

State Through Cbi Vs. Mohd.Umar

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Court : Delhi

Decided On : Feb-19-2013

Judge : S. P. Garg

Appellant : State Through Cbi

Respondent : Mohd.Umar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

14. h January, 2013 DECIDED ON :

19. h February, 2013 + CRL.A. 616/1999 STATE THROUGH CBIAppellant
Through : Mr.R.V.Sinha, Standing Counsel. versus MOHD.UMAR Through :
.Respondent Mr.K.B.Andley, Sr. Advocate with Mr.M.Shamikh, Advocate.
CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. State (through CBI) has preferred the present appeal against the judgment dated 05.09.1998 of learned Special Judge, Delhi by which the conviction and sentence recorded by learned Metropolitan Magistrate in R/C No.10 (S)/94 PS SIC-I/SIU-II/CBI, Delhi was set aside and the respondent was acquitted.

2. The respondent Mohd. Umar was arrested by CBI for committing offences punishable under Sections 420/468/471 IPC. Allegations against the respondent were that in September, 1992, he cheated Udayvir Singh and Dalmia Industries by forging recommendatory CRL.A. 616/1999 Page 1 of 7 letter dated 09.09.1992

addressed to M/s. Dalmia Industries, Bharatpur, Rajasthan purported to have been signed by Sh.Naresh Chandra and Sh.A.N.Verma, the then Principal Secretaries, Prime Ministers Office, for employment of Mahavir Singh and received `500/- from Udayvir Singh. During the investigation, admitted signatures of the respondent with the questioned signatures were sent for examination. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation a charge-sheet was submitted against the respondent. The respondent was duly charged and brought to trial. The prosecution examined eleven witnesses. In his 313 Cr.P.C. statement, the respondent pleaded false implication. He examined DW-1 (Vijay Singh Yadav) and DW-2 (SI J.S.Rathore). On appreciating the evidence and considering the rival contentions of the parties, learned Metropolitan Magistrate held the respondent guilty for committing offences punishable under Sections 420/468/471 IPC and sentenced him to undergo RI for three years with fine. Being aggrieved, the respondent preferred an appeal before learned Special Judge, CBI. Vide order dated 05.09.1998 in CrI.A.No.1/1996, benefit of doubt was given and the respondent was acquitted. The State has challenged the acquittal. CRL.A. 616/1999 Page 2 o

3. I have heard the learned Spl.PP and learned Senior Counsel for the respondent and have examined the record. It is not in controversy that letter (Ex.PW-2/B) was a fake one. It contained forged signatures of Sh.Naresh Chandra and Sh.A.N.Verma. It was never issued from the Prime Ministers Office. Claim of the respondent is that he was not perpetrator of the crime and the questioned recommendatory letter was not forged by him. The burden to prove that the letter (Ex.PW-2/B) was forged by the respondent was heavily upon the prosecution. On scrutinizing the statements of the witnesses examined, I am of the considered view that the prosecution failed to establish beyond reasonable doubt that the respondent was perpetrator of the crime and had forged the recommendatory letter (Ex.PW-2/B). The incident came to the notice of the investigating agency in 1992. However, First Information Report was lodged only in 1994 and CBI registered the case at hand. The inordinate delay in lodging the First Information Report on 23.08.1994 has not been explained. It was also not revealed as to what detailed investigation was carried out from September, 1992 till registration of First Information Report on 23.08.1994. First Information Report lodged by Sh.V.S.

Yadav mentions Mahavir Singh and other unknown person as accused. Name CRL.A. 616/1999 Page 3 of 7 of the respondent does not find mention therein. It was alleged that Mahavir Singh entered into criminal conspiracy with other unknown persons with the object to commit offence of cheating and forgery. However, no charge-sheet against Mahavir Singh was filed for committing any offence. Statements of Udayvir Singh and Chander Pal Singh were recorded in October/ November, 1994 after a considerable delay of more than two years. Statements of other witnesses were also recorded in 1994 or 1995. The delay in recording the statements of the relevant witnesses has not been explained.

4. Admittedly the respondent was working as a carpenter in the Prime Ministers Office. Apparently, he was not in control of any stationary/ letter heads. No evidence was collected during the investigation as to how and in what manner the respondent had access to the letter heads of Prime Ministers Office and how and by what mode he obtained it. Letter (Ex.PW-2/B) is not in the handwriting of the respondent. It is a typed one. The respondent had no regular job to type letters on the typewriter kept in the office. No witness was examined by CBI during investigation to infer when, where and at what time the letter (Ex.PW-2/B) was typed by the respondent. It is unclear in whose custody CRL.A. 616/1999 Page 4 of 7 the typewriter used to remain and who permitted the respondent to type letters including the Ex.PW-2/B on the said typewriter. During investigation, specimen signatures/ handwritings of the respondent on number of papers were obtained. Documents containing his admitted signatures were also collected. They were sent to Government Examiner of Questioned Documents, Shimla. Those documents were carefully and thoroughly examined by M.L. Sharma and Santokh Singh. The report (Ex.PW-7/G) did not implicate the respondent and they were of the opinion that the person who wrote the blue enclosed signatures stamped and marked S-85 and S-86 did not write the red enclosed signatures similarly stamped and marked Q-8. They further were of the opinion that it was not possible to express any definite opinion on the rest of the items on the basis of material supplied. This report was submitted on 30.12.1994. It appears that subsequently, more documents were sent to the experts and they, after examining those documents, gave opinion (Ex.PW-7/H) that the writings mark Q-4, Q-5, Q-8 and specimen handwriting/ signatures S-8 to S-82, S-102 to S-204, A-9 to A-17 were

all written by one and the same person. It again was of the view that it was not possible to express any opinion on the rest of the items on the basis of CRL.A. 616/1999 Page 5 of 7 material at hand. This report was submitted on 25.01.1995. Learned special Judge gave detailed reasons in the impugned judgment for not relying upon the subsequent opinion in Ex.PW-7/H. At no stage, the specimen handwriting and signatures of the respondent were taken in the presence of the concerned Metropolitan Magistrate. No application was moved before the Court to seek permission to obtain the handwriting and signatures of the respondent. PW-7 (M.L.Sharma), Government Examiner of Questioned Documents, Shimla did not give reasons for two different and contradictory opinions in Ex.PW-7/G and Ex.PW-7/H. Santokh Singh, Examiner was not produced before the Court to record his statement. Mahavir Singh and his brother Udayvir Singh were beneficiaries. However, their specimen signatures were not obtained and sent for examination. Neither Mahavir Singh nor Udayvir Singh lodged any complaint with CBI against the respondent for demanding `500/- on the promise to make available the recommendatory letter. Being carpenter in the Prime Ministers Office, there was no legitimate assurance to the complainant Udayvir Singh that the respondent would make available the recommendatory letter. Even when Mahavir Singh or Udayvir Singh did not get the job on the basis of the recommendatory letter, they did not ask CRL.A. 616/1999 Page 6 of 7 the respondent to return `500/-. Meeting with Udayvir Singh and Chander Pal with the respondent at Army Canteen was accidental. Nothing has come on record to show if the respondent had ever made misrepresentation and cheated any other person to provide him job. No incriminating stationary including letter head, stamp pad, green colour pen were found in his possession. He was not involved in any other similar case. The Trial Court convicted the respondent only on the basis of subsequent opinion in Ex.PW-7/H given by the expert which was doubted by learned Special Judge for the reasons mentioned therein. I have no good reasons to deviate from the said findings.

5. Considering all these facts and circumstances of the case, I find no illegality or irregularity in the impugned judgment whereby the respondent was given benefit of doubt and was acquitted. The appeal filed by the State lacks merits and is dismissed. The Trial Court record be sent back forthwith. (S.P.GARG) JUDGE

