

(2009) 11 P&H CK 0185

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 3746-M of 2008

Jai Krishan

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Nov. 26, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (2009) 31 CriminalCC 752

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: R.S. Rai, with Mr. Gautam Dutt, for the Appellant; Chetan Mittal, Addl. A.G., Punjab, For the Respondent No. 2 Mr. K.S. Dhaliwal, Advocate, Mr. T.S. Sangha for Dr. Karamjit Singh, for the Respondent

Final Decision: Allowed

Judgement

Permod Kohli, J.

This petition has been filed by the complainant, Jai Krishan for cancellation of bail granted to accused Narinder Kumar son of Shri Dharmpal in FIR No. 140 dated 28.11.2005 for offence under Sections 302/307 read with Section 34 of the IPC and Sections 25/27/24/54/59 of the Indian Arms Act. The accused who is respondent No. 2 in this petition was one of the accused in the aforesaid FIR and was facing the trial. He filed bail application being Crl. Misc. No. 75824-M of 2006 which came to be dismissed as withdrawn on 4.12.2006. The said accused filed the second bail application being Crl. Misc. No. 3746-M of 2008 before this Court. The bail was sought primarily on medical grounds. The accused pleaded that he is suffering from serious ailment and further custody of the accused would not be conducive to his health. This Court called a report from the Jail. One Dr. Karamjit Singh posted as Senior Medical Officer, Incharge Central Jail, Patiala submitted his report dated 5.10.2007 to the Superintendent, Incharge Central Jail, Patiala giving details of the treatments given to the accused from time to time. The said doctor also appeared in

the Court alongwith the report. During the course of hearing, the doctor informed the court that the accused is suffering from heart ailment on account of old injury he suffered from seizure at varied durations. On a specific query by the court, the doctor gave his opinion that further custody of the accused might not be safe, in view of the history of seizure suffered by the accused. On the basis of the report and the medical opinion, this Court vide order dated 10.10.2007 granted bail to accused-respondent No. 2 with conditions that he will not influence the witnesses or threaten them or interfere with the trial. From the order dated 10.10.2007, it appears that the bail was granted only on medical grounds. The complainant in the present case has contested the claim of the accused of suffering from any serious ailment warranting grant of bail on medical grounds. In addition to the ground that the bail was procured by the accused in collusion with jail staff and the doctor, the complainant has also referred to DDRs entered by the police being DDR No. 30 dated 30.10.2007 under Sections 107/151 Cr.P.C. and DDR No. 24 dated 21.11.2007. It has been alleged that even after securing the concession of bail by misrepresentation and manipulation, the accused has attempted to attack the complainant and other members of his family and threatened them with dire consequences if they deposed against the accused. The petitioner has also referred to the medical report which was obtained by him from the Superintendent, Central Jail, Patiala. The report relates to the CT scan of the accused which indicates that the accused was normal and had no serious ailments. The complainant also alleged that the medical record has been manipulated by the accused and there are cuttings in the medical record maintained in the jail. Keeping in view the aforesaid circumstances, this Court vide its order dated 15.2.2008, while issuing notice of motion constituted a Board of Doctors in the PGI to examine respondent No. 2-accused and to give opinion with regard to his past medical history and also whether there would be any danger to the life of the accused if he is kept in jail. Consequent upon the aforesaid order passed by this Court, the accused was examined by Board of Doctors and the report of the medical board vide communication dated 15.3.2008 was filed before this Court. This report was taken on record and bailable warrants were issued against respondent No. 2 vide order dated 24.3.2008. Vide subsequent order dated 9.4.2008, this Court on examination of the report of the Board of Doctors called for comments of Dr. Karamjit Singh, the doctor posted in the jail on whose report and statement, the accused was granted bail. Subsequently, Dr. Karamjit Singh was placed under suspension and he filed a writ petition being CWP No. 10525 of 2008 which was listed before a Division Bench of this Court and this application for cancellation of bail was also accordingly directed to be listed before the Hon'ble Division Bench vide order dated 23.7.2008. Since the matter has again been allocated to the Single Bench, the application for cancellation of bail was listed before this Court. This Crl. Misc. Application for cancellation of bail was heard alongwith the main writ petition.

2. It has been argued on behalf of the petitioner that the accused has secured bail by playing fraud and misrepresentation in connivance with Dr. Karamjit Singh, posted in the jail. At the time of grant of bail, Dr. Karamjit Singh had sent the medical report of the accused to the Superintendent, Central Jail, Patiala which was produced before this Court which seems to have persuaded this Court to grant bail. The said report is reproduced here under :-

From GCM 38390-M

D. No. 116 dated 5.10.07

From

Senior Medical Officer, I/C Central Jail, Patiala

To

Superintendent, I/C Central Jail Patiala

Subject : Medical report of UT Narinder Kumar Sharma S/o Dharampal On the above said subject, it is stated that the above said UT is k/c/o H/o MLL Case vide Reg. No. 65/22 dated 30.9.2005 and got injuries and X-rays & C.T. Scan was advised. He gave H/o Head Injury. Then the C/O H/O trauma Rt knee jt and H/o Head severe chest pain c vertigo and was referred to Ortho OPD and Medicine OPD Rajendra Hospital Patiala on 23.8.06 and on 1.11.2006 he again visited Medicine OPD Rajendra Hosp. Patiala vide OPD No. 28867 and ECG was done. There was T wave in L-III doubtful flattening of OVF, Repeat ECG to rule out Inf.Xischemia. He was diagnosed as a case of ANC Myalgia C Coronary artery disease ? He was referred to PGI Chandigarh on 11.12.06 for CT Scan head as CT Scan Medicine of Rajendra Hospital Patiala was not working order. He again visited PGI Chandigarh Neurology deptt. On 23.11.2007. He C/o Headache and again visited PGI Chandigarh on 7.2.07 and medicines were prescribed on PGI out patient Ticket No. 937523 dated 21.5.07. Pt gave H/o RSA 2 years back with head injury and n/o Seizures was present and E.E.G. was advised after C.T. Scan and pt. is still under the treatment of Neurology deptt. PGI Chandigarh and follow up treatment is being given. Pt. again visited Neurology deptt. PGI Chandigarh and had n/o seizures in last month and medicines were prescribed. Pt. again visited PGI on 27.7.2007 and on 24.8.07 and is under the treatment of Neurology Deptt. PGI, Chandigarh. Inspite of all this treatment from Neurology Deptt. PGI Chandigarh and follow up treatment at Central Jail Patiala Pt c/o severe headache c vertigo and again epileptic attack and chest pain during custody in jail.

Note : Photocopy (attached) of original

Medical Record is attached along

sd/- Senior Medical Officer, I/O Central Jail, Patiala 5.10.2007

3. This Court, while granting bail to the accused on 10.10.2007 made following observations :-

.... Considering the pleadings and the arguments, a report from the jail was called for. Dr. Karamjit Singh, Sr. Medical Officer, Incharge Central Jail, Patiala is present in Court with the report. Dr. Karamjit Singh has confirmed that other than the petitioner having heart ailment on account of an old injury, he suffer from seizure at varied durations. On a specific query of the Court, the opinion of the Doctor is that the further custody of the petitioner might not be safe in view of the history of seizure suffered by the petitioner. The petitioner had to be taken to Rajindera Hospital, Patiala and PGI, Chandigarh repeatedly.....

Having regard to the nature of ailment, repeated visits to the hospital and the seizures suffered by the petitioner, I am of the opinion that further custody might be dangerous for the petitioner's life. This view is supported by the doctor....

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From the above, it is evident that the only ground for grant of bail was the medical report and the opinion of the doctor.

With a view to establish the fact that the doctor had fudged the report and manipulated the medical record of the accused, the various reports and documents have been referred to. The petitioner has placed on record the treatments received by the accused in the Rajindra Hospital Patiala and PGI, Chandigarh. It is contended that the accused had intentionally given different names in the medical record to secure the benefit of doubt, if at any later stage, his fraud is detected. There is report of the Mata Ganga Hospital, Patiala dated 8.9.2006, where the accused claimed Precordial Pain and he was advised some test. He was advised CT scan head. He was taken to PGI where he was registered as outdoor patient under CR No. 952032 on 11.12.06. At the time of registration, the accused recorded his name as

Niranjan Singh instead of Narinder Kumar. His CT scan was done on 23.2.2007 and was found to be normal. In this CT scan, the petitioner had referred his name as Niranjan Singh and not Narinder Kumar. However, from the record of the PGI at page 42 of this petition, it appears that the CT scan report was collected by the Constable Rajinder Pal Singh on behalf of Superintendent Jail. It is relevant to note that the record produced by the petitioner alongwith the writ petition has been obtained by the petitioner from the jail authorities and is not disputed by the accused in the court. It is also relevant to note that in the report dated 5.10.2007, submitted by the doctor, he has mentioned that the accused was referred to PGI, Chandigarh on 11.12.2006. The CT scan was pursuant to the said reference and the PGI registration also shows that the accused went to PGI on 11.12.2006 for CT scan for which he was registered under different Registration number i.e. CR. 937523 dated 21.5.07 under the name of Narinder Kumar. The registration of the accused on this date and number again finds mention in the report dated 5.10.2007. On examination, no serious ailment was found. The petitioner has also produced on record the copies of the jail register where the accused was examined by the doctor and medicines were prescribed. At page 73 of this application, it appears that 18.4.2006 the accused name is mentioned as Narender Singh son of Dharampal and he was given only cough syrup. Even on 15.5.2006, his name is shown as Narender Sharma son of Dharampal. On 30.6.2006, his name is only mentioned as Narinder son of Dharam. Again on 15.8.2006, his name is mentioned as Narinder Sharma. He was further examined on 28.9.2006 and his name is mentioned as Narinder. During the period of these examinations, no serious ailment is shown. It was for the first time on 7.7.2007 when the accused was examined, he has been prescribed cough syrup and thereafter there are some insertions about the epilepsy and some tablet seems to have been prescribed. He was again examined on 8.9.2007 and again there seems to be an insertion of epilepsy and another tablet was prescribed. Keeping in view the fact that there seems to be some insertions, the original register was called for. I have examined the original registers. On 24.4.2007, he was again examined under the orders of Additional Sessions Judge where he complained of headache etc. It is argued on behalf of the petitioner that after the grant of bail i.e. on 10.10.2007, the accused never visited the PGI for any follow-up treatment which is sufficient to establish that medical report was only a ploy to secure the bail. Learned counsel for the petitioner has further argued that the accused in his reply has admitted about his CT scan which was normal.

4. I have perused the reply filed by the accused. In paragraph 6 of the reply, it has been admitted by the accused that on 11.12.2006, card was issued to him which has been misplaced. It is further stated that he is not aware whether there was any mistake in the name of accused though he disclosed his name correctly. As a matter of fact, the accused has admitted that he approached the PGI for CT scan. The report of the CT scan is not known. The CT scan report and the opinion of the Board of Doctors clearly establish that the accused was not suffering from any serious

ailment. Even the treatments given to him by Dr. Karamjit Singh as also in the Rajendra Hospital and PGI, Chandigarh do not establish that the accused had any serious ailment at the time when he was granted bail. The original registers examined by me even support the allegations of the petitioner that there are some insertions in the patient register of the jail. It seems that the disease of epilepsy and medicines for the same were inserted as an after-thought. Learned counsel for the accused has challenged the locus of the complainant to file application for cancellation of bail. His further contention is that once the Court has granted the bail on consideration of the material, it is not permissible to cancel the bail.

5. Learned counsel for the respondent has, however, argued that the accused has not misused the concession of bail on being released and this should be sufficient to reject the cancellation of bail application. To the contrary, learned counsel for the petitioner has referred to the DDR reports registered after the accused was released on bail and pleaded that the accused has misused the liberty and is attempting to threaten the witnesses with a view to prevent them from deposing against the accused in the trial being faced by him.

6. I have heard learned counsel for the parties at length and perused the record which has been referred to here-in-above.

Section 439(2) of the Code of Criminal Procedure, 1973 deals with taking into custody of the accused who has been admitted to bail. Section 439(2) of the Cr.P.C is reproduced as under :-

439 (2) : A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

7. The High Court as also the Court of Session is empowered to order the arrest of a person released on bail for committing him to custody. The power u/s 349 (2) is unfettered, though such power has to be exercised judiciously. It is not necessary that the power u/s 439(2) of the Cr.P.C. can only be exercised at the instance of the State in case instituted by the State. This question is no more res integra having been considered by Hon"ble Supreme Court in the case of [R. Rathinam Vs. State by DSP, District Crime Branch Madurai District, Madurai and Another](#), wherein it has been observed as under :-

6. Be that as it may, the next question is whether the same high Court can cancel the bail for other reasons. The answer is explicit in Section 439(2) of the Code of Criminal Procedure.....

7. The frame of the sub-section indicates that it is a power conferred on the said courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the

State or investigating agency or even a Public Prosecutor moves for it by a petition.

8. It is not disputed before us that the power so vested in the high Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the high Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 off the Code or in any other law which inhibits a person from moving the high Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open, to the high Court to dismiss the petition. If that is the position, it is also open to the high Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law.

8. In the present case, the application has, been moved by the Complainant. The complainant is entitled to move such an application, he being an aggrieved person and also an important witness in the case. Thus the contention raised on behalf of the accused about the locus of the petitioner is without any substance.

9. The question whether the accused has misused the concession of bail becomes a secondary question in this case. The primary question is whether the accused has secured the bail by fraud and misrepresentation and on the basis of the manipulated record. I have referred to the record in detail which clearly establishes that during the period between 2006-07 there was no serious ailment with the petitioner. However, he attempted to approach the doctor. Upto the month of July, 2007, no serious ailment was shown. It was only in July, 2007 that the disease of epilepsy was inserted in the diagnosis and some tablet was prescribed. It appears that this was done by the doctor in connivance with the accused to help him in securing bail from the court. The report of the Board of Doctors comprising of four experts from the PGI, Chandigarh is an indicator in this regard. One fails to understand why four senior doctors from the PGI, Chandigarh should give a wrong opinion and a false report against the accused. It is settled that no person can be beneficiary of his own fraud. Fraud vitiates everything. From the registers produced, it appears that there has been tampering. The report of the doctor was the sole basis for grant of bail. No material has been produced on record that after being granted bail, the accused is under continuous treatment. The medical report was only a device to secure bail. Notwithstanding the fact that whether the accused has misused the liberty of bail or not, he cannot be given the benefit of his fraud. The accused and the doctor had the courage to mislead the High Court. I have no doubt in mind that such a person deserves no sympathy. The mere fact that the bail has been procured with fraud is sufficient to recall the order of bail. It is now the unanimous judicial opinion that fraud vitiates all acts. Even if a beneficial order is

procured from a Court by playing fraud, the order itself being outcome of the fraud has to go.

10. It is the constitutional as also social obligation of the Court to prevent the perpetuation of fraud. In the case of [Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings \(India\) Ltd. and others](#), Hon"ble Supreme Court has observed as under :-

18.....In interpreting a beneficent provision, the Court must be for ever alive to the principle that it is the duty of the court to defend the law from clever evasion and defeat and prevent perpetration of legal fraud.

11. Again in the case of [A.V. Papayya Sastry and Others Vs. Government of A.P. and Others](#), the Hon"ble Supreme Court has observed as under :-

39..... Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior....

12. While reiterating the aforesaid settled proposition of law, in the case of [A.V. Papayya Sastry and Others Vs. Government of A.P. and Others](#), the Hon"ble Supreme Court has observed as under :-

21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

Fraud avoids all judicial acts, ecclesiastical or temporal.

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or interior. It can be challenged in any Court, at any time, in appeal, revision, writ, or even in collateral proceedings.

23. In the leading case of *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed :

No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, Lord Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was 'mistaken', it might

he shown that it was `misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said; Fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of `finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

27. In [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others](#), this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The high Court however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the high Court as `wholly perverse", Kuldip Singh, J. stated :

The courts of law are meant for imparting justice between the parties. One who comes to the court, approached this Court.

33. Allowing the appeal and setting aside the orders, this Court stated :

15. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award

was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice". (emphasis supplied)

13. The aforesaid observations of the Hon"ble Supreme Court are fully applicable to the facts and circumstances of the present case. As noticed earlier, the accused by playing fraud with the Court has obtained bail vide order dated 10.10.2007. I am of the considered opinion that the accused has tried to interfere with the due course of administration of justice. In the case of [Dolat Ram and Others Vs. State of Haryana](#), , the Hon"ble Supreme Court has observed as under :-

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, broadly (illustrative and not exhaustive) are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner.....

In view of the above, this application is allowed. The bail granted to the accused vide order dated 10.10.2007 is hereby cancelled and the accused is directed to be taken into custody, forthwith. Record be returned back to the State counsel.