Sushil Kumar Sanghi Vs. the State

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Court : Delhi

Decided On : Sep-23-1994

Reported in : 1994IVAD(Delhi)150; 1995CriLJ3457; 1994(3)Crimes1035; 1994(31)DRJ155; 1995RLR42

Judge : Dalveer Bhandari, J.

Acts : Indian Penal Code (IPC) - Sections 120B and 409

Appeal No. : Criminal Appeal No. 70 of 1977, dated September 23, 1994

Appellant : Sushil Kumar Sanghi

Respondent : The State

Advocate for Def. : S.Lal, Counsel for C.B.I.

Advocate for Pet/Ap. : S.K. Aggarwal and; J. Sarin, Advs

Judgement :

Dalveer Bhandari, J.

1. Several appeals have been filed against the judgment dated 1st January, 1979 passed by the Additional Sessions Judge sentencing the accused under Sections 409 and 120(B) of the Indian Penal Code.

2. Brief facts necessary to dispose of the appeal, are recapitulated as under :

3. Ram Krishna Dalmia accused, was the elder brother of Jai Dayal Dalmia and Father-in-law of Shanti Prasad Jain. All the three accused formed a group known as 'Dalmia Jain Group' with Ram Krishna Dalmia, accused as its Principalman. They controlled and had substantial financial interests in the following Companies.

1. Dalmia Cement & Paper Market Co. Ltd.

2. Dalmia Jain & Company Ltd.

3. Allen Berry & Company Ltd.

4. Govan Bros. Ltd.

5. Bharat Bank Ltd.

6. Bharat Insurance Company Limited.

4. In July, 1946 the said Dalmia Jain Group floated a joint stock company known as Dalmia Jain Airways Limited. The Company was incorporated on 9th July, 1946. That Group also floated a Company known as Dalmia Jain Aviation Limited which was incorporated on 11th March, 1948. In the year 1949 Ram Krishan Dalmia formed two Trusts known as 'Bhriguraj Charitable Trust' and 'Yogi Raj Charitable Trust'.

5. Members of the Dalmia Jain Group entered into a conspiracy with the other accused, P. S. Patke, approver PW 2, R. K. Jain, P. S. Sodhbans, R. P. Bajoria, J. M. Gupta and G. Ramachandran to commit or cause to be committed Criminal Breach of Trust with respect to the funds and assets of Airways Ltd. including those in current account No. 716 called 'Share Application Money Account' of the said Airways Ltd. with Bharat Bank Ltd., Darya Ganj, Delhi. That was dominant object of the conspiracy and with a view to achieve that object it was decided by the conspirators that there should be forging or causing to be forged accounts of Allen Berry, D.C.P.M. and Airways ltd.

6. Dalmia Jain Group wanted to float a Company known as Airways Ltd. sometimes early 1946. They obtained necessary permission for share capital of Rs. 40 lakhs to issue four lakhs ordinary shares of Rs. 10/- each. Out of Rs. 40

lakhs, 16 lakhs would be free money while Rs. 24 lakhs would be deposited with the bank or invested in Govt. securities and that further proceeds of the issue would not be used for any other object of expenditure than those described in the application on the basis of which sanction was accorded.

7. Thereafter, a letter dated 27th June, 1946 Exhibit P1 was sent along with documents Exhibits P2 to P6 for incorporation of Airways Ltd. and the same was actually incorporated on 9th July, 1946. On account of the issue of capital of Rs. 40 lakhs, more than three crores had been received from different applicants for allotment of shares. Though the permission was for four lakhs ordinary shares of Rs. 10/- each, Rs. three crores had been received from the different applicants for the allotment of shares of that company. The Dalmia Jain Group did not want that the aforesaid money which had been received in excess should be returned to the share-holders.

8. It may be pertinent to mention that during that period, Dalmia Jain Group was urgently in need of money on account of therein project of purchasing of vehicles from the Director General of Disposal which had been received by the latter from the U.S. Army, which was going back to the U.S.A. after world war II from Europe. According to their estimate total cost of those disposal vehicles was going to be at least 5.71 crores. Frantic meetings were going on for the purpose of collecting money because Allen Berry who had to purchase the said vehicles possessed only a little over rupees one crore including the amounts which could be raised from the Banks. The deal was finalized sometimes in 1946.

9. On 31st July, 1946 Ram Krishna Dalmia entered into an agreement on behalf of Allen Berry and Airways Ltd. with the Director General of Disposals for the purchase of U.S. Surplus vehicles in the Depots of Jodhpore and Sodhpore for Rs. 2.50 crores. It was inter alias agreed that a sum of Rs. 50 lakhs would be paid on the following day. thereforee, the accused required money urgently in order to fulfilll their commitments. Apart from that they did not want to return the excess money to the shareholders who had invested in the said company.

10. Dalmia Jain Group along with their conspirators devised different ways and means to remove all obstacles which stood in the way of achieving and

consummating that object. They diverted funds of their companies and through them they made dishonest use of the funds. Apart from purchasing 2323 disposal vehicles, the Dalmia Jain Group had purchased two mills for Rs. 50 lakhs. A sum of Rs. 37 lakhs which belonged to Airways Ltd. was spent on the purchase of mills which was totally unconnected with the business of Airways Ltd.

11. The shareholders of Airways were mounting pressure on the management of Dalmia Jain Group regarding their share money. In the end of March, 1952 Dalmia Jain Group expected that either enquiry would be instituted or the Company would be wound up compulsorily because of tremendous public pressure. So they held a conference and all three principal accused clearly stated in the conference. The relevant portion is set out as under :

'You very well realize the resentment amongst the shareholders of Dalmia Jain Airways Ltd. and to avoid any Govt. interference we have decided to go into voluntary liquidation of Dalmia Jain Airways Ltd. Before doing so we have to take some measures to safeguard our interest, thereforee, we have decided to transfer the entire liability of Allen Berry & Co. Ltd. to D.C.P.M. so that the Government or any other authority will not get a chance to attach property or stocks of Allen Berry & Co. Ltd. You should, thereforee, sign the letter E.P. 697. We are also issuing similar instructions to Directors of Dalmia Jain Airways Ltd.'

12. Ram Krishna Dalmia was receiving adverse reports from different sources and he thought that some kind of criminal proceedings might be ordered by the Government. thereforee, he decided that entire assets and records of Airways Ltd. should go to Aviation Ltd. as early as possible and that it would be prudent to destroy important records like Joint Venture Agreement, Ante-dated Agreement, relevant books of accounts of Airways Ltd.

13. On 28th-29th March, 1953 a truck load full of records was sent to Delhi Glass Works, Ghaziabad and was burnt in presence of S. K. Sanghi and S. N. Dudani accused. The first information report containing the charges pertaining to criminal breach of trust and criminal conspiracy was lodged against the accused. The prosecution examined 48 witnesses, their statements under S. 342 of the old Criminal Procedure Code were recorded. They all have denied having entered into

a conspiracy or having committed criminal breach of trust. The accused however, by and large accepted the relationship inter se.

14. The learned Additional Sessions Judge on the basis of evidence of 48 prosecution witnesses and large number of documents. Reached to the conclusion that the accused persons are guilty of offence of criminal breach of trust, specially because it related to the funds of public at large, who had invested in the shares of a public limited company, like Dalmia Jain Airways Ltd.

15. While taking all the facts and circumstances into consideration, the accused persons had been convicted under Ss. 409 and 120(B) of the Indian Penal Code and were given sentence ranging from two years to six months. Along with the principal conspirators (employers) some employees were also convicted. Some of the employees aggrieved by the said judgment have preferred the said appeal.

16. This appeal has been heard after more than 48 years of the alleged conspiracy. All the main accused of Dalmia Jain Group are dead. The appellant in these appeals were mere employees of the Companies of Dalmia Jain Group. They all acted in compliance of the directions and instructions of the main accused. Undoubtedly, they are also guilty of offences which were committed in pursuance of the conspiracy hatched by the main accused persons who were owners/proprietors of various companies of Dalmia Jain Group.

17. All these appellants who were young employees of various companies are now in their late 70s and 80s. The sword of democles has been hanging over their heads for more than four decades. They all have virtually spent their entire life under the shadow of criminal prosecution, thereby losing charm of leading normal, healthy and purposeful life.

18. The most pertinent question which arises for the consideration is whether it would be appropriate and in the interest of justice to compel these employees of the various companies to serve out the remaining sentence ranging from six months to two years after 48 years of the alleged offence of conspiracy particularly when people who have really hatched the conspiracy are dead.

19. The extraordinary mitigating circumstance as far as these accused are concerned is that each of them has virtually faced prosecution for almost five decades. Even Mr. S. Lal, learned counsel appearing for the C.B.I. fairly submitted that no useful purpose will be served by directing these accused/appellants to serve out the remaining sentence.

20. Looking to the totality of the entire facts and circumstances of this case, in my considered opinion, ends of justice would be met if conviction of the accused is maintained and he is sentenced to the imprisonment till rising of the Court and fine of Rs. 5,000/- and in default to undergo six months imprisonment. Fine to the diposited within two months in the Court of Chief Metropolitan Magistrate, Tis Hazari, Delhi.

21. Consequently while maintaining the conviction as awarded by the learned Additional Sessions Judge to the accused, I modify the sentence of imprisonment and fine as indicated above.

22. The appeal is partly allowed and disposed of accordingly.

23. Appeal partly allowed.