

Sanjay Tyagi Vs. State

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Court : Delhi

Decided On : Dec-24-2010

Judge : Ajit Bharihoke, J.

Acts : Indian Penal Code (IPC) - Sections 420, 467, 468, 471, 193, 196, 205 read with 120B; Companies Act - Section 391

Appeal No. : BAIL APPLN. NO.1731/2010; CRL.M(B) NO.1538/2010

Appellant : Sanjay Tyagi

Respondent : State

Advocate for Def. : Mr.R.N.Vats, Adv.

Advocate for Pet/Ap. : Mr.Arvind Nigam; Mr. Sunil Kumar, Adv.

Judgement :

1. Sanjay Tyagi, the petitioner herein vide this application is seeking bail in case FIR No. 140/2009, P.S. Crime Branch, Delhi.

2. Briefly stated, facts relevant for the disposal of this application are that the learned Company Judge of this court, while hearing company petition No. 234/2005, titled "Manjit Kaur v. Nanda Tourism Corporation Ltd." arrived at a prima facie finding that Manjit Kaur was a fictitious person and she had filed petition for winding up of the company on the basis of forged and fabricated bills of M/s. Kumar Security Syndicate, a fictitious entity purported to have provided security

services to the company, with a view to defraud. Accordingly, a direction was issued vide order date 18 th April, 2009 to investigate into the matter.

3. Pursuant to said directions, Crime Branch, Delhi enquired into the matter and the enquiry revealed that Manjit Kaur and M/s. Kumar Security Syndicate was fictitious entities. Kumar Security Syndicate was the creation of one Sharad Aggarwal, Advocate and he, in conspiracy with R.K.Nanda, Promila Nanda and directors of M/s. Nanda Tourism Corporation Ltd., prima facie, fabricated and forged entries and records to raise claim towards the company and has prima facie committed offences punishable under Sections 420, 467, 468, 471, 193, 196 & 205 read with Section 120B IPC.

4. It is pertinent to mention that the learned Company Judge, while dealing with the company petition No. 238/2005, titled "Manjit Kaur v. Durga Builders" arrived at a prima facie finding that Manjit Kaur (petitioner) was a fictitious person and she had sued for winding up of the company on the basis of forged bills of M/s. Kumar Security Syndicate, a fictitious entity, purported to have provided security service to M/s. Durga Builders Pvt. Ltd., with a view to defraud the creditors. Learned Company Judge, accordingly issued direction for registration of FIR in that case also and pursuant to that, FIR No. 24/2009, P.S. Crime Branch was registered. In the said matter, after completion of investigation, charge sheet was filed against R.K.Nanda and Sharad Aggarwal, Advocate, who was arrested and subsequently released on bail by this court. Promila Nanda, wife of R.K.Nanda was also released on anticipatory bail.

5. Learned counsel for the petitioner has submitted that the petitioner surrendered before the learned Trial Judge on 06th October, 2010 and since then, he is in judicial custody. Though the Investigating Officer sought police custody remand of the petitioner, the court declined the prayer. The bail applications moved by the petitioner were respectively dismissed by the order of learned ACMM dated 13th October, 2010 and the order of learned Additional Sessions Judge dated 19th October, 2010. Learned counsel further submitted that the petitioner has been made a scapegoat in this case. He was only an employee of Nanda, who made him a dummy director in M/s. Nanda Tourism Corporation Ltd. in December, 2003

and thereafter, Nanda resigned from the Board of Directors in 2005 and appointed the petitioner as Managing Director. Learned counsel also submitted that the petitioner was not authorized to operate the bank account of M/s. Nanda Tourism Corporation Ltd. nor he had anything to do with the bank account in the name of Kumar Security Syndicate, which was operated by Sharad Kumar Aggarwal, Advocate and which account was closed on 02nd March, 2009. He argued that R.K.Nanda and Promila Nanda were in actual control of the company and all other directors were namesake directors.

6. Learned counsel further contended that the petitioner has not committed any forgery and only allegation against him is that he filed a false affidavit in the court, which constitutes an offence under Section 193 IPC, which is a bailable offence. Learned counsel argued that the petitioner has not cheated anybody nor he had forged any bill and even as per the police report, the forgery was committed by Sharad Kumar Aggarwal, Advocate, as such, prima facie, no offence under Section 467 IPC is made out against the petitioner. Learned counsel further argued that there is no creditor of M/s. Nanda Tourism Corporation Ltd. and no monetary loss has been caused to anybody by filing of alleged revival petition by the petitioner in the company court. Learned counsel argued that as regards FIR No. 24/2009 registered pursuant to the directions of the company court in the matter of Manjit Kaur v. Durga Builders Pvt. Ltd., charge sheet has been filed wherein the petitioner is not an accused. It is also argued that petitioner is the sole bread earner of his family comprising of his wife and two small children and an aged mother and his detention in judicial custody is causing unnecessary suffering to his family members.

7. Learned APP, on the other hand, has opposed the bail application on the ground that as per the affidavit filed by the petitioner in the High Court, he was holding 70% shares along with Ram Avtar Jindal in M/s. Nanda Tourism Corporation. Admittedly, he was Managing Director of the Company, therefore, he cannot get away by taking shield of an argument that he was only a dummy director. Learned APP further contended that in the affidavit, the petitioner had stated that Manjit Kaur had rendered services to M/s. Nanda Tourism Corporation and was a creditor to whom a sum of ` 8,40,156/- was due by the company.

8. I have considered the rival contentions. On perusal of the record, it transpires that application for anticipatory bail filed by the petitioner on the ground that he was only a dummy director in M/s. Nanda Tourism Corporation Ltd., which is actually owned and promoted by R.K.Nanda, his wife and their family members, was rejected by learned Single Judge of this court vide order dated 07 th September, 2010. In the aforesaid order, there is a reference to the affidavit of Sanjay Tyagi filed by him in the court on 16 th February, 2009, which reads thus:-

"7. I affirmed the that as on date the propunder hold more than the statutory requirement of 70% as required under the Companies Act propunder expect to acquire the balance and undertake to buy any share from share holder willing to sell.

8. I depose the following shareholders are also the propounders.

1. Shri Sanjay Tyagi A-2, P.T.S. Malviya Nagar New Delhi

2. Ram Avtar Jindal S/o Sh. Jagdish Prasad 2 P.T.S. Colony Malyia Nagar New Delhi.

9. As the petition is under Section 391 of the Companies Act and the propounders/petitioners are ready to make the payment to the creditors Manjeet Kaur sole proprietor of Kumar Securities Syndicate.

10. Total amount payable to alleged unsecured creditors. The amount due and payable based on the date of liquidation to the Manjeet Kaur proprietor of Kumar Securities Syndicate was Rs. 8,40,156/- and propounders have arranged and ready and willing to pay aforesaid amount of Rs. 8,40,156/-alongwith interest and the same has been consented by the petitioner Manjeet Kaur. There is no other creditors."

9. In the affidavit, the petitioner claimed that he held more than 70% of the shares of M/s. Nanda Tourism Corporation Ltd. as required under Companies Act and he expected to acquire the balance and undertook to buy any share from the shareholders willing to sell. He claimed that besides him, Ram Avtar Jindal was also the propounder shareholder. He also affirmed in the said affidavit that the

amount due and payable, based on date of liquidation to Manjit Kaur, proprietor of Kumar Securities Syndicate was ` 8,40,156/- and that the propounders were ready and willing to pay the aforesaid amount of ` 8,40,156/- along with the interest and same has been consented to by Manjit Kaur. It is evident from the record that as per the enquiry conducted by the Crime Branch, Manjit Kaur is a fictitious person, which prima facie shows that the affidavit filed by Sanjay Tyagi in the company court on 16th February, 2009 is false and this circumstance, prima facie, negates the submission of the petitioner that he was only a dummy Managing Director.

8. From the above fact, prima facie, involvement of the petitioner in the conspiracy to create unwarranted liability of M/s. Nanda Tourism Corporation Ltd. in favour of a fictitious security agency is disclosed. The offence allegedly committed by the petitioner is of a serious nature, therefore, at this stage, I am not inclined to grant bail to the petitioner. Bail application is accordingly dismissed.

9. It is clarified that nothing contained in this order shall be treated as observations on the merits of the case.

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