

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1991-2017(O&M)

Date of decision:-24.1.2018

Tariq Ahmed

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.L.S. Sidhu, Advocate
for the petitioner.

H.S. MADAAN, J.

Petitioner – Tariq Ahmed, an accused along with his co-accused – Raj Kumar and Neelam Devi faced trial by Judicial Magistrate Ist Class, Pathankot on the allegations that Raj Kumar had taken money from Prem Singh, Amrik Singh and Uttam Singh for procuring jobs in Army for 8 boys, however, he neither procured jobs nor returned the money, rather on 26.9.2012 Raj Kumar and his wife Neelam Devi abused the complainants; that both of them had gave a cheque in the sum of Rs.20 lakhs, but it was then taken back by them; that though a compromise had been reached between the parties but accused did not return money; that the matter had been inquired into by DSP, wherein involvement of Tariq

Ahmed in the scam was found to be there inasmuch as Raj Kumar had given money to Tariq Ahmed for procuring the jobs but he failed to do so; that Tariq Ahmed had given a cheque bearing No.039011 in the sum of Rs.20,00,000/-, which had been handed over to Prem Singh but the cheque was dishonoured due to insufficient funds; that when pressurized, Tariq Ahmed had given different cheques but those were also dishonoured. Formal FIR had been registered against Raj Kumar, Neelam Devi, Tariq Ahmed Bani and Monir Ahmed. Raj Kumar and Neelam Devi were arrested but Tariq Ahmed and Monir Ahmed could not be arrested and were declared proclaimed offenders. Subsequently Tariq Ahmed was arrested and supplementary challan was filed against him.

The trial proceeded, which ended in conviction and sentence of the accused under Sections 419, 420, 120-B IPC read with Section 34 of IPC since the prosecution was able to establish that accused Raj Kumar, Neelam Devi and Tariq Ahmed had entered into a criminal conspiracy giving false assurance to complainant to provide jobs to their relatives and as a part of that conspiracy, Raj Kumar introduced accused Tariq Ahmed, who was wearing Army uniform thereby impersonating himself as an Army Officer and a test was conducted result of which was not declared. All the three accused were sentenced to undergo rigorous imprisonment for a period of three years under Section 419 IPC, three years imprisonment under Section 420 IPC and 6 months imprisonment under Section 120-B of IPC. All the accused were sentenced to pay a fine of Rs.5,000/- under Section 420 IPC and in default of payment of fine, shall further undergo imprisonment of 30 days.

Feeling aggrieved by the said judgment of conviction and order of sentence, accused Tariq Ahmed has filed an appeal in the Court of Sessions, which was marked to learned Additional Sessions Judge, Pathankot, therein he moved an application under Section 391 Cr.P.C. for the reason that actually his name is Mehboob Ali son of Abdul Gani Batt, resident of village Manjmi Panchayat Manjmi, District Doda, J&K; that he was arrested from Samba and falsely involved in this case; that he had given identity proof during the course of his arrest but that was not taken on record; that he had moved an application in the same very Court in which due verification was sought and it was confirmed that there is no person by the name of Tariq Ahmed residing in Manjmi Doda, rather report was received that present person Mehboob Ali is innocent and not involved in any other case except that he was residing in Jammu for the last 8 to 10 years and is A class contractor.

Opposing the application, it was submitted that Prem Singh, victim in the case had categorically identified present accused as the person who had introduced himself as an Army Officer, in that way cheating Prem Singh and during the entire trial before the Magistrate, the accused had nowhere moved any application in that regard, therefore, the instant application is not maintainable.

Learned Additional Sessions Judge, Pathankot has observed that counsel for the applicant has contended that present applicant never filed any appeal before this Court and same is not signed by the present applicant and has contended that separate application has been moved which should be decided. The observations recorded by learned

Additional Sessions Judge, Pathankot are to the following effect:

Taking into consideration that once the person who is not previously known to a victim may disclose his name which may be a wrong name and cheats a person the investigation is completed during the course of which the victim identified the same person and also identified him in the court, therefore filing of the appeal by the said person is a pre requisite condition. Once the learned counsel for the applicant has not even owned his appeal, the application under Section 391 of Cr.P.C. is not maintainable. It is only a matter to be probed once the appeal is filed by such person and he is given an opportunity if it is so required in the said application. Therefore, the application under Section 391 of Cr.P.C. is not maintainable. Same is dismissed.

I have seen the file. The present applicant had filed appeal through Shri Nitin Mahajan, Advocate and while he was in custody his thumb impression was attested by Deputy Superintendent, Sub Jail, Pathankot and even in the bonds furnished before this Court even then he disowned his name as Tariq Ahmed and furnished fresh bonds by the name of Mehboob Ali Bhatt and the said Counsel Shri JK Khanna (Mattu) and Nitin Mahajan have not present in Court nor they had filed the present application on 7.1.2017 and in the application it is not mentioned anywhere that the appeal was never filed by him. Only during the course of arguments it

has been represented by the counsel that no appeal is filed. The application is dismissed. However, the appeal was duly filed and the counsel presently appearing has not obtained no objection from the previous counsel. Therefore, the present appellant is directed to appear on 17.3.2017 and notice to previous counsel be also issued for that date.

Feeling aggrieved by the said order, the petitioner has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the petitioner besides going through the record.

At the very outset, it may be stated that the revision petition has not been filed within time and is rather time barred. An application under Section 5 of the Limitation Act has been filed for the reason that the counsel representing the petitioner at Pathankot did not apply for copy of order dated 18.2.2017 and after inspecting the file, copy of the order was taken. This reason does not seem to be quite satisfactory. Nevertheless instead of dismissing the revision petition at the outset for being time barred, I proceed to decide it on merits.

Section 391 Cr.P.C. provides that Appellate Court may take further evidence or direct it to be taken. It provides that In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate. However, in this case the Appellate Court has nowhere recorded the satisfaction that

additional evidence is necessary, rather the application so filed by accused/petitioner has been found to be without merit. The order passed by the Appellate Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

24.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No