2024:PHHC:044061

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

122 **CRM M-13472 of 2024 (O&M)**
Date of Decision: 15.03.2024

Santosh Kumar ...Petitioner

Versus

State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Nitin Sherwal, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to quash the impugned order dated 12.01.2024 (Annexure P-5) passed by the Court of Chief Judicial Magistrate, Barnala and the impugned order dated 14.02.2024 (Annexure P-7) passed by the Court of Additional Sessions Judge, Barnala, whereby, the application filed by the petitioner/accused under Section 319 Cr.P.C. for summoning the respondents No.2 and 3 as additional accused had been rejected.

2. As per the case of the prosecution, Sanjay Kumar Srivastava, respondent No. 2 had lodged one FIR No. 84 dated 11.04.2015 under Sections 406, 408, 409, 467, 468, 471 read with Section 120-B of IPC against the present petitioner and the said Fir has been reproduced below:-

> *"To the Senior Superintendent of Police (SSP) District Barnala (Punjab).*

Sir, with due respect the applicant Sanjay Kumar Srivastava s/o Sri Udit Narayan Lal Srivastava presently working with Sahara India Parivar as Sector Manager Worker as Sector Office Patiala situated at Lower Mall Road, opposite Pollo Ground, above Indian Bank, IInd Floor Patiala (Punjab) begs to submit that the organization of the applicant is a financial commercial institution and carries its business across the country through various branches and franchisees offices. A franchisee office of the applicant's company, under the administrative control of Sector Office Patiala is situated at B-11/1152, IInd Floor opposite Rimpy Studio, K.C. Road, Barnala (Punjab) under the territorial jurisdiction of Police Station Barnala City. The above Franchisees Office is run and operated by Sri Santosh Kumar s/o Sri Ramashish, permanent residence of village Patiosi Ashant, Police Station Bishanpur, District Darbhanga (Bihar) and presently having residence at H. No. 30873/ 30775, Gali No. 15, Jogi Nagar, Bathinda (Punjab) since 15.01.2013. Sri Santosh Kumar has been working as agent (Code No. 270010516), since very long, in the organization of the applicant. Apparently, as a franchisees guardian, Sri Santosh Kumar was executing and performing his responsibilities satisfactorily. However in the month of Feb 2014, it came to the notice of the applicant, for the 1st time, that one of the esteemed depositor of the company has lodged complaint before the DCP City, District Bathinda (Punjab) with allegations that Sri Santosh Kumar had collected money from various depositors but failed to deposit the same in their company's accounts properly. Therefore inquiries were being conducted by the Bhatinda Police form Branch

Office of the company at Bhatinda and the above said franchisee office of the company at Barnala and that the party ledgers of the some depositors/ account holders were being demanded by the police. Guessing and understanding the seriousness of the issues the applicant tried to get revealed the information of the incidence from Sri Santosh Kumar, but he avoided to give any reply, response and information. Thereafter, Sri Santosh Kumar absented himself from the franchisees office and consequently from the work field. In absence of Sri Santosh Kumar from the franchisee office, the applicant immediately appointed a permanent staff of the company to take over the control of the franchisee office and over Sri Om Prakash, the office staff appointed by Sri Santosh Kumar, in order to avoid inconvenience to the esteemed account holders of the above franchisee office. In continuance of the same when the applicant started inquiry on the transactions over most of the accounts operated by Sri Santosh Kumar through his Franchisee office, it transpired that there was a shortage of Rs. 2,52,165/- of cash in hand at the franchisee office. There were false entries of bank deposits of Rs. 42,000/- in the day book, while the above amount was actually not deposited in the bank. The maturity payment of few account holders to the tune of Rs. 76,430- was received in cash by preparing and producing false and fabricated documents bearing forged signatures of the parties. The maturity payments of few account holders to the tune of Rs. 74,023/ received through different cheques by preparing and producing false and fabricated documents bearing forged signatures of the parties. Moreover, the secured loan to the tune of Rs. 12.69,810/- on the *accounts of same account holders were also received by Sri Santosh Kumar through different cheques by preparing and producing false and fabricated documents bearings forged signatures of the parties. The above documents relating to the above fraud, forgery and embezzlement are in possession of the applicant. Thus, the applicant has recognized a case of total embezzlement of Rs. 17,24,428/-by franchisee office Barnala of the Company. The in-depth inquiry has revealed that the various payment cheques reflected to have been made to the parties in day books, have actually been cleared in Saving Bank Account No. 5014679907-1 of Sri Santosh Kumar at Barnala Branch of Allahabad Bank and in saving bank account No. 5007853386-9 of Sri Om Prakash, his office staff, at Barnala Branch of Allahabad Bank. It is clear from the transactions that the embezzlement of above money has been made by Sri Santosh Kumar either personally or in collusion with his staff, Sri Om Prakash by using their saving Bank Accounts in Allahabad Bank at Barnala, preparing and producing forged and fabricated documents, containing the forged signatures of the parties and consequently committed the offence of forgery, fraud, cheating and embezzlement etc. Sri Santosh Kumar has committed fraud, not only to the applicant's company but also to various account holders of the company. Till now, the maturity payment and secured loan payments on the accounts on which the applicant has conducted inquiry and detected fraud, it has been noticed and observed that the majority of the cheques have been cleared in the accounts operated by Sri Santosh Kumar and his staff, Sri Om Prakash in Barnala Branch of Allahabad Bank.*

However it is felt and suspected that the maturity payment and secured loan payment of few or more other accounts might have been taken by clearing the cheques in some other accounts which could not be detected in due diligence. However the fraud over these accounts may be detected on the basis of actual complaints in future. It is important to point out here that the accounts on which forged secured loans have been taken by Sri Santosh Kumar; the company owes interest liability day by day to such account holders. When the applicant pressurized Sri Santosh Kumar and his family to immediately recover the embezzled amount and reconcile the accounts of the company, his father came forward to meet the deficit of Rs. 2,62,165/- which was short of cash in hand, but with respect to the balance recovery he refused to meet out the same and suggested to recover that part from Sri Santosh Kumar only. Since Sri Santosh Kumar is absenting from his franchisee office and work field, he is trying to contact telephonically only. Now Sri Santosh Kumar is not picking up the calls of the applicant or any official of the company. At earlier stage the above embezzlement was admitted verbally by Sri Santosh Kumar and it was assured that he shall get recovered the above amount very soon. Recently, he has declined to make payment of embezzled amount and instead threatened the applicant that he shall cause damage to the person and properly of the applicant or any other person of the company who approaches him or his family in this regard. Presently Sri Santosh Kumar is absconding and is not traceable. Therefore the applicant requests your good self to register the first information report of the applicant under the appropriate sections and provisions of IPC and other *applicable laws against Sri Santosh Kumar s/o Sri Ramashish, permanent resident of village Patiosi Ashant, Police Station Bishanpur, District Darbhanga (Bihar) and presently residing at H. No. 30873/ 30775, Gali No. 15, Jogi Nagar, Bathinda (Punjab) and having Mobile Nos. 8550632894, 9653588387 and 9815599415, and also against any other persons with whose assistance he has committed the serious offences of forgery, cheating. fraud, breach of trust and prepared/submitted forged documents of maturity/secured loan papers of various account holders and making forged signatures also on these documents, making forged entries in day book of the company and thereby embezzlement of huge sum of money. The relevant documents regarding the case shall be made available/ provided to the investigation officer during the investigation.*

Thanking You,

sd/- Sanjay Kumar Srivastava, Sector Office, Sahara India Pariwar, Lower Mall Road, Opposite Pollo Ground, Above Indian Bank, IInd Floor, Patiyala (Punjab) +91-9316982309 Date: 28.06.2014. C.C.: Station House Officer (SHO) Police Station: Barnala City, District: Barnala (Punjab)".

3. Learned counsel for the petitioner contends that after the completion of the investigation, a report under Section 173 Cr.P.C. was presented against the present petitioner/accused and his co-accused, namely, Om Parkash son of Sohan Singh. Thereafter, the trial Court held that a *prima-facie* case under Sections 406, 408, 409, 467, 468, 471 read with Section 120-B IPC was made out against the petitioner and his co-accused and charge was ordered to be framed

against them. During the course of trial, Sanjay Kumar Srivastava, respondent No.2/complainant appeared as PW2 and admitted that he and respondent No. 3 were the only authorized signatories to issue all the cheques relating to payments of Franchisee Office at Barnala at the time of embezzlement and he had further admitted that the cheques, which were encashed were signed by him and respondent No. 3. Thus, both of them were also liable to be prosecuted alongwith the present petitioner. Learned counsel further contends that the petitioner had been working on the aid and advice of respondents No. 2 and 3 and the cheques were issued by respondents No. 2 and 3, who were duly authorized to issue cheques and had not delegated any powers to the Franchisee Office. Apart from that, the respondent No. 2 was in administrative control of Franchisee Office of the petitioner and the application under Section 319 Cr.P.C. had been wrongly declined by the trial Court as well as by the Revisional Court.

4. I have heard the learned counsel for the petitioner and perused the record.

5. No doubt, the provisions of Section 319 Cr.P.C. confers powers on the trial Court to summon any other person as an additional accused to face the trial alongwith the co-accused already facing trial, however, such discretion has to be exercised against the proposed accused in the light of evidence available and such discretion has to be exercised with circumspection and not in a casual and cavalier manner. In the present case, while declining the prayer of the

petitioner, the following observations have been made by the Revisional Court:-

> *"The revision petitioner has filed the application under section 319 Cr.PC only on the ground that complainant Sanjay Kumar Shrivastava, while appearing in the witness box as PW2 has stated that he along with Ramesh Yadav were the only authorized signatories to issue cheques relating to the payment of the Franchisee Office at Barnala at the time of alleged embezzlement and the cheques were admittedly signed by said persons and therefore there they are liable for the embezzlement. The trial court while considering the summoning of the accused under section 319 Cr.P.C has perused the entire record and has rightly observed that before registration of the FIR of the present case, an inquiry was conducted by the EO Wing and in the said inquiry, accused Santosh Kumar did not appear to record his statement. No such allegations as have been taken in the present application have been ever raised by accused during the course of inquiry and investigation. Furthermore, merely because the cheques were signed by Sanjay Kumar Shrivastava and Ramesh Yadav, same does not make them accused in the present case, especially when it has come on record that said cheques were signed by Sanjay Kumar Shrivastava and Ramesh Yadav in due course of practice and same were later on misused by the accused along with Om Parkash. Further, in the considered opinion of this court, the trial Court has to exercise the power under Section 319 Cr.P.C only if*

> *the Court feels satisfied that there are sufficient grounds for summoning of the additional accused. In each and every case, the said power cannot be exercised. Otherwise, the evidence collected by the investigating agency would be of no value at all. Moreover, the cross examination of the complainant is still incomplete and not concluded and other prosecution witnesses are yet to be examined. Hence, the trial court has rightly appreciated the facts and evidence available at this stage and has passed the impugned order. With due deference, there is no dispute about the ratio of law laid down in* ***Bholu Ram's case (supra)*** *relied upon by the counsel for the revision petitioner, but the said ruling is not applicable to the facts of the present case due to distinguishable facts".*

6. Even, this Court has carefully perused the findings recorded by the trial Court as well as Revisional Court and find no ground to interfere with the well reasoned impugned order. The FIR in the present case was got registered by Sanjay Kumar Srivastava respondent No. 2 and the matter was thoroughly investigated by the Economic Offences Wing. During the course of investigation, it was found that the franchisee office, which was run and operated by Santosh Kumar, petitioner was under the administrative control of respondents No. 2 and 3. However, the petitioner had collected the money from various depositors, but failed to deposit the same in the account of the company. Moreover, when the fraud came to the knowledge of the higher authorities, the petitioner absented himself

from the franchisee office. Even during the course of inquiry, it was found that there was shortage of cash at hand in the franchisee office and false inquiries were made in the day book by the petitioner without the knowledge of the higher officers. Apart from that, it was also established from the record that embezzlement of the money was made by petitioner in collusion with the staff posted at franchisee office and the signed cheques were misused by him, which were handed over to him for smooth running of the franchisee office. It was also established that the petitioner had received blank account payee cheques for the administrative working of franchisee office, but the same were got encashed by the petitioner illegally and had cheated the complainant-company. Even, the detailed findings have been recorded by both the Courts below and there is no ground to interfere with the said findings. Thus, finding no merit, the present petition is ordered to be dismissed.

15.03.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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