

State Vs. Om Prakash and ors.

State Vs. Om Prakash and ors.

SooperKanoon Citation : sooperkanoon.com/1170693

Court : Delhi

Decided On : Aug-05-2013

Judge : G. S. Sistani

Appellant : State

Respondent : Om Prakash and ors.

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 74/2013 %
Judgment dated 05.08.2013 STATE Through: Petitioner Mr.Dayan Krishnan,
Adv. versus OM PRAKASH & ORS. Through: None Respondents CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE G.P. MITTAL
G.S.SISTANI, J (ORAL) CRL.M.A. 2097/2013.

1. This is an application filed by the petitioner seeking condonation of 173 days delay in filing the present petition for leave to appeal.
2. Heard. For the reasons stated in the application, the same is allowed. Delay in filing the present leave to appeal is condoned.
3. Application stands disposed of. CRL.L.P. 74/2013 4. The present leave to appeal has been filed by the State under Section 378(1) of the Code of Criminal Procedure against the acquittal of the respondents of all charges under Sections 489A/489B/489C/489D/34 IPC, vide judgment dated 18.8.2012 passed by the learned trial court in S.C.No.12/2011.

5. The brief facts, as noticed by the trial court, are that as per the prosecution on 8.1.2011 at about 2.15 p.m., a secret information was received by SI Satish Rana that one person, namely, Om Prakash, (respondent no.1 herein) is involved in the printing of fake Indian currency notes (FICN in short) in the denominations of `100/- and `50/- from his house. SI Satish Rana further learnt that Om Prakash used to supply the said FICN to meet his daily expenses. As per the information of SI Satish Rana, Om Prakash was to come near a Power House before Khajuri Red light at Pushta Road, Delhi, between 4.00 p.m. and 4.30 p.m. to supply FICN to two persons, namely, Sanni (respondent no.2) and Rohit (respondent no.3). SI Satish Rana produced the secret informer before Inspr. Subhash Vats, who, upon satisfying himself, conveyed the secret information by phone to his senior officer, who directed him to conduct the raid immediately. As directed by Inspr.Subhash Vats, SI Satish Rana constituted a raiding party comprising of ten police officials under the supervision of Inspr.Subhash Vats, he briefed the secret information to the members of the raiding party. The raiding party left the office of the Special Cell at about 2.40 p.m. in private cars. On the way efforts were also made to persuade public persons to join the raiding party but none agreed.

6. At about 4.05 p.m. two persons came from Khajuri Red Light side. One person, who was wearing a green linedar (lining) shirt and blue jeans was identified by the secret informer as Rohit and the another person, who was wearing a black coloured jersey and blue jeans, was identified as Sanni. After about 5 minutes, another person, who was wearing grey coloured jacket, reached there. He was identified as Om Prakash. Thereafter Om Prakash spoke to the said persons and took out two yellow coloured envelopes from two different pockets of his jacket and handed over one envelope to Rohit and the other envelope to Sanni. Both, Rohit and Sanni obtained the envelopes, looked inside the envelope and thereafter kept the same in the right pocket of their pants. As soon as all the three persons started moving towards their direction, the police party apprehended them. SI Satish Rana caught hold of Om Prakash, HC Ashok caught hold of Sanni and HC Ram Gopal caught hold of Rohit. Thereafter SI Satish Rana disclosed his identity and offered the search of members of raiding party, but the respondents refused to take the search. Requests to join the investigation were also made to 8-10 persons but none came forward. Thereafter investigating officer took a search

of Sanni whereupon one yellow coloured envelope was recovered from the right side pocket of his pants, which contained 35 FICN in the denomination of `50/- bearing serial number OND17723. All the recovered currency notes were kept in the same envelope and sealed in a cloth parcel with the seal of SR and the parcel was given serial No.S. Form FSL was also filled up and the seal was handed over to HC Ram Gopal. Thereafter SI Satish Rana took the search of respondent Rohit, and recovered one yellow coloured envelope containing 35 FICN in the denomination of `100/- each, bearing serial number 7LH-031937 and 34 FICN of `50/- each, bearing serial No.OND17723 from the right pocket of his pant. All the recovered currency notes were kept in the same envelope and sealed in a cloth parcel with the seal of SR and the parcel was given serial No.R. Form FSL was also filled and the seal was handed over to HC Ram Gopal. Thereafter search of the respondent Om Prakash, was also taken and one yellow coloured envelope was recovered from the right side pocket of his pants which was found containing 76 FICN in the denomination of `100/-, each, having serial number 7LH-031937 and 54 FICN of `50/-, each, having serial No.OND17723. All the recovered currency notes were kept in the same envelope and sealed in a cloth parcel with the seal of SR after taking it from HC Ram Gopal the parcel was given serial No.O. Form FSL was also filled and thereafter the seal was handed over to HC Ram Gopal. All the recovered currency notes were fake and counterfeit as the security thread was quite dull. Thereafter SI Satish Rana prepared a rukka and sent HC Ram Gopal to the Police Station of Special Cell to lodge an FIR for the offence punishable under Sections 489A/489C/34 IPC. After the investigation was complete challan was filed. Charge was framed vide order dated 24.5.2011.

7. The prosecution examined eight witnesses. The respondents were also examined under Section 313 of the Code of Criminal Procedure. No evidence was led by the defence. As per the respondents, the appellant had picked them up from their respective houses and falsely implicated them in this case.

8. Learned counsel for the State submits that the learned trial court has erred in not noticing that it is a settled law that independent witnesses are not required to be associated in searches consequent to disclosure under Section 27 of the Indian Evidence Act. Counsel further submits that the trial court has further erred in not

noticing the settled position of law that absence of a public witness is not fatal to the admissibility or appreciation of evidence. Counsel also submits that the trial court has laid great emphasis to minor discrepancies between witnesses without taking into account that there is clear and cogent corroboration by the witnesses as well as the evidence on record.

9. It is contended by counsel for the petitioner that the trial court has given undue weightage and has erred in coming to the conclusion that the mere use of personal vehicles of the investigating officers renders the investigation and evidence on record as suspicious. It is further contended that the trial court has also erred in coming to the conclusion that the mere fact that the light pole was not mentioned in the site plan renders the site plan itself suspicious.

10. We have heard learned counsel for the State and also examined the judgment and the evidence placed on record. It may be noticed that to bring home the guilt of the accused persons the prosecution examined eight witnesses and the entire case of the prosecution is based on the deposition of Police official witnesses. The prosecution has failed to involve any independent witness or any respectable persons of the locality to join the proceedings.

11. The first issue that needs to be dealt is whether the officials of Special Cell are under an obligation to maintain a register where they are required to enter their arrival and departure. In their testimonies, PW-4 to PW-7 have stated that being the officials of Special Cell they are not required to enter their arrival and departure in the register. The trial court has observed, after perusing the relevant rules under Punjab Police Rules, 1934, that all police officials irrespective of their rank are bound to record their arrival at the time of joining their duties and departure at the time of leaving their office. However, in the instant case, the members of raiding party did not make any entry of their arrival or departure in the register. In light of this fact, we are of the view that the trial court has rightly held that it is possible to manage the rojnamcha register.

12. Further, as per the prosecution case, the rukka was prepared and sent to the police station at about 8:15 pm and FIR was registered at 9:00 pm. There are material contradictions in the testimonies of police officials on this aspect.

According to PW-5 SI Satish Rana he had sent the rukka to police station at 8:15 pm through PW-4 HC Ram Gopal. But PW-4 deposed that he left from the spot to lodge the FIR at about 7:45 pm. As per the prosecution, PW-4 stayed at the police station after lodging the FIR whereas as per PW-6 HC Ashok Kumar, PW-4 had returned to the spot along with the FIR. PW-3 ASI Ramesh Chand has given a totally different version. He deposed that he had received the rukka from PW-4 at about 4:15 pm and thereafter he had registered the FIR. PW-3 further admitted in his cross-examination that there is overwriting in the FIR at daily diary number. After considering this issue, we are of the view that the above mentioned discrepancies are inconsistent to the case of prosecution and, therefore, cannot be relied upon.

13. The next circumstance which is to be considered is the use of private vehicles in conducting the raid. PW-5 SI Satish Rana deposed that he had used two private cars and one gypsy in the raid. He further deposed that Special Cell had 10-12 different types of vehicles along with the drivers and log books were also being maintained in the said vehicles. Similarly PW-4, PW-6 and PW-7 also deposed that numerous official vehicles were available in the Special Cell along with the drivers. It is not clear as to why PW-5 preferred to use personal vehicles in the alleged raid. The trial court observed that in some special circumstances, investigating agency is compelled to use private vehicles in order to conceal their identity from the culprits but once they used private vehicles in the raid, it is the paramount duty of the investigator to maintain the log book of the said vehicle. In the instant case, PW-5 neither ascribed any special reason for using private vehicles nor was any log book maintained by him. Therefore, in our view, the testimonies of the police official witnesses are dissatisfactory with regard to this circumstance also.

14. Further the case of the prosecution is that two master-pieces of currencies of `50/- and `100/- each were recovered from the house of respondent Om Prakash. The said master-piece currency notes were found pasted on a white paper sheet and the serial number on these master-piece currency notes was found similar to when compared with the recovered FICN. PW5 SI Satish Rana admitted in his cross-examination that the master-piece Ex.P-3 was pasted on a white sheet,

thus, only one side of the masterpiece could have been used to print the FICN. In this regard, the prosecution failed to show how the FICN were printed on both sides by the respondent Om Prakash. On the contrary, PW-6 HC Ashok Kumar deposed that the dye of both sides of FICN was recovered from the house of respondent Om Prakash. However, the prosecution did not produce the other side of the master-piece before the trial court. In our opinion, this further weakens the case of the prosecution as rightly considered by the trial court.

15. The next issue pertains to the allegation of tampering with the case property. As per the prosecution case, when FICN were recovered from the respondents, they were in yellow coloured envelopes and the investigation officer had sealed the recovered FICN after keeping them in the respective envelopes. However, when the case property was opened for the first time before the trial court the said yellow coloured envelopes were found missing. PW-8 Vijender Singh, Senior Scientific Officer has nowhere deposed that when the sealed parcels reached FSL, they were in the sealed yellow coloured envelopes. In light of these facts, we are of the view that the trial court has rightly held that there is a possibility of tampering with the case property in the instant case.

16. It is also the case of the prosecution that the writing work was done either below the light of an electricity pole or after sitting in the car. PW-5 SI Satish Rana, who prepared the site plan Ex.PW5/C, did not denote the point where the said electricity pole was located. This fact creates another suspicion in the prosecution case. Further as per the prosecution case raiding party was constituted by PW-5 SI Satish Rana under the supervision of Inspector Subhash Vats and the raid was conducted by PW-5. However, PW-6 deposed that Inspector Subhash Vats was the leader of raiding party. According to PW-6, raid was conducted by Inspector Subhash Vats and not by PW-5. The prosecution has failed to explain the reason for not citing Inspector Subhash Vats as a witness. In our view, this is a material discrepancy which casts a serious doubt on the case of prosecution.

17. Further, as per the prosecution case, no public witness was called for at the time of taking the search of the house of respondent Om Prakash. Section 100 sub-section 4 of the Code of Criminal Procedure casts a mandatory duty upon the

investigators to call upon two or more independent and respectable inhabitants of the locality where the search is to be conducted. The object of this provision is to ensure that searches are conducted fairly and squarely and that there is no planting of articles by the police.

18. In the instant case, wife of respondent Om Prakash was present in the house at the time of search but no efforts were made to join her. PW-5 SI Satish Rana deposed that he cannot tell the reason why investigating officer ASI Amrik Singh (PW-7) had not called her at the time of alleged recovery. PW-7 also could not explain why the wife of respondent Om Prakash was not joined as a recovery witness. Moreover, no list of seized articles was delivered to the wife of respondent Om Prakash.

19. Regarding non-joining of any independent witness at the time of raid, PW-5 SI Satish Rana in his cross-examination had categorically admitted that he had not called any respectable person from the nearby locality either at the time of raid or investigation. In the case of Pradeep Narayan Madgaonkar v. State of Maharashtra reported at (1995) 4SCC255 it has been held by the Apex Court:

11. Indeed, the evidence of the officials (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony. We cannot lose sight of the fact that these police officials did not join any independent witnesses of the locality and made an attempt to create an impression on the courts that both PW2 and PW5 were witnesses of locality and were independent, knowing fully well that PW2 was a witness who was under their influence and available to them, as he had been joining the raids earlier also and PW5 was a close associate of PW2 their friendship having developed during the days of gambling when admittedly the police never conducted any raid at their gambling den.

12. The very fact that the police officers joined PW2 and PW5 in the raid creates a doubt about the fairness of the investigation. Coupled with this is the manner in which the confessional statement of A-1 and A-2 was recorded by Hemant Karkare PW3 which has been rightly discarded by the Designated Court itself. Even if we were to ignore the tell-tale discrepancy in the number of the room i.e. 3323 or 3334, from where the appellants were arrested, accepting the explanation of the prosecution that it was as a result of typographical error, it looks to us rather strange that the discrepancy should have come to the notice of the investigating officer only when he filed his affidavit in the Supreme Court in the special leave petition filed by the absconding accused, yet in the totality of the circumstances of the case and after a careful analysis of the evidence on the record we find it rather unsafe to rely upon PW1 PW4 and PW6 only without there being any independent corroboration of their testimony, to uphold the conviction and sentence of the appellants. We cannot lose sight of the fact that since the mere possession of an arm, as specified in the schedule, without a licence, in a notified area, attracts the provisions of Section 5 of TADA with stringent punishment, the quality of evidence on which the conviction can be based has to be of a much higher order than the one we find available in the present case. Our independent appraisal of the evidence on the record has created an impression on our minds that the prosecution has failed to bring home the charge to the appellants beyond a reasonable doubt.

20. The learned trial court has noticed that PW-5 had merely asked some passers by to join the investigation who were not even ready to disclose their names and addresses to him. In this regard, we agree with the view taken by the trial court that such efforts cannot be termed as genuine and sincere efforts.

21. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. The court must take into account the presumption of innocence of the accused and the acquittal by trial court adds to the presumption of his innocence.

22. We do not find any reasons for interference in the present case. Accordingly, no grounds are made out and the petition for leave to appeal stands dismissed.

G.S.SISTANI, J G.P. MITTAL, J AUGUST05 2013 msr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com