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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06th August, 2018

+ CRL.M.C. 572/2015

S.K. MIGLANI

..... Petitioner

Through: Mr. Raj Kumar Sharma, Advocate

versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, APP for the
State with SI Madhurendra Kumar, PS EOW

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The name of the petitioner (a bank employee) figured in the investigation into first information report (no.432/2000) of police station Kotla Mubarakpur for the offences punishable under Sections 409, 201, 419, 420, 467, 468, 471, 120 B of Indian Penal Code, 1860 (IPC). The police, upon completion of the investigation, submitted report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC), *inter alia*, seeking his prosecution, the gravamen of the accusations (charge) primarily being that he had authorized the opening of a fictitious saving bank account in connivance with the co-accused Praveen Kumar Arora, to facilitate encashment of a cheque amounting to Rs.2,22,263/- issued by Delhi Development Authority (DDA) obtained by way of a fraudulent refund.

2. Upon cognizance being taken on the above-said charge-sheet, the petitioner stood summoned as one of the accused. The petitioner after putting in appearance moved an application seeking discharge on the ground that the prosecution initiated without a sanction under Section 197 Cr.PC was bad in law. The Chief Metropolitan Magistrate considered the said submission and also the issue of charge by a common order passed on 03.12.2014. He rejected the contention of the petitioner vis-à-vis the provision contained in Section 197 Cr. PC observing, *inter alia*, that the evidence presented before the court would show that he (the petitioner) had forged the signatures of Gautam Dhar on account opening form, the act of committing forgery not being an act done in discharge of official duties by him, taking this view by placing reliance on the decision of the Supreme Court in Parkash Singh Badal and Anr. Vs. State of Punjab and Ors., (2007) 1 SCC 1 to the following effect :-

“...The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence”

3. Upon consideration of the material, the Chief Metropolitan Magistrate found charge made out against the petitioner for offences punishable under Sections 465, 120B IPC, this in contrast to the order directing charge to be framed against co-accused Mahender Kumar, H.R. Sharma, S.C. Chugh and V.D. Nanda for the offences under Sections 409, 120 B IPC, against co-accused Praveen Kumar, S.K.

Khanna and S.K. Goel for offences punishable under Section 471, 120B IPC and against the co-accused M.L. Ahuja and Asha Gupta for offences under Section 201, 120B IPC.

4. The petitioner invoking the inherent power of this court under Section 482 Cr. PC has approached this court seeking the aforementioned order of the Chief Metropolitan Magistrate to be quashed and the proceedings against him being dropped, his insistence being that he is entitled to the protection of Section 197 Cr.PC. He relies on *N.K. Ganguli Vs. Central Bureau of Investigation*, (2016) 2 SCC 143.

5. Having heard the learned counsel for the petitioner and having gone through the record, this court finds no error in the impugned order of the Chief Metropolitan Magistrate. In *N.K. Ganguli (supra)*, the Supreme Court found that the allegations made against the accused had been committed “*in discharge of official duty*”. This fact distinguishes the case of *N.K. Ganguli (supra)* from the case at hand. It cannot, by any stretch of reasoning be argued that as the officer of the bank in question, it was part of the duties of the petitioner to forge the signatures of a person on the account opening form as is the act *prima facie* shown committed by him, allegations to such effect supported by the opinion by the Forensic Science Laboratory.

6. The petition, thus, is found devoid of merit and is dismissed.

R.K.GAUBA, J.

AUGUST 06, 2018/yg