(2008) 04 P&H CK 0166

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 17611 of 2007

Court on its own motion	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: April 25, 2008

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1)(e)

Citation: (2008) 3 RCR(Criminal) 73

Hon'ble Judges: Vijender Jain, J; Kanwaljit Singh Ahluwalia, J

Bench: Division Bench

Advocate: Amol Rattan Singh,A.A.G, for the Appellant; Atul Lakhanpal, for the Respondent

Judgement

1. On 23.09.2002, DSP Harjit Singh Brar had sent a statement (ruqqa) (Ex. PR) to SHO Police Station, Raikot. In Ex. PR statement, he stated as under: -

To the Officer In-charge.
Police Station,
Raikot.

Today I, DSP along with Mohinder Kumar SI/SHO, Police Station Raikot; Arvind Puri. SI/SHO Police Station Sudhar along with police party in the investigation of case FIR No. 113 dated 06.09.2002 u/s 13(1)(e) read with Section 13(2)(88) PC Act, were present in the house of accused Gurcharan Singh and Gurmel Singh sons of Lal Singh Jat, resident of Pherurai and were searching his house when in the presence of sarpanch Hardev Singh son of Gurcharan Singh Jat resident of Pherurai, Kartar Singh son of Ram Kishan and Tarlochan Singh son of Harbans Singh Jat resident of Pherurai. were conducting search of the house according to the procedure, when from one iron peti (big box), which was lying beneath the stair case, from the bedding kept therein one black plastic envelope, currency notes were recovered. On checking Rs. 1,50,000/- Indian currency and Rs. 5,20,000/- forged Indian currency notes were recovered, which according to

separate recovery memos, were taken into possession. Because accused Gurcharan Singh and Gurmel Singh have kept counterfeit Indian currency notes amounting to Rs. 5,20,000/-, they have committed an offence u/s 489 B, C of the IPC. Therefore, on the ruqqa being sent by hand through Constable Jasbir Singh 381 a case be registered against them. After registration of the case, case No. be intimated. I, DSP along with companion police officials is busy at the spot in investigation.

Sd/-
Harjit Singh Brar
DSP Raikot
23.09.2002

In the revenue area of Pherurai.

12.00 noon

2. On the basis of above said ruqqa, case FIR No. 120 dated 23.09.2002 was registered at Police Station Raikot u/s 489(b), 489(c) IPC. FIR has been exhibited as Ex. PJ. At the spot, DSP Harjit Singh Brar had drawn rough site plan (Ex. PS) to show the place from where the recovery was affected. On 11th October, 2002, vide memo (Ex. PT) arrest of Gurmel Singh accused was effected. Ex. PT was prepared by Harjit Singh Brar DSP and was witnessed by ASI Mohammad Jamil, Police Station Raikot and Constable Tarsem Lal 142. On 22nd October, 2002, arrest memo of Gurcharan Singh accused was prepared. The same is Ex. PU. This memo was prepared by Harjit Singh Brar DSP Raikot and was witnessed by ASI Mohammad Jamil. On 13th October, 2002, disclosure statement of accused Gurmel Singh u/s 27 of the Evidence Act was recorded by Harjit Singh Brar DSP. This is also witnessed by ASI Mohammad Jamil, Police Station Raikot. This disclosure statement is (Ex. PV). On 24.09.2002 Deputy Superintendent got the currency notes verified from State Bank of Patiala, Branch Raikot. Ex. PY is addressed to DSP Raikot in which it has been stated that currency notes have been presented by Mohammad Jamil amounting to Rs. 5,20,000/- and they are forged and counterfeit. On 15.02.2007 SI Pal Singh had sworn affidavit (Ex. PA), wherein he stated that on 02.12.2002 he was directed by DSP Harjit Singh Brar to take the counterfeit currency notes amounting to Rs. 5,20,000/- to Government Printing Press, Nasik. It is further stated that on 02.12.2002, he was handed over counterfeit currency notes by Assistant Mohrrir Head Constable Sukhdev Singh Mo. 15 and proceeded towards Government Printing Press. Nasik and on 5th December. 2002 he deposited all the counterfeit currency notes at Nasik. On 8th December. 2002 he handed over the receipt regarding deposit of the counterfeit currency notes to DSP and during the period, the counterfeit currency notes remained with him. He did not tamper with the same.

3. Ex. PB is statement of Harjit Kaur widow of Malkiat Singh recorded u/s 161 Cr.P.C. by Harjit Singh Brar DSP on 9th October, 2002. in which she stated that she is the neighbored of both the accused Gurcharan Singh and Gurmel Singh and 5/6 months

before, accused Gurmel Singh came with a small bag and took the currency out of the same and said that with this counterfeit currency, he is going to purchase two buffalos and in the evening with that currency, he bought two buffalos. Purportedly, this statement was recorded to infer that the accused used to deal in the counterfeit currency.

4. Statement of Hardev Singh sarpanch u/s 161 Cr.P.C. was also recorded by Harjit Singh Brar DSP, which is Ex. PC. Hardev Singh sarpanch stated in his statement that he was present along with police party in the house of the accused and in his presence, according to the procedure, from the iron box, currency was recovered. He stated that three packets of currency notes of Rs. 500/- denomination amounting to Rs. 1,50,000/- were recovered. 198 currency notes of the denomination of Rs. 1000/- amounting to Rs. 1,98,000/-, six packets of notes of denomination of Rs. 500/-, 44 currency notes of Rs. 500/- denomination in total amounting to Rs. 3,22,000/-. In all forged currency notes amounting to Rs. 5,20,000/- were recovered. A separate memo was attested by sarpanch Hardev Singh, Kartar Singh, Tarlochan Singh and Mohinder Kumar SI/ SHO, Police Station Raikot. Recovery memo has been exhibited as Ex. PD, in which details of the notes have been given. Recovery memo Ex. PD as stated above, has been prepared by Harjit Singh Brar DSP and has been attested by sarpanch Hardev Singh, Kartar Singh, Tarlochan Singh and Mohinder Kumar SI/ SHO.

5. Statement of Mohinder Kumar SI/ SHO, Police Station Raikot was also recorded u/s 161 Cr.P.C. regarding search, seizure and recovery. This statement of SI/ SHO Mohinder Kumar was recorded by DSP Harjit Singh Brar. Statement is exhibited as ExPE.

6. Statement of Constable Jasbir Singh (Ex. PF) was recorded. He also stated regarding the procedure of search, seizure and recovery. To similar effect is the statement of C-II (Constable enrolled in the list-II of Punjab Police) Tarsem Lai, which is Ex. PG. To the similar effect, is the statement Ex. PK, PL, PM and PN of AS1 Mohammed Jamil. He has further stated that he had taken the counterfeit currency notes to the State Bank of Patiala, Raikot Branch and he has also witnessed the disclosure statement suffered by one of the accused.

7. The above stated FIR was investigated by DSP Harjit Singh Brar. Mohinder Kumar SI/ SHO Police Station Raikot on the basis of investigation, submitted a report u/s 173 Cr.P.C. in the Court of Illaqa Magistrate on 16.12.2002. The following relevant portion of report/challan submitted u/s 173 Cr.P.C. is reproduced below:

In the present case, report of State Bank of Patiala, Branch Raikot regarding recovered counterfeit currency Reserve Bank of India has been gathered, which is attached along with the challan. Besides this, counterfeit currency notes have been sent to Government Press Nasik, The test report has not been received yet. After receipt of the same, same will be attached. From the investigation conducted till now by DSP Harjit Singh Brar from the counterfeit Indian currency notes, inspection of the spot, site plan on the spot, statement of the witnesses, test report and interrogation of the accused Gurmel Singh

and Gurcharan Singh Pherurai, sufficient evidence has been collected, from which, offences are proved against the accused and these have been attached with the case file. Therefore as per the report under section! 73 Cr.P.C. offences u/s 489 B and C is made out against the accused and therefore challan is presented for consideration. Witnesses be summoned and accused he punished as per law.

Sd/-
Mohinder Kumar
SHO.
Police Station Raikot
16.12.2002

8. In the report u/s 173 Cr.P.C. following witnesses were cited:

1. Harjit Singh Brar, DSP Raikot

2. Mohinder Kumar, SI/ SHO Police Station Raikot.

3. Sarpanch Hardev Singh son of Gurcharan Singh Jat resident of Pherurai.

4. Kartar Singh son of Ram Kishan Jat resident of Pherurai.

5. Tarlochan Singh son of Harbans Singh Jat resident of Pherurai.

6. ASI Mohammad Jamil, Police Station Raikot.

7. C-ll Tarsem Lai. No. 142 GM, DSP Raikot.

8. R.C. Sarwal. Manager State Bank of Patiala. Branch Raikot.

9. C. Jasvir Singh No. 381. GM DSP Raikot.

10. ASI Jarnail Singh No. 260 Police Station Raikot.

11. Harjit Kaur widow of Malkiat Singh Jat resident of Pherurai.

12. Tarlochan Singh Nambardar son of Santa Singh resident of Gassuwala, Tehsil Rampuraphool (now resident of Rorikpura Police Station Jaito).

13. ASI Pal Singh. Police Station Raikot.

9. The challan, i.e. report u/s 173 Cr.P.C. also contained affidavits of Head Constable Sukhdev Singh, Head Constable Karamjit Singh and ASI Mohammad Jamil to prove link evidence.

10. As stated above, accused were arrested. Their judicial remand was obtained. Accused were granted bail by this Court on April 9,2003 vide Criminal Misc. No. 7215-M

of2003.

11. On 02.01.2003 Judicial Magistrate (I st Class) Jagraon committed the case to the court of Additional Sessions Judge, Ludhiana. On 31.01.2003 Additional Sessions Judge, Ludhiana ordered that from the facts and circumstances of the case, prima-facie case for charging the accused under Section-489 B and C IPC is made out. On November 18,2003, this Court vide Criminal Misc. No. 48429 of 2003 transferred the case to the Court of Sessions Judge, Ambala with direction that he shall further assign it to any other Additional Sessions Judge in his jurisdiction.

12. What is shocking our conscious, is the total break of rule of law, failure of administration of criminal justice as caused before Additional Sessions Judge (Adhoc) Fast Track Court, Ambala, who was trying the case. All witnesses .except Pal Singh PW1, resiled were declared hostile and did not utter a single incriminating line or a piece of, evidence against the accused. It included, investigating officer, SHO of Police Station, official police witnesses to the recovery memos except PWf SI Pal Singh. PW2 Harjit Kaur feigned total ignorance. She stated that she had made no statement to the police. To similar effect is the statement of sarpanch Hardev Singh. Inspector Mohinder Kumar, who was part of the search party and who had submitted the challan in the Court, stated that during the search no currency genuine or fake was recovered by the police in his presence. PW5 Constable Jasbir Singh, PW6 Constable C-II Tarsem Lai, PW7 ASI Jarnail Singh, PW8 ASI Mohammad Jamil and above all, investigating officer DSP Harjit Singh Brar PW9 went out of way, to deny all allegations against the accused and covered an extra mile to absolve accused of the offences.

13. Learned Additional Sessions Judge (Adhoc) Fast Track Court, vide judgment dated 06.10.2007 acquitted the accused. What disturbs us is that he was a meek spectator and under his authority and command of law, witnesses were being declared hostile and he did not take any action as per the law. for which there are ample provisions.

14. A single Judge of this Court (Ranjit Singh, J.) took notice of the newspaper report and passed the following order:

Hindustan Times dated November 14. 2007 has published a News Item titled "fake currency case witnesses resile as SSP Pherurai. brother walk free" revealing that G.S. Pherurai, Senior Superintendent of Police has been acquitted by Additional Sessions Judge (Adhoc) working as Fast Track Court at Ambala. The News Item would also show that G.S. Pherurai, SSP was prosecuted for being found in possession and for circulating fake currency in the market. Acquittal, as such, may not be a cause of much concern, but the manner in which this has come about, may be a matter of serious concern. Ten police witnesses examined by prosecution have turned hostile. Portion of their versions has been reproduced in the news paper, which may be disturbing feature of the case. They can clearly be seen hiding the truth to favour the accused/ police officer. The trial Judge appears to have remained silent spectator and may be seen to have not performed his

duties well. It is failure of justice. Allegation against the accused was of recovery of fake currency of Rs. five lakhs, which was covered by various forms of media and displayed by way of photograph or by video on channels. It can either be a case of fake recovery or a unfair acquittal. Both aspects would need some looking into.

I thought, it would be appropriate to bring this fact to the kind attention of Hon''ble the Chief Justice and accordingly I am sending this note along with photo copy of the News Item published in Hindustan Times dated November 14, 2007 for kind perusal and orders considered appropriate.

(RANJIT SINGH)
REGISTRAR (JUDICIAL)
16.11.2007

Offence u/s 489 B IPC is punishable with imprisonment for life or with imprisonment of a description which may extend to 10 years and offence u/s 489 C is punishable with imprisonment of a description which may extend to 7 years.

From the above, only two conclusions can be drawn, either Gurmel Singh and Gurcharan Singh Pherurai were falsely implicated or witnesses came to their rescue and in the Court, for ulterior reasons, were party to the acquittal of the accused.

15. Section 191 IPC defines false evidence and Section 192 IPC defines fabrication of false evidence. These are punishable u/s 193, 194 and 195 IPC. Section 193, 194 and 195 IPC read as under:

193. Punishment for false evidence.- Whosoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation I - An trial before a Court-martial [****] is a judicial proceeding.

Explanation 2- An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Explanation 3.- An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Classification of offence - The offence under this Section is non-cognizable, bailable, non-compoundable and triable by Magistrate of the first class.

Intentionally giving or fabricating false evidence in any other case, it is non-cognizable and triable by any Magistrate.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence. - Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [by the law for the time being in force in [India]] shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; if innocent person be thereby convicted and executed. - and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Classification of offence. - The offence under this Section is non-cognizable, non-bailable, non-compoundable and triable by Court of Session.

If innocent person be thereby convicted and executed, it is non-cognizable, non-bailable and triable by Court of Session.

195. - Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment - Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in [India]] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Classification of Offence.- The offence under this Section is non-cognizable, non-bailable, non-compoundable and triable by Court of Session.

16. PW10, Manager of the Bank had issued a certificate (Ex. PY) that was later stated to be false. The same is punishable u/s 197 and 198 IPC. If any false information is given in respect of any offence committed, the same is punishable u/s 203 IPC. If any false case is registered or false charge is brought out with an intent to injure, Section 211 IPC is made out and if a public servant frame incorrect record with intent to cause injury, loss or to save any person, that is punishable u/s 218 IPC. A similar punishment can also be attracted u/s 220 IPC if a person is wrongly got committed. There are various other provisions, for which witnesses can be punished.

17. We are prima facie of the view that the grave offences, as mentioned above, i.e. under Sections 193,194,195,197,198,203,211,218 and 220 IPC are made out against the witnesses and inquiry u/s 340 Cr.P.C. ought to have been conducted by the learned trial

Court and if he came to the conclusion that the offence has been committed, a complaint to this effect ought to have been filed.

18. The learned trial Court in such a case, ought to have taken recourse u/s 340 Cr.P.C. read with Section 195 Cr.P.C. As to why recourse to these provisions was not taken by the learned Additional Sessions Judge (Adhoc) Fast Track Court, Ambala is beyond over comprehension. We are amazed at the inaction on the part of the Additional Sessions Judge (Adhoc) Fast Track Court, Ambala. Even enquiry u/s 340 Cr.P.C. can also be conducted after the conclusion of trial.

19. We are also of the considered opinion that there is a total inaction on the part of the DGP Punjab and Home Secretary to take corrective measures when responsible officers of their offices have resiled from their statements in the Court. We are of the view that there is a total breach of rule of law. If the official witnesses had falsely implicated the accused (one of them was SSP), what was the hesitation on the part of the authorities to dispense with the services of such kind of officers, who had falsely implicated the accused, otherwise, if the accused were rightly found to have committed the offence during investigation, then as to why the witnesses have resiled in the Court of law, should be a matter of grave concern for the authorities of the State of Punjab.

20. As per the report of Indian Security Press, the currency recovered was not genuine and was counterfeit. The economy of our nation is being ruined by the circulation of counterfeit currency. Section 489 C and B are very serious offences, which are against the integrity and sovereignty of the country. Who abetted and from where the counterfeit currency came, is another issue. If the same is not found from the possession of the accused, then the police officials had obtained the same and planted it upon the accused. If accused are absolved as to why the police officials are not guilty of offence u/s 489 C and B, is another concern. We direct the DGP Punjab and Home Secretary Punjab to file their affidavits in response to our order. Since we have formulated our prima facie opinion, before we issue any directions, it will be necessary to issue notice to the affected parties. Therefore, we deem it appropriate to issue notices to these witnesses, namely PW2 Harjit Kaur, PW3 Sarpanch Hardev Singh son of Gurcharan Singh, PW4 Inspector Mohinder Kumar the then SHO Talwandi Sabo, Distt. Bathinda, PW5 Constable Jasbir Singh No. 381 posted at Police Station Sadar, Jagraon, PW6 Constable Tarsem Lal No. 142, Police Station Raikot, Punjab, PW7 ASI Jarnail Singh, CIA Jagraon, PW8 ASI Mohammad Jamil, PW9 Harjit Singh Brar, the then DSP Raikot, PW 10 R.C. Sarwal, Ex-manager, State Bank of Patiala Raikot. Notice be also issued to Gurcharan Singh Pherurai and his brother Gurmel Singh. Let notices be issued for 23.05.2008 and shall be served by the State.