Tek Chand JaIn Vs. State

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Court : Delhi

Decided On : Jan-09-1992

Reported in : 47(1992)DLT28

Judge : S.C. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 227

Appeal No. : Criminal Revision Appeal No. 106 of 1989

Appellant : Tek Chand Jain

Respondent : State

Advocate for Pet/Ap. : S. Lal, Adv

Judgement :

S.C. Jain, J.

(1) Thecase has been on the boardof this Court. Today is at No. 1 but none appeared for the petitioner. thereforee, I proceed to hearthe argument of the Counsel for CBI.

(2) The facts giving rise to this revision petition are that Shri Tek Chand Jain was suspended from M.C.D on 31.5.1973 and ultimately he was dismissed from service on 26.6.1981. During his suspension period he receivedRs. 13,378.80

towards his subsistence allowance from January 1980 to May,1981 on the basis of certificate allegedly produced by him showing that he was not employed anywhere, nor he was engaged in any business during this period.Later on, it was revealed that actually during this period he was employed with Messrs Aar. Pee. Apartments and was getting Rs. 600.00 per month.On the basis of these facts an Fir was lodged and investigation was conducted by the CBI. During investigation Cbi collected various, documents which prima facie indicated that the petitioner had been giving false certificate and obtained subsistence allowance of Rs. 13,378.80 and thus cheated the Corporation to the extent of that amount and a case under Section 420 IPC was registered against the petitioner Tek Chand Jain and a challan was filed before the Metropolitan Magistrate being Nc 3/84 State v. Tek ChandJain. The Metropolitan Magistrate New Delhi after hearing and going through the record ordered framing of charge under Section 420 Indian Penal Code vide judgment dated 8.2.89.

(3) Aggrieved, this revision petition has been filed. From the grounds taken in the revision petition it appears that the thrust of the petitioner'sdefense is that there was nothing on the record to show that the petitioner had any fraudulent intention to cheat the corporation and at the most it can be violation of the rules of service whereby the government employees should not engage in any trade or business without the permission of the government as envisaged in Rule 15 of the Ccs Rules. The other plea which seems to have been taken by the petitioner is that there is no evidence to prove that the petitioner had actually been paid any payment by Aar. Pee. ApartmentsPvt. Ltd. No document of payment of Rs 600.00 has been taken in possession by the CBI.

(4) Shri Lal, Special P.P. for Cbi drew my attention towards the evidence collected by the Cbi to this effect. According to the statement of Shri Shiv Kumar and Santokh Singh of the office of the Registrar of Companie she was in the employment of Messrs Aar. Pee. Apartments during this period and was paid Rs. 600.00 per month. In the income tax returns filed by the accused which have been seized by the Cbi and have been placed on record wherein he has shown a salary of Rs. 600.00 from Aar. Pee. Apartments.According to Mr. Lal Prima facie, it is apparent that the accused was in the employment of Aar. Pee. Apartments and

that he dishonestly represented this fact of not being in service during the suspension period and dishonestly received subsistence allowance to the extent of Rs. 13,378.80 and order of framing of charge under Section 420 Indian Penal Code has been correctly passed by the Metropolitan Magistrate and this revision petition deservesno merit.

(5) The offence of cheating under Section 420 Indian Penal Code is defined under Section 415. Two essential ingredients viz, deceit i.e. dishonest and fraudulent misrepresentation to a person and (2) inducing that person to deliver theproperty. In this case, it is not in dispute that during the period January, 80to May, 1981 the accused was under suspension and he received Rs. 13,378.80towards subsistence allowance. It is also on record that at the time of receiving subsistenceallowance he produced certificates certifying that he did not remain in service during this period. Had these certificates not been produced,he would not have got the subsistence allowance. The plea of the petitioner that no penal offence is made on the basis of these false certificates and it can be only a violation of. the conduct rules is not tenable in the present circumstances of the case. From the evidence which the Cbi has collected it is prima fade established that the accused deceived the Corporation by producing the false certificates and received Rs. 13,378.80 towards subsistence allowance though he remained in service with M/s. Aar. Pee Apartments Pvt. Ltd. during this period. It is settle law as laid down by the Supreme Court in Union of India v. Prafulla Kumar Samal, : 1979 CriLJ154 , that while deciding the question of framing the charges under Section 227 of the Code the Court has undoubtedly 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. The test to determine a. prima facie case would naturally depend upon the facts of each case. It is difficult to lay down a rule of universal application. 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. In this case, from the evidence which the Cbi has collected and placed on record, a prima facie case under Section 420 is made out against the petitioner and I find on illegality or infirmityin the impugned order passed by the Metropolitan Magistrate on 8.2 89 ordering that the petitioner be charged under Section 420 Indian Penal

Code for cheating the corporation to the tune of Rs.13,378.80. The re is no jurisdictional error. I, thereforee, dismiss the revision petitionhaving no merit. Record of the lower Court be sent back immediately.