

D.K. Sharma Vs. State

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Court : Delhi

Decided On : Sep-20-1988

Reported in : 36(1988)DLT338

Judge : H.C. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B

Appeal No. : Criminal Revision Appeal No. 76 of 1988 and Criminal Miscellaneous Appeal No. 87 of 1988

Appellant : D.K. Sharma

Respondent : State

Advocate for Pet/Ap. : P.S. Sharma and; S. Lal, Advs

Judgement :

H.C. Goel, J.

(1) This is a revision petition under Ss. 397/401 of the Code of Criminal Procedure directed against the impugned order of Shri R.L.Chugh, Chief Metropolitan Magistrate, Delhi dated January 21, 1988 by which he charged the petitioner for the offence punishable under S. 120-B read with S. 409 of the Indian Penal Code and also under S. 409 of the Indian Penal Code substantively. The prosecution

case stated in brief is that D.K. Sharma accused petitioner who was employed as an Assistant Engineer with the Desu had entered into a conspiracy Along with his four co-accused, three of whom were also employees of the Desu to misappropriate electric cable lying in the store of the Desu at Lawrence Road, Delhi. This conspiracy is alleged to have been hatched some time in November, 1982. In pursuance of the conspiracy 1002 mtr, L.T. Pvc cable was removed by the accused persons from the said store on November 30, 1982 which was later on sold in the market and the proceeds thereof were distributed among them. The only evidence against the present petitioner as relied upon by the prosecution is the alleged statement of PW1 Jai Ram Bharadwaj, a clerk of DESU. In his statement recorded under S. 161 Cr. P.C. he stated that he had issued the cable in question on seeing the signatures of D.K. Sharma, petitioner, on the docket on the basis of which cable was issued by him to S.C. Yadav, Inspector. Desu, a co-accused of the petitioner. The specimen signatures of the petitioner marked as S1 to S8 were obtained for comparison with the disputed signatures purported to be that of the petitioner which were marked as Q1 to Q3. Mr. M.K. Jain, Senior Scientific Officer-cum-Assistant Chemical Examiner of Questioned Documents, Cfsi, New Delhi, in his report stated that it had not been possible to express any opinion about the authorship of the questioned signatures 'D.K. Sharma' marked Q 1 to Q3 for comparison with the specimen signatures marked Si to S8. There is one more sentence after this sentence in this report which is however, unintelligible. The learned counsel for neither party was able to throw any light as to what was sought to be conveyed by that sentence in the report of the Assistant Chemical Examiner. In any case, it is the admitted position that the purported signatures of the petitioner on the alleged docket have not been opined by the examiner of the questioned documents as tallying with either the specimen signatures or with any undisputed signature of the petitioner. I fail to see as to how a prima facie case for either of the two offences in question could be deemed to have been made out against the petitioner when there was not an iota of evidence to show that the alleged signatures of the petitioner were in fact his signatures and how a charge against the petitioner could be framed. It is a case of no evidence against the petitioner. Mr. S. Lal, learned Public Prosecutor for the State, conceded that there was no other material against the petitioner which could prima

facie connect the petitioner with either of the two offences. The impugned order of the learned Chief Metropolitan Magistrate is a non-speaking one. He has not indicated in the slightest as to how, for what reasons and on what material he was of the view that the petitioner had prima facie committed either of the said two offences. In conclusion I accept the revision petition, quash the charge as framed against the present petitioner and discharge him in the case. The record of the lower court be sent back.

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