

Jaspal Singh Gill Vs. the State

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Court : Delhi

Decided On : May-03-1984

Reported in : 26(1984)DLT109; 1984RLR327

Judge : Jagdish Chandra, J.

Acts : [Evidence Act, 1872](#) - Sections 27; [Official Secrets Act, 1923](#) - Sections 3; [Indian Penal code, 1860](#) - Sections 120B

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 421 of 1984

Appellant : Jaspal Singh Gill

Respondent : The State

Advocate for Pet/Ap. : Ram Jethmalani,; K.K. Sud and; B.R. Handa, Advs

Judgement :

Jagdish Chandra, J.

(1) This order shall dispose of the bail application of petitioner/assured Jaspal Singh Gill who is being prosecuted for offences Secs. 3, 5 and 9 of the [Official Secrets Act, 1923](#) as also under S. 126-B of the Indian Penal Code. The only incriminating matter against him is the alleged disclosure statement dated 18.II.1983 of co-accused Lt. Col.(Retd) Jasbir Singh and the consequent recovery of a defense Telephone Directory from office room of the office-cum-residence of

the petitioner located at 82, Sunder Nagar, New Delhi as a result of the house search. The disclosure statement of co-accused Lt. Col. (Retd.) Jasbir Singh detailed in Annexure 'B' reads as follows :

'I have been passing on the secret vital information pertaining to defense and in process of that I had passed on defense Telephone Directory along with other defense documents in lieu of which, I can get money from Jaspal Singh Gill, which I can get recovered.'

(2) As many as 23 items were seized during the course of this search but the Investigating Agency found only the first five items suspicious but further investigation revealed that documents No. 2,3 and 4 were genuine documents written by the Military Authorities in the course of normal and legitimate business correspondence whereas item No. 5 was found to be unclassified. Thus, the only document which is somewhat suspicious is document No. 1 which is the aforesaid defense Telephone Directory of the year 1980.

(3) The aforesaid disclosure statement of co-accused Lt. Col (Retd.) Jasbir Singh contains confessional statement part of which is in admissible having been made while in police custody and the remaining portion thereof being admissible under S. 27 of the Indian Evidence Act so far as it pertains to the information which led to the discovery of the defense Telephone Directory from the premises of petitioner Jaspal Singh Gill. It may be pointed out that premises No. 82, Sunder Nagar, New Delhi had in it two portions one of which was used by the petitioner for his residence and the other for his office wherein he carried on his business under the name and style 'EMGEE International' and wherein the petitioner had employed the co-accused Lt. Col. (Retd.) Jasbir Singh as Consultant and in that capacity Lt. Col. (Retd.) Jasbir Singh had full excess to the said office and the defense Telephone Directory was admittedly recovered from the said office room and it may be dubious whether Lt. Col. (Red.) Jasbir Singh had brought and kept it there with the knowledge or consent of the petitioner.

(4) The aforesaid alleged disclosure statement of Lt. Col. (Retd.) Jasbir Singh, though admissible under Section 27 of the Indian Evidence Act against the maker thereof, is not by itself substantive evidence against the co-accused/ petitioner

under Section 30 of the Evidence Act (Vide- Ram Chandra v. State of Uttar Pradesh, : 1957 CriLJ559). It has also been held in Haricharan v. State of Bihar, : 1964 CriLJ344 that though confession may be regarded as evidence in that generic sense because of the provisions of Scc. 30 of the Evidence Act) the fact remains that it is not evidence as defined by Section 3 of the Evidence Act and further that the confession of a co-accused cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking an assurance in support of its conclusion deducible from the said other evidence. Where there is evidence against the co-accused sufficient, if believed, to support a conviction, then the kind of confession described in Section 30 may be thrown into the scale as a reassuring factor for believing that evidence. There may be cases wherein the court is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction, and in such an event the Judge may call in aid the confession of a co-accused and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of such confession he would not be prepared to accept. Under Section 30 of the Evidence Act the confession is merely to be an element in the consideration of the other evidence and unless there something more, a conviction of an accused solely on the confession of a co-accused shall still be a case of no evidence. If there is substantial evidence sufficient to sustain conviction by itself against the accused and there remains some lingering doubt, the confession of the co-accused may be taken into account to set that little doubt at rest. The evidence in this case against the petitioner comprises the recovery of the defense Telephone Directory from the office room of the petitioner as a result of house search but, as already pointed out above, the same admits of a dual possibility in view of the employment of co-accused Lt. Col. (Retd.) Jasbir Singh as Consultant with the petitioner in that very office and his having brought the same into that office of his own without the knowledge or consent of the petitioner or with the knowledge or consent of the petitioner and thus not by itself sufficient to sustain conviction of the petitioner and this insufficiency is not to be made good by the aforesaid confessional statement of co-accused Lt. Col. (Retd.) Jasbir Singh which can serve only as a reassuring factor for evidence which should be self-sufficient for

conviction.

(5) It is also note-worthy to point out that as per the case of the prosecution itself co-accused Lt. Col. (Reta) Jasbir Singh was recruited by accused no. 1 Maj. Genl. (Reta) F. D. Larkins some time in the year 1979 and that recruitment was approved by Jockey a foreign agent but subsequently Lt. Col. (Retd) Jasbir Singh was dropped because he could be no longer trusted inasmuch as jockey had the information which rendered him unreliable and Maj. Gen. (Retd) F.D. Larkins also had his own reasons in dropping him because he was supposed to be friendly to the petitioner who happened to be a business competitor, and these facts asserted by the prosecution itself, tend to demolish the case of conspiracy alleged against the petitioner.

(6) For the aforesaid reasons, there does not appear to be any Justification for declining bail to the petitioner who is ordered to be released on bail on his furnishing a personal in the sum of Rs.5,000.00 with one surety in the like amount to the satisfaction of the court concerned. The aforesaid observations are only prima facie in nature and shall not, in any manner, affect the trial of the case.