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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 636/2013 & CRL.M.A. 9367/2016

SUDHIR SHARMA

..... Appellant

Through: Mr. Dhan Mohan, Ms. Tanu B.
Mishra, Mr. Ravi Mishra, Ms.
Harkamaljeet Kaur & Ms. Roshni,
Advocates

versus

C B I

..... Respondent

Through: Ms. Rajdipa Behura, SPP with Mr.
Philomon Kani, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **18.09.2018**

1. The appellant has been convicted under Section 120-B IPC read with Sections 420/467/468/471 IPC and Section 12(2) of the Passport Act by the trial court vide its judgment dated 12.03.2013 and has been sentenced for the aforesaid offences as under:

- (i) For the offence punishable under Section 120B IPC read with Section 420 IPC, appellant has been sentenced to undergo RI for 7 years in addition to payment of fine of ₹ 10,000/-, in default whereof he shall further undergo SI for a period of 2 years;
- (ii) For the offences punishable under Section 120B IPC read with Section 467 IPC, appellant has been sentenced to undergo RI for 7 years in addition to payment of fine of ₹ 10,000/- in default whereof he shall further undergo SI for a period of 2 years;

- (iii) For the offences punishable under Section 120B IPC read with Section 468 IPC, appellant has been sentenced to undergo RI for 7 years in addition to payment of fine of ₹ 10,000/-, in default whereof he shall further undergo SI for a period of 2 years;
- (iv) For the offences punishable under Section 120B IPC read with Section 471 IPC, appellant has been sentenced to undergo RI for 2 years in addition to payment of fine of ₹ 5,000/- in default whereof he shall further undergo SI for a period of 6 months and
- (v) For the offences punishable under Section 12(2) of Passport Act, 1967, appellant has been sentenced to undergo RI for 2 years in addition to payment of fine of ₹ 5,000/- in default whereof he shall further undergo SI for a period of 6 months;

2. As per Trial Court Record, appellant was working in M/s T.S. Duggal Enterprises which was engaged in the business of exporting manpower to Gulf countries. During the year 1992-93, appellant along with co-accused/Gurjinder Singh (since deceased) and Anand Singh Negi hatched a criminal conspiracy to send aspirants to United States of America (USA) on forged official passports. Late Gurjinder Singh used to take out undelivered official passports lying in PV-II Section of Ministry of External Affairs (MEA) and photographs of aspirants thereafter used to be illegally pasted on the said passports. Appellant used to get their photographs clicked, book their air tickets, buy foreign exchange for them and provide other logistics involved in this regard, along with Late Gurjinder Singh and Anand Singh Negi. Later on, Anand Singh Negi was sidelined by the appellant and Late Gurjinder Singh. In pursuance of the criminal conspiracy, Late Gurjinder

Singh stole two undelivered official passports lying in PV-II section of MEA, of D.M. Natraj and D.D. Ingty. These passports were forged by replacing the photographs with that of Amarjeet Singh and Harjinder Singh. Visa notes were forged and visas were obtained from the Embassies of Panama, Venezuela and USA.

3. On 06.02.1996, appellant took Harjinder Singh and Amarjeet Singh to Mumbai International Airport from where they travelled to the USA on the forged passports. It is noted that Harjinder Singh was made an Approver by the CBI subsequently.

4. Prosecution examined 32 witnesses. Approver, Harjinder Singh was examined as PW-1. He deposed that he came in contact with appellant in the year 1995. Appellant assured him that he would arrange a passport and a valid visa for him. Appellant took his photographs. Later on, he was informed that the passport and visa were ready.

5. On 04.02.1996, appellant took PW-1 and Amarjeet Singh to Mumbai. They stayed at the Lord's hotel. Subsequently, appellant took him and Amarjeet Singh to M/s Thomas Cook for buying foreign currency. Appellant filled in a form known as Basic Travel Quota (BTQ) for him in the name of D.D. Ingty and for Amarjeet Singh in the name of D.M. Natraj. The appellant took signatures of Harjinder Singh and Amarjeet Singh on the said forms. Later on, he and Amarjeet Singh took flight to the USA, on the basis of these passports, visa and other documents.

6. Anand Singh Negi was examined as PW-4. He deposed that he knew appellant and Late Gurjinder Singh. Appellant used to manage the passports

and visas for the persons intending to go abroad. PW-4, however, turned hostile. PW-24, Sh. S.L. Mukhi, Principal Scientific Officer deposed that BTQ forms were in the handwriting of appellant. PW-7, Sh. Chander Sharma deposed that appellant purchased tickets in the name of D.M. Natraj and D.D. Ingty from him. PW-19, Sh. Deepak Chopra deposed that he was the owner of Jaglila Photo Studio and appellant used to regularly send customers at his studio for taking their photographs; other witnesses examined by the Trial Court also supported prosecution version.

7. Appellant in his statement under Section 313 Cr.P.C. admitted that he made entries in the register of Hotel Lord's in his own handwriting. Further, that he took PW-1 and Amarjeet Singh to M/s. Thomas Cook for obtaining foreign currency and that he illegally filled the BTQ forms in the name of D.D. Ingty and D.M. Natraj to facilitate the procurement of foreign currency. He also admitted that he had shown PW-1, a white coloured passport issued in the name of D.D. Ingty but containing photograph of PW-1. Appellant also admitted to have supplied air tickets to PW-1 and Amarjeet Singh for going to New York and from New York to Caracas. The appellant also admitted that he used to accompany the aspirants to Mumbai, where they used to stay in Hotel Lord's.

8. The Trial Court has found the testimonies of the witnesses to be trustworthy and reliable and has convicted the appellant.

9. During the course of hearing, learned counsel for the appellant has failed to point out any discrepancy in the statements of the relevant witnesses inasmuch as on instruction of the appellant, present in Court, has given up challenge to the conviction of appellant on merits. Only prayer

made by the appellant's counsel is that the sentences awarded to the appellant in this case may be directed to run concurrently with the sentences awarded in 5 other cases.

10. It is submitted that other cases, including the present case, have been registered after registration of RC No. 4(S)/98, which was also in similar facts. It is submitted that after appellant was arrested in the said case, other cases have been registered. No offence was committed by the appellant after his arrest in RC 4(S)/98. Appellant has been in incarceration for the last more than 10 years. Trial Court has wrongly mentioned in the order of sentence that the appellant was a habitual offender. In LPA 7/2018 titled as ***Sudhir Sharma Thr. Parokar/Wife vs. The State Govt. of NCT of Delhi & Anr.***, a Division Bench of this Court in judgment dated 09.08.2018 has noted that it would be difficult to characterise the appellant to be a habitual offender. The relevant para reads as under:

“21. The CBI had filed the relevant judgments which had recorded the convictions of the appellant, in all the six cases, he was implicated in as an accused. They show that between 1992 to 1997/98, the offences were committed by him, in conspiracy with others. No doubt, there is similarity of these offences. Yet, it would be difficult to characterize that he was a “habitual” offender. The fact that most of these cases were registered, at different times, though the period of their commission is common, is undenaible. As a consequence of this peculiar feature, the trials took place in the latter part of 1999 and ended in 2009-2010. In between, the appellant was in and out of prison; he has claimed set off of those periods, in respective of the cumulative prison sentence of 19 years. He has completed sentence in four out of the six cases he was convicted in; the total period of sentence

undergone by him appears to be about 11 years. Given these objective circumstances, it is evident that any criminal propensity that he had about two decades ago (when the offences were committed) must have diminished altogether or extinguished. It is also a fact that today he is over 65 years; he has a family of grown up married children and is even a grandfather. Having regard to these facts, the peculiar feature that he had committed several offences (maybe in sequence, but which were pursued one after the other by the CBI) will in effect hang on his neck as a millstone in perpetuity and deny him the right to seek furlough.”

11. The aforesaid observations have been made by the Division Bench in the context of the question whether appellant was entitled to furlough or not.

12. Keeping in view that the appellant is aged about 65 years, he is in incarceration for more than 10 years, his jail conduct is satisfactory, and also the fact that the appellant has a family of grown up children and is even a grandfather, the propensity of committing crime of similar nature as existed earlier, may not be there now, while upholding the conviction of appellant, his sentences awarded in this case are directed to run concurrently with the sentences awarded in earlier cases.

13. The appeal and the application are disposed of in the above terms.

A.K. PATHAK, J

SEPTEMBER 18, 2018

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