(2005) 04 P&H CK 0091

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 20986-M of 2001

S.M. Lamba	APPELLANT
Vs	
Suresh Kumar and Another	RESPONDENT

Date of Decision: April 6, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 409, 467

Citation: (2005) 14 CriminalCC 888

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: R.S. Cheema, with Mr. R.K. Trikha, for the Appellant; R.K. Jain, C.B. Goel, for the Respondent No. 1, Mr. Partap Singh, for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

Satish Kumar Mittal, J.

Petitioner S.M. Lamba, who is working as Chief Manager, Oriental Bank of Commerce, Sector 11, Panchkula, has filed this petition u/s 482 Cr.P.C. for setting aside the judgment dated 15.2.2001, passed by Additional Sessions Judge, Gurgaon, vide which revision filed by the State of Haryana against the order dated 18.5.1999, passed by Chief Judicial Magistrate, Gurgaon, discharging respondent No. 1 in case FIR No.418 dated 15.5.1996 under Sections 409, 467, 468, 420 and 471 IPC registered at Police Station City Gurgaon, has been dismissed and further for expunging the adverse remarks appearing against him (the petitioner) in para 14 of the aforesaid judgment dated 15.2.2001.

2. When the petitioner was working as Senior Manager in Gurgaon branch of Oriental Bank of Commerce in the year 1994, he received an application form one S.S. Jaspal (account holder of the bank) requiring detail of his two cheques to the tune of Rs. 10 lacs each, which he had deposited in his loan account. On receipt of

the said letter, the petitioner started an enquiry and found that instead of crediting the amount of cheques in the loan account of said S.S. Jaspal, Suresh Kumar, respondent No.1 herein, the then Senior Manager, had opened a saving account in the name of S.S. Jaspal, without any account opening form, and credited amount of the first cheque to the said saving account of S.S. Jaspal. Thereafter, he debited the said amount in the same account of S.S. Jaspal on the same day and credited it in the account of M/s. Sigma Shoes of Delhi. Similarly, amount of another cheque was first credited to the saving account of S.S. Jaspal and thereafter the same was debited from the said saving bank account and credited to the accounts of M/s. Anisha Enterprises and M/s. Arjun Enterprises. In the enquiry, it was found that in fact, the saving account was not opened on the request of S.S. Jaspal, but it was opened by respondent No.1 of its own without obtaining any account opening form from S.S. Jaspal and without taking the initial amount for the purposes of opening saving account. It was in fact a fictitious account, which was opened by respondent No.1. After holding the enquiry, the petitioner moved an application to SSP, Gurgaon/ Station House Officer, Police Station City Gurgaon for initiating criminal proceedings against respondent No. 1. Consequently, FIR 418 dated 15.5.1997 under Sections 409/ 420/467/468/471/120-B IPC was registered at Police Station City Gurgaon. against respondent No. 1.

3. After the investigation, the police submitted challan against respondent No. 1 for trial. During the course of investigation, two original cheques, transfer vouchers and copies of accounts of all the concerned concerns were taken into possession. Statements of the witnesses u/s 161 Cr.P.C. were recorded.

4. At the time of framing of charge, the Chief Judicial Magistrate, after hearing counsel for the accused as well as the State Counsel, concluded that taking into consideration the material collected by the police and submitted to the court u/s 173 Cr.P.C, no ground to presume that the accused has committed offence is made out, and the material collected by the prosecution was deemed to be insufficient for framing the charge against the accused. Hence, respondent No.1 was discharged.

5. The aforesaid opinion was framed by Chief Judicial Magistrate on the basis of the statement made by S.S. Jaspal u/s 161 Cr.P.C. and also the photo copies of the application/letters dated 19.5.1996 and 20.5.1996 written by him to the Senior Manager, Oriental Bank of Commerce, Gurgaon and the affidavit dated 27.5.1996 submitted by S.S. Jaspal. In those letters and affidavit, he had stated that he had only enquired about his statement of account in order to reconcile his account books and he did not allege any sort of fraud against any person. In those letters and affidavit, S.S. Jaspal further confirmed the debit entries of the amount of two cheques in favour of M/s. Sigma Shoes. M/s. Anisha Enterprises and M/s. Arjun Enterprises. He has categorically stated in his affidavit that no offence has been committed regarding his two cheques, which were deposited by him in his account. In view of this material, the learned trial court came to the conclusion that no

charge could be framed against respondent No. 1.

6. Against the said order of discharge, the State of Haryana filed criminal revision, which has been dismissed by the Court of Additional Sessions Judge, Gurgaon, vide judgment dated 15.2.2001, while observing as under: -

After giving my considerable thoughts to the submissions so made by learned Public Prosecutor for the Revisionist as well as by learned counsel for the accused-respondent, I am of the considered opinion that there is no merit in the submissions made by learned Public Prosecutor, because he could not point out as to what financial loss or otherwise did cause to the bank due to any act of the accused-respondent. There is nothing on the file from which it can be proved that respondent-accused ever misused his official capacity while acting as a Senior Manager of the Bank Branch, at Gurgaon.

7. While dismissing the said revision, certain observations have been made by learned Additional Sessions Judge to the following effect against the petitioner: -

...1t seems that Sh. S.M. Lamba, out of some personal grudge or greed got recorded the present false FIR against the accused-respondent for the reasons best known to him. It seems that Sh. S.M. Lamba was adamant to jeopardize the reputation of the accused-respondent and, thus, got recorded the present false FIR in this case, knowing well that no criminal offence was committed by the accused-appellant. The said device was adopted by Sh. S.M. Lamba Senior Manager to harm the reputation of the accused-respondent and the said act on his part is highly condemnable... I am of the considered opinion that the complainant moved by Sh. S.M. Lamba, the then Senior Manager, to the police was a sheer result of misuse of powers by him and not by the accused-respondent while discharging his official duties.

8. Against the aforesaid judgment, the State of Haryana did not file any petition in this Court. However, the petitioner feeling aggrieved against the aforesaid observations made against him has preferred this petition, in which he has also impugned the judgment of Additional Sessions Judge and the order of Chief Judicial Magistrate, whereby respondent No. 1 has been discharged.

9. Counsel for the petitioner submitted that both the courts below have not minutely perused the evidence collected by the prosecution at the time of filing report u/s 173 Cr.P.C. against respondent No.1. In so much so, statements of the prosecution witnesses has also not been properly scanned. While referring to the statements of Chander Kanta, Clerk, Oriental Bank of Commerce, Ashok Dargan, another employee of the bank and S.S. Jaspal, the account holder, counsel for the petitioner submitted that from the reading of the statements of these persons, the alleged offence has been made out against respondent No.1, but the courts below, while ignoring these statements, have wrongly discharged the accused on the basis of the letters and affidavit given by S.S. Jaspal. Counsel for the petitioner submits that actually, the offence has been committed, but subsequently, S.S. Jaspal has connived

with respondent No.1-accused and written the letters to the Investigating Officer. He further submits that once the offence was committed, then the accused cannot be discharged merely because the complainant has resiled from his earlier stand. Counsel further submits that while-dismissing the revision filed by the State of Haryana, certain observation made by the revisional court in its judgment against the petitioner are totally uncalled for. He submits that these observations have been made without giving any proper notice to the petitioner and these adverse remarks will effect his service career. Therefore, these adverse remarks recorded by Additional Sessions Judge against the petitioner should be expunged.

10. On the other hand, counsel for respondent No. 1 submits that the Chief Judicial Magistrate, after taking into consideration the material collected by the investigating agency, has rightly come to the conclusion that there is no ground to presume that the accused has committed any offence. He further submits that once the order of discharge was upheld by the revisional court, there is hardly any scope of interference in the same by this court in exercise of the inherent powers u/s 482 Cr.P.C.

11. After hearing counsel for the parties and perusing the contents of the petition and the impugned orders, I do not find any force in the submission of counsel for the petitioner regarding quashing of the impugned orders. In my opinion, the Magistrate, who is expected to apply his mind at the time of framing the charge, has rightly found the charge levelled against respondent No. 1 as groundless. In the instant case, when S.S. Jaspal, the account holder, has given in writing that no fraud was committed and has acknowledged the account in which the cheques were deposited and also acknowledged the debit entries in favour of three concerns, then there was no material on the basis of which respondent No.1 could have been convicted. Thus, once the opinion framed by the Magistrate to the effect that there is no ground for framing the charge is confirmed in revision, then I do not find any reason to take a different view and set aside the order in exercise of the inherent power of this court u/s 482 Cr.P.C.

12. Regarding the aforesaid adverse remarks recorded by Additional Sessions Judge in para 14 of its judgment, I am of the opinion that the same have been made unnecessarily, as the same were totally out of scope of the case. Even before recording adverse remarks, which were totally uncalled for, Additional Sessions Judge did not provide any opportunity of hearing to the petitioner. Thus, the same are totally in violation of the principles of justice. Even otherwise, in my opinion, the petitioner being officer of the bank was within his right to enquire into the matter and if in his opinion, some illegality or fraud was committed, then he could report the matter to the police. In my opinion, the act of the petitioner is not mala fide. Therefore, the adverse remarks recorded in para 14 of the impugned judgment dated 15.2.2001 are totally uncalled for and liable to be expunged.

13. In view of the aforesaid, this petition is partly allowed.

14. The adverse remarks made against the petitioner in order dated 15.2.2001 (Annexure PI) passed by the Additional Sessions Judge, Gurgaon, are expunged and the prayer for quashing of the order of discharge of respondent Suresh Kumar dated 18.5.1999, passed by the Chief Judicial Magistrate, Gurgaon, which has been upheld in revision by the Additional Sessions Judge, Gurgaon, is declined.