

(2006) 01 P&H CK 0210

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 488-MA of 2004 (O and M)

Punjab and Haryana High Court,
Chandigarh

APPELLANT

Vs

Om Parkash Chaudhary and
Others

RESPONDENT

Date of Decision: Jan. 18, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 193

Citation: (2006) 2 RCR(Criminal) 426

Hon'ble Judges: Baldev Singh, J; Amar Dutt, J

Bench: Division Bench

Advocate: B.S. Rana, Deputy A.G., Haryana, for the Appellant; T.P.S. Mann, Advocate for the Respondent No. 1 and Mr. P.S. Hundal, Advocate for the Respondent Nos. 2 and 3, for the Respondent

Judgement

Amar Dutt, J.

Through the present Criminal Misc. Application complainant seeks to challenge the order dated 9.8.2004 passed by the Chief Judicial Magistrate, Panipat convicting the respondents under Sections 193, 196, 197, 198, 199 and 465 read with Section 120-B, IPC on the ground that the trial Court has omitted to award any punishment for the offences under Sections 468 and 471 IPC for which the respondents had also been charged inspite of the fact that in Para 36 of its judgment, the trial Court has observed in relation to the evidence produced before it in regard to these offences as under :-

36. PW2 Badan Singh SHO has deposed on oath that he has prepared report Ex. PK and as per his verification it was found that Om Parkash Kashmiri Lal Panjabi does not reside on the address 281/B, Bawa Gangapuri Road, Netaji Colony, Panipat meaning thereby that he was not a tenant of Om Parkash Chaudhary and he has given a false affidavit regarding this fact knowingly. Accused Nos. 3 and 4 joined

hands with accused No. 2 while preparing the false certificates to the effect that accused No. 1 was a tenant of Om Parkash Chaudhary, accused No. 2. Later on these affidavits and certificates were produced in the judicial proceedings before the Hon'ble Punjab and Haryana High Court by accused No. 1 showing them as they are genuine. On perusal of all the above said sections and in the light of the facts discussed above it cannot be said that the essential ingredients of all the aforesaid sections are not fulfilled by the prosecution. Rather all the essential requirements of the aforesaid sections are proved by the prosecution through cogent and convincing evidence. There is no ground to disbelieve the report of PW2 Badan Singh SHO Ex.PK as well as his statement on oath. It is laid down in the authority [Karamjit Singh Vs. State \(Delhi Administration\)](#), that the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. While placing reliance upon this authority and in view of the aforesaid discussion I am of the considered opinion that the prosecution has proved the guilt of the accused beyond reasonable doubt.

2. It was in view of this lapse that this Court had issued notice to the respondents to show cause as to why the leave to appeal be not granted and on July 7, 2005, this Court had adjourned the case on the request of learned counsel for the parties in order to enable them to address arguments on the following points :-

a) regarding the Forum before which the present Criminal Misc. Application for leave to appeal would be maintainable in view of the amendment carried out in the Code of Criminal Procedure in the year 2005.

b) regarding the effect of the failure of the trial Court to give decision in relation to charges framed under Sections 468 and 471 of the Indian Penal Code.

3. On 29.7.2005, when it was brought to our notice that Criminal Appeals No. 24 and 26 of 2004 had been filed by the respondents to challenge the conviction and sentence recorded against them by the trial Court before the Additional Sessions Judge, Panipat, we had also directed the Registry to summon the records of these appeals to enable us to peruse the same while dealing with the application for grant of special leave to appeal.

4. We have heard Shri B.S. Rana, learned Deputy Advocate General, Haryana appearing on behalf of the applicant, Mr. T.P.S. Mann, learned counsel appearing on behalf of respondent No. 1 and Mr. P.S. Hundal, learned counsel appearing on behalf of respondents No. 2 and 3 and perused the record with their assistance.

5. On going through the records, we find that though charges had been framed against respondents under Sections 193, 196, 197, 198, 199, 206, 465, 468 and 471

IPC read with Section 120-B IPC and the trial Court had also dealt with the material brought on record by the prosecution in relation to offences under Sections 468 and 471 IPC in the terms already reproduced hereinbefore yet most probably by oversight the learned Chief Judicial Magistrate, Panipat had not awarded any punishment in relation of the afore-mentioned offences.

6. Mr. T.P.S. Mann, learned counsel appearing on behalf of respondent No. 1 and Mr. P.S. Hundal, learned counsel appearing on behalf of respondents No. 2 and 3 have very fairly conceded this possibility and have suggested that instead of admitting the case, we should after granting special leave to appeal, set aside the judgment and remand the case to the Chief Judicial Magistrate, Panipat, who should after hearing arguments to be addressed by the counsel for the parties pass an appropriate order in accordance with law.

7. Mr. B.S. Rana, learned Senior Deputy Advocate General, Haryana has no objection to this being done as according to him the course suggested may be the only order that can be passed in the case, as the same would also provide adequate safeguards for the right of appeal being exercised by the respondents in the event of their having to face any adverse decision.

8. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties and are in agreement with the contention advanced by learned counsel for the parties. We, accordingly, grant special leave to appeal and set aside the order of conviction and sentence passed against respondents by the Chief Judicial Magistrate, Panipat and remand the case to the Additional Chief Judicial Magistrate, Panipat as this may avoid any prejudice being caused to the respondents on account of the view already expressed by the Chief Judicial Magistrate. The Additional Chief Judicial Magistrate, Panipat will hear the arguments and dispose of the case at the earliest preferably within two weeks.

9. Parties through their counsel are directed to appear before the Additional Chief Judicial Magistrate, Panipat on 31.1.2006.

Order accordingly