

Dr. Manish Sharma vs State Of Himachal Pradesh & Ors on 24 October, 2016

Author: Dharam Chand Chaudhary

Bench: Dharam Chand Chaudhary

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MMO No. 149 of
Decided on: 24.10.2016

Dr. Manish Sharma
Versus
State of Himachal Pradesh & ors.

Coram
The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.
Whether approved for reporting? 1. Yes.

For the petitioner: Mr. Subhash Sharma, Advocate.
For the respondents: Mr. Parmod Thakur, Addl. AG with Mr. Neeraj K. Sharma, Dy. AG. for respondents No. 1 & 2.
Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate for respondent No. 3.

Justice Dharam Chand Chaudhary, J (Oral).

Heard.

2. The petitioner herein is complainant in a case registered against the 3rd respondent in Police Station, Theog, District Shimla, H.P. under Sections 409, 465, 468 and 471 of the Indian Penal Code, vide FIR No. 138/2013 dated 8.10.2013.

3. The complaint is that the 3rd respondent has procured the order of bail from this Court in Cr.MP (M) No. 11583 of 2013, on the basis of forged and fictitious documents. It has been canvassed that

this Court while admitting the 3rd respondent on bail had left it open to the respondent-State to approach for cancellation of the liberty of bail granted to her, if at some later stage, during the course of investigation, it transpires that various amounts she received under 'Rogi Kalyan Samiti' are found to be not deposited by her with the petitioner-complainant and Whether reporters of the local papers may be allowed to see the judgment?

rather misappropriated. Now, during the course of scientific investigation got conducted in the matter, the so called letter whereby the complainant .

had allegedly directed her to deposit the amount in question with him and the two receipts she pressed in service at the time of seeking bail, as per the report received from the Forensic Science Laboratory, were found to be forged by the 3rd respondent herself. The petitioner-complainant approached the respondent-State to file application in this Court for of cancellation of the bail granted to the 3rd respondent but of no avail, hence this petition.

4. rt Mr. Subhash Sharma, Advocate representing the petitioner-

complainant has vehemently argued that the 3rd respondent has obtained order of bail in the application she filed by way of fraud and on the basis of forged and fictitious records. The liberty of bail granted to her, therefore, has been sought to be withdrawn. Mr. Sharma, learned counsel has also placed reliance on various judgments of Apex Court in S.P. Chengalvaraya Naidu (dead) by L.R.s vs. Jagannath (dead) by L.Rs and others, AIR 1994 SC 853, Indian Bank vs. M/S Satyam Fibres (India) Pvt. Ltd., AIR 1996 SC 2592, Vijay Syal and another vs. State of Punjab and others, AIR 2003 SC 4023, Bhaurao Dagdu Paralkar vs. State of Maharashtra and others, AIR 2005 SC 3330, A.V. Papayya Sastry & ors. vs. Government of A.P. & ors., and in Amar Singh vs. Union of India & ors., (2011) 7 SCC 69.

5. Having gone through the record and on analyzing the submissions made on both sides, true it is that the 3rd respondent has produced along with the petition under Section 438 of the Code of Criminal Procedure registered as Cr.MP (M) No. 11583 of 2013, an office order and two receipts allegedly issued by the petitioner-complainant to show that .

various amounts she collected under 'Rogi Kalyan Scheme' stands deposited with the petitioner. The judgment, Annexure P-3 passed by this Court in the bail petition reads as follows:

"2. Consequent upon the directions issued on the previous dates, the accused-petitioner remained associated with the of investigation of the case. The investigation, however, is still in progress and according to learned Additional Advocate General, the amount she allegedly embezzled, is yet to be rt recovered from her. The plea raised on behalf of the accused- petitioner, however, is that whatever amount pertaining to 'Rogi Kalyan Samiti', she collected; during discharge of her duties stands deposited with the complainant i.e. Senior Medical Officer, Civil Hospital, Theog, who is Drawing and Disbursing Officer also. The record reveals that she has produced one office order and two receipts to show that under the directions

of the complainant she was required to deposit the amount in question with him and that she had been depositing the same with him from time to time. The receipts he allegedly issued have been pressed in service in this behalf.

3. Learned Additional Advocate General has disputed the authenticity and genuineness of the documents so produced by the accused-petitioner on account of being not genuine. The status report reveals that the steps to ascertain the genuineness and authenticity of these documents through scientific process, are being taken.

4. True it is that the offence allegedly committed by the accused-petitioner is grievous and heinous one as she has misappropriated the money, being collected in the Hospital by .

way of user charges etc. for the welfare and well being of the poor patients, who have no means to bear the medical expenses.

However, the investigation in the case is still in progress. There is no complaint that the accused-petitioner when called upon to join the investigation failed to do so. She even is permanent of resident of District Shimla and as such can reasonably be believed to have roots in the Society. Therefore, there is no apprehension of her fleeing away from justice or jumping over rt the bail.

5. The recovery of the amount in question from the accused petitioner, no doubt, has been vigorously urged and this petition sought to be dismissed on this score, however, if at some later stage during the course of investigation it surfaced that the amount in question was not deposited with the complainant and rather found to be misappropriated by her, the investigating agency may approach the Court by filing application for seeking appropriate orders in this regard. I therefore, allow this petition and it is ordered that in the event of the arrest of the accused-

petitioner in connection with FIR No.138/13, registered with Police Station, Theog, she shall be released on bail, subject to her furnishing personal bond in the sum of `50,000/- with one surety in the like amount to the satisfaction of the arresting Police Officer/I.O., and shall further abide by the following conditions:-

a. She shall make herself available for interrogation as and when required and shall cooperate with the investigating Officer to conduct the investigation in a manner so as to take it to its logical end;

b. She shall not tamper with the prosecution evidence nor .

hamper the investigation of the case in any manner whatsoever;

c. She shall not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police officer; and d. She shall not leave the territory of India without the prior permission of the Court."

of

6. The 3rd respondent as such was ordered to be admitted on bail.

The status report placed on record by the respondent-State reveals that all the three documents during scientific investigation got conducted in the matter were not found to be issued by the petitioner-complainant and rather it is the 3rd respondent who herself is the author thereof and forged the same. Not only this, but the status report further reveals that during the period from 2.1.2013 to September, 2013, a sum of Rs. 1,11,430/-

collected by the 3rd respondent has not been deposited by her in the Bank and rather the same has been misappropriated and embezzled by her for her own gain and advantage.

7. True it is that this Court while granting bail to the 3rd respondent had observed in para 5 reproduced hereinabove that if at some later stage during the course of investigation it transpires that the amount in question was not deposited by the 3rd respondent and rather misappropriated by her, the Investigating Agency may approach the Court by filing application for seeking appropriate orders in this regard. Such observations had come at a stage when during the course of hearing the Investigating Agency had insisted for a direction to the 3rd respondent to deposit the amount she allegedly misappropriated and embezzled. Since the respondent-State has not filed any such application despite of during .

the scientific investigation it transpired that the documents pressed in service by the 3rd respondent were found to be forged and fictitious, therefore, the petitioner has rightly filed this application in this Court. The petition, no doubt, makes out a case for issuance of a direction to accused-

3rd respondent to deposit the amount in question she allegedly embezzled, of however, no liberty was reserved in favour of the respondent-State to approach for cancellation of bail nor any case therefor is made out for the reason that the present is not a case of violation of the conditions imposed upon the respondent while granting bail to her. In terms of para 6 of the judgment (supra), the Investigating Agency could have moved to the Court for cancellation of bail in the event of the accused-respondent No. 3 was found to have misused the liberty of bail or have violated any of such conditions imposed upon her. No doubt, prima-facie, she has obtained the order qua grant of bail on the basis of the documents, which during the course of scientific investigation, have been found to be forged and fictitious. The genuineness and authenticity of the report of Forensic Science Laboratory is, however, yet to be gone into during the course of trial against her. Above all, as per the judgment Annexure P-3, she could have only been directed to deposit the amount she embezzled and misappropriated, had she during the course of further investigation been found to have not deposited the amount in question either with complainant or in the Bank. Prima-facie, she seems to

have misappropriate this amount and not deposited the same in the Bank.

Therefore, there will be a direction to accused-3rd respondent to deposit a sum of Rs. 1,11,430/- in the Court of ACJM, Theog, District Shimla, within .

4 weeks from today, failing which, the liberty of bail already granted in her favour vide Annexure P-3 shall stand withdrawn automatically without any further reference to the Court and in that event, the Investigating Agency shall also have right to arrest her in connection with the case registered against her vide FIR No. 138 of 2013 dated 8.10.2013.

of

8. The deposit of amount in the trial Court by accused-

respondent No. 3, however, shall have neither adverse effect on her defence rt nor an expression on merits of the case. The amount so deposited by accused-respondent No. 3 shall be invested in Fixed Deposit and shall abide by the final decision of the case. The petition is accordingly disposed of.

October 24, 2016,
(karan)

(Dharam Chand Chaudhary),
Judge .