

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30758-2014 (O&M)
Reserved on: 12.01.2024
Pronounced on: 20.01.2024

Ram Parkash Bansal
... Petitioner(s)
Versus
State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Yogesh Goel, Advocate,
Mr. Vishwas Bansal, Advocate and
Mr. Lakshay Goel, Advocate
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab with
ASI Gulsher Singh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	6.8.2009	Vigilance Bureau, Ludhiana	7, 13(2) of the Prevention of Corruption Act, 1988

1. The petitioner, an advocate by profession, seeking quashing of Kalandra u/s 182 IPC and consequential orders in FIR captioned above, had come up before this Court by filing the present petition under Section 482 CrPC on Sep 4, 2014.
2. Facts of the case are being extracted from reply dated 1.12.2014 filed by the State by way of affidavit of the concerned DySP, which reads as under: -

“1. That the brief facts of the case are that the present petitioner approached the DSP, Vigilance Bureau, Ludhiana leveling allegations that he is a practicing lawyer and one Nirdosh Singla had moved two applications against The Ludhiana Kalyan House Building Cooperative Society in which the petitioner is a counsel for the said Society and the said two applications are pending before Sh. Dharmadesh, Assistant Registrar, Cooperative Societies, Ludhiana. It was further alleged that the proceedings are pending and no final decision is being given on these applications by the said Assistant Registrar and in this connection, the

petitioner had met the said Assistant Registrar Sh. Dharmadesh on 03.08.2009. It was further alleged that said Sh. Dharmadesh demanded Rs. 40,000/- bribe from the present petitioner for deciding the said two applications in favour of the society for which the petitioner was counsel. It was further alleged by the petitioner that the matter of bribe has been settled at Rs. 20000 /. Accordingly, the petitioner approached the then DSP, Vigilance Bureau, Ludhiana and after completing the formalities, the tainted money of Rs. 20,000/- was handed over to the petitioner for further handing over the same to the said officer. However, during the raid, the colour of the hands of the said officer did not changed nor the tainted money was recovered from the personal possession of the said officer. Ultimately, the tainted money was recovered from the vacant upper portion of a drawer of a separate table lying in front of the table of the said officer Sh. Dharmadesh."

3. Counsel for the petitioner submits that the *Kalandra* in question deserves to be quashed for the reason that simply because when hands of the accused Dharmadesh, Assistant Registrar, Cooperative Societies, Ludhiana were put into the glass of water containing a mixture of sodium carbonate, it did not turn into pink color, and it was made out that the accused had not taken bribe and the allegations made by the petitioner-complainant were false. The DySP concerned had duly applied phenolphthalein powder on currency notes and handed over to the petitioner-complainant to further give it to accused Dharmadesh, Assistant Registrar, Cooperative Societies, Ludhiana.

4. The petitioner's case is that simply because the money was not recovered from the accused's possession but from the open space over the drawer of the accused's table would also not mean that he had not accepted the bribe. Instead, the State had wrongly concluded that the accused was innocent.

5. His next contention is that while there is no finding that the complaint is false and as such, at the most, he should be given the benefit of the doubt.

6. On the contrary, the State has strenuously opposed the present petition on the grounds that the petitioner had implicated an honest officer, which would demotivate the Government officials. State's counsel has referred to paragraph 2 of the reply, based on which they seek dismissal of the petition, which read as follows: -

"2. That thereafter, it was revealed that the said two files of the petitioner stood transferred to the Assistant Registrar Cooperative Societies, Jagraon on 30.07.2009 i. e. prior to the raid by the Vigilance Bureau on 06.08.2009. Thus, it means that on the date of raid, there was no motive to hand over the money to the said officer because there was no file/work of the petitioner pending before the said officer. It was further revealed that earlier during the hearing of the said two applications, there was exchange of hot words between the petitioner and the said officer Sh.

Dharmadesh and as a result of which the petitioner has falsely implicated the said officer in this case. Accordingly, the said FIR was cancelled and proceedings u/s 182 IPC were launched against the present petitioner. Hence, the present petition is liable to be dismissed on this ground alone."

7. I have heard counsel for the parties and gone through the pleadings.

8. After the completion of the investigation, the prosecution filed a closure/untraced report. However, vide an order dated 1.3.2011, the learned Special Judge Ludhiana ordered further investigation through some responsible officer, and at that time, the complainant and the accused were duly represented. After that, the investigator again sought cancellation/closure of the FIR. On this, the present petitioner preferred a protest petition on 23.2.2013, and the State of Punjab duly filed a reply to the said petition. It is relevant to extract the incriminating allegations levelled by the petitioner-complainant against accused Dharmadesh, Assistant Registrar, Cooperative Societies, Ludhiana, in Protest Petition, which read as under: -

"2.As per the directions of the D.S.P. Vigilance Bureau, Ludhiana I alongwith Vijay Singh, entered in the office of Sh Dharmadesh ARCS Gill Road Ludhiana and remaining members of the raiding party concealed themselves in a scattered manner outside the office. Sh Dharmadesh ARCS Ludhiana, demanded Rs 20000/- as bribe from me, as motive or reward for doing the above said work and on demand, I handed over twenty currency notes of the denomination of Rs 1000/- each, which were smeared with powder. Sh Dharmadesh received that amount and kept the same, above the drawers of his table and assured me that my work will be done. In the meanwhile Vijay Singh came out of the office and gave the requisite signal to the raiding party. Upon receipt of signal, the raiding party entered the office of Sh. Dharmadesh, DSP Vigilance Bureau, Ludhiana disclosed his identity as DSP Vigilance Bureau, Ludhiana to Sh. Dharmadesh and asked him about Rs.2000/- from him, which he had received as bribe from me and Sh. Dharmadesh pointed out the place to the DSP where he had kept Rs.20000/-....."

9. A bare reading of the allegations would point out that, as per the present petitioner, the accused Dharmadesh, Assistant Registrar, Cooperative Societies, Ludhiana, had received the bribe money. However, there is no allegation that he had received the bribe money with his own hands and kept the same over the drawer of his table. Had he received the bribe money with his own hands, then the glass of water containing a mixture of sodium carbonate would have turned pink the moment his hands were put into it, as DySP concerned had applied phenolphthalein powder on currency notes handed over to the petitioner-complainant. This would make all allegations of the accused receiving money doubtful.

10. The petitioner has filed the present petition with the following prayer: -

"It is, therefore, respectfully prayed that the present petition may be allowed and the Kalandra U/s 182 IPC registered vide Case bearing No. 250 dated 25.08.2010 pending in the Court of Sh. Jagdeep Sood ACJM Ludhiana (Annexure P-2), impugned order dated 16.08.2013 (Annexure P-6) and the Impugned order dated 19.03.2014 (Annexure P-7) along with all consequential proceedings arising from FIR No. 22 Dated 06.08.2009 U/s 7,13(2) Prevention of Corruption Act 1988 registered at Police Station Vigilance Bureau Ludhiana (Annexure P-1) may kindly be quashed."

11. It would also be relevant to refer to order dated 16.8.2013 (Annexure P-6), which reads as under: -

"That you the abovesaid accused on 6.8.2009 in the area of Vigilance Bureau one case against Dharma Desh U/s 3/17 (2) PC has filed on your statement during the trial of this case in Special Court you have resiled from your earlier given statement and thereby you committed an offence punishable under Section 182 IPC, and within my cognizance. And I hereby direct that you accused be tried for the abovesaid offence by this Court."

12. Based on this order, the concerned Court framed charges vide order dated 16.8.2013 (colly), which reads as under: -

"Arguments on notice of accusation heard and considered. On perusal and documents attached, prima facie, there is sufficient evidence to frame notice against the accused U/s 182 of IPC. Detailed expression of opinion is avoided as it is not necessary at this stage, in view of law laid down by the Hon'ble Supreme court of India in Kanti Bhadra Shah Vs State of West Bengal AIR 2000 SC522 and reiterated in Lal Parshad @ Lal Parshad Yadav Vs State of Bihar through CBI 2007 (1) RCR (Criminal) 365.

Accordingly charge have been framed, to which they pleaded not guilty and claimed trial. Now to come upon 14.10.13 for prosecution evidence. Let PW'S No. 1 to 4 be summoned for 14.10.13."

13. A perusal of the charge reveals that the sole reason for which the charge was framed under Section 182 IPC is that the present petitioner (accused) had resiled from his earlier statement. However, this, on the face of it, is contrary to the stand of the petitioner (complainant). The petitioner was the complainant, and he reiterated that he had paid a bribe to the accused Dharmadesh, Assistant Registrar, Cooperative Societies,

Ludhiana. Even in the protest petition, he had explicitly mentioned that he had paid money to the accused. However, he could not explain why the glass of water containing sodium carbonate did not turn pink when the hands of the accused were put into it. But it cannot be concluded that the powder applied on currency notes was phenolphthalein powder and the chemical mixed in the glass of water was only sodium carbonate. Given this, the petitioner cannot be blamed, and thus, he is entitled to the benefit of the doubt. Coupled with this, since the charge that has been framed is only that the petitioner had resiled from his previous statement, it is contrary to the petitioner's statement; as such, the order of framing of the charge cannot be sustained.

14. Given above, the present petition is allowed and the Kalandra (Annexure P-2), order dated 16.8.2013 (Annexure P-6) and consequent proceedings are quashed *qua* the petitioner.

Petition is allowed in the terms mentioned above. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

January 20, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes