

The decree obtained by fraud is not to be get set aside or cancelled. To my mind, it can be declared to be not binding on the owner on whom fraud was committed and such a suit would fall within Article 58 of the Limitation Act. As already noticed, Jarnail Singh continued to be in possession of the land which he owned before the alleged exchange in spite of the alleged exchange and the fraudulent decree. As and when his possession was sought to be disturbed from that property, the period of three years would start and in this case there is no evidence if Malkiat Singh ever tried to disturb his possession prior to the filing of the suit. In support of the point, reference may be made to *Ibrahim alias Dharamvir v. Smt. Sharifan alias Shanti* (1).

(16) Accordingly, I am of the view that the Courts below erred in law in coming to the conclusion that the suit was time barred. The finding of the Courts below on the point of limitation are reversed and it is held that the suit is not proved to be time barred. In the result R.S.A. No. 2589 of 1980 is allowed and the suit filed by the plaintiff is decreed by granting a declaration that the decree dated 28th April, 1971 obtained by Malkiat Singh against Jarnail Singh would not effect the rights of Jarnail Singh and after his death his legal representatives, since he has died during the pendency of the proceedings, and Jarnail Singh and after him his legal representatives continue to be the owners in possession of the land and Malkiat Singh has no interest therein. The appellant shall have the costs of the proceedings from Malkiat Singh throughout.

R.N.R.

Before J. B. Garg, J.

SUBHASH CHANDER AWASTHY,—*Petitioner,*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 8748-M of 1990.

5th December, 1990.

Criminal Procedure Code, 1973 (II of 1974)—S. 482—Indian Penal Code, 1860—S. 409—Service terminated on ground of con-

(1) 1979 P.L.J. 469.

Subhash Chander Awasthy v. State of Punjab (J. B. Garg, J.)

tracting second marriage—Employee relieved and issued no objection certificate—Misappropriation case registered after four years—Delay not explained—F.I.R.—Whether liable to be quashed.

Held, that nothing has been brought on record to show that delay in lodging the F.I.R. was on account of any overt-act by or on behalf of the petitioner. The conclusion is that the petition is accepted and the F.I.R. in question registered against the petitioner at police station, city Gurdaspur is hereby quashed. (Para 4)

Petition Under Section 482 Code of Criminal Procedure praying that this petition may kindly be accepted and the First Information Report copy Annexure 'P-4' and all subsequent proceedings there under be quashed and set aside.

It is further prayed that proceedings in the case before the trial court be stayed during the pendency of the present petition. F.I.R. No. 90, dated 28th September, 1988, under section 409, I.P.C. P.S. City Gurdaspur and proceedings initiated thereunder.

M. R. Midha, Advocate, for the Petitioner.

P. S. Thiara, A.A.G., Punjab, for the Respondent.

JUDGMENT

J. B. Garg J.

(1) Subhash Chander Awasthy was employed as store-keeper-cum-Clerk in Civil Hospital, Gurdaspur. He was a Punjab Government employee and since he contracted a second marriage, his services were terminated on 15th October, 1984. He was also relieved the same day. However, after about four years on 28th September, 1988, a case under Section 409 of the Indian Penal Code, 1860 was registered against him at police station city Gurdaspur, alleging that he had misappropriated medicines in the form of a large number of tablets during the years 1982, 1983 and 1984. One misappropriated item consists of 12,51,000 chloroquin tablets. It was also alleged that he also possessed some chairs, tables, bed-sheets, dustbins, dusters etc. and value of all these articles was assessed at Rs. 2,40,000.

(2) On behalf of the petitioner, it has been argued that there was no allegation of any kind against the petitioner throughout his career except that he married second time during the subsistence

of the first marriage and this was the only cause of his removal from service. The registration of the present case about four years after relinquishment of the charge is a kind of device to shield other employees who wanted to shirk their own responsibility and to turn the blame on the petitioner who was relieved of his job long ago on 15th October, 1984 in accordance with rules.

(3) It has further been pointed out on behalf of the petitioner that at the time he was relieved, a certificate, Annexure P1, was issued which contains a specific mention that neither any medicine nor any furniture was in possession of this employee and nothing was outstanding against him. It may be worthwhile to reproduce another 'no due certificate', Annexure P2, dated 17th October, 1984, which is as under :

"Certified that the charge has been taken complete in all respects according to the balance of stock register and nothing is due against him."

There is another communication from the Civil Surgeon, Gurdaspur addressed to the Director, Health and Family Welfare, Punjab, Chandigarh, dated 25th October, 1986 wherein there is a specific mention that "after taking over the complete charge" Shri Subhash Awasthy, Store-Keeper, was relieved on the after noon of 15th October, 1984 and there was nothing due against him. The contention that the irregularities came into notice after correspondence which continued between the Civil Surgeon, Gurdaspur and Director of Health Services, Punjab, from 8th August, 1985 till 28th September, 1988, has no merit. In the presence of the aforesaid certificates issued by the Employer to the present petitioner, it cannot be said that there can be justification for launching his prosecution.

(4) Here attention has been invited to *J. C. Goel, Sub Divisional Officer, v. State of Punjab* (1), wherein prosecution for misappropriation of building material for the period 1976 to 1980 was quashed on account of delay. Besides this, *State of Andhra Pradesh v. P. V. Pavithran* (2), has been referred to, where prosecution of a peacefully retired employee was considered 'a surprise. Any authority to the contrary has not been referred to here. Nothing has been brought on record to show that delay in lodging the F.I.R.

(1) 1989 (2) Recent C.R. 467.

(2) A.I.R. 1990 S.C. 1266.

Thakkar Dass v. The State of Haryana (H. S. Rai, J.)

was on account of any overt act by or on behalf of the petitioner. The conclusion is that the petition is accepted and the F.I.R. in question registered against the Petitioner at police station city Gurdaspur is hereby quashed.

P.C.G.

Before Harbans Singh Rai, & A. P. Chowdhri, JJ.

THAKKAR DASS,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 3056-M of 1990.

18th December, 1990.

Constitution of India, 1950—Art. 227—Criminal Procedure Code, 1973 (II of 1974)—S. 482—Prevention of Food Adulteration Act, 1954—Petition for quashing complaint, charge and other proceedings dismissed by High Court—No change in circumstances—Second petition—Whether competent.

Held, that when the petitioner prays that on the same facts, his subsequent petition be allowed. He does not allege any change of circumstances nor any fresh ground of attack. In such a situation, no petition under S. 482 Cr. P.C. read with Article 227 of the Constitution of India is competent. If there had been any change of circumstance then a petition under S. 482 Cr. P.C. read with Article 227 of the Constitution of India could be competent but without any change in the circumstances, on the same facts and grounds, no subsequent petition will be competent. It will amount to review of the earlier order. To our mind, the legal position is clear and this second petition on the same facts is not competent and is dismissed.

(Para 7)

Constitution of India, 1950, Article 227, Criminal Procedure Code, 1973, Section 482, Prevention of Food Adulteration Act, 1954.

Petition for quashing complaint, charge on other proceedings dismissed by High Court—Second petition under same circumstances—Whether competent.