



2024:DHC:9637



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision:02.12.2024

+ **CRL.L.P. 576/2024**

PAWAN GUPTA

.....Petitioner

Through: Mr. H.K. Panda and Mr. Maheshwar
Dash, Advocates.

versus

SANJEEV MAHAJAN AND ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL.M.A. 35994/2024

1. By way of present application, the appellant seeks condonation of delay of 31 days in re- filing the present appeal.
2. For the reasons stated in the application, the same is allowed and delay of 31 days is condoned.
3. Application is disposed of.

CRL.L.P.576/2024

1. By way of present petition, the petitioner/complainant seeks leave to challenge the Judgement dated 15.07.2024 passed by the JMFC, NI Act-03 (Central), Tis Hazari Courts in Complaint Case No. 513034/2016 CNR No.DLCT02-000062-2003, titled as "Pawan Gupta vs. Sanjeev Mahajan." Vide the impugned judgement, the Trial Court acquitted the respondent No.1 for offences punishable under Section 323/406/506 Part II of IPC.
2. The petitioner was employed in the proprietorship firm of respondent



2024:DHC:9637



No.1, namely Sakida Financial Services, from 01.08.2002 to 30.09.2003. In his complaint, he had alleged that firstly, despite bringing business worth 2.5 Crore rupees, he did not receive the complete incentives of more than Rs 1,00,000/- which he was entitled to. He also alleged that his salary for the month of September 2003 had been arbitrarily withheld. Secondly, he alleged that he was maltreated in front of staff and when he demanded the salary due to him for September 2003 from the respondent No.1, he threatened to kill the petitioner. Lastly, it was alleged that on 18.12.2003, the respondent No.1 with two other persons visited the office of the petitioner and slapped him, held him by neck and threatened to kill him.

3. Learned counsel for the petitioner contends that the Trial Court has erred in acquitting the respondent No.1 despite there being sufficient evidence available to convict him. He submits that the rate of incentive which the petitioner was entitled to was orally agreed to be fixed at 0.5% on the sale. It is submitted that though initially for two months the petitioner was given incentives at the agreed rate, later however, the respondent No.1, in contravention of their agreement, arbitrarily reduced the rate of incentives paid to the petitioner by claiming that a part of the incentives would be deposited in his Provident Fund Account. It is further submitted that the petitioner later found that his PF Account was never opened. With respect to the finding of the Trial Court that the incentive rate may have varied with the profits of the firm, it is submitted that the petitioner had given them more business and consequently, he deserved more incentives.

4. Further, it is argued that the trial court's observation that the salary for his last month was not paid because he did not serve his notice period is erroneous because the notice period would only have been applicable if the



2024:DHC:9637



job was confirmed and no confirmation notice was ever given to the petitioner and he was working on probation.

5. Lastly, it is submitted that due to harsh and unjust treatment, the petitioner had left the job and when he demanded his incentives and salary for the month of September 2003, he was threatened and slapped by respondent No.1. It is submitted that the Trial Court's finding that no complaint before the police was made with respect to the slapping incident can be explained by the fact that the incident is alleged to have occurred on 18.12.2003 and within 2 days, the petitioner had approached the Trial Court on 20.12.2003 with the present complaint.

6. I have heard learned counsel for the petitioner and gone through the records.

7. The petitioner was employed in the sole proprietorship of the respondent No.1, Sakida Financial Services, as Senior Executive from 01.08.2002 at a remuneration Rs.5500/- per month plus incentives. He left the service of respondent No.1 on 30.09.2003. He filed a complaint case No. 513034/2016 on 20.12.2003 in which he alleged that offences under Sections 406/420/323/506 of the IPC had been committed.

The Trial Court summoned respondent No.1 vide order dated 23.06.2006 for offences under Sections 406/323/506 part II IPC and vide order dated 12.05.2023, respondent No.1 was charged for the aforesaid offences. Vide impugned judgement dated 15.07.2024, the Trial Court acquitted the respondent No.1 for offences punishable under Section 323/406/506 Part II of IPC.

8. A decision of acquittal strengthens the presumption of innocence in the favor of the accused. At the same time, the appellate court, while



considering a leave to appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The appellate court should be slow in reversing an order of acquittal passed by the trial court.¹ The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. v. State of Himachal Pradesh² in the following terms:-

“xxx

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189])

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Arulvelu [Arulvelu v. State, (2009) 10 SCC 206] and Gamini BalaKoteswara Rao v. State of A.P. [(2009) 10 SCC 636]”

xxx”

9. A reading of the appointment letter and the terms and conditions of employment would show that though the petitioner is entitled to incentives, the rate of such incentives has not been defined anywhere. No evidence has been led by the petitioner before the trial court to establish that the rate of

¹Jafarudheen&Ors. v. State of Kerala, (2022) 8 SCC 440,
² (2020) 10 SCC 166



2024:DHC:9637



0.5% on sale which he claims was agreed upon is standard practice. Though the petitioner did receive incentives at the said rate for October 2022 to November 2022, he also received incentives at the rate 0.13% for December 2022 to March 2023, 0.21 % for April 2023 to June 2023 and no incentive for July 2023 to September 2023. No notice or communication has been brought on record to show that the reduction in the rate of incentives was objected to by the petitioner at any time.

In so far as the withholding of salary for the month of September 2023 is concerned, it is the admitted case of petitioner that he did not serve the requisite notice period of one month which has been mentioned in the appointment letter given to him which was exhibited as Ex. PW 1/2. It is not unnatural for a company to withhold a month's salary where the notice period has been served. In any case, the dispute regarding payment would be of a civil nature. Though the learned counsel for petitioner has contended that the petitioner worked on probation and hence he was not required to serve any notice period, however the same is negated by the fact that the terms of employment clearly show that the probation was only to be for a period of 3 months extendable by three more months. Admittedly, the petitioner worked in respondent No.1's firm for more than a year. Nothing has been shown to prove that his probation period was extended. In the trial, no question was put to the respondent No.1 regarding this aspect by the petitioner. The impugned judgement correctly holds that the charge under Section 406 IPC was not made out.

10. With respect to the allegations of hurt under Section 323 IPC, it is observed that neither any independent witness was cited, nor any medical documents were produced to substantiate the claim of respondent No.1



2024:DHC:9637



having slapped the petitioner.

In so far as the allegation of criminal intimidation under Section 506 IPC is concerned, though the petitioner had alleged that the respondent No.2 threatened to kill him and implicate him in false cases, nowhere has he stated that the alleged threat caused any alarm to him. For the purposes of Section 506 IPC, the threat must be accompanied with intention to cause alarm and mere expression of any words is not enough. In this regard, reference may be made to the decision of Supreme Court in Mohammad Wajid & Anr v. State of U.P. & Ors, reported as **2023 INSC 683** wherein it was held that-

27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

No evidence has been shown to prove that the respondent No.2 had an intention to cause alarm to the petitioner. In absence of the same, Trial Court did not commit any error in coming to the conclusion that Section 506 IPC was not made out.

11. Considering the above, the Trial Court cannot be said to have committed any error in acquitting the respondent No.1 and the impugned order does not suffer from any infirmity or perversity. Since the petitioner has failed to establish its case beyond reasonable doubt, this Court finds no ground to grant leave to appeal. Consequently, the leave petition is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 2, 2024/ry