

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1962-2016 (O&M)
Date of Decision: 24.01.2024

Raj Kumar ... Petitioner

VS.

State of Haryana ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SP Arora, Advocate, Mr. Himanshu Arora and Mr.Vijay Sheoran, Advocates (CRR-1962-2016)
Mr. KS Khehar, Advocate (CRR-1945-2016)
Mr. KS Banyana, Advocate (CRR-2008-2016)
for the petitioner

Mr. Pawan Kumar Jhanda, DAG Haryana

Sandeep Moudgil, J.

(1). This order shall dispose of CRR-1962-2016, CRR-1945-2016, CRR-2008-2016 and CRR-1928-2016 as issues involved are identical in nature. For the sake of order, CRR-1962-2016 is treated as the lead case.

(2). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment of conviction dated 13.05.2016 as well as the order of sentence dated 16.05.2015 passed by Additional Sessions Judge, Ambala in Criminal appeal No.279 of 2015 vide which the judgment of acquittal passed by JMIC, Ambala dated 27.04.2015 has been reversed and the petitioner was acquitted in case FIR No.193 dated 11.05.2010 under Sections 409/420/120-B IPC registered at Police Station Ambala City, Ambala.

(3). Notice of motion was issued on 26.05.2016 and therefore on 07.06.2016, the sentence of the petitioner was suspended. Thereafter, the matter was adjourned on numerous occasions until it came to be listed before this Court.

(4). The prosecution case as per report under Section 173 Cr.P.C. and other accompanying documents is that on 11.05.2010, a letter received by SHO Ambala City stating that the mutation of Bungalow No. 126-A, Staff Road, Ambala Cantt was sanctioned illegally by the officials of the Municipal Committee, Ambala Cantt without preparing a file. As per complainant all the accused persons were entrusted with file memo no. 56529 dated 29.10.2009 for obtaining the sanction order from the office of D.M. but the said file was misplaced from the table of Raj Kumar clerk and all the accused persons cheated the municipal committee by misplacing the said sanction order file and misappropriated the said file in order to provide benefit to the accused persons. Resultantly, the instant FIR was registered.

(5). Learned counsel for the petitioner submits that neither the District Magistrate nor any public person had ever made complaint with regard to alleged dishonest act by inducing accused person to deliver valuable property and so, no ingredients of Section 420 of IPC can be proved in the evidence of PW1 to PW12 in any manner and although, three accused were involved in FIR No.56 dated 15.02.2008 under Sections 420,465,468,471 and 120-B of IPC PS Ambala Cantt, but it does not mean that they being conspirators got misplaced police/judicial file in connivance with Raj Kumar Accountant from his custody, rather the said file was misplaced from the table of Raj Kumar and same was not recovered from anyone, so, if some unknown person took away the said file from the table of Raj Kumar, then the petitioner and other co-accused are not liable for committing offences under Sections 409 and 120-B of IPC.

(6). He further argued that learned trial court has appreciated the entire evidence in proper manner and there is no scope of interference in the findings

rendered by trial court inasmuch as the file in respect of FIR No. 56, against the three accused named in the FIR, which was stated to have been misplaced, for which the petitioner has been prosecuted, was reconstructed and sanction was granted by the competent authority and in such circumstances there could not be any presumption of connivance as the petitioner himself submitted note to the Deputy Commissioner expressing his suspicion on Jai Bhagwan-accused having taken away the file from his table.

(7). Learned State counsel, on the other hand, submits that the order of conviction passed by the Additional Sessions Judge, Ambala has been passed by considering the material evidence and documents i.e. site plan, recovery memo etc. and upon careful reading of the same, the appellate Court has found that the prosecution has proved its case beyond reasonable doubt wherein Sections 409, 420, 120-B IPC are fulfilled against the petitioner and other co-accused and as such, the instant petition deserves to be dismissed.

(8). Heard learned counsel for the parties and gone through the record.

(9). A perusal of the impugned judgment passed by the Appellate Court vis-à-vis the trial court judgment as also the record, it becomes clear that there is no direct evidence on case file which can prove that the petitioner and other accused persons committed offences as incorporated in the FIR as there is no independent witness who was examined by the prosecution despite availability and the investigating agencies failed to explain as to why no witness from public was joined during investigation.

(10). The appellate Court has drastically misread the judgment of the trial court and failed to appreciate that there are lot of contradictions in the testimonies of the prosecution as it came on record before the trial court that the

prosecution witnesses were seem to have been tutored which did not inspire any reliability or trust-worthiness. What is astonishing is that the Appellate Court has not considered the fact that PW9 Jai Ram who is complainant in this case has stated that he was not having any personal knowledge about this case and no personal investigation of this case has been conducted by him and besides that, PW5 SI Prem Chand, stated that no recovery has been effected from the accused persons.

(11). Coming to the ingredients of the FIR, it is of paramount importance that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

(12). In the case of **State of Kerala v. A. Pareed Pillai and another, AIR 1973 SC 326** the Supreme Court ruled that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfill the promise. Similar view has been taken in the case of **S.W. Palanitkar and others v. State of Bihar & another (2002) 1 SCC 241** and also in the case of **State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661.**

(13). The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in **State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. AIR 1982 SC 949** and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR.

(14). At this stage, it would be appropriate to reproduce the content of the judgment passed by the trial court which has gone unnoticed by the Appellate Court and resultantly the petitioner has been convicted. Para 17 & 18 of the trial court judgment read as under:-

“17. The authorities quoted by learned APP for the state are not applicable to the present facts and circumstances. The complainant has completely weakened the case of the prosecution particularly in his cross examination where in he has expressed his ignorance with regard to the contents of the complainant as well as culpability of the accused persons. It is further significant to mention that Prem Chand who is star witness and investigating officer in the present case has deposed that recovery has not been effected from the accused person. The prosecution witnesses have also failed to establish that prior to prosecution of accused, sanction was obtained from District Magistrate or not which

further was mandatory requirement. In short nothing incriminating has come on case file against the accused person.

18. There is nothing on case file through which it can be deduced that there was criminal breach of trust or deception by accused. The dishonest intent from the very beginning or later on has not been proved. The prosecution has failed to lead any cogent and convincing evidence to prove ingredients under sections 409, 420 & 120-B IPC.”

(15). From a reading of the above reproduced portion of the judgment of the trial court, it can be seen that the complainant himself was not aware and expressed his ignorance with regard to the contents of the complaint as well as culpability of the accused persons including the petitioner. Even the starred witness Prem Chand, who is the investigating officer in the present case has deposed that recovery has not been effected from the accused person.

(16). In the light of above discussion, this petition is allowed and the judgment of conviction dated 13.05.2016 as well as the order of sentence dated 16.05.2015 passed by Additional Sessions Judge, Ambala in Criminal appeal No.279 of 2015 is set aside and the judgment passed by JMIC, Ambala dated 27.07.2015 whereby the petitioner was acquitted in case FIR No.193 dated 11.05.2010 under Sections 409/420/120-B IPC registered at Police Station Ambala City, Ambala is upheld.

(17). Ordered accordingly.

24.01.2024

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No