

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. REV. PETITION NO.393/2006 and CRL.M.A.5484/2006

% Date of decision: 07.02.2008

ANUPAM MAZUMDAR[... .. PETITIONER

Through: Nalin Tripathi, Adv.

- V E R S U S -

STATE OF DELHI RESPONDENT

Through: Pawan Sharma, Adv.

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2.To be referred to Reporter or not? | No |
| 3.Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J.

1. The petitioner being the sole proprietor of one M/s Equinox International, carrying on the business of Freight Forwarding agreed to render his services as a forwarding agent for transportation of a consignment of M/s Wave International (hereinafter referred to as the complainant) to Moscow before 20-05-2001 for which a sum of Rs. 2, 21,890/- and Rs. 4,621/- vide two different cheques was given to the petitioner by the complainant at the time of booking itself. A bill of lading was issued by the petitioner whereby the said consignment was to be delivered to M/s OOO Pharma Market, the consignee at Moscow on ware house delivery basis. However, in the Ocean bill of lading, M/s Northeuro Logistics OY (the principal of the

petitioner agent in India vide transportation agreement dated 18-10-2000) was mentioned as the consignee and the invoiced party and the delivery port was given as Kotka in Finland instead of Moscow.

2. It is stated that the said consignment was received by the principal of the petitioner at Kotka and further transported to Moscow to M/s OOO Pharma Market but for doing so, the complainant had to shell out an additional sum of US \$ 10570 to the said principal for which the complainant felt cheated and registered an FIR with the P.S. Malviya Nagar on 25-10-2001 under section 406/420/120 of the Indian Penal Code, 1908 (in short 'IPC'). The charge sheet was filed and the Ld. MM after taking note of the factual matrix of the case and hearing the parties, framed a charge against the petitioner u/s 420 IPC, against which the petitioner is aggrieved and has filed the present revision petition.
3. A perusal of the impugned order shows that the Ld. MM has taken into account the fact which is asserted from the material placed on record that the said principal had refused to send the goods to Moscow on the ground that it had not been paid to transport goods from Kotka to Moscow as also that the Ocean bill of lading mentioned the place of delivery of goods as Kotka in Finland and not Moscow. The factum of the petitioner despite having received the payment for delivery of goods till Moscow and not making payment of transportation charges to his counterpart, M/s Northeuro Logistics OY was considered prima facie enough to infer dishonest intention of

the petitioner. The question as to whether the complainant paid any money to M/s Northeuro Logistics at Kotka or not or whether even such payment was released by the complainant in violation of provisions of FERA could not be considered at this stage and could not be of any benefit to the petitioner.

4. The Ld. MM has also examined the general principles for framing of charges relying on the cases of UOI v. Prafful Kumar AIR 1979 SC 366, State of Maharashtra v. Somnath & Ors. JT 1996 (4) SC 615, State of Bihar v. Ramesh Singh AIR 1977 SC 2018, Umar Abdullah Sakur Sorathia v. Intelligence Officer of Narcotic Control Bureau JT 1999 (5) SC 394 and Kalumal Gupta v. state 2000 I AD Delhi 107 that only sifting of evidence is necessary and as long as there is strong suspicion which leaves the court to think that there is ground for presuming that the accused has committed an offence, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. It was thus held that there was sufficient material to frame charges.
5. It is the case of the petitioner that the delivery of goods was made before the registration of the FIR by the complainant. It is also contented that no money as alleged was paid by the complainant to the said principal and that the Ocean bill of lading issued by a shipping company barely indicates the transportation of goods from one port to another and thus does not reflect any dishonest intention on the part of the petitioner.
6. The learned counsel for the petitioner has further contended

that the averments made in the complaint and the documents placed on record do not disclose any offence, much less the offence of cheating as defined u/s 420 IPC. Reliance is placed on the decision of the Kerela High Court in Unnie Menon v. Kerela Film Artists and Critics Society & Ors, Crl. M.C. No. 365/1996 decided on 26-09-1986 wherein it was held that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making of the promise and such intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise.

7. The case of the prosecution on the other hand is that the petitioner had induced the complainant to obtain such contract and promised to deliver the goods at Moscow for which the petitioner had taken the entire money for transportation but instead the said goods were delivered at Kotka in Finland and that a further amount had to be paid by the complainant to the principal of the petitioner to get the goods delivered at Moscow whereas such payment should have been made by the petitioner since the complainant had already paid the petitioner for such delivery of goods.
8. On hearing the learned counsel for the parties, I am unable to accept the plea of the learned counsel for the petitioner that in order to extract money from the petitioner, the petitioner was blackmailed and that there was a conspiracy hatched by the petitioner's principal and the complainant. It is an admitted position that the goods which were to be delivered/shipped at Moscow were delivered at Kotka and that

the petitioner's principal had refused to send the goods further to Moscow on account of having not been paid the transportation charges by the petitioner.

9. I find myself in full agreement with the Ld. MM that at this stage, it cannot be said as to whether any amount was paid by the complainant to the said principal or not as alleged in the complaint and that can be determined only at a later stage in the trial. The Court at the stage of framing charges has to sift and weigh the evidence on record and other documents only for the limited purpose of ascertaining whether prima facie case is made out against the accused. Thus, if such material is available, charges should be framed under Section 228 of the Cr.P.C. and, if there is absence of such material, then the accused should be discharged under Section 227 of the Cr.P.C. as held in the judgment of the Supreme Court in Niranjan Singh Karam Singh Punjabi, Advocate & Ors. Vs. Jitendra Bhimraj Bijjaya and others, (1990) 4 SCC 76. In Dilawar Babu Kurane Vs. State of Maharashtra, 2002 CRL.L.J.980 it was held that the Court while exercising powers under Section 227 of the Cr.P.C. does not act as a mere post-office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, and should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. In the present case, the petitioner inspite of having been paid, did not pay the transportation charges to the principal which in itself, in

my considered view, laid a strong suspicion on the petitioner for having the Ld. MM to think that there is sufficient ground for presuming dishonest intention of the petitioner. I am thus of the considered view that there is no ground made out to set aside the impugned order dated 16-08-2005 of framing charges.

10.The trial court has discharged the function of sifting through the material on record to come to the conclusion that there was sufficient material to frame the charges.

11.In view of the aforesaid, the correctness, legality and propriety of the order framing the charges cannot be doubted.

12.Dismissed.

CRL.M.A.5484/2006

Application does not survive for consideration and is disposed of.

February 07, 2007
'RA'

SANJAY KISHAN KAUL, J.