

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2127-2019 (O&M)
Date of Decision: 18.04.2024

Parveen Kumar

... Petitioner

VS.

Sarabjit Singh Kandhari,
Chief Agriculture Officer & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SS Sidhu, Advocate for the petitioner

Mr. Gaurav Chopra, Sr.Advocate with
Mr. Saurabh Arora, Advocate and Mr. Mohit Giri, Advocate for
respondent No.1

Mr. Aman Kumar, Advocate for
Mr. JS Grewal, Advocate for respondents No.2&3

Sandeep Moudgil, J.

(1). This criminal revision petition under Section 401 CrPC has been filed by the petitioner seeking to quash the part of the order dated 29.03.2019 whereby the direction issued by the trial court against registration of FIR against respondent No.1 to 3 regarding manipulation of the record for framing the petitioner and other five innocent persons in a false criminal case, has been set aside by the appellate Court.

(2). On 23.02.2004, Sukhdev Singh, Fertilizer Inspector Gidderbaha along with A.C.E.O. Gidderbaha visited the petitioner's shop, namely, M/s Kamal and Company, Gidderbaha under the power vested with him under Section 28 of Fertilizer Control Order, 1985. He disclosed his identity and intimated his desire to draw the sample of single super phosphate 16% (Granulated) manufactured by M/s Jubilant Organosys Ltd. Jyotiba Phule Nagar. Sukhdev Singh, Fertilizer Inspector checked the record and found 22

bags of 50 kilograms each of fertilizer in stock register. After following due procedure, samples along with Form 'J' and 'K' were drawn and on 24.02.2004, the same were deposited with Chief Agriculture Officer, Muktsar. One portion of the sample along with Form 'K' was sent to Analytical Chemist Fertilizer Quality Control Laboratory, Faridkot, vide letter No.33 dated 26.02.2004 through Narinder Kumar, Beldar, Muktsar, who deposited the sample on the same day. The Analytical Chemist Fertilizer Quality Control Laboratory, Faridkot, sent the analysis report and declared that, "The sample is not according to the specifications and fails in nutrient content and seal found intact." Show cause notice dated 01.04.2004 was served to the above said firm and after giving an opportunity of personal hearing, the license of selling fertilizers in retail was cancelled on 13.05.2004 alleging that the dealer firm M/s Kamal & Company, Gidderbaha, and its sole proprietors Vijay Kumar and Parveen Kumar offered for sale and stocked the non-standard fertilizer and are liable for prosecution under Section 7 of Essential Commodities Act 1955 having violated clause 19(a) of Fertilizer 5 Control Order, 1985. Hence the complaint was filed by Sarabjit Singh Kandhari, Chief Agriculture Officer, Muktsar. The trial Court vide judgment dated 15.04.2013 dismissed the said complaint, the relevant portion of which reads as under:-

"Before parting with the judgment, this Court is of the considered opinion that CW4/Sukhdev Singh, CW5/Vinod Kumar and complainant/Sarabjit Singh Kandhari, the then Chief Agriculture Officer, Sri Muktsar Sahib manipulated the record in order to frame the accused falsely by making entries in the stock register. The accused faced trial for seven years. It is pertinent to mention that the courts of law are flooded with frivolous litigation and

common people are suffering. The aforesaid three persons misused their authority. In these circumstances, this Court directs that an FIR be registered against these persons, who hatched a conspiracy in order to frame the accused and committed the offence of forgery and put the official proprietary at stake. A copy of this judgment along with certified copies of cross-examination of CW4 and CW5 be sent to the Ld.SSP Sri Muktsar Sahib for doing the needful, within a period of 15 days from the date of receipt of same, under intimation to this Court...”

(3). The complainant along with two other officers of the Agriculture Department filed appeal and vide judgment dated 29.03.2019, the Addl. Sessions Judge, partly allowed the appeal whereby the direction issued by the trial court for registration of FIR against the appellants was set aside while keeping intact the findings of the lower court qua acquittal of the petitioners. The petitioners are before this Court in revision to challenge the above said portion of the direction issued by the Appellate Court.

(4). Learned counsel for the petitioner contends that the lower appellate court has erroneously upset the well reasoned and justifiable judgment passed by the trial court inasmuch as the respondents were found in manipulation of the record for framing the petitioner and other five innocent persons in a false criminal case. He submits that the lower appellate court did not appreciate the evidence on record as well as statements of CW4 i.e. respondent No.2 who himself have admitted to have fabricated the record and documents to implicate the petitioner and others due to which the petitioner faced criminal trial and investigation for 9 years without there being any fault on their part.

(5). It is then averred that the lower appellate court failed to take into consideration the fact that in pursuance to the directions issued by the trial court, FIR No.74 dated 13.06.2013 was registered against respondents No.1 to 3 under Section 420/465/467/468/471/120-B IPC wherein the challan has already been presented against the respondents No.1 to 3 and even a petition preferred by them before this Court seeking quashing of the said FIR, has also been dismissed by this Court.

(6). Mr. Gaurav Chopra, learned senior advocate appearing on behalf of respondent No.1 contends that the Complaint filed against the petitioner was meritorious and the trial Court should have convicted the petitioners of the offences under the Fertilizer Control Order 1985 and the Essential Commodities Act, 1955 inasmuch as it was proved beyond doubt that the samples were taken from their premises as has been admitted by them in the letter dated 26.05.2004 which have been proved to be of sub-standard quality as is apparent from Chemical Examiner Report.

(7). It is argued that the assertion that petitioner-Parveen Kumar was not present at the premises and that his signatures are forged is false in view of the fact that Form 'J' has been signed by himself only and there was no occasion for the raiding party to have allegedly forged the signatures of Parveen Kumar on Form 'J' and therefore, he was present at the shop in question. He admitted the fact that no appeal/revision was filed against the acquittal of the petitioners vide judgment dated 15.04.2013 passed SDJM, Gidderbaha.

(8). On the other hand, reply has been filed on behalf of respondents No.2 & 3 wherein it has been averred that the trial court by misreading the evidence and without reading the complete prosecution had passed wrong

observations as the alleged incident is of dated 23.02.2004 and as per the evidence of prosecution, CW-4 Sukhdev Singh (retired APPO) has never signed on any entry prior to 23.02.2004 and he never signed the entry of October 2003 and as such the original register prior to 23.02.2004 was with the petitioner and the said entries were made by him.

(9). Mr.Aman Kumar, Advocate appearing for Mr. JS Grewal, Advocate on behalf of respondents No.2&3 vehemently argued that PW4 (*sic* CW4) answered the said question that it is “in-correct”, but due to typographical mistake by the trial court, the said ‘in’ could not be typed and a reading of the evidence of CW-5 has cleared this confusion, but the learned trial court without going through the complete evidence of prosecution and by adopting pick and choose policy, passed the impugned order.

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

(11). From a bare perusal of the statement of CW4 Sukhdev Singh, it emerges out that the said respondent No.2 was categorical in deposing that "It is **correct** that thereafter we manipulated the register at point DX, DX1, DX2 and Ex.D4 at Sr. No.6 and 7 of October 2003 and thereafter we showed 22 bags of super phosphate to implicate the present case against the accused." It was further admitted by respondent No.2 that neither there was any stock available on 23.02.2004 i.e. the alleged date of taking sample nor there was any business being conducted by petitioner’s shop M/s Kamal and Company. Respondent No.2 has further categorically admitted the factum of compromise Ex. D5 and there is no denial by the respondent No.2 that original stock register was taken by him after the said compromise as he admits that thereafter, they manipulated the said register to implicate the petitioners.

(12). Similarly, respondent No.3 Vinod Kumar (CW5) in his statement has also admitted his signature Ex. D5 and submitted that as per record, stock of super phosphate was shown as nil on 06.10.2003 of M/s Kamal and company. In fact, it has come on record before the trial court that Vijay Kumar Sharma who is the sole proprietor of M/s Kamal and company also had specifically mentioned in statement under Section 313 CrPC that his above-named shop was lying locked due to his illness and he has conducted no business during the said period when the alleged raid was conducted and further there was no stock lying on the alleged date of taking sample nor he was conducting any business on the alleged date.

(13). Learned counsel for the petitioners exhorted that respondent No.2 and 3 were demanding bribe from them as is evident from the statement made by Vijay Kumar who deposed that he had made complaints against respondent No.2 and 3 (Ex.CW4/P and Ex.CW4/G and Ex. DA) and feeling perturbed by these complaints, both Sukhdev Singh and Vinod Kumar (respondent No.2 and 3) approached Yashpal who was the President of pesticide dealer union, Gidderbaha and they represented before the said president that they have falsely implicated him and they also requested that he should get the matter compromised with him otherwise their families will be ruined. The said Yashpal got effected the compromise in writing, which is placed on record before the trial court as Ex. D5 and at that time Sukhdev Singh (respondent No.2) asked Yashpal to get the stock register and other papers from him because the matter was patched up. Relying upon Yashpal, he handed over his stock register as per their desire (Ex.D3. and Ex. D4) and respondent No.1 to 3 thereafter manipulated false entries in his stock register and filed the complaint.

(14). Another astonishing aspect that drew attention of this Court is to the allegation made by the respondents that the trial court manipulated the statement made by CW4 Sukhdev Singh inasmuch as the statement drawn on papers by the trial Court is different than the one actually affirmed by respondent No.2 Sukhdev Singh since the cross-examination of CW4 and CW5 has in fact been wrongly recorded by the trial court. At this stage, it would be apposite to reproduce para 8 of the grounds of appeal filed by the respondents before the Appellate Court which reads as under:-

8) That the learned lower court pointed out some contradictions and admissions made in statement of CW4 Sukhdev Singh and CW5 Vinod Kumar appellants. The said contradictions and admissions occurs due to passage of time. Evidence of witnesses made in examination in Chief as well as cross examination is to be read as a whole not in parts. So, if the statement is read as whole than there is no flaw in the statement made in examination in chief and cross examination. It is well settled law if minor contradictions and admissions made with the passage of time and if any such contradiction have took place that are not fatal to the case of complainant/ prosecution and same are liable to be ignored”.

(15). Respondents No.1 to 3 cannot be allowed to blow hot and cold simultaneously, as on one hand, it is admitted that there are contradictions and admissions which has occurred due to passage of time in the statements made by respondents No.2&3 whereas on the other hand, in their reply, a ground is being made to show that the trial Court recorded the statement/cross-examination wrongly as the respondent No.2 never answered the court's suggestion in affirmative.

(16). A perusal of the judgment of the trial court would show that CW4 & CW5 – respondents No.2 & 3 were confronted with Ex.D5, they admitted their signatures after admitting its contents as also the existence of entries and the trial court, after perusal of the copies of stock register proved on record, came to the conclusion that manipulations were made in order to frame the petitioners

(17). Moreover, there is nothing on record to show that the respondents ever filed any protest petition or objection before the trial court or any other superior court seeking a direction for carrying out typographical error in the statement. To raise aspersion against the conduct of the trial judge in casually recording the statements/cross-examination without any valid ground or evidence is contemptuous and needs to be snubbed.

(18). As regards the counter-submission made by the respondents that the trial court ought to have conducted a preliminary inquiry under Section 340 CrPC is not sustainable in the eyes of law simply for the reason that none of the offence has been committed during the proceedings of the trial by the respondents No.1 to 3. Whatever offence they have committed as admitted by respondent. No.2 in his evidence was already committed even before the filing of the complaint with the sole motive to implicate the petitioners by manipulating the documents in their custody and forging them to make a false and frivolous complaint against the petitioners.

(19). Section 340 CrPC, deals with the offences which are mentioned under Section 195 Cr.P.C. and are committed during the proceedings of the Court whereby, the offence have been committed in respect of the document produced or given in evidence in a proceeding in any court.

(20). In the present case whatever documents were produced, they were forged much prior to the filing of the complaint i.e. on 13.07.2005 and the alleged occurrence of forgery etc. is of year 2003 by the respondent No.1 to 3 and in such circumstances, no fault can be found with the well reasoned judgment passed by the trial court in directing to register FIR against the respondents No.1 to 3. Section 340(1) CrPC reads as under:-

340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.”

(21). An enquiry when made under Section 340 (1) Cr.P.C. is really in the nature of affording a *locus poenitentiae* to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry

should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry.

(22). It is not peremptory that such preliminary inquiry should be held. Even without holding such inquiry, the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that court and it is not necessary always that the court should make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. This view of mine is reinforced by the judgment of the Apex Court in **Prithvi versus State of Maharashtra and others [2002 (1) SCC 253]**.

(23). That being so, once the trial Court, after comparative reading and analysis of the oral and documentary evidence and testimony of the witnesses, has come to a logical conclusion that a case of forgery and manipulation has been committed to falsely implicate the petitioners, the requirement of Section

340(1) CrPC stands fulfilled the moment the trial court has taken cognizance of the illegality that has been committed even before the filing of the complaint.

(24). In view of the above discussion, this petition is allowed and the judgment dated 29.03.2019 passed by Additional Sessions Judge, Sri Muktsar Sahib is set aside and the findings/observations and directions issued by the trial court vide judgment dated 15.04.2013 is upheld. In view of the conduct of the respondents No.1 to 3, the way they have cast aspersions on the trial judge, a cost of Rs.50,000/- is imposed to be personally recoverable from respondents No.1 to 3 to be deposited with the Punjab and Haryana High Court Clerk Association within one week under intimation to this Court.

(25). Ordered accordingly.

23.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No