 of the IPC and under Sections 420, 467, 468, 465 and 471 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

10. In support of the prosecution case, the prosecution examined seventy seven witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned trial Judge, drew proceedings under Section 313 of the Cr.P.C., but thereins, the accused claimed false implication, and, pleaded innocence. The accused examined eight witnesses in their defence.

11. During trial accused Kuldeep Kumar and Mohinder Nath absconded and were declared proclaimed offenders. Accused Sushil Kumar died during trial and proceedings were dropped against him.

12. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Special Judicial Magistrate, CBI, Patiala, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused.

Submissions of the learned counsel for the CBI.

13. The learned counsel for the CBI-State, has made a vigorous submission before this Court that, the passing of the impugned verdict of acquittal qua accused Rakesh Kumar and Ravi Shankar, suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and they be accordingly sentenced.

14. The learned State counsel (CBI) further argues that impugned verdict dated 15.07.2005 passed by the learned Additional Sessions Judge, Patiala, upholding the judgment of conviction and order of sentence dated 15.12.1997, as passed qua accused Surjit Singh, is well merited, and, does not warrant its becoming interfered with, by this Court.

Submissions of the learned Counsel for the petitioner-convict-Surjit Singh (in *CRR-1410-2005*).

15. The learned counsel for the petitioner-revisionist has argued that concurrent verdict(s) of conviction, passed by the Courts below are based upon surmises and conjectures, and contrary to the principle relating to appreciation of evidence, thus are liable to be set aside.

Analysis of the submissions (supra)

16. It is not disputed that the accused allegedly opened accounts in the name of fictitious persons and fictitious firms. Therefore, since no living person was in existence nor when his

admitted signatures were available, thus, for comparisons thereof being made with the admitted/specimen signatures of the accused concerned. Contrarily, when the disputed documents, whereons, existed only the signatures of the accused concerned, who respectively un-authorizedly represented the fictitious firm concerned and pretended to be one Jasbant Singh, who then was a non existing person. Therefore, the similarity of signatures of the accused concerned, with the ones as became made on the disputed documents rather do not comprise clinching incriminatory evidence. Consequently, the affirmative report of the handwriting expert, who but made comparisons of the signatures, as, existing on the relevant disputed documents, thus with the specimen signatures as became provided by the accused concerned, rather *prima facie,* may be not of immense evidentiary value. Conspicuously, yet the said signatures resulted in the opening of the bank accounts concerned, besides resulted in withdrawals therefroms taking place.

17. Be that as it may, the result of the apposite examinations/apposite comparisons, as made by the handwriting expert concerned, become extracted hereinafter.

> *"The person who wrote the blue enclosed writings and signatures stamped and marked S-59 to S-117, S-124 to S-126 and S-188 to S-204 also wrote the red enclosed writings and signatures, similarly stamped and marked Q 225 and Q237 etc."*

18. The effect of the above, is that, even if assumingly there was no purveyings of sample signatures by the accused concerned, thus either in the presence of the authorized officer or in the presence of the

competent investigating officer concerned, yet for the reasons (supra), the above infirmity is inconsequential, thus for determining whether the accused concerned, is/are liable to be convicted for the charged offences.

19. The reason for forming the above conclusion emanates from the factum, that since pursuant to the opening of the alleged forged bank accounts concerned, respectively in the name of the fictitious persons and/or in the name of a fictitious firm, thus monies entered into the said opened bank accounts, whereafters therefroms the monies became withdrawn.

20. Importantly also, the makings of the withdrawals from the fictitiously opened bank accounts, thus, at the instance of the accused concerned, rather subsequently led them to make the respective disclosure statements before the investigating officer concerned, contents whereof are extracted hereinafter.

Signatured disclosure statement of accused Surjit Singh.

21. During the course of investigations, being made into the appeal FIR, convict Surjit Singh made a signatured disclosure statement, to which Ex. PW9/2 is assigned. The signatured disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

> *"I am running a fodder shop at Samrala Chowk, Ludhiana and also doing a side business of property dealer. I joined hands with Sarvshri Ram Pal, S.K.Kaushal and Kuldeep kumar Mehta alias Vipin Kumar in preparation of fake drafts purported to have been issued by different branches of State Bank of India. I had opened two current accounts*

in fictitious names and fictitious addresses viz. Jasbant Singh and non-existing firm i.e. M/s Guru Nanak Traders. Sh. Kuldeep Kumar had opened one current account with fictitious name and fictititous address with the name and style Gupta enterprises (India). All these three fictitious accounts were opened in Punjab National Bank, Millerganj Branch, Ludhiana in the months of March/April 1983. We used to deposit fake drafts in the said accounts and withdrew the money through withdrawal cheques on different dates. The cash so received by defrauding the bank was distributed by us in four shares. I received about rupees 20 lacs in cash as my share from the defrauded money. Out of this amount I have kept deposited/spent as per detail below :-

1. *Rupees two lacs given to Kishan Singh & Co. for the purchase of agricultural land.*
2. *Rupees two lacs I have kept in locked steel box with my cousin brother of Village Bawani, Distt. Ludhiana.*
3. *Rs. 1,20,000/- cash and jewellery worth Rs. 40,000/- which was purchased out of the fraud money was kept locked in steel box in the house of Sh. Sudarshan Sharma, Hira Singh Road, Civil Lines, Ludhiana.*
4. *Rs. 40,000/- were given to Sh. R.K. Sharma, Principal of Everest Model High School, Ludhiana.*
5. *About Rs. 1,38,000/- I have deposited in my Savings Bank account which I opened with Indian Overseas Branch, Industrial Area, Ludhiana.*
6. *I have also got opened S.B. Account with Indian Overseas Bank, Industrial Area, Ludhiana of my*

friend Jasbir Singh and got deposited Rs. 71,000/- in it.

7. *Rs. 1,10,000/- I have given to my uncle Tara Singh of Moti Nagar, Ludhiana.*
8. *I had purchased three drafts two from Indian Overseas Bank, Industrial Area Ludhiana for Rs.60,000/-each and one draft from Bank of India, Model Town, Ludhiana for Rs. 80,000/- in favour of Sh. Balbant Singh my cousin residing at Indore (M.P).*
9. *I have opened an Savings Bank Account in my name with Bank of Baroda, Industrial Area, Ludhiana by depositing Rs. 1,71,000/-*
10. *I also got purchased a draft for Rs. 65,000/- from Punjab National Bank, Chandigarh Road, Ludhiana in the name of Tara Singh, my Uncle.*
11. *I had also got opened an S.B. account in Punjab National Bank, Chandigarh Road, Ludhiana of Sh. Balvinder Singh of Village Tibba my maternal uncle by depositing Rs. 95,500/.*
12. *I have also purchased one draft for Rs.75,000/- from Punjab & Sind Bank, Sherpur Branch, Ludhiana.*
13. *I have also purchased one draft for Rs. 80,000/- from S.B.I. Branch Link Road, Ludhiana.*
14. *I and Sh. Ram Pal my associate purchased one Ambassadar Car for Rs.80,000/-from Ludhiana in the name of Sh. Rakesh Kumar, nephew of said Sh.Ram Pal. Out of this Rs.80,000/-, Rs.40,000/- were paid by me and Rs.40,000/- by Sh.Ram Pal and This car was with Ram Pal.*
15. *I have also paid Rs. 50,000/- to Sh.Bhagwan Dass of Ludhiana for purchase of a residential plot.*

16.I have also paid Rs.50,000/- to Sh.Kaka Singh of V.Sadhugark and got released our agricultural land mortgaged to him.

17. Rs.30,000/- I have given to Sh.Charan Singh alias Charani of V. Bawani Ludhiana my relative.

18.I have also purchased one two wheeler scooter for Rs.15,000/-

19. Rs. 3000/- I have given to Dr.

20. I have also spent Rs.7,700/- for purchasing of my golden Kara and golden ring.

21. I have also spent about Rs.65,000/- for the purchase of VCR set Sterio, Revolver, Camera etc. from Singapore.

22. I have also spent about one lac during these three months including my Singapore tour. I can point out the places/persons and can get the articles/cash recovered.

22. Pursuant to makings of the above said signatured disclosure statements, convict Surjit Singh ensured the effectuation of the recovery of the relevant incriminatory items, which were taken into police possession through the respectively made recovery memo(s), as detailed in the hereinafter extracted manner.

Recovery memo Ex. PW7/2.

Accused Surjit Singh alias Jasbant Singh son of Teja Singh resident of 626 L, Model Town, Ludhiana in police custody led the police party to Everest Public High School, Moti Nagar, Ludhiana and pointed out Sh. Rajinder Krishan Sharma, Principal of the said school and told that he had given Rs. 74,972/- to him out of fraud money. Sh. R.K.Sharma admitted to have received Rs. 74,972/- in cash from accused Surjit Singh in the month of July, 1983. Out of Rs. 74,972/- he had spent Rs. 39,572/- for making arrangement for Singapur Trip for

Sh. Surjit Singh. On demand he produced the balance amount of Rs. 35,400/- and following connected documents:-

i)	*Cash (Two packets)*	*100 x 204*	*20,400*
	(Three packets)	*50 x 300*	*15,000*
		total	*35,400*

ii) Expenditure statement for Singapore Trip

iii) Receipt dated 16.7.83 for Rs. 2 lacs signed by Sh. Kishan Singh, 581, Industrial Area B, Ludhiana.

Recovery memo Ex. PW7/3

Accused Surjit Singh @ Jasbant Singh son of Sh. Teja Singh resi of 626 L, Model Town, Ludhiana (Pb.) in police custody led the police party to the fodder shop in Samrala bypass chowk, Ludhiana owner which is of Sh. Tara Singh (uncle of accused Surjit Singh) and pointed out a scooter, which he had purchased from Mulak Raj, Harnam Nagar, Ludhiana with money out of the money obtained from bank fraud by using fake bank drafts of SBI.....

The scooter alongwith documents have been taken into possession in the presence of signatories to the memo vide this recovery memo."

Recovery memo Ex. PW7/4

Expenditure receipt of visit made by convict Surjit Singh to Singapore.

Recovery memo Ex. PW8/1

Recovery of Rs. 1,38,000/- by withdrawal by convict Surjit Singh from savings bank account No. 3471 of the Indian Overseas Bank, Industrial Area, Ludhiana.

Recovery memo Ex. PW8/2

Recovery of Rs. 71,000/- from bank account No. 3536, Indian Overseas Bank, Industrial Area, Ludhiana, which was opened in the name of Jasbir Singh.

Recovery memo Ex. PW9/3

Recovery of Rs. 2,00,000/- which the accused Surjit Singh had given in cash to Sh. Kishan Singh on 16.07.83, for purchase of Agricultural land.

Recovery memo Ex. PW9/11

Recovery of Rs. 3000/- which the accused Surjit Singh had given in cash to Sh. Doctor Parshotam Lal, Prop. Verma Clinic, on 13.07.83.

Recovery/seizure memo Ex. PW10/2

Recovery of Rs. 2,00,000/- which he had kept concealed in a steel box in the house of Baljinder Singh.

Recovery memo Ex. PW10/4

Recovery of Rs. 50,000/- which the accused Surjit Singh had given in cash to Sh. Bhagwan Dass, on account of purchase of residential plot.

Recovery memo Ex. PW 12/2

Recovery of Rs. 62,000/- which the accused Surjit Singh had given in cash to Sh. Tara Singh son of Sh.Shyam Singh.

Recovery memo Ex. PW25/1

Recovery of Rs. 1,20,000/- (in cash), 6 gold bangles (114 gms), one pair gold ear ring, one gold necklace and various other articles/documents. The said recovery was got effected from a locked steel trunk, at the instance of the accused from the house of Sh. Sudarshan Sharma.

Recovery memo Ex. PW 26/1

Recovery of Rs. 1,71,712/- from bank account No. 13112, Bank of Baroda, Industrial Area-B, Ludhiana.

Disclosure Statements of other co-accused and consequent thereto recoveries.

23. During the course of investigations, being made into the appeal FIR, convicts-Ram Pal (since expired), Kuldeep Kumar (proclaimed offender), Sushil Kumar (expired during trial), made their respective signatured disclosure statements, to which Ex. PW18/37 /

Ex.PW39/2, Ex. PW11/3 / Ex.PW18/44 and Ex.PW11/1 become respectively assigned.

24. Pursuant to the makings of the above said signatured disclosure statements, the accused ensured effectuations of recovery(ies) of the relevant incriminatory items, which were taken into police possession through the respectively made recovery memo(s), as detailed in the hereinafter extracted manner.

Name of the convict	Disclosure Statement	Recovery
Ram Pal	Ex.PW18/37 Ex. PW39/2	He got recovered a scooter vide recovery memo Ex. PW9/4, which he purchased out of the fraud money obtained by using fake drafts of SBI.
		He got recovered a process camera with lens, one wooden tray used for preparation of blocks, one printing frame and one kerosene stove vide recovery memo Ex. PW9/7.
		He got recovery of Rs. 2,43,480/- from bank account which was opened by the accused in the name and style of Shiv Enterprises through recovery memo Ex. PW69/1.
		Recovery of Ambassador Car from the nephew of Ram Pal one Rakesh Kumar through recovery memo Ex. PW67/A.
Kuldeep Kumar	Ex. PW11/3 Ex.PW18/44	He got recovered a scooter vide recovery memo Ex. PW9/6, which he purchased out of the fraud money obtained by using fake drafts of SBI.
Sushil Kumar	Ex.PW11/1	He got recovered a scooter vide recovery memo Ex. PW 12/1, which he purchased out of the fraud money obtained by using fake drafts of SBI.

<u>INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).</u>

25. Moreover, when in pursuance to the signatured disclosure statements as made by the accused concerned, the latter ensured the apposite effectuations of recoveries thus, at their respective instances to the investigating officer concerned. Resultantly the respectively validly drawn disclosure statements and the respectively validly drawn recovery memo(s), do comprise clinching and cogent evidence for constraining this Court to conclude that thereby the charge drawn against the accused becomes proven to hilt.

<u>Reasons for agreeing with the reasons made by the learned trial Judge concerned for acquitting accused Rakesh Kumar.</u>

26. Admittedly co-accused Rakesh Kumar is the nephew of accused Ram Pal. Though accused Ram Pal made an inculpatory disclosure statement to the effect, that from the money withdrawn from the fictitiously opened bank accounts, he purchased Ambassador Car for a sum of Rs. 80,000/-, thus in the name of co-accused Rakesh Kumar. Though therein he has also stated that both he and co-accused Surjit Singh paid Rs. 40,000/- each, towards the total sale consideration of Rs. 80,000/-. Moreover, though the recovery of the said Ambassador Car was effected at the instance of Rakesh Kumar, but yet unless there was evidence existing on record, thus displaying that the nephew of accused Ram Pal was in the know that his uncle accused Ram Pal, had made fictitious withdrawals from fictitiously opened bank accounts, therebys no finding of conviction could be recorded against him.

27. However, reiteratedly since there exists no evidence with candid speakings thus to the above effect, therefore, merely on the

disclosure statement of co-accused Ram Pal, no finding of conviction can be recorded against accused Rakesh Kumar.

Reasons for agreeing with the reasons made by the learned trial Judge concerned for acquitting accused Ravi Shanker.

28. The allegation against accused Ravi Shanker are that he alongwith accused Mohinder Nath Tiwari (proclaimed offender) had prepared blocks of the bank demand drafts in their shop at Laxman Nagar, Miller Ganj, Ludhiana. However, since no recovery became effected of the blocks allegedly prepared by accused Ravi Shanker nor any amount of fraud monies became recovered from him.

29. Therefore, it can be forthrightly stated that the charge drawn against the accused was not well founded nor also when no recovery of money became effected at his instance, in pursuance to the inculpatory disclosure statement being made by accused Ram Pal, therebys, reiteratedly the finding of acquittal recorded against him is required to be affirmed and maintained as such.

Final Order of this Court.

30. In consequence, there is no merit in the appeal (***CRA-S-643-SBA-1998)*** and, the same is dismissed. The impugned verdict of acquittal, as made qua accused Rakesh Kumar and qua accused Ravi Shanker, by the learned trial Court concerned, is maintained, and, affirmed.

31. For all the reasons (supra), the connected petition bearing number ***CRR-1410-2005*** is dismissed. The impugned concurrent verdict(s) of conviction, and, consequent thereto sentence(s) (supra), as

imposed upon the convict-petitioner by the Courts below, are affirmed and maintained.

32. If the convict (supra) is on bail, thereupon, the sentences(s) as imposed upon the convict-petitioner, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

33. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.

34. Since the main case itself has been decided, therefore all the pending application(s), if any, also stand(s) disposed of.

35. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

18.09.2024

kavneet singh

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