

15. **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 5113/2005 & CrI. M.A. 10193/2005

Date of order : 12th March, 2008

SIRI CHAND GUPTA Petitioner
Through Mr. A.K. Singh and
Mr. Vimal Dubey, Advocates.

versus

SANTOSH KUMARI & ANR. Respondents
Through Mr. O.P. Saxena, APP.
Mr. Javed Ahmad, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

DR. S. MURALIDHAR, J. (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the quashing of Complaint Case No. 298 of 1994 titled ***Smt. Santosh Kumar v. Siri Chand Gupta*** under Sections 420/468/471 IPC registered at Police Station Shakur Pur pending in the Court of Metropolitan Magistrate ('MM'), Delhi.

Background facts

2. The complainant is Smt. Santosh Kumari who states that she was a member of Vishnu Co-operative Urban Thrift and Credit Society ('Society')

of which the Petitioner is Secretary. She states that she applied for a loan of Rs.45,000 from the Society. According to her she was not aware that the Society had in fact sanctioned the loan. She states that she found on 30th March, 1994 that from her account a sum of Rs.35,000/- had been withdrawn. On this basis she filed a complaint alleging that the Petitioner here got the loan sanctioned by forging her signatures on the loan application form, got the signatures of the sureties in advance and made it appear as if a sum of Rs.35,000/- had been deposited in her account and then got it withdrawn.

3. On its part, the Society instituted proceedings under the Delhi Cooperative Societies Act, 1972 (DCS Act) against the complainant (Respondent No.1 in these proceedings), her husband, the sureties and other guarantors for recovery of the loan amount. The case was referred to the arbitration by the Joint Registrar, Cooperative Societies, Government of NCT of Delhi. An Award was passed against Respondent No.1 by the Arbitrator on 25th May 1995. However, by an order 15th December 1995 the Delhi Cooperative Tribunal ('Tribunal') set aside the said award and remanded the case for a fresh consideration by the Joint Registrar.

4. In the order passed on remand, the Joint Registrar found that all the documents including the surety bond was signed by the sureties and Respondent No.1. Apart from the loan of Rs.35,000 sanctioned to Respondent No.1, a loan of Rs.45,000/- was sanctioned to her husband and

the total amount of Rs.45,000/- plus Rs.35,000/- totalling Rs.80,000/- was deposited in a fixed deposit in the name of her husband. The Joint Registrar considered the report of the Central Forensic Science Laboratory ('CFSL') and opined that although it showed that the signatures of Respondent No.1 on the loan application form did not tally with her normal signature, the husband of Respondent No.1 had signed all the loan documents and "his signatures are genuine." The Joint Registrar, in his order dated 4th April 2000 accepted the case of the Society that the loan had been validly sanctioned and obtained by Respondent No.1 and that she was liable to repay the loan together with interest.

5. The appeal filed by Respondent No.1 through her husband in the Tribunal was dismissed on 1st July, 2000. The matter was then agitated by way of a Writ Petition (C) 4300 of 2000 in this Court. By an order dated 23rd July, 2002 a Division Bench of this Court dismissed the writ petition as withdrawn after observing that there were concurrent findings of the authorities below. It is stated that after the dismissal of the writ petition by this Court on 21st November 2002, Respondent No.1 filed a further revision under Section 80 of the DCS Act which also came to be dismissed by the Financial Commissioner by the order dated 4th May, 2007.

6. The above narration shows that as regards the civil proceedings, it has been conclusively established, even after considering the CFSL report, that Respondent No.1 had in fact availed of a loan of Rs.35,000 from the Society

which she is liable to repay.

7. As regards the criminal proceedings, it commenced with a complaint filed by the Respondent against the petitioner in July 1994 under Sections 406, 408, 420, 468, 471 and 477-A IPC. It was initially numbered as Criminal Complaint No.298 of 1994 and later renumbered as No.150/1 of 2000. Since this was a warrant case instituted other than by way of a police report, and the learned MM was required to proceed in terms of Section 244 CrPC. The pre-charge evidence in the form of the statements of the Respondent No.1 herein as CW1 was recorded on 27th May 1997. There were two other witnesses whose statements were recorded as well.

8. In her pre-charge evidence Respondent No.1 was unable to name any single individual whose was either an office bearer or member of the Society or anyone else whom she even suspected of being responsible for the alleged forgery of her signature. She stated in her statement by way of examination-in-chief as well as in the cross examination that she was not aware when and how the sum of Rs.35,000/- was deposited in her account and withdrawn from her account. The evidence of the sureties and guarantors Shri B.N. Sharma PW-2, Shri Siri Pal Sharma PW 3, Shri Rajinder Kumar PW4 did not even remotely suggest that any of the office bearers or members of the Society were suspected of having forged the signature of Respondent No.1 on the loan application.

9. The learned MM in the order dated 14th May, 2003 proceeded on the basis that “it is a well settled law of the land that if there is a strong suspicion on the complicity of the accused in a particular crime, the order of discharge cannot be passed. The benefit of doubt, if any, can be given at the conclusion of the trial and cannot be given at the stage of framing of the charge.” On this basis the learned MM came to the conclusion that “prima facie evidence under Section 420/468/471 IPC is fully made out against the accused Siri Chand Gupta.”

10. This order was challenged by way of Crl. Revision No. 362 of 2004 by the Petitioner here. By an order dated 17th August, 2005 the learned Additional Sessions Judge (‘ASJ’) dismissed the Revision Petition referring to the judgments of the Supreme Court in *Kanti Bhadra Shah v. State of West Bengal AIR 2000 SC 522* and *State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711* and *Munna Devi v. State of Rajasthan 2002 Crl. L.J. 225*. The learned ASJ opined that “all that the court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceedings against the accused on a general consideration of **the materials placed before it by the investigating agency** and there is no legal requirement for the trial court to write reasoned or lengthy order for framing of charges.” (emphasis supplied) Further, the learned ASJ was of the view that the CFSL report also showed that there was no infirmity in the order of the learned MM.

Submissions of counsel

11. Learned counsel for the Petitioner submits that there is a fundamental error in the approach of the learned MM and the learned ASJ in this case. He points out that this is a warrant case instituted otherwise on a police report and is covered by the provisions of Sections 244, 245 and 246 CrPC. He submits that the yardstick for determining if an offence is made out for the purposes of framing a charge in this type of a case is different from that instituted on a police report to which Sections 239 and 240 CrPC would apply. For the purposes of a warrant case instituted otherwise than on a police report, the Magistrate would have to be satisfied on the examination of the entire prosecution evidence that it can lead to the conviction of the accused. This according to him is the strictest scrutiny of the materials brought on record if the case is instituted on a police report. He points out that both the learned MM and ASJ have referred to the decisions of the courts rendered in the context of cases instituted on a police report. Secondly, he submits that the civil proceedings under the DCS Act have conclusively held that Respondent No.1 is liable to repay the loan. In those proceedings the CFSL report was considered and despite that the case of the Respondent No.1 was not accepted. He accordingly submits that the criminal proceedings cannot be continued.

12. Learned counsel for the Respondent No.1 urges that at the present stage of the criminal proceedings, the learned MM was only required to examine if there was only a prima facie case and found that there was a suspicion that

the accused had committed the offence. He submits that the CFSL report is sufficient at this stage for such a suspicion to be drawn against the Petitioner here. Although he does not dispute the fact that even the complainant in her pre-charge evidence does not name the Petitioner here as having committed the forgery, he submits that this can be examined at the stage of trial and that information be drawn that the forgery ought to have been committed only by some office bearer of the Society.

Warrant Cases otherwise than on a police report

13. Warrant cases instituted otherwise than on a police report are governed by Sections 244 to 246 CrPC. Sections 244 and 245 which are immediately relevant for the present case read as under:

“Section 244 - Evidence for prosecution

(1) When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”

“Section 245 - When accused shall be discharged._

(1) If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous

stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

14. On the other hand when warrant cases which are instituted on a police report, the approach to be adopted by the Magistrate is covered by Section 239 and 240 which read as under:

“Section 239 - **When accused shall be discharged.**__

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

“Section 240 - **Framing of charge.**

(1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

15. A comparison of these provisions show that in the event of a warrant case being instituted otherwise than on a police report, the Magistrate “shall discharge” an accused if “upon taking all the evidence referred to in Section 244, the Magistrate considers for the reasons to be recorded that no case against the accused is made out which, if unrebutted, would lead to his

conviction.” This is different from the test to be adopted in a warrant case instituted on police report where Section 240 states that the Magistrate shall frame in writing a charge against the accused if he is of the opinion that “there is ground for presuming that the accused has committed an offence triable under this Chapter...” Therefore while Section 245 envisages that where the Magistrate finds that the pre-charge evidence is not sufficient to warrant conviction then the accused “shall” be discharged, in a case instituted on a police report is enough if there is “a ground for presuming that the accused has committed an offence.” It is therefore clear that where a warrant case is instituted otherwise than on a police report, the task of the Magistrate at the stage of framing charge is to undertake a greater degree of scrutiny of the materials brought because it is not an investigating agency that has filed a report which the Magistrate is required to consider. He is acting on a pre-charge evidence of the complainant and her witnesses and he has to be satisfied that what is presented before him, even if unrebutted, makes out a case for framing a charge. If that evidence, even if unrebutted, does not make out a case against the accused then the Magistrate “shall discharge” the accused. Therefore the degree of scrutiny of the evidence of the prosecution is much stricter than in the case instituted on a police report.

16. Learned counsel for the Petitioner is right in his submission that as far as the impugned order dated 14th May, 2003 of the learned MM and the order dated 17th August, 2005 of the learned ASJ are concerned, both suffer from an error in their approach to the case by not treating it any different

from a warrant case instituted on a police report. The distinction between the two sets of provisions referred to as above has not been noticed in either of the orders. It is for this reason that the judgments referred to in the order of the learned ASJ would have no application as far as the present case is concerned.

17. On perusing the pre-charge evidence of each of these witnesses, this Court is unable to find even a single suggestion by any of these witnesses that the Petitioner here was even suspected of having committed the forgery of the signature of the Respondent No.1 on the loan application form. Merely because there is a CFSL report which points out that the signature on the loan form is different from the natural signature of the petitioner, that by itself does not in any event point to the Petitioner having been the person responsible for the forgery. It would be unsafe for any court to proceed on the footing that such evidence inculcates the petitioner. This Court is, therefore, unable to appreciate the conclusion drawn by the learned MM that a prima facie case under Sections 420/468/471 IPC is “fully made out against the accused Siri Chand Gupta.” As pointed out earlier the test here was not merely to see if there was a prima facie case against the Petitioner Siri Chand Gupta but whether the entire prosecution evidence even if unrebutted makes out any case against him at all. This Court is satisfied that the entire prosecution evidence, even if unrebutted, makes out no case against the petitioner. This was indeed a case where the Magistrate was bound to discharge the petitioner in exercise of the powers under Section 245 (1)

CrPC.

18. The fact that CFSL report was considered by the authorities adjudicating the civil proceedings under the DCS Act and held by them as not absolving the Respondent NO.1 of her liability to repay the loan which was found to have been availed of by her, also cannot be lost sight of. Those authorities on a lesser degree of proof have come to the conclusion that the Respondent No.1 did avail of loan and was liable for its repayment.

19. For the aforementioned reasons this Court concludes that the criminal proceedings in the instant case against the Petitioner cannot be allowed to continue. Accordingly, Complaint Case No. 298 of 1994 (renumbered as No. 150/1 of 2000) titled *Smt. Santosh Kumar v. Siri Chand Gupta* under Sections 420/468/471 IPC registered at Police Station Shakur Pur pending in the Court of Metropolitan Magistrate ('MM'), Delhi and all proceedings consequent thereto hereby stand quashed. The petition is allowed and the pending application is disposed of.

20. The trial court record be sent back immediately. A certified copy of this order be sent to the concerned learned MM within a period of 5 days. A copy of this order be given dasti to learned counsel for the parties.

S. MURALIDHAR, J

MARCH 12, 2008
dn