

Manish Madan and Anr. Vs. State

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Court : Delhi

Decided On : Nov-27-2014

Judge : V.P.Vaish

Appellant : Manish Madan and Anr.

Respondent : State

Advocate for Def. : Mr. M.P. Singh

Advocate for Pet/Ap. : Mr. Ajay Verma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

18. h September, 2014 Date of Decision:27th November, 2014 % + CRL. M.C. 3599/2014 MANISH MADAN & ANR. Through:Petitioners Mr. Ajay Verma, Advocate. versus STATE Through:Respondent Mr. M.P. Singh, APP for the State. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 The present petition has been preferred by the petitioner under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) assailing the order dated 24.07.2014 passed by learned Additional Sessions Judge-05 (Central), Tis Hazari Courts, Delhi whereby the Criminal Revision bearing C.R. No.135/14 was dismissed.

2. Succinctly the facts of the case are that on 23.04.2005 complainant Mr. Hemant Bishnoi, Chief Manager (Shopping), India Times lodged a complaint stating that on 12.04.2005 one Ravi Arora placed an order for purchase of 256 MB SD card worth Rs.38,400/(Rupees Thirty eight thousand four hundred) and on the same day he had also placed an order of different Nokia mobile phones worth Rs.1,47,370/- (Rupees One lakh fourty seven thousand three hundred and seventy) by using credit card No.5409085000079373. Since, it was a high value transaction, as a routine the confirmation was sought from Citi Bank through e-mail dated 19.04.2005 who in reply asked the complainant to keep the transactions on hold as the above mentioned credit card was reported lost by the issuing bank. The complainant has also stated that on 21.04.2005 (from the original FIR) a telephonic call was received from phone No.23273418 and the caller disclosed his name as Ravi Arora and confirmed that he has placed the said order worth Rs.1,85,770/- (Rupees One lakh eighty five thousand seven hundred and seventy) and further inquired about its delivery. Since, the complainant was already informed by the bank about the fraudulent transactions and was further advised by the bank not to execute the delivery of the said order. The complainant told him to come to their office at 10, Daryaganj, Delhi between 3:00 p.m. to 4:00 p.m. It is also stated by the complainant that on 23.04.2005 two persons whose names were revealed as Manish Madan and Kapil Mehta were carrying an authority letter in the name of Rajiv Kumar to collect the goods. Both the said persons signed the order form and while doing so their photographs were taken. Both of them were detained and as the complainant had already informed the police about it, the police officials reached at the spot and apprehended both the said persons.

3. After conclusion of investigation, charge-sheet was filed and after considering the plea taken by the applicant learned trial court further proceeded towards framing charges for the offence under Sections 419/468/471 IPC read with Section 120B IPC and Sections 420/511 IPC read with Section 120B IPC vide order dated 05.05.2014. Aggrieved by the said order the petitioners preferred the Criminal Revision No.135/2014, which was dismissed by learned Additional Sessions Judge, Delhi vide impugned order dated 24.07.2014. Therefore, against the impugned order the petitioner has preferred the present petition.

4. Learned counsel for the petitioner submits that the bone of contention is that the alleged credit card No.5409085000079373 belonged to Chalakara Saimmuddeen but no cogent evidence has been collected by the investigating officer with regard to the ownership of the said credit card. The investigating officer could not reveal the ownership of the credit card and filed a report that the owner of the card could not be ascertained. Accordingly, the offence of forgery under Sections 419/468/471 IPC read with Section 120B IPC and Sections 420/511 IPC read with Section 120B IPC is not made out.

5. Another submission of learned counsel for petitioner is that the investigating officer did not obtain any permission from the trial court to obtain the alleged specimen handwriting of the petitioners without following the mandatory provisions of law. In support of his submission, he has relied upon judgment of this Court in *Sapan Haldar & Anr. vs. State*, (2012) 191 DLT225(FB).

6. Per contra, learned APP for the State urged that the petitioners were apprehended at the spot when they had gone to take delivery of the goods which were purchased on the basis of the lost credit card. He also submitted that the authority letter was forged by the petitioners.

7. I have carefully considered the submissions made by learned counsel for petitioner and learned APP for the State.

8. The scope of Section 397 and 482 Cr.P.C. was considered by the Apex Court in *Amit Kapoor vs. Ramesh Chander and Anr.*, (2012) 9 SCC460 wherein it was held as under:

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression prevent abuse of process of any court or otherwise to secure the ends of justice, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is

palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine qua res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.

9. At this stage it is necessary to consider the scope of Section 482 of Cr.P.C. The inherent powers of this Court under Section 482 of Cr.P.C. was intended to prevent the abuse of process of the Court and secure the ends of justice. This Court should interfere only when it is satisfied that non-quashing of charges would amount to abuse of process of Court and interest of justice otherwise calls for quashing of charges.

10. Before going to the merits of the case, it would be proper to consider the exercise and jurisdiction under Section 482 of Cr.P.C. by this Court. The inherent powers of this Court under Section 482 of Cr.P.C. are intended to prevent the abuse of process of the Court and secure ends of justice. This Court should interfere only when it is satisfied that non-quashing of charges would amount to abuse of process of Court and when the interest of justice otherwise calls for quashing of charges. The Honble Supreme Court of India in *Dhanalakshmi v. R. Prasanna Kumar*, (1990) Supp. SCC686 observed as under:

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it

appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

11. Further, in *State of Bihar vs. Murad Ali Khan*, (1988) 4 SCC655 the Honble Supreme Court of India observed as under:

It is trite that jurisdiction under Section 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings

would, in the circumstances, amount to an abuse of the process of the court or not.

12. In view of the aforesaid judgment of the Apex Court, it is evident that unless this Court feels that the inherent jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

13. It is beyond any cavil that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, are taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At that stage if there appears a strong suspicion of guilt of the accused, the Court is not required to enter into meticulous examination of the evidence and material placed before it. The Court is not expected to dig into probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. If there is strong suspicion which leaves Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to see that there is no sufficient ground for proceeding against the accused.

14. In view of the dictum of the Apex Court in the aforesaid judgments, it is evident that unless this Court feels that the inherent jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

15. After considering the plea taken by the applicant, the trial court framed charges for the offence under Sections 419/468/471 IPC read with Section 120B IPC and Sections 420/511 IPC read with Section 120B IPC vide order dated 05.05.2014.

16. In the instant case, learned Additional Sessions Judge, New Delhi after considering the oral and documentary evidence available on record formed an opinion that a prima facie case for the offence under Sections 419/468/471/120B IPC and under Sections 420/511/120 IPC are made out. In view of the legal position, this Court cannot delve into the merits of the case for framing of charges.

17. As regards the submission of learned counsel for the petitioner with handwriting of the petitioner was obtained forcibly without complying the mandatory provisions of law. It may be mentioned that it would be open to the petitioner to urge the said plea before the trial court at an appropriate stage and the effect thereof would be considered by the trial court during the course of trial.

18. The upshot of aforesaid discussion is that there is no illegality or infirmity in the impugned order dated 24.07.2014 passed by learned Additional Sessions Judge (Central), Delhi. The present petition is devoid of any merit and the same is hereby dismissed. (VED PRAKASH VAISH) JUDGE NOVEMBER27h, 2014 hs

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