

Kanwal Kumar Vs. State

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Court : Punjab and Haryana

Decided On : Aug-18-2004

Reported in : (2005)140PLR330

Judge : Virender Singh, J.

Acts : Indian Penal Code (IPC) - Sections 34, 409 and 467

Appeal No. : Criminal Revision No. 116 of 1995

Appellant : Kanwal Kumar

Respondent : State

Advocate for Def. : G.S. Bhandari, Adv.

Advocate for Pet/Ap. : Tanu Bedi and; T.P.S. Mann, Adv.

Judgement :

Virender Singh, J.

1. Vide this judgment, I shall be disposing of Criminal Revision No. 116 of 1995, Kanwal Kumar and Raghu Nath Sapra v. State of Punjab and Criminal Revision No. 704 for 195, Kultar Singh Multani v. State of Punjab, as both the revision petitions are arising out of one and the same impugned judgment of learned Additional Sessions Judge, Barnala dated 10.2.1995, whereby the conviction of

the present petitioners recorded by the trial Court vide impugned judgment dated 21.1.1993 was upheld.

2. Kultar Singh Multani, petitioner, has been convicted under Section 467 I.P.C. and sentenced to undergo RI for 2 1/2 years and to pay a fine of Rs. 1500/- and in default of payment of fine, to further undergo RI for six months. He has also been convicted under Section 409 I.P.C. and sentenced the same sentence as awarded under Section 467 I.P.C.

3. Kanwal Kumar and Raghu Nath Sapra, petitioners, have been convicted under Section 467 read with Section 34 I.P.C. and sentenced to undergo RI for 11/2 years and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo R.I. for four months. They have also been convicted under Section 409 read with Section 34 I.P.C. and sentenced for the same sentence as awarded under Section 467 read with Section 34 I.P.C.

4. However, the substantive sentences awarded to all the three petitioners were ordered to run concurrently.

5. The present case was registered against the petitioners on the basis of a letter Ex.PA addressed by one Mr. M.L. Sharma, Manager, Punjab National Bank, Maur Nabha Branch to the Senior, Superintendent of Police, Sangrur. The gist of the said letter is reproduced hereunder:

'Kultar Singh Multani had worked as an Accountant at Punjab National Bank, Maur Nabha Branch for the period from 1.2.1983 to 12.2.1984. He had the general and specific power of attorney as given to him by the Bank to act on its behalf and to discharge various duties in his official capacity at the place of his posting. As accountant, Kultar Singh Multani petitioner was also competent to issue the demand drafts and sign the same in his official capacity. He was also having independent possession of demand draft drawing books of different denominations issued by the Bank to him from time to time. He was entrusted with the work of issuing demand drafts to the customers of the Bank on its behalf in lieu of the amount received by the Bank. It is then alleged that Kultar Singh Multani petitioner issued forged demand drafts without any consideration in favour of the other two

petitioners, namely, Kanwal Kumar and Raghu Nath Sapra and withdrew the amounts at different stages from the Bank. In this regard, draft No.PR.V 943464 dated 10.06,1983 for Rs.9000/-, draft No.PR.V 943483 dated 24.09,1983 for Rs. 9000/- and draft No.PR.V 943497 dated 7.1.1984 for Rs.9500/- were prepared, Draft No.PR.V 943483 dated 24.8.1983 was prepared in favour of Kanwal Kumar, whereas the other two drafts were prepared in favour of Raghu Nath Sapra.'

6. Subsequently, during investigation, it revealed that all the aforesaid three drafts amounting to Rs.27,500/- were encashed.

7. After completion of the investigation, challan was filed against the present three petitioners. As stated above, they suffered conviction for the aforesaid offences vide impugned judgment of learned Judicial Magistrate, IInd Class, Barnala, dated 21.1.1993. Aggrieved by the said judgment, they preferred an appeal, which also stands dismissed vide impugned judgment of learned Additional Sessions Judge, Barnala, dated 10.2.1995. Hence these two revision petitions.

8. I have heard Ms. Tanu Bedi, learned counsel appearing for Kanwal Kumar and Raghu Nath Sapra petitioners and Mr. T.P.S. Mann, learned counsel for Kultar Singh Multani petitioner. Mr. G.S.Bhandari has also rendered his assistance on behalf of the State. I have also gone through the entire record minutely.

9. Ms. Tanu Bedi, learned counsel appearing for petitioners Kanwal Kumar and Raghu Nath Sapra, states that so far as the present petitioners are concerned, their conviction under Section 409 read with Section 34 I.P.C. is bad in the eye of law. Dwelling upon her arguments, she submits that the present petitioners are not public servants and as such, they could not be convicted even with the aid of Section 34 I.P.C. She further contends that the conviction of the present petitioners under Section 467 read with Section 34 I.P.C. is also un-sustainable for the reason that the prosecution has not brought any evidence worth the name to connect them with the commission of the alleged offence along with other co-accused Kultar Singh Multani, who was working as an Accountant in Punjab National Bank, Maur Nabha Branch. She further contends that simply the cheques have been encashed by the present petitioners at different stages after depositing them in their respective banks would not be a ground to convict them with the aid

of Section 34 I.P.C. In the present case, forgery is allegedly committed by Kultar Singh Multani only, who was in possession of all the drafts. She then contends that the defence of the present petitioners is most probable on the face of it, in which they have categorically asserted that Kultar Singh Multani petitioner, in fact, owned this amount to them and in order to clear his dues, he issued the drafts at different stages to the present petitioners, which were subsequently deposited by them for clearance. The present petitioners could not possibly know that the drafts, which were handed over to them, were in fact forged by Kultar Singh Multani while officiating as Accountant in Punjab National Bank.

10. Relying heavily on the aforesaid submission, the learned counsel contends that the case of the prosecution is not proved against Kanwal Kumar and Raghu Nath Sapra beyond a shadow of reasonable doubt and as such, their conviction as recorded by the trial court and subsequently upheld by the lower appellate Court deserves to be set aside.

11. In the alternative, the learned counsel beseech for reduction in the sentence on the ground that both the petitioners have already undergone one month and few odd days of their substantive sentence; they have already faced the agony of long protracted trial.

12. Mr. T.P.S. Mann, learned counsel appearing for petitioners Kultar Singh Multani does not join the issue on merits and confines his arguments with regard to quantum of sentence only. He contends that the petitioner has already undergone 10 months and a few odd days of his total awarded sentence as he remained in custody for about one month when his appeal was pending before the learned Additional District Judge and after the appeal was dismissed on 10.2.1995, his sentence was suspended on 29.11.1995 by this Court. He then contends that besides the fact that the petitioner has already lost his job, he has already faced an ordeal of protracted trial of long 19 years. He then contends that the petitioners was of young age at the time of alleged occurrence and at that time, he was having minor children, who are now of marriageable age. On the basis of aforesaid submissions, learned counsel prays for a lenient approach with regard to the quantum of sentence. Repudiating the submission made by learned

counsel for petitioners Kanwal Kumar and Raghu Nath Sapra, learned State counsel submits that no doubt, it is not proved on the file that they had also connived with their co-accused Kultar Singh Multani, but they were real beneficiaries and had ultimately deposited the three drafts in the bank for encashment, which were duly encashed. He then contends that their conviction under Section 467 I.P.C. with the aid of Section 34 I.P.C. is, thus proved, Learned State counsel, however, very fairly conceded that their conviction under Section 409 read with Section 34 I.P.C. is being not sustainable.

13. Opposing the submissions made by Mr. Mann on behalf of petitioner Kultar Singh Multani, learned State counsel contends that the case of the petitioner does not call for any lenient approach with regard to quantum of sentence, as he being an Accountant of the bank has not only embezzled the amount, but has also shattered the faith of the public.

14. I find force in the submission made by Ms. Tanu Bedi, so far as the case of petitioners Kanwal Kumar and Raghu Nath Sapra on merits is concerned. With the assistance of learned counsel for both sides, I have re-scanned the material evidence available on file. No doubt, the aforesaid drafts No.PR.V 943464 dated 10.6.1983, PR.V 943483 dated 24.9.1983 and PR.V 943497 dated 7.1.1984 amounting to Rs.27,500/- in total have been encashed by petitioners Kanwal Kumar and Raghu Nath Sapra, but by no stretch of imagination, it can be said that the present two petitioners have ever connived with Kultar Singh Multani petitioner, who was posted as an Accountant with Punjab National Bank, Maur Nabha Branch and had issued the drafts. Admittedly, there is no evidence on the file to indicate that the present two petitioners had ever filled in any form with regard to the issuance of aforesaid drafts in Punjab National Bank, where Kultar Singh Multani was posted. Forgery cannot be presumed and it has to be proved by the prosecution by cogent evidence. In the case of present two petitioners, it is missing on the face of it. In my considered view, the prosecution has miserably failed to connect the present two petitioners with the main offence of forgery with the aid of Section 34 I.P.C. They, thus, stand acquitted for the said charge, At the cost of repetition, it is stated that so far as the conviction of the present petitioner under Section 409 read with Section 34 I.P.C. is concerned, it is conceded at the

bar by learned State counsel that the said offence is not made out against them. Even otherwise, in my view, this offence is not proved at all, qua them, the net result is that Kanwal Kumar and Raghu Nath Sapra petitioners, are, hereby, acquitted of both the charges i.e. 467/34 I.P.C. and 409/34 I.P.C.

15. Reverting to the case of Kultar Singh Multani petitioner. He has already faced on agony of protracted trial of long 19 years. Another fact which can be considered as mitigating circumstance with regard to reduction in the quantum of sentence is that the has already lost his job. As stated by Mr. Mann and not disputed by the learned State counsel, the petitioner has also remained in jail for 10 months and a few odd days.

16. Keeping in view the entire facts and circumstances of the case, the ends of justice would be adequately met, if the substantive sentence as awarded by the trial court on both counts (2-1/2 years) is reduced to the period already undergone. It is so ordered. However, the fine awarded on both counts is Rs.3000/- in all. The same is now enhanced to Rs. 30,000/-. It is made clear that in case the petitioner has already deposited Rs. 3000/- before the trial Court, the same shall now be adjusted towards the enhanced amount. The petitioner is given three months time from today to deposit the enhanced amount before the trial court. In the event of deposit, the said amount shall be disbursed to the Punjab National Bank, Maur Nabha Branch, where the petitioner was working. It is made further clear that in case, while dismissing the present petitioner from the service, the aforesaid amount of the three bank drafts i.e. Rs. 27,500/- is already deducted/adjusted from the account of the petitioner, in that eventuality, the petitioner shall not be depositing the same. But the amount of Rs. 3000/- already awarded by the trial Court as fine shall remain intact. In default of compliance with the aforesaid direction, the revision petitioner filed by him shall be deemed to have been dismissed and in that eventuality, he shall undergo the entire sentence awarded to him by the trial Court and upheld by the lower appellate Court.

17. The net result is that Revision No. 116 of 1995 filed by Kanwal Kumar and Raghu Nath Sapra is, hereby allowed, whereas Revision No. 704 of 1995 filed by Kultar Singh Multani is dismissed with the modification in the quantum of sentence

and the fine as indicated above.

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