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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th February, 2019

+ CRL.M.C. 803/2019 and CrI.M.A.3253-3254/2019

SH. JITENDER SINGH TOMAR Petitioner

Through: Mr. Satish Tamta, Senior
Advocate with
Mr. Kush Sharma, Advocate

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Naresh, PS
Hauz Khas.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is one of the several accused persons who stand summoned in the criminal case (CC No.12482/2018) registered on the basis of report ("charge sheet") under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.), submitted upon conclusion of investigation into first information report (FIR) No.605/2015 to Police Station Hauz Khas. The FIR was registered on the complaint of Honorary Secretary, Bar Council of Delhi alleging offences punishable under sections 420/467/468/471 and 120-B of the Indian Penal Code, 1860 (IPC) having been committed, certain individuals, statedly including the petitioner herein, having got themselves enrolled as Advocates with the Bar Council of Delhi on the basis of forged and fabricated educational testimonials.

2. The investigation carried out is stated to have brought out material confirming, *inter alia*, that the mark-sheets purportedly of the degree course of Bachelor of Science (B.Sc) of Awadh University besides provisional certificate No.3687 and mark-sheets of the degree course of Law (LL.B.) of Tilka Manjhi Bhagalpur University were submitted by the petitioner with his application for enrolment, it leading to enrolment vide No.D-134/2011, on such basis but the same were found to be forged and fabricated. It is pointed out by the petitioner that in the charge sheet reference was made to a disclosure by him about the role of one Madan Singh Chauhan as the person from whom the said forged documents were procured against payment of money. It is also, however, conceded that no discovery of any further evidence on the basis of such disclosure of the petitioner could be found against the said Madan Singh Chauhan and, consequently he has not been sent up for prosecution.

3. The Additional Chief Metropolitan Magistrate (ACMM) before whom the criminal case came up, after the presence of the accused persons had been secured, considered the question of charge. By a very detailed order dated 21st July, 2018, some of the persons sent up for prosecution were discharged, the ACMM finding no ground to proceed against them, charge, however, having been framed against some others, including the petitioner. It is noted that charges were framed pursuant to the said order dated 21.07.2018 by the ACMM on the same date, the charge of criminal conspiracy, in which regard the

present petition has been filed, being the subject matter of third head, it reading thus:-

“Thirdly, you agreed to forge the mark-sheets of your graduation from Awadh University and mark-sheets and degrees of LL.B. from Tilka Manjhi University and the forging of these documents and getting yourself registered by cheating Bar Council of Delhi was done in pursuance of an agreement with other co-accused persons and you thereby committed an offence punishable under section 120-B IPC and within my cognizance.”

4. The petitioner challenged the above formulation of the charge of criminal conspiracy before the court of sessions by invoking its revisional jurisdiction. The Criminal Revision Petition No.291/2018 was disposed of by the Additional Sessions Judge, again by a very detailed order passed on 12.10.2018, the conclusions about the deficiency in the formulation of the charge of criminal conspiracy being recorded (in para 90) as under:-

“90. In the opinion of this court, there is no irregularity in the charge framed by Ld. Trial Court with regard to conspiracy. It is already noticed above that it is not obligatory to state in the charge the names of the fellow conspirators. However, it is desirable. Further, the other sections of the Code may also be mentioned in the charge of conspiracy to indicate the objects of the conspiracy. To that extent, the Ld. Trial Court will partly modify the charge with regard to 120-B of IPC framed against each accused by specifying the name of other conspirators and specifying the name of other conspirators and specifying the objects of conspiracy therein i.e. conspiracy to commit various substantive

offences for which the revisionist and other co-accused have been charged by the learned Trial Court.”

5. Pursuant to the above directions, the ACMM reframed the charge describing it as “*altered charge*” on 28.11.2018 which, in view of the nature of submissions made, is noted, *in extenso*, the same reading thus:-

“That on 02.02.2011 at the office of Bar Council of Delhi, 2/6 Siri Fort, Institutional Area, Khel Gaon Marg, New Delhi, within the jurisdiction of Police Station Hauz Khas, you cheated Bar Council of Delhi by dishonestly inducing it to register you as an advocate vide enrollment No.D/134/2011 on the basis of forged mark-sheets of graduation (B.Sc.) of Awadh University, forged provisional certificate No.3687 and mark-sheets of LL.B. of Tilka Manjhi Bhagalpur University Bihar and you thereby committed an offence punishable under section 420 IPC or in the alternative committed an offence under section 417 IPC and within my cognizance.

Secondly, on the aforesaid date and place, you fraudulently used the aforesaid forged marks and provisional degree as genuine documents and other documents like reply of RTI & the original degree of LL.B from Tilka Manjhi University, which you knew or had reason to believe at the time of you used it, to be a forged document and that you thereby committed an offence punishable under section 471 IPC and within my cognizance.

Thirdly, you entered into a criminal conspiracy alongwith co-accused Bare Narayan, Dr. Razi Ahmed, Dr. Rajender Prasad, Janardhan Prasad Yadav, Dinesh Kumar Srivastava, Anil Kumar Singh, Niranjana Sharma and Sadanand Rai and agreed to forge the mark-sheets and degrees of LL.B. from Tilka Manjhi University and the forging of these documents and getting yourself

registered by cheating Bar Council of Delhi, which was done in pursuance of an agreement with other co-accused persons for committing the offence under section 471 IPC and you thereby committed an offence punishable under section 120-B IPC and within my cognizance”.

6. The petitioner was yet not satisfied. He took the matter to the revisional court once again by Crl. Revision Petition No.38/2019. The Additional Sessions Judge (ASJ) found no error, illegality or impropriety in the altered charge and, thus, dismissed the petition by order dated 21.01.2019.

7. The present petition under Section 482 Cr.P.C. has been filed with the prayer for quashing or setting aside of the orders dated 12.10.2018, 28.11.2018 and 21.01.2019 of the courts below, it being pressed only in respect of third head of the charge of criminal conspiracy. The learned counsel for the petitioner submitted that the charge, as now framed in the modified form (*altered charge*) is still deficient, in that the name of his co-conspirator, he being Madan Singh Chauhan, as brought out in the charge sheet, is not reflected in the charge nor there is any reference to the date on which the criminal conspiracy was hatched or agreed upon.

8. During the course of arguments, the counsel was pointedly asked as to whether there is any evidence supporting the arguments of Madan Singh Chauhan being in criminal conspiracy with the petitioner. The counsel would only refer to the disclosure statement of the petitioner himself. On being asked, he conceded that in absence of any discovery pursuant to such disclosure, such disclosure would be

inadmissible. If so, the argument insisting that the name of Madan Singh Chauhan be reflected in the charge as co-conspirator is, to say the least, most frivolous and meaningless.

9. It is well settled that, generally speaking, the date, time or place, where criminal conspiracy was hatched, is a matter regarding which there can hardly be a clear evidence available for the reason criminal conspiracies are hatched in secrecy and executed in stealth. The counsel fairly conceded that no evidence has been brought out to fix date, time or place when the criminal conspiracy, which is the subject matter of this case was actually hatched or executed. In these circumstances, going by the date of commission of the offences under sections 420/417 and section 471 IPC, which are the subject matter of the first and second heads of charge, it has to be assumed and inferred, at least at this stage of the criminal process, that the criminal conspiracy, pursuant to which the forged material came into being for it to be used later for above mentioned purposes would have been hatched in the period prior to or on or about 02.02.2011. The argument that the third head of charge must also indicate the date of the commission of the offence, technically speaking, is correct. But then, the particulars of the charge under the preceding two heads do make up the deficiency. Yet, in order to make the matter even more clear, it is desirable that the third head of the charge also mentions the date which, given the above facts and circumstances, could be by use of the expression "*prior to, on or about 02.02.2011*". The ACMM is, thus, directed to add the said expression in the third head of the altered

charge framed on 28.11.2018, after the word “*thirdly*” and before the words “*you entered into a criminal conspiracy*”.

10. With the above noted observations and directions, the petition alongwith applications are disposed of.

R.K.GAUBA, J.

FEBRUARY 13, 2019

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