

(Raviprakash Singh vs. State of M.P. & Anr.)

8.5.2017

Shri J.S. Kushwah, Counsel for the applicant.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent No.1/State.

Shri M.P. Agrawal, Counsel for the respondent No.2.

This petition under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No. 302/2016 registered by Police Station Gohad, District Bhind for offence under Section 420 of IPC and all other consequential criminal proceedings.

The necessary facts for the disposal of the present petition in short are that on 23.9.2006 the applicant was working on the post of Special Assistant in State Bank of India, Mau Road, Gohad, District Bhind. The duty of the applicant was to counter check the signatures of the consumers put by them on the withdrawal form with their specimen signatures available in the Bank. Only after the signatures on the withdrawal form was certified by the applicant, the payments were released. On 23.9.2006, one withdrawal form was submitted for withdrawing an amount of Rs. 13,000/- from the account of one Meharban Singh. After verifying the signatures on the withdrawal form with that of the specimen signatures of the account holder by the applicant, the Bank made the payment of Rs. 13,000/-. On 25.9.2006, the account holder namely Meharban Singh presented a withdrawal slip for withdrawing an amount of Rs. 13,000/- and at that time he was informed that no money is left in his account as he has already withdrawn an amount of Rs. 13,000/- from his

account on 23.9.2006. The account holder informed the Bank that he has never withdrawn the said amount. It appears that on the basis of the complaint made by the account holder Meharban Singh, a departmental enquiry was conducted and it was found that the applicant was negligent in performing his duties and accordingly a punishment of fine of Rs. 1000/- was imposed on the applicant by order dated 13.3.2007. The Bank made payment of Rs. 13,000/- to the account holder. It is submitted that on 5.10.2016 the Bank informed the SHO, Police Station Gohad, District Bhind that as the incident of 23.9.2006 with regard to fraudulent withdrawal of Rs. 13,000/- has been classified in the category of fraud, therefore, under the instructions of the Reserve Bank of India, in the case of fraudulent withdrawal of amount ranging between 10,000/- to 1,00,000/-, information is required to be given to the concerning police station, thus, it was prayed that an offence be registered against the applicant. Accordingly, the police station Gohad registered a Crime No.302/2016 for offence under Section 420 of IPC.

The present petition has been filed by the applicant for quashment of the FIR on the ground that the incident took place on 23.9.2006 whereas the FIR has been lodged on 5.10.2016 i.e. after 10 years of the incident, though the period of limitation for taking cognizance for offence under Section 420 of IPC is seven years, therefore, the case is barred by limitation. It was further submitted that as the applicant has already been punished in the departmental enquiry, therefore, his criminal prosecution would amount

to double jeopardy.

Per contra, it is submitted by the counsel for the State that no period of limitation is prescribed for the offence under Section 420 of IPC and, therefore, it cannot be said that the police cannot register the offence under Section 420 of IPC on the report made by the Bank on 5.10.2016 and secondly the punishment of the applicant in the departmental enquiry would not effect the criminal case.

The counsel for the Bank also submitted that the applicant was found guilty in the departmental enquiry and as per the instructions of the Reserve Bank of India, the FIR has been lodged against the applicant.

Heard the learned counsel for the parties.

So far as the first contention made by the counsel for the applicant with regard to the period of limitation is concerned, Section 468 of Cr.P.C. deals with the period of limitation. Section 468 of Cr.P.C. reads as under:-

“468. Bar to taking cognizance after lapse of the period of limitation:-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

From the plain reading of Section 468 of Cr.P.C., it is clear that the period of limitation for taking cognizance of an offence punishable with the maximum sentence of three years, is three years and for the remaining offences which are punishable with imprisonment of more than three years, no period of limitation is prescribed. The maximum sentence provided for an offence under Section 420 of IPC is seven years and, therefore, it cannot be said that the FIR lodged on 5.10.2016 is beyond the period of limitation as no period of limitation is prescribed for offence under Section 420 of IPC.

So far as the fact that the applicant has already been held guilty in a departmental enquiry is concerned, it is clear that the applicant cannot take advantage of the said finding given in the departmental enquiry because it cannot be said that the applicant was tried and acquitted or convicted for the same offence. Section 300 of Cr.P.C. reads as under:-

“300. Person once convicted or acquitted not to be tried for same offence:-(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same

offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence, may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect

the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.

Explanation:- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this section."

From the plain reading of Section 300 of Cr.P.C., it is clear that in order to attract the provision of Section 300 of Cr.P.C. the applicant must show that he was tried by a Court of competent jurisdiction for an offence and was convicted or acquitted for such offence and, therefore, he is not liable to be tried again for the same offence nor on the same facts for any other offence.

So far as the departmental enquiry is concerned, since the nature of the proceedings is different, therefore, it cannot be said that the registration of offence against the applicant on the similar allegations and the trial of the applicant on the similar allegations would amount to double jeopardy.

Accordingly, this petition fails and is hereby **dismissed**.

(alok)

(G.S. Ahluwalia)
Judge