Diksha Dhingra Vs. State

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Court : Delhi

Decided On : Oct-23-2007

Reported in : 2007(99)DRJ113

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120, 409 and 420

Appeal No. : Bail Application No. 2161/2007

Appellant : Diksha Dhingra

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.,; S.S. Gandhi, Sr. Adv.,; R.K. Aggarwal

Advocate for Pet/Ap. : Prashant Mendiratta, Adv

Judgement :

Pradeep Nandrajog, J.

FIR No. 713/2007 dated 5.8.2007 under Sections 420/409/120/34 IPC PS Najafgarh.

1. Petitioner is in judicial custody since 14.8.2007. She has thus remained injudicial custody for 71 days.

2. Petitioner is aged 43 years. She is employed as a teacher in the nursery section of DAV Public School, West Patel Nagar, Delhi. She is an accused in the afore-noted FIR.

3. FIR has been registered on the complaint lodged by G. Somasekhar on behalf of the Institute of Chartered Accountants.

4. As per the FIR, the common proficiency test of chartered accountancy course was to be held all over India on 5.8.2007. 82,000 candidates were appearing in said, examination. About 15,000 candidates were to take the exam at Delhi at 20 centres. DAV Public School, West Patel Nagar was one out of the 20 centres earmarked for conducting exam at Delhi. Before the examination commenced, on 5.8.2007 at 8.30 A.M. 'India TV aired a sting operation showing that the paper had leaked and one Sudesh Kumar who was carrying on business from premises No. 37, Prem Nagar, Najafgarh was behind the whole episode.

5. Investigation revealed that on behalf of the management of the school Bhavna Malik, the Headmistress of the school had nominated the petitioner as the superintendent of the centre i.e. the overall in-charge for conduct of the exam. Question papers, in 3 sets, were handed over by the representative of the Institute of Chartered Accountants to one Arti, another nursery school teacher, who kept the same in an almirah in the staff room on 31.7.2007. According to Arti she had done so inasmuch as petitioner was not present in the school to receive the question papers on 31.7.2007.

6. The almirah in question had a lock. 2 keys thereof were available. One was with Arti and the other was with the petitioner. It was found that 1 question paper had leaked out of the three sets which were prepared and that the same had leaked from the centre in question of which petitioner was the superintendent.

7. Needless to state, petitioner was made answerable for what had happened.

8. In her disclosure statement, petitioner informed that she had been directed by the headmistress of the school to function as the supervisor. That Sudesh Kumar was known to the headmistress Bhavna Malik. That she was instrumental in

leaking out the paper at the instance of the headmistress.

9. Much after the petitioner was arrested, the headmistress had also been arrested on 19.10.2001. In her disclosure statement, the headmistress has admitted her complicity with Sudesh Kumar.

10. Another relevant fact which needs to be noted is that in her disclosure statement, petitioner has disclosed to the investigating officer that on 28.7.2007, at the asking of the headmistress, she had supplied to Sudesh Kumar the attendance sheet of the students who were to take the examination.

11. Relevance of the said fact is that this would have made known to any person the seat assigned to a particular candidate.

12. As noted above, 3 sets of question papers were prepared. They were to be given to the candidates for answering in sequential pattern i.e. 1, 2, 3 - 1, 2, 3 ...Thus knowledge of the seating pattern would have facilitated the person who was in possession of One out of the three questions papers to sell the same or utilize the same for benefit of those candidates who were assigned the particular seat(s) at the time of the examination.

13. For conduct of the exam, the Institute of Chartered Accountants had paid money in the name of DAV Public School. It was obviously intended that not only the school building but the school staff would be utilized for providing supervisors for conduct of the examination.

14. But, this did not happen. The headmistress of the school outsourced the service of providing invigilators at the school centre to Sudesh Kumar who provided the invigilators to invigilate when the students were taking the exam. The investigation has revealed that some of the invigilators were just senior secondary.

15. Prima facie, the conduct of the headmistress casts a serious suspicion qua her behaviour. Surprisingly, the headmistress outsourced the invigilation duties to Sudesh Kumar, the person from whose custody a question paper was recovered.

16. In the aforesaid backdrop, submission of learned Counsel for the petitioner that his client could well be a victim of conspiracy and not the conspirator has to be considered.

17. Relevant would it be to note that as of today the police has no evidence that petitioner received any money from either Sudesh Kumar or the headmistress of the school.

18. It surprises me that the headmistress chose a junior school teacher to be the supervisor of the examination centre. As noted above, petitioner is in-charge of the nursery classes. It is urged by learned Counsel for the petitioner that being an employee of a private school, if petitioner refused to function as the supervisor, she would have probably lost the job. Counsel further submits that admittedly, the sealed envelope containing the question papers were received by Arti on 31.7.2007. They were kept in an almirah in the staff room. In the almirah, attendance registers of the teachers were kept. The school had functioned on 1.8.2007 and 3.8.2007. On said 2 dates, attendance registers were taken out from the almirah, meaning thereby anybody could have an access to the almirah. Counsel concedes that as the supervisor of the centre and entrusted with the question papers, petitioner ought to have been more vigilant and was answerable if some third pally accessed the question paper from the sealed envelopes.

19. Given the evidence collected by the prosecution, it is difficult to say that the petitioner is innocent. Equally, it is difficult to form a conclusive opinion with respect to evidence that there is a strong case against the petitioner for the reasons the confessional statements of the accused to the police are inadmissible evidence as no recovery pursuant thereto has been effected.

20. However, I would hasten to add that even on grave suspicion not only can a person be booked as an accused but even a charge can be framed on grave suspicion.

21. But, notwithstanding the aforesaid legal position I am inclined to release the petitioner on bail on account of the fact that she has remained in judicial custody for 72 days and is not required for any further investigation. Being a lady, there is

no apprehension of the petitioner threatening any witness of the prosecution. The petitioner is married. She has a family. There are 2 minor daughters who are studying in the same school where petitioner was working, meaning thereby, petitioner has her roots in Delhi.

22. But before concluding I must caution the Institute of Chartered Accountants to be careful in future. Least they could have done was to deliver the question papers a day prior to the examination day and additionally have had ensured that only teachers of the school functioned as invigilators and not high school graduates.

23. Petition accordingly stands disposed of directing the learned Trial Judge to release the petitioner on bail on the petitioner furnishing a personal bond in sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of the learned Trial Judge.

24. Dasti.