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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th February, 2019

+ CRL.M.C. 1883/2016

SAHENDRA LAL TREAHAN

..... Petitioner

Through: Mr. H.S. Bhullar, Ms. Bhawani
Gupta, Ms. Monalisha
Chowdhury, Ms. Snigdha Singh
& Ms. Sarabjeet Kaur, Advs.

versus

STATE & ANR

..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State.
Mr. Pulkit Kaushik, Proxy Adv.
for Mr. Hemant Kumar, Adv.
for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no. 239/2005 was registered by police station Lajpat Nagar on the complaint of the petitioner, the allegations having been made against second and third respondents for offences punishable under Sections 420/203/468/471/182/120B of Indian Penal Code, 1860 (IPC) having been committed. The second respondent is the son of the petitioner, while the third respondent is the wife of the second respondent and thus, daughter-in-law to the petitioner. The parties had been involved in some dispute in the run up to the filing of the said FIR, it being preceded, *inter alia*, by FIR

no. 622/2004 also registered with police station Lajpat Nagar at the instance of the third respondent, for offences under Sections 379/403/411/465/471/120-B IPC, allegations made therein being, *inter alia*, against the petitioner.

2. In the context of the FIR no.622/2004, reference was made to cheque no. 453554 of ANZ Grindlays Bank, New Delhi. It appears that the petitioner had earlier filed a criminal complaint case on the basis of the said cheque alleging offence under Section 138 Negotiable Instruments Act, 1881 claiming the same to have been issued in his favour by the third respondent it, upon presentation, having been returned unpaid, no payment having been tendered in spite of notice of demand. The third respondent in the said proceedings, as also in the FIR no. 622/2004 claimed that the said cheque had actually been stolen, she claiming to have lodged a non-cognizable report (NCR) bearing no. 56/1996 with the police post Amar Colony, police station Lajpat Nagar, on 29.02.1996 in such regard under Section 155 of the Code of Criminal Procedure, 1973 (Cr.P.C), submitting a photocopy.

3. During the course of investigation into the FIR no.622/2004, it came to be pointed out that the above-mentioned photocopy was a fabricated document, the form printed on 07.12.1996 having been used for purposes of claiming that NCR had been made on 27.02.1996. The document was sent for forensic scrutiny but the forensic experts were unable to give any definitive opinion as to its authorship primarily for the reason that it was only a photocopy.

4. The aforesaid fabricated document had been handed over to ASI Mahavir Singh by the third respondent during the course of investigation into FIR no.622/2004. The investigation was completed and report under section 173 Cr.P.C. seeking closure of the said case was submitted. This prayer was accepted. Around the same period, FIR no. 239/2005 had been registered at the instance of the petitioner. Upon conclusion of the investigation into said FIR (no. 239/2005), final report (charge-sheet) was submitted under Section 173 Cr.P.C. seeking trial of the second and third respondents for offences under Sections 420/203/468/471/182/120B IPC.

5. The Metropolitan Magistrate took cognizance of the charge-sheet presented in the FIR no. 239/2005 and issued process. But, later the Chief Metropolitan Magistrate, by order dated 04.05.2013, found no case made out for putting the second and third respondents on trial thereby discharging them, setting out his reasons as under:-

“The main allegation against the accused Poonam Trehan is procurement of bogus/forged NCR report bearing no. 56/96 dated 27.02.1996 in respect of loss of one cheque alongwith some other articles which later on became the subject matter of a case under Section 138 of NI Act filed against her by the complainant in the present case.

It is interesting to note that no original NCR has been placed on record nor there is any investigation conducted by the IO in respect of its existence if any, or otherwise, and the charge sheet has been filed only on the basis of said photocopy alone.

Even handwriting of both the accused persons was taken and was sent for FSL examination and from the

report received from GEQD, FSL Shimla, it has become crystal clear that in the absence of original document, no opinion could have been expressed by the examiner of handwriting on the photocopy.

It is a matter of common understanding and practice that NCR forms are being filled up in the police station/police post by the concerned police official and no private individual is allowed to fill the same in his/her own handwriting. Hence, it could not be presumed that either of the accused persons, present in the court today, might have prepared the said NCR by filing the said form. Hence, no case under section 468,469 IPC is made out against them. Furthermore, nowhere it has been submitted by the IO during his investigation that the aforesaid photocopy of NCR was either used or sought to be used by either of the accused persons as a genuine document at any given place or point of time whatsoever which further rules out the applicability of section 471 in the given facts and circumstances.

So far as section 403, 420 IPC are concerned, no victim has come forward either during the investigation or even till date who had claimed that he had been cheated by the aforesaid acts of either of the accused.

From the perusal of the entire material available on record including the statements of witnesses recorded under section 161 Cr.P.C. by the IO, no evidence has come on record warranting framing of charge against either of the accused for any of the offences alleged to have been committed by them as mentioned in the charge sheet. Not only this, but it is also interesting to note that there is not even a whisper about the role, acts or omission if any, on the part of accused Deepak Trehan. It is the settled preposition of law as held by Hon'ble Apex Court in catena of its pronouncements that no charge for an offence as alleged to have been committed in the present case could be framed against the accused person solely on the basis of photocopy of a document especially when the

whereabouts of its original are not known. Accordingly, both accused persons are discharged in this case.”

6. The petitioner challenged the above-mentioned order before the court of Sessions by criminal revision no. 01/2014. The Additional Sessions Judge declined to interfere and dismissed the revision petition by order dated 30.01.2016, adopting the reasoning and logic applied by the Chief Metropolitan Magistrate in the above quoted order.

7. Feeling aggrieved, the present petition was filed under Section 482 Cr.P.C. to assail the view taken by the courts below submitting that the brazen manner in which the private party respondents have used the document which was *ex facie* forged, cannot be given a go by and that the discharge against the above-mentioned backdrop is an order which is perverse and which cannot be allowed to stand.

8. The second and third respondents entered appearance on 18.01.2018. In spite of opportunity being given for reply to be filed there is no response filed on their behalf. The trial court record has been requisitioned in terms of directions in the order dated 26.07.2018.

9. The view taken by the courts below is apparently perverse and there is a case made out for this Court to interfere. The observation that in absence of the “original” NCR, the case cannot proceed further is missing the point. The document which was actually used by the third respondent is only a photocopy. For purposes of the criminal prosecution brought against the second and third respondents, that

photocopy is the “original” or primary document. In the context of documents the law only makes a distinction between “primary” and “secondary evidence”. It may not have been possible to establish the authorship. But then, it does not call for much imagination for concluding that the document was clearly a forged and fabricated one. The date of printing the form used for it being prepared is later in point of time. Since there is evidence available, particularly in the statement of ASI Mahavir Singh that the said apparently forged photocopy of the NCR had come from the hands of the third respondent, she (and the second respondent, both acting in concert) are answerable.

10. There may not be sufficient evidence to hold the trial of the second and third respondents on the charge for offences under Sections 468 or 469 IPC, in that the authorship has not been traced to them. But, the trial court, as well as the revisional court, have failed to bear in mind that mere possession of a document which is forged but intended to be used as genuine, is an offence punishable under Sections 474 IPC. Further, the said fabricated photocopy was actually used to attempt persuade the investigating agency to take action against the petitioner and another. This also amounts to an attempt to cheat and further in the nature of giving false information (punishable under Section 203 IPC). The lodging of such FIR on basis of such false information, apparently designed with intent to cause the public servant to use his power to the injury of another person, is also an offence under Section 182 IPC. From the above facts, a *prima facie*

case of criminal conspiracy having been hatched to commit the aforementioned offences can also be inferred.

11. In these circumstances, a case for putting the second and third respondents on trial on the charge for offence under Section 120 B IPC and for substantive offences under Section 420 read with Section 511 besides Sections 471 and 474 IPC, each read with 120-B IPC, is made out. The impugned orders are, thus, set aside.

12. In the result, the proceedings before the Chief Metropolitan Magistrate, South East District, stand revived. The said court will take up the case for further proceedings on 05.04.2019. The second and third respondents are directed to appear accordingly before the concerned court which shall frame formal charges in terms of the above directions and proceed further with the case in accordance with law.

13. The above observations have been recorded only for the purposes of deciding the issue of charge. Nothing in this order will be construed as final expression of opinion on merits.

14. The petition is disposed of in above terms.

R.K.GAUBA, J.

FEBRUARY 26, 2019

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