Mal Singh Vs. State of Delhi

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Court : Delhi

Decided On : Mar-18-2002

Reported in : 2002IVAD(Delhi)710; 98(2002)DLT163; 2002(63)DRJ17

Judge : S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 227, 397 and 482; Constitution of India - Article 227; India Penal Code (IPC), 1860 - Sections 406, 420, 468 and 471; Arms Act - Sections 25, 54 and 59

Appeal No. : Crl. M.(M). No. 2919/99 and Crl. M. No. 9049/99

Appellant : Mal Singh

Respondent : State of Delhi

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Avnish Ahlawat, Adv

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. By this petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, petitioner has challenged the order dated

14th July, 1999, passed by the Additional Sessions Judge, New Delhi, setting aside the order dated 1.3.1996, of the Metropolitan Magistrate and remanding back the case with a direction to reconsider the whole case and re-frame the charges in case FIR No.571/93 under Sections 420/468/471, IPC, P.S. Hauz Khas.

2. In brief, prosecution allegations are that complainant was running a business of selling of sweets at Jodhpur and was looking for some alternative business. One Mr. D.L. Naida r/o village Singhora, District Jhunjhun, Rajasthan, a contractor, was known to the complainant. He mentioned the name of the accused and told him that petitioner can get a government supply contract through him. Mr. Naida also informed the complainant that he was getting such a big contract through the petitioner. The complainant became interested in the project and on 7.11.1993 he came to Delhi Along with Mr. Naida. Both of them stayed at Uphar Guest House, Green Park. thereafter, the complainant was introduced to the petitioner by Mr. Naida. Accused at that time claimed himself to be the 'Indian defense Accounts Officer' and on deputation to the Ministry of defense as Executive Officer. In order to inculcate faith in the complainant, petitioner showed his identity card. He represented that he can get a very big supply contract from Ministry of defense at one percent commission. On this representation, the complainant became more interested in the project. On his own, petitioner gave a photocopy of classified letter dated 23.9.1993 to the complainant, in which the supply of goods worth Rs.17.20 crores was to be awarded. Petitioner informed the complainant that a fee of half percent of the value which comes to Rs.8.0 lakh has to be deposited as security. Petitioner also told him that everything has to be kept top secret and he is in charge of the whole project. He also asked the complainant to bring money on 12.11.1993 and promised that on the same day the contract will be signed and given to him. On this representation, the complainant went back to Jodhpur and arranged a sum of Rs.8.0 lakhs from his father-in-law and others. On 11.11.93 the complainant came back to Delhi and stayed with his brother Shri D.D. Singh. The petitioner had given a contact Number 3782609 Extn.2. This telephone was picked up by the petitioner himself. On telephone the complainant told him that he had arranged the money. Accordingly, the petitioner called the complainant at South Block, Main Gate towards North Block at 2:30 p.m. As per the instructions of the

petitioner, the complainant Along with his brother D.D. Singh went to South Block, Main Gate. The accused came out from South Block and met the complainant. The petitioner with the complainant and his brother sat in a car. They were told that the entry in the office was restricted. While sitting in car petitioner gave two typed letters on letter head of Govt. of India and asked the complainant to fill and signed the same. These letters were duly signed by the complainant and witnessed by his brother on the asking of the accused. In presence of the complainant and his brother the accused had signed both these documents as Executive Officer and endorsed 'recommend'. Thereafter, the petitioner went inside the office and came out after half an hour and gave photocopy of these two letters duly stamped with the endorsement 'recommended'. The contract was to be allegedly signed by some other officer. Thereafter, the accused told the complainant that the tender has been informally accepted. The complainant was asked to deposit half percent security, at the residence of P.S. Badiala, Director General at T-23, Green Park. The complainant and his brother, as per the instructions of the accused went there. The petitioner took the brief-case containing Rs.8 lakhs from the complainant and went inside and came after half an hour and informed that the complaint would be receiving receipt on 16.11.93 at Room No.-17-B, South Block Along with papers of the contact. The petitioner also congratulated the complainant and asked that his commission of Rs.17 lakhs should be given to him before the start of first payment, for which the complainant agreed. On 14.11.93, Mr. Naida came to Delhi. Thereafter, to meet Shri Naida the complainant came to Uphar Guest House where the petitioner was to meet but he did not turn up. When the petitioner did not meet the complainant and Mr. Naida, they got suspicious. Next day Mr.Naida informed the complainant that Mr. Mal Singh Choudhary had also cheated him for Rs.5 lakhs. At this the complainant tried to find out the petitioner at the given address.

3. On the basis of the above allegations, the Metropolitan Magistrate by order dated 1.3.1996 ordered that the charge for the offence under Section 420 IPC only is made out against the accused. Petitioner filed a revision petition, which was dismissed and the matter was remanded back for reconsideration of the charges. It was also observed that prima facie offence under Sections 468/471, IPC is also made out. This order is under challenge. I have heard learned counsel for the

petitioner and learned APP for the State.

4. Learned counsel for the petitioner, at the outset, argued that petitioner had filed the revision petition against the order framing charge against him under Section 420, IPC and the order holding that prima facie case under Sections 468/471, IPC, is also made out and directing reframing of charge against petitioner is without jurisdiction. I am unable to agree. Bare perusal of Section 397 of the Code of Criminal Procedure shows that the superior court can always call for and examine the correctness, legality or propriety of any finding, sentence or order. Merely because the learned Additional Sessions Judge came to the conclusion that prima facie a case under Sections 468/471, IPC is also made out. The impugned order cannot be said to be without jurisdiction.

5. Learned counsel for the petitioner next argued that petitioner was earlier also falsely implicated in case FIR No. 88/97, P.S. Maurice Nagar, under Sections 25/54/59 of the Arms Act and by judgment and order dated 19.3.1997 he was acquitted because there was no public witness and evidence of the public officials was not believed. Referring to another order passed by the Court at Jhunjhunu, Rajasthan, learned counsel argued that on the basis of the complaint lodged by one Digambar Lal, petitioner was involved in another case under Section 420/406, IPC. On the revision petition filed by the petitioner, he was exonerated at the stage of framing of the charge itself. She argued that the present case is also a part of the same plan through Mr. Nadiad and, thereforee, prosecution of the petitioner is nothing but an abuse of the process of the Court and charge against petitioner is false and baseless and that no case is made out against the petitioner. Learned APP for the State argued to the contrary.

6. I have considered the rival contentions and have been taken through the record. As per settled law, at the stage of framing of charge, the Court is not required to examine the evidence minutely. Even a grave suspicion is enough. The Court is required to see whether the allegations against the accused, prima facie, appear to be true. At this stage, defense of the accused is not required to be considered. Reference in this regard can be made to the decision of the Supreme Court in Union of India v. Prafulla Kumar, : 1979 CriLJ154 and several subsequent

decisions, wherein it was held:

'Thus, on a consideration of the authorities mentioned above, the following principle emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the un-doubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial;

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(emphasis supplied).

7. Applying the above principles to the facts of this case, at this stage, it cannot be said that prima facie no offence against the petitioner is made out. Any detailed discussion is not necessary lest it may prejudice the case of the petitioner or the prosecution. The reasoning adopted by the learned Additional Sessions Judge

while dismissing the revision petition is legal and valid. There is nothing in the impugned order to warrant any interference at this stage.

8. For the foregoing reasons, I find no merit in the petition and the same is dismissed. Any observations made in this order shall not affect the merits of the case.