

\$~75

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21.10.2019

+ CRL.M.C. 5404/2019 & CRL.M.A. 38774/2019-stay

NAVNEET SINGH Petitioner

Through Mr. Rajat Aneja, Adv.

versus

STATE

..... Respondent

Through Mr. Kamal Kr. Ghei, APP for State
SI Ashok Kumar, PS Chankya Puri

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 38775/2019

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.M.C. 5404/2019 & CRL.M.A. 38774/2019

1. Vide the present petition, the petitioner seeks direction thereby to set aside the impugned Order dated 28.09.2019 passed by learned Special Judge, Patiala House Courts, New Delhi in the Criminal Revision Petition bearing C.R. No. 458/2018, arising in the proceedings of F.I.R. No. 15/2016 registered at Police Station Chanakya Puri under Sections 420/468/471/120-

B IPC, and to discharge the Petitioner of the aforesaid Offences.

2. Brief facts of the case are that on 14.01.2016, a Complaint was lodged by the Assistant Regional Security Officer of the Embassy of United States of America, New Delhi, wherein it was interalia alleged that an individual named Harpreet Singh applied for a Non-Immigrant Visa at the US Embassy at New Delhi and along with the application, said Shri Harpreet Singh annexed various documents; Shri Harpreet Singh claimed himself to be the owner of a firm by the name of M/s P.K. Jutti Palace situated at Patiala, Punjab besides filing the documents in connection therewith; however in the interview with the Embassy Officials, Shri Harpreet Singh stated that he does not own or work for M/s P.K. Jutti Palace and all the documents submitted by him along with the Visa Application were fraudulent and that he paid a sum of ₹.1,00,000/- to an individual named Navneet Singh for the said fraudulent documents and would pay an additional sum of Rs. 1,00,000/- if the Visa is approved.

3. Learned counsel appearing on behalf of petitioner submits that during the course of investigation, statements of certain witnesses were recorded including so called confessions extracted from the two accused persons namely, Shri Harpreet Singh and Shri Navneet Singh. On the completion of

investigation, a detailed Chargesheet was filed by the concerned police officials, whereafter cognizance was taken by the Learned Metropolitan Magistrate and accordingly, both the accused persons including the present Petitioner were summoned to appear before the Learned Metropolitan Magistrate on 08.01.2018.

4. Thereafter, while the matter was adjourned for hearing on the point of charge vide Order dated 11.05.2018 and the matter was listed for the said purpose on 28.09.2018. However, the other co-accused person Harpreet Singh made an Application for plea bargaining under the relevant provisions, as a result whereof, the said Application was referred to the National Lok Adalat for 14.07.2018. On the said day i.e. 14.07.2018, the said Accused Shri Harpreet Singh admitted his guilt and sought the benefit of Chapter 21A of the Criminal Procedure Code, 1973 by way of plea bargaining and consequently, the National Lok Adalat after considering the facts and circumstances of the case, vide its Order dated 14.07.2018 itself, convicted the Accused Harpreet Singh under Sections 420/467/468/471/120-B IPC and sentenced him to imprisonment for the period already undergone by him besides imposing a fine of Rs.5,000/-.

5. Learned counsel for petitioner further submits that the present

Petitioner did not move such application for plea bargaining and he was not even aware about the status of the other co-accused having moved the Application for plea bargaining.

6. Learned counsel for petitioner further submits that when Petitioner came to know about the aforesaid proceedings of the National Lok Adalat as well as the Order passed on the Application of accused Harpreet Singh for plea bargaining and accordingly, the Petitioner herein filed an application for early hearing before the Learned Metropolitan Magistrate on the point of charge and to prepone the date of 28.09.2018. However, the said Application was declined in view of the heavy pendency before the Court below.

7. The matter eventually came up for hearing before the Leaned Metropolitan Magistrate, Patiala House Courts, on 28.09.2018 on the point of Charge and the learned Counsel for the petitioner stated that no case is made out against the Petitioner on the basis of the materials accompanying the Chargesheet, particularly keeping in view the fact that the investigation conducted by the police authorities did not reveal any incriminating evidence against the Petitioner, therefore, no charge is liable to be framed for any of the offences alleged against him. It is submitted that, however, the Learned Metropolitan Magistrate after hearing the counsel for the Petitioner

held otherwise and proceeded to frame charges against the Petitioner under Sections 420/468/471/120-B IPC vide Order dated 28.09.2018.

8. Being aggrieved, the petitioner challenged the same by filing Criminal Revision Petition under Section 397 read with Section 401 of the Cr.P.C and the same was dismissed vide order 28.09.2019 by learned ASJ, Patiala House Courts, New Delhi.

9. Learned counsel for the petitioner further submits that the learned Special Judge while passing the impugned Order dated 28.09.2019 dismissing the Revision Petition of the Petitioner made a grave error while observing in the penultimate paragraph (unnumbered) thereof, that in view of the co-accused (Harpreet Singh) having pleaded guilty in the application seeking plea bargaining as well as the statement of the said co-accused before the American Embassy as mentioned in the written complaint, are sufficient to frame charges against the present Petitioner. The learned Judge below further went on to observe that the co-accused Harpreet Singh having pleaded guilty before the National Lok Adalat on 14.07.2018 is sufficient to attract Section 30 of the Evidence Act, which would bind the present petitioner.

10. Learned counsel further submits that the learned Special Judge

therefore committed a grave illegality by ignoring and overlooking the factum of plea bargaining proceedings for the purpose of taking the admission of the co-accused as '*proved*' in order to fasten criminal liability upon the Petitioner and concluded, albeit erroneously, that the said admission of the co-accused would bind the Petitioner also, and therefore, there is sufficient material on record against the Petitioner.

11. On the other hand, learned APP for the State has argued that during investigation, ASI Surender Kumar sent the recovered CPU for expert opinion to RFSL, Yashwant Palace, Chanakya Puri and after transfer of ASI Surender Kumar, the present IO obtained the RFSL opinion whereby it was stated that *“The exhibit hard drive marked “HDD1” was forensically imaged on sterile storage media using Encase Software. On analysis of imaged storage data by authorized hardware and software tools, the relevant documents “DOC1”, “DOC2”, “DOC3”, and “DOC4” could not be retrieved from exhibit “HDD1”. However, the retrieved data (doc-files, pdf files and images) from exhibit “HDD1” is provided in a CD vide Annexure “CDI”.*

12. It is further stated that the CD given by FSL was examined, however, no incriminating material was found therein.

13. It is further stated that during investigation, regarding the IP address which was created in the DS-160 Form, a letter was sent to the concerned agency for details of the same but no details could be received by the IO.

14. Learned APP submits that since co-accused Harpreet Singh has admitted his guilt, therefore, Section 30 of the Indian Evidence Act is applicable and the case is made out against the petitioner, consequently, the learned Trial Court rightly framed the charges against the petitioner.

15. For the convenience, Section 30 of the Indian Evidence Act, 1872 has been reproduced as under:-

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.— When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession

16. On perusal of the same, where confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

17. Thus, the aforesaid Section is not conclusive for the reason that only if the Court feels the confession is corroborated with other materials on

record, then that can be used against the co –accused and in that situation section 30 of the Indian Evidence Act will come into play.

18. It is not in dispute that there are three accused in the crime, however, since the co-accused Sukhdev Singh is not traceable and his identity has not been established, therefore, the chargesheet is filed against the other two co-accused.

19. It is also not in dispute that co-accused Harpreet Singh pleaded guilty before the National Lok Adalat and accordingly, he was sentenced to the period already undergone by him and fine of ₹5,000/- vide order dated 14.07.2018.

20. Provisions related to plea bargaining are contained in Chapter 21-A of the Cr.P.C. The relevant provisions are reproduced below:-

“265A. Application of the Chapter.-

(1) This Chapter shall apply in respect of an accused against whom--

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on

complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B Application for plea bargaining

(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under Sub-Section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under Sub-Section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the

case, as the case may be, and the accused appear on the date fixed under Sub-Section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where -

- (a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;*
- (b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under Sub-Section (1).*

Also according to Section 265K. Statements of accused not to be used.-Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.”

21. According to the aforesaid provisions it is clear that facts stated by an accused in application for plea bargaining filed under Section 265B Cr.P.C cannot be used for affixing guilt on any other co-accused.

22. It is also not in dispute that since there is no material on record either from the CDRs or there is no FSL report regarding that therefore if the

prosecution evidence on record is accepted as it is, still, the petitioner cannot be convicted. Therefore, there would be no purpose to direct petitioner to face trial. Accordingly, I hereby set aside the impugned order.

23. Even otherwise, if identify of Sukhdev is established and he is arrested in the present case on the material on record as filed by the IO with Trial Court and chargesheet is filed, the petitioner cannot be convicted.

24. In view of above, petitioner is discharged from all the offences, the FIR quashed against the petitioner with emanating proceedings thereof.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 21, 2019
ms

सात्यमेव जयते