

R.S. Nagarwala Vs. State

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Court : Delhi

Decided On : Nov-24-1971

Reported in : 1972RLR73

Judge : V.D. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 235

Appeal No. : Criminal Appeal No. 402 of 1971

Appellant : R.S. Nagarwala

Respondent : State

Advocate for Pet/Ap. : R.K. Maheshwari,; Y. Dayal and; D.R. Sethi, Advs

Judgement :

V.D. Misra, J.

(1) On May 24, 1971, at about 12 noon, Ved Prakash Malhotra, Chief Cashier of the State Bank of India, Parliament Street, New Delhi, was sitting in his room as usual. He received a telephone call purposing to be from Shri Haksar, Principal Secretary to the Prime Minister, informing him that the Prime Minister needed Rs. 60 lacs for Bangia Desh and he should make arrangements for that amount. He was also told to keep the matter as 'Top Secret', and should bring out the amount himself. Since Malhotra was a bit hesitant, the caller asked him to talk to the Prime

Minister herself. Thereafter, a female voice purporting to be that of the Prime Minister told him to bring the money out of the bank himself and hand it over to the courier who should be recognised by the exchange of the Code words divulged to Malhotra. Malhotra was further assured that he would get the necessary voucher and receipt. Accordingly, Malhotra asked the Deputy Chief Cashier to bring the money from the strong room. Shri R.P. Batra, the Deputy Cashier, went to the strong room at about 12.30 p.m. and told Ruhel Singh, Deputy Head Cashier, that the Chief Cashier was to make a payment of Rs. 60 lacs lying in a box and that he should sign the cash book. Ruhel Singh signed the cash book and demanded a voucher for the same. He was told that he would get the voucher from Malhotra. After some time, Malhotra came there along with two cash coolies who took the box with him. Malhotra placed the box in the car of the bank bearing registration number DLK. 760 and left the bank premises. On Parliament Street near the Bible House, Malhotra was met by R.S. Nagarwala who represented himself to be the courier sent by the Prime Minister. He also gave the code words and so Malhotra, being assured that he was the courier w

(2) Malhotra went to the Prime Minister's residence and failing to get an access to the Prime Minister went to the Parliament House. After making various unsuccessful attempts to meet the Prime Minister, he came across Shri Haksar, and when Malhotra asked for the receipt for the amount in question he was told that no such demand was made by the Prime Minister or any one else on her behalf. Malhotra there upon immediately contacted the senior officers of the police who were available near about and apprised them of the facts and the circumstances in which he had been cheated. Meanwhile Nagarwala with the box reached defense Colony and left it at the house of his friend, N.B. Captain at No. 277-A, defense Colony. He ultimately proceeded to Parsi Dharamshala where he was staying.

(3) In the meantime, Ruhel Singh, Deputy Head Cashier, asked Shri R.P. Batra for the voucher two or three times. He was assured that he would get the voucher soon. Since neither the voucher was given to him nor Malhotra had returned to the bank for a considerable time, he brought the fact to the notice of his superiors. Thereafter, he made a report to the police giving the details of the box containing

the currency notes worth Rs. 60 lacs. The police officer, to whom Malhotra had narrated the facts, took immediate necessary steps to alert the police and started trekking down Nagarwala. He ultimately succeeded in locating Nagarwala at Parsi Dharamshala and thereafter succeeded in recovering Rs.59,95,000.00 from defense Colony. Nagarwala was arrested under Section 419/420 Indian Penal Code.

(4) On May 27, 1971, Nagarwala made a confessional statement before Shri G. R. Aggarwal,. On that very day the police presented a Chalan against Nagarwala under Sections 419/420, Indian Penal Code, in the Court of Shri K. P. Khanna Judicial Magistrate I Class. The learned Magistrate framed the charges to which accused pleaded guilty. Nagarwala was, therefore, sentenced to various terms of imprisonment. On appeal, his conviction and sentence were set aside and the case was remanded to Shri N. L. Kakkar, Additional Chief Judicial Magistrate for a fresh trial in accordance with law. On August 9, 1971, fresh charges under Sections 419/420, Indian Penal Code, were framed against Nagarwala in the following words :- On Oct 5, 1971 Nagarwala moved an application before the trial court alleging that the material on the record made out a prima facie case against V. P. Malhotra under Section 409 Indian Penal Code, and that the court should take cognizance of the same under Section 190 of the Code of Criminal Procedure. It was further stated that Malhotra should be impleaded as an accused with Nagarwala and they should be tried jointly. This application was opposed by the prosecution. The learned Additional Chief Judicial Magistrate held that the record before him did not show Malhotra's involvement in any crime whatsoever. He further held that Malhotra was a prosecution witness in the case, he would be detained for the purpose of inquiry or trial under Section 351 of the Code of Criminal Procedure in the case in case it appeared from the evidence given by him that any crime has been committed by the witness. He, therefore, dismissed the application. Nagarwala went in revision to the Court of Sessions and the learned Sessions Judge did not find any legal infirmity in the order and dismissed the revision. He has now come up in the revision to this Court.

(5) Mr. R. K. Maheshwari, learned counsel for the petitioner, contends that the evidence on record makes out a prima facie case under Section 409, Indian Penal

Code, against V.P. Malhotra and that he should be tried with the petitioner jointly. He submits that under Section 239 of the Code of Criminal Procedure persons accused of different offences committed in the course of the same transaction can be charged and tried together under sub-section (e).

(6) It is no doubt true that the Magistrate under Section 190(1) of the Code of Criminal Procedure takes cognizance of the offence and not the offenders. After taking cognizance of the offence, it is the duty of the Magistrate to find out who the offenders really are, and if he finds that in addition to the persons sent up by the police as accused some other persons are involved, then it is his duty to proceed against those persons, *Raghubans Dubey V. State of Bihar* : 1967 CriLJ1081 . It is further true that under Section 190(1)(b) of the Code of Criminal Procedure it is the duty of the Magistrate to take cognizance of any cognizable offence which is brought to his notice and he has no discretion in the matter. (*A.C. Aggarwal, Sub Divisional Magistrate Delhi and another V. Mst. Ram Kali etc.* : 1968 CriLJ82 . However, the question in this case is whether any prima facie case is made out against V.P. Malhotra.. In this connection Mr. Maheshwari has referred to me to the first information report lodged by Ruhel Singh as well as the statement given to the police by V. P. Malhotra under Section 161 of the Code of Criminal Procedure. From this the learned counsel submits that Malhotra should not have taken out the money in question from the bank vaults without the drawer having presented the necessary cheque or authority. It is thus sought to be concluded that V.P. Malhotra dishonestly misappropriated the property and is liable to be proceeded against under Section 409 Indian Penal Code. He supports the submission from the fact that Malhotra was arrested by the police a few days after the arrest of the petitioner on the basis of the same first information report for a case under Section 408 Indian Penal Code, which is still under investigation.

(7) It is not denied by the State that Malhotra had been arrested a few days after the arrest of the petitioner on the basis of the first information report and a case under section 409 Indian Penal Code, is being investigated. It is further not denied that though in Nagarwala's case the police was able to conclude the investigation and put in the Challan within three days of the commission of the offence, the investigations against Malhotra are still incomplete despite the lapse of a period of

about six months. This has been the subject of severe criticism by the learned counsel for the petitioner who has attributed mala fides to the police for trying to rush in for the quick conviction of the petitioner by doubtful methods and then delaying the completion of investigation in respect of Malhotra.

(8) Malhotra is a star witness of the prosecution in the case against Nagarwala. It is his solitary statement of having received a telephone call which is the basis of his removing Rs. 60 lacs from the bank and then handing it over to the petitioner. His statement prima facie shows that he has been cheated and for that reason a charge under Sections 419/420, Indian Penal Code, has been framed against the petitioner. Why and under what circumstances the police decided to arrest him and investigate a case against him for an offence under Section 409, Indian Penal Code, is best known to the police. In these proceedings, I am not concerned with that aspect. But there is force in the argument that either the prosecution is doubtful about the truth of the statement of this witness or has started this false investigation so that a sword of Damocles may be kept hanging on the head of the witness to make sure that he supports the prosecution version at the trial. Again, this aspect is not germane to the decision of the present revision and it will be for the trial court to decide what weight should be given to the statement of this witness.

(9) The facts on the record show that Malhotra was duped by the telephone message and so he took out the money and proceeded himself to deliver the same. He had brought out the money because of the representation made that he would be given due receipt by the Prime Minister or her secretariat. For that purpose he had proceeded straight to the residence of the Prime Minister and thereafter to the Parliament House to obtain the receipt. He was keeping the matter 'Top Secret' as he was directed on the telephone. When he realised that he has been duped he immediately informed the police. This conduct does not show any dishonesty on the part of Malhotra. He might be guilty of infringing some rule or procedure of the bank and of indiscretion of taking the money out of the bank premises, but definitely he cannot be said to be dishonest. The learned trial court as well as the learned Sessions Judge were correct in concluding that on the records of this case there is no prima facie case made out of criminal

misappropriation against Malhotra.

(10) It is also suggested by Mr. Maheshwari that I should order the stay of the present proceedings and direct the police to complete the investigation and also to put up the Chalan against Malhotra. His submission is that in case the police decides to put up a Chalan under Section 409, Indian Penal Code, against Malhotra, it would necessarily mean that Mr. Malhotra was not in fact cheated as alleged by him but was a party to the conspiracy of criminal misappropriation. In that event, if the petitioner is convicted, he would have been punished for an offence which he never committed and so irreparable injustice would have been done to him.

(11) The Supreme Court in *Roopchand Lal V. State of Bihar*, after reviewing various provisions of the Code of Criminal Procedure came to the following conclusion :

'WE have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.'

In this case it was also observed that the functions of the Magistracy and the police are entirely different, and though, the Magistrate may or may not accept the report and take suitable action, according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view. This clearly shows that the courts have no jurisdiction to direct the police to put in a chalan against the accused. In the present case, whether the police will ultimately decide to put in chalan or would come to the conclusion that there is no case made out against Malhotra, cannot be conjectured.

(12) Moreover, before any joint trial can be held by a Magistrate under Section 239 of the Code of Criminal Procedure, there has to be before the Court an accusation made by the prosecution against Malhotra of an offence arising out of the same transaction. Even if such an accusation has been there, the trial court was not bound under Section 239 of the Code to order a joint trial. The matter is one of discretion of the trial court. The contention of Mr. Maheshwari that the word 'may' used in section 239 in the sentence 'The following persons may be charged and tried together.....' means 'must' has no force in view of the decision of the Supreme Court in *Purshottamdas Dalmia V. State of West Bengal*, Air 1961 Sc 1989, wherein it was held thus :

'AS section 235 and 239 of the Code are enabling sections, the Legislature, rightly did not use the expression which would have made it incumbent on the court to try a person of the various offences at one trial or to try various persons for the different offences committed in the course of the same transaction together.'

(13) In view of the above discussion, it is not proper to order stay of the trial of the petitioner pending conclusion of the police investigations against Malhotra. I am, however, constrained to remark that had the police shown as much diligence in completing investigation of the case registered against Malhotra as was done in the case of the petitioner, they would have provided no reasonable grounds of doubt in the mind of the petitioner about their bona fide. I can only hope they will be able to complete the investigations at a very early date. Revision Dismissed