Aman Bhatia Vs. State

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Court : Delhi

Decided On : Mar-23-2012

Judge : Suresh Kait

Appeal No. : CRL.M.C. No.2283 of 2011

Appellant : Aman Bhatia

Respondent : State

Advocate for Pet/Ap. : Mr. Mihir Joshi

Judgement :

SURESH KAIT, J.

1. Vide the instant petition, the petitioner has sought to set aside/ quash the FIR No.62/2003 registered with police station Anti-Corruption Branch under Section 7/13 of the Prevention of Corruption Act, 1988 (hereinafter referred as 'PoC Act') and Section 69 of the Stamp Act. Also sought quashing the criminal proceedings including the summoning order dated 25.01.2006 and order on charge and formal charge framed against the petitioner vide order dated 02.06.2008 in case titled ‘ *State v. Aman Bhatia’* by learned Special Judge, Delhi.

2. Learned counsel for petitioner has submitted that vide aforementioned FIR dated 09.12.2003 case for the offence punishable under Section 7/13 PoC Act was registered at police station A.C. Branch against the petitioner.

3. Vide order dated 02.06.2008 formal charges were framed against him under the offences mentioned above.

4. Being aggrieved, the petitioner filed a Criminal Revision Petition No.510/2008 before this Court against the order on charge dated 02.06.2008. Vide order dated 08.09.2008 this Court issued notice in the said petition and also stayed the proceedings before learned Trial Court.

5. On 30.03.2011, the said petition listed before this Court and the Court was of the opinion that revision was barred against an interlocutory order. Therefore, learned counsel for petitioner sought leave to withdraw the aforesaid petition while reserving the right of the petitioner to seek his remedy in accordance with law. Accordingly, said petition was dismissed as withdrawn with liberty to file fresh petition; hence, the instant petition.

6. The brief facts of the case are that the petitioner was granted a licence to vend non-judicial/Court Fees stamp papers subject to the conditions as contained in Delhi Province Stamp Rules, 1934 as framed under the Indian Stamps Act. The allegations against the petitioner are that on 09.12.2003 one Shiv Charan gave a written complaint to the Anti - Corruption Branch of Delhi Police enumerating therein that on 09.12.2003 he went to purchase stamp paper of `10/- but the petitioner demanded `12/- for the said stamp paper. Accordingly, on the basis of said complaint, a raiding team was organised. The petitioner was arrested on the allegations of demanding and accepting `12/- in the form of Indian currency notes of denomination of `10/- and `2/- which were treated with phenolphthalein, for the purchase of the stamp paper of `10/-. Accordingly, the police registered the FIR under Section 7/13 of PoC Act and Section 69 of the Indian Stamp Act against the petitioner.

7. On completion of the investigation, prosecution filed the charge sheet under Section 173 of the Cr.P.C. against petitioner for the offences mentioned above. Vide order dated 25.01.2006, learned Trial Court took the cognizance and issued summoning order against the petitioner.

8. Vide order dated 02.06.2008 after hearing both the parties, passed the order on charge under Section 7/13 of the PoC Act and also framed charges for the said offences punishable under Section 7/13 of the PoC Act against the petitioner.

9. The petitioner has filed the instant petition on the ground that the Trial Court framed charges contrary to law assuming jurisdiction under PoC Act, arbitrarily, illegal and are nullity because of the fact that the petitioner wrongly inferred that he is a public servant.

10. Learned counsel for petitioner argued that the impugned order passed on the presumption that the petitioner was authorised to sell stamp papers to public at large on payment of cash equivalent to the value of the stamp paper, and, therefore, was being paid "commission" in the form of remuneration as defined under Section 2(c) (i) of the PoC Act. For convenience, said provision is reproduced as under:-

"2. Definitions - In this Act, unless the context otherwise requires -

(c) ***Public Servant means****-*

(i) Any person in the service or pay of Government or remunerated by the Government by fee or commission for the performance of any public duty."

11. Learned counsel for petitioner submitted that he was granted licence by the Collector of Stamps (HQ), Government of NCT of Delhi to vend the 'non-judicial/Court Fee Stamp Papers' and was not in service or on salary of the Government and as such the petitioner is not a public servant.

12. It is further submitted that learned Trial Court failed to appreciate the fact that the licence to sell the stamp paper was granted to the petitioner under Delhi Province Stamp Rules, 1934, whereunder what the vender gets a 'discount' as allowed under the orders of the local government from time to time, as provided under Rule 28 of the aforesaid rules and not the 'commission' and, therefore, the petitioner was only a vendor and not an agent and was not receiving any commission for selling the non-judicial stamp papers , and, therefore, provision of PoC Act is not applicable to the petitioner.

13. Learned counsel further submitted that learned Special Judged has failed to appreciate the distinction between, ‘commission' and 'discount' as explained in Black's Law Dictionary and in judicial pronouncements.

14. In Black's Law Dictionary ‘commission' and 'discount' are defined and explained as under:- *"**Commission**": The recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. Weiner v. Swales 217 Md.123; A.2d 279, 750. A fee paid to an agent or employee for transacting a piece of business or performing a service. Prayer v. Churriti App. 280 SC 241; 312 S.E. 2d 16, 18 Compensation to an administrator or other fiduciary for the faithful discharge of his duties. "**Discount**": In a general sense, an allowance or deduction made from a gross sum on any account whatever. In a more limited and technical sense, the taking of interest in advance. A deduction from an original price or debt, allowed for paying promptly or in cash. Method of selling securities (e.g. treasury bills) which are issued below face value and redeemed at face value. To purchase an instrument or other right to the payment of money, usually for an amount less than the face amount of the right."*

15. It is further submitted that learned Special Judge failed to appreciate that it is not the stamp-vendor collects papers from the Government and then sells them to the retail customers and then deposits the sale proceeds with the Government, less the discounts. The liability of the stamp-paper vendor to pay the price less the discount is not dependent upon or contingent to sale of the stamp papers by the licensed vendor. The licensed vendor would not be entitled to get any compensation or refund of the price, if the papers were to be lost or destroyed.

16. Learned Special Judge has also failed to appreciate that the ownership in the stamp-papers passes to the stamp vendor when the treasury officer delivers the stamp papers on payment of price less discount. The rules themselves contemplates that what the licensed vendor does, while taking delivery of the stamp papers from the government offices, is purchasing the stamp papers. Also failed to appreciate that the stamp paper vendors are not the agent of the State Government, from whom they purchase the stamp papers. The stamp vendors

have to first obtain licence under the Delhi Province Stamp Rules. The licensed stamp vendor has to apply to the treasury office for the stamps required by him. The statement of stamps, etc popularly known as '*challan'* will have to be filled which clarifies the discount available to the stamp vendors on the basis of purchase of stamps and the total amount paid for it. The stamp vendor has to make the payment of the requisite amount in cash which is the total price of the stamps on their face value less the discount available to the vendor.

17. It is further submitted that since the stamp vendor has to pay price less the discount in advance to the treasury officer and thereafter, the required stamps are disbursed to the stamp vendor on the next day of payment, all dealings are done only on cash basis. Hence, there is no payment from the government to the stamp vendor, much less commission or brokerage.

18. It is further submitted that the learned Special Judge failed even to appreciate the fact that if the allegations as mentioned in the charge sheet are taken as true (though contested), the case involves only violation or breach of the Delhi Province Stamp Rules, 1934 for charging more than face value of the stamp-paper and for which the punishment is provided under Section 69 of the Indian Stamps Act, and for which no sanction has been taken by the prosecution.

19. In the instant case, learned counsel for petitioner, has pointed out the offence if any squarely falls under the Indian Stamp Act and without the sanction the prosecution could not have been instituted, as such the impugned order and formal charge framed are liable to be set aside.

20. Learned counsel for petitioner has argued that Section 70 of the said Act reads as under:-

*"**70. Institution and conduct of prosecutions** - No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially, authorises in that behalf."*

The prosecution could not have been instituted under the Stamps Act alongwith Section 7/13 of the PoC Act. The very institution of the *challan* is bad in law and all the proceedings including taking cognizance of the offences / framing of charge are illegal, null and void.

21. The prosecution was obligatory to obtain sanction for the prosecution of the petitioner from the Collector of Stamps under Section 197 of the Cr. P.C. as no prosecution could be launched against a public servant who 'is or was' a public servant.

22. Learned counsel has submitted that to prevent the abuse of process of Court, this Court has inherent powers to prevent such abuse of process by quashing the proceedings. Because of the initiations of the proceedings under the POC Act and continuation of trial for charges framed under the PoC Act, has caused gross failure of the justice and as such the proceedings are a abuse of process of Court and, therefore, interference of this Court is necessary and essential for securing ends of justice.

23. To strengthen his arguments, learned counsel for petitioner has relied upon the judgment rendered by Division Bench of this Court in ***Commissioner of Income Tax v. Singapore Airlines Ltd (2009) 224 CTR (Del) 168*** wherein it has been held as under:-

"27.5 In so far as the Ahmadabad Stamp Vendor and Association (supra) case is concerned it is clear that it does not assist the assessee(s)- airline(s), if at all the ratio of the judgment clearly helps the Revenue. In the said case the petitioner association whose members were stamp vendors had approached the court, amongst others, with a prayer of declaration to the effect, that the provisions of Section 194H of the Act were not applicable in respect of discount available to them with regard to stamps bought by them at a discount from the State Government. It is in this context the court was called upon to determine whether the discount made available to the stamp vendors by the State Government ITA NO 306/2005 Page 49 of 53 was a "commission?or "brokerage?within the meaning of the explanation (i) to Section 194H of the Act. The Court came to the conclusion that stamp vendors had purchased the stamps at a discounted price

and hence the provisions of Section 194H of the Act had no applicability. This is clear from the following observations of the Court "There is no dispute about the fact that the licensed vendor has to pay the price of the stamp papers less the discount at the rates provided in Appendix III to the Rules, which rates vary from 0.5 per cent to 4 per cent. It is not that the stamp vendor collects the stamp papers from the Government, sells them to the retail customers, and then deposits the sale proceeds with the Government less the discount. The liability of the stamp vendor to pay the price less the discount is not dependent upon or contingent to sale of the stamp papers by the licensed vendor. The licensed vendor would not be entitled to get any compensation or refund of the price if the stamp papers were to be lost or destroyed......."

"....The crucial question is whether ownership in the stamp papers passes to the stamp vendor when the treasury officer delivers stamp papers on payment of price less discount. The rules themselves contemplate that what the licenses vendor does, while taking delivery of the stamp papers from the Government offices, is purchasing the stamp papers. Clause (b) of sub-rule (2) of rule 24 indicates that the discount which the licensed vendor had obtained from the Government was on purchase of the stamp papers......"

24. Learned counsel has also relied upon ***AhmadabadStamp Vendors Association v. UOI (2002) 3 GLR 613*** wherein it has been held as under:-

1. The petitioner is a registered association of the stamp vendors of Ahmadabad. As the officers of the Income-tax Department called upon the State Government to deduct tax at source under Section 194H of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), on commission or brokerage to the persons carrying on the business as "stamp vendors", the petitioner-association has approached this court with a prayer to quash and set aside the communication at annexure D collectively, and for a declaration that Section 194H of the Act is not applicable to an assessee carrying on business as a stamp vendor. In response to the notice, an affidavit-in-reply has been filed by the Commissioner of Income-tax, Ahmedabad-II, for justifying the invocation of Section 194H of the Act. By the Finance Act, 2001, Section 194H was inserted in the Act with effect from June 1, *2001. The section reads as under :*

"194H. Commission or brokerage.--Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the June 1, 2001, to a resident, any income by way of commission (not being insurance commission referred to in Section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent. :

Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed two thousand five hundred rupees :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Clause (a) or Clause (b) of Section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.--For the purposes of this section,--

(i) 'Commission or brokerage' includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities ; . . .

(iii) the expression 'securities' shall have the meaning assigned to it in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); . . ."

Mr. Mihir Joshi, learned counsel for the petitioner, has made the following submissions:

(i) The stamp vendors are not agents of the State Governments from whom they purchase the stamp papers. The stamp vendors have to first obtain the licence under the Bombay Stamp Act and/or the Indian Stamp Act. The licensed stamp vendor has to apply to the treasury office for the stamps required by him. The statement of sale of stamps, etc., popularly known as "challan" will have to be filled which clarifies the discount available to the stamp vendors on the basis of purchase of stamps and the total amount paid for it. The stamp vendor has to make the payment of the requisite amount in cash which is the total price of the stamps on their face value less the discount available to the vendor

(ii) The crucial question is whether ownership in the stamp papers passes to the stamp vendor when the treasury officer delivers stamp papers on payment of price less discount. The rules themselves contemplate that what the licensed vendor does, while taking delivery of the stamp papers from the Government offices, is purchasing the stamp papers. Clause (b) of Sub-rule (2) of Rule 24 indicates that the discount which the licensed vendor had obtained from the Government was on purchase of the stamp papers. The stringency of the restrictions contained in the rules is not on account of the fact that the ownership over the stamp papers is not transferred to the licensed vendors when they deliver the stamp papers on payment of price less discount, but the stringency of the conditions is on account of the nature of the stamp papers as such stamp papers are used in transactions relating to valuable properties for the purpose of creating, transferring and extinguishing the interest in valuable properties. Judicial notice can be taken of the fact about the important, if not paramount, role being played by stamp papers in our legal system.

The doubt, if any, on the controversy at hand may also be cleared by reference to entry 84 in Schedule I to the Gujarat Sales Tax Act, 1969. If these licensed stamp vendors were mere agents of the State Government, no sales tax would have been leviable when the stamp vendors sell the stamp papers to the customers because it would be "sale" by the Government through the stamp vendors. However, entry 84 has been specifically provided in Schedule I to the Gujarat Sales Act for exempting sale of stamp papers by the licensed vendors. The relevant entry reads as under :

SCHEDULE 1

[See section 5]

Goods, the sale or purchase of which is free from all taxes

Sr. No.	*Description of goods*	*Conditions and exceptions subject to which exemption is granted*
84.	*Stamp papers sold by vendors duly authorized under the provisions of the Bombay Stamp Act, 1958 (Bom LX of 1958), or the Indian Stamp Act, 1899(2 of 1899).*	

The very basis of enacting the provision by the State Legislature for giving exemption from sales tax in respect of sale of stamp papers by the licensed vendors was the fact that the sale of stamp papers by the licensed vendors to the customers would have been otherwise eligible to sales tax. The question of levy of sales tax would arise only because the licensed vendors themselves sell the stamp papers on their own and not as agents of the State Government. Had they been treated as agents of the State Government, the question of levy of sales tax on sale of stamp papers by them would not arise.

Applying the aforesaid definitions and the judicial pronouncements to the facts of the present case and in backdrop of the aforesaid rules, it is clear that although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of priceless the discount on the principal to principal basis and there is no contract of agency at any point of time."

25. To sum up learned counsel for petitioner has relied upon the different provisions of the Delhi Province Stamp Rules, 1934 which in particular reads as under:-

1. Interpretation - In these rules, unless a different intention appears from the subject or context:-

(e) the expression ex-officio agent, means the treasurer for the time being of the treasury at the headquarters; or his agent and the subordinate treasurer of every subordinate treasury at the headquarters, and it also includes every person appointed to discharge the functions of a treasurer at any local depot established at the place where there is no treasury and postmasters including sub and branch postmasters and persona appointed by the office offices to sell 'Revenue' stamps

(f) the expression Licensed agent means and includes every person who for the time being holds a licence granted under these rules, to sell stamps, but does not include a specially licensed agent or any ex-officio agent may if duty licensed be also a licensed agent. The expression licence means a licensed agent's licence.

(g) the term 'vendor' includes an ex-officio agent a licensed agent and a specially licensed agent.

(h) the term 'special license means a license granted under these rules to a Government Servant to sell -non-judicial' stamps only on special terms as to remuneration; and specially licensed vendor is a person holding such license.

28. **Every license granted under these rules shall be subject to the following conditions:-**

(vi) The vendor shall not sell stamps of any kind the use of which has been discontinued or prohibited by competent authority.

(vii) The vendor shall be bound to sell to any person upon immediate payment any stamps of a kind or value permitted by his license, but not of any other kind or value. The vendor shall not demand or accept for any stamp any consideration exceeding the value of such stamp. Provided that

(xvii) (b) The licensee is not allowed to charge more than face value of stamps.

(xx) The remuneration to the vendor shall be in the form of discount allowed from time to time under the orders of the local Government.

The infringement of any of these rules or conditions shall render the holder liable to the cancellation of his license in addition to the penalties prescribed in Section 69 of the Indian Stamp Act, 1899/ Section 34 of the Court Fees Act, 1870, namely imprisonment for a term which may extend to six months or fine not exceeding five hundred rupees or both.

34. Remuneration of vendors *(i) No ex-officio agent shall be as such be entitled to any discount or commission on the value of any stamps supplied to him for custody and sale upon the sale thereof.*

(ii) Commission allowed on court fee stamps- Every licensed vendor of court fee stamps shall be entitled to discount at the rate of 1% on stamps upto `100 in a single transaction purchased by him from an ex-officio agent, provided that he shall not be entitled to any such discount when the total value of stamps purchased at any one time is less than `10/- nor on any sum in excess of a multiple of `10/-.

(iii) Every licensed agent and post master or sub post master as vendors of non-judicial stamps shall be entitled to discount at the rates specified in the following schedule on the value of every non-judicial stamp purchased by him from an ex-officio agent provided that discount shall not be allowed on the value of any stamp of a kind not specified in the said schedule, nor when the total value of the stamps purchased at one time is less than `5/-.

(a) Vendors holding ordinary licenses to sell stamps in following manner:-

For Hundi stamps, Revenue stamps and Impressed stamp papers

(a) 3% upto `100/- in single transaction.

(b) 2% for `101 to `500/- in single transaction.

26. While refuting the contention of petitioner, and submitting on the lines of reply filed on behalf of respondent, Mr.Navin Sharma, learned APP has submitted that on the statement of one Shiv Charan FIR was registered against the petitioner for charging over and above the face value of stamp paper of `10/- and demanded `12/-. After framing of charge against the petitioner on 19.08.2008 and matter is pending for trial. The petitioner is covered under Section 2(c)(i) of the POC Act.

27. He further submitted that stamp vendor get commission for selling stamp paper. The commission is being given by government, which is including in the face value of Stamp Papers. Therefore, by virtue of Section 2 (c) (ii) of the PoC Act, a stamp paper vendor is a public servant. He is being paid commission, for performance of his duties, by the government; therefore, he is a public servant. There is nothing wrong in the proceedings pending before learned Trial Court; hence, no interference is required by this Court.

28. Heard learned counsel appearing for the parties.

29. In the case in hand, the petitioner is a stamp -paper vendor. On being filed complaint case against him, case has been registered on the allegations that he was demanding `12/- for the stamp-paper having face value of `10/-. Therefore, case under Section 7/13 PoC Act and Section 69 of the Indian Stamps Act, against him has been registered.

30. Vide instant petition, the petitioner has raised the issue that as he was getting the stamp-papers from the Government on ‘commission’ basis, therefore, he does not come under the definition of ‘public servant’ as such could not have been charged and tried for the offence punishable under Section 7/13 of PoC Act.

31. The definition of ‘public servant’ is enumerated as defined under Section 2 (c) (i) of the PoC Act that any person in the service or pay of government or remuneration by government by fee or commission for the performance of any public duty. For providing the stamp-papers is the duty of the government; the government has appointed stamp-vendors; therefore, on behalf of the government- vendors perform the same.

32. Petitioner was granted licence to sell stamp-papers under Delhi Province Stamp Rules, 1934 whereunder what the vender gets that is ‘commission’, therefore, as provided under Rule 28 of the aforesaid rules. Therefore, provisions of PoC Act are applicable to the petitioner.

33. The stamp-paper vendor is to pay price less the commission, get the stamp-papers and sell it to the public on the face value of the stamp-papers and not over and above the said price. If any of the lincesed vendor sell it over and above the face value of the stamp-paper, then he is liable for the offences under the respective law.

34. Learned Trial Court in the impugned order has recorded that the petitioner was authorised to sell stamp-papers to public at large on payment of cash equivalent to face value of the stamp-papers; therefore, he was being paid commission in the form of remuneration as defined under Section 2(c) (i) of the PoC Act. Undisputedly, only the licensed vendor can get the stamp-paper from the government treasury on the price less their commission; however no other person is permitted to do so. In this way, the government has extended its duties and responsibilities to the licensed stamp-vendor; so that the stamp-papers can be made available to the public, whereas, same is the duty and responsibility of government.

35. As far as the contention of learned counsel for petitioner of non-obtaining any sanction for prosecution of petitioner is concerned, matter is pending trial; and if there is no valid sanction, the benefit of same would definitely be extended to petitioner by learned Trial Court during trial, but not by this Court, at this stage.

36. For the reasons discussed above, I am of the opinion that there is no discrepancy, perversity or illegality in the impugned order. Therefore, I find no merit in the instant petition.

37. Accordingly, Criminal M.C.No.2283/2011 is dismissed.

38. No order as to costs.