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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 18.03.2021

Pronounced on: 23.03.2021

+ CRL.M.C. 346/2017 & Crl.M.A. 1487/2017

MANDEEP GANDHI

..... Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate with
Mrs. Priya Sachdeva, Ms. Tanya Raheja,
Mr. Nishad Sharma & Ms. Himanshi Bhatija,
Advocates

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, Additional Public
Prosecutor for State with Inspector
R.P. Dabbas

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Present petition has been preferred against the order dated 08.07.2016 passed by the learned Revisional Court, vide which order dated 17.11.2015 passed by the learned trial court framing charge against the petitioner has been upheld. In this petition, aforesaid two orders as well as FIR in question are sought to be quashed.

2. The brief facts of the case are that on 05.02.2003, complainant- V. *Shiva Kumar*, Risk Management & Fraud Control Department, Citi Bank

made a complaint at Special Cell, Lodhi Colony, New Delhi regarding skimming and counterfeiting of credit card suspecting that a few shopkeepers had colluded with the criminals, which is causing loss to the bank as well as genuine card holders. On his complaint, FIR No. 07/2003, under Sections 419/420/467/468/471/120B IPC was registered at Special Cell, New Delhi.

3. During investigation of this case, master mind Mayank Garg @ Bobby, Sharif Ahmed @ Sahil & Ajay Taneja were arrested on 22.02.2003 and upon further investigation, accused Mukesh Kumar, Jagdish Chand and Aleem Ahmed who provided data of genuine card holder and shop keepers, namely, Ashish Khera, Naresh Nagpal, Mukesh Dubey, Dhiraj Gupta, Jaspal Singh, Chaman Lata Gupta, Gaurav Bansal, Lalit Chander and petitioner-Mandeep Gandhi, at whose shops the cloned cards were used, were arrested and recovery was effected.

4. Petitioner- Mandeep Gandhi, who was running a shop in the name of M/S M.G.Electronics at Madangir, Delhi was arrested on 03.03.2003. The allegations against him are of permitting use of fake credit cards and taking 30% share of the billing amount. It is alleged that on 13.01.2003, main accused Mayank Garg along with co-accused Lalit Chand Verma came to

his shop, where they twice swiped the fake credit card in the name of R.B. Santosh Kumar and caused loss of Rs.48,000/- to Citi Bank. It is alleged that petitioner got an amount of Rs.13,000/- in the said transaction. It is further alleged that Mayank Garg signed on the charge slip and bill as R.B.Santosh Kumar, while petitioner- Mandeep Gandhi also signed on the bill prepared by him. Prosecution has alleged that petitioner was in regular touch with Lalit Chand Verma through his mobile phone, who was a middleman to Mayank Garg, who was involved in the illegal use of cloned credit card. During investigation, one mobile phone, photocopy bills, charge slips, copy of terms and agreements of banks, bill book and electronic data capture machine of City Bank was recovered from petitioner's shop and complainant/ R.B.Santosh Kumar stated that he had never visited M.G.Electronics nor did he authorize any one to use his card.

5. After completion of investigation, charge sheet in this case was filed on 16.08.2003. Taking a view that at the stage of framing of charge, only a *prima facie* case has to be seen and that circumstantial evidence of the case has to be established and also that mere suspicion is sufficient to frame charge, the learned trial court on 17.11.2015 framed charge under Sections 120B IPC, Sections 419/420 r/w Sections 468/471 IPC r/w Sections 467/474

r/w 467 all read with 120B IPC against the accused persons, including petitioner. The aforesaid order of framing of charge dated 17.11.2015, was challenged by the petitioner and the learned Revisional Court dismissed it observing that there was sufficient material before the trial court to frame charge against the petitioner. Hence, this petition.

6. During the course of hearing, learned senior counsel for petitioner assailed the impugned order by stating that against his arrest, petitioner had made an application to the appropriate authority for conducting a vigilance enquiry in relation to how petitioner is associated with the present case and after filing of charge sheet, he had also preferred an application before the trial court for summoning the aforesaid vigilance enquiry, but it was erroneously dismissed by the trial court observing that petitioner can take benefit of the aforesaid report at the stage of defence.

7. Learned senior counsel for petitioner submitted that there is not an iota of admissible evidence to suggest that petitioner had entered into a criminal conspiracy with other accused persons and that the only material available on record is the disclosure statement of main accused Mayank Garg, which is inadmissible in absence of any recovery at the instance of petitioner.

8. It was further submitted that the learned trial court without adverting to the role assigned to each of the accused in the alleged crime, has mechanically passed the impugned order on charge stating that *prima facie* offences are made out against all the accused. He further submitted that even the learned Revisional Court has fallen into error in not distinguishingly appreciating the role of petitioner in the present case and presumed as if it is at par with that of main accused Mayank Garg. It is submitted that the recovered challan book, bill book and charge slip clearly show that petitioner had conducted the entire transaction with *bona fide* intention, as after approving the payment by the bank, purchaser signed the transaction slip and as an abundant caution, petitioner also obtained purchaser's signatures on the bill.

9. Lastly, learned senior counsel submitted that out of 15 accused persons, two accused namely, Mayank Garg, main accused and Gaurav Bansal, have expired and also that petitioner has been unnecessarily subjected to mental harassment and humiliation for last many years, therefore, these orders deserve to be set aside.

10. On the other hand, learned Additional Public Prosecutor for State on instructions from Inspector R.P.Dabbas, Investigating Officer, explained

before this Court how cloning of credit cards resulted into siphoning off amount of genuine card holders and caused huge loss to them as well as to banks. Learned Additional Public Prosecutor submitted that petitioner along with co-accused entered into a well designed criminal conspiracy and permitted use of cloned cards at his shop for his personal gains and recoveries made at his instance are subject to scrutiny during trial and does not call for any interference at this stage. He further submitted that while framing charge only a *prima facie* opinion has been given by the trial court and petitioner has the remedy to prove his innocence at the stage of defence evidence. He also submitted that the impugned orders are well merited and do not call for any interference by this Court, hence, this petition be dismissed.

11. I had heard learned counsel representing both the sides and have gone through the impugned order as well as material placed on record.

12. In ***State of Maharashtra vs. Salman Salim Khan and Anr., (2004) 1 SCC 525***, the Hon'ble Supreme Court has held as under:-

"12. We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a

case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial....."

13. Further, the Hon'ble Supreme Court in ***Amit Kapoor Vs. Ramesh Chander & Anr. (2012) 9 SCC 460*** has made the following pertinent observations:-

"19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

14. The plea raised in this petition is that the Revisional Court as well as trial court have fallen in error in not considering that the petitioner is innocent and is a victim of circumstances and the learned trial court has mechanically framed charge against him along with other accused persons. Pertinently, cloning of cards and its illegal use cannot be individually done

but with the connivance of others and in the present case, allegation against the petitioner is of permitting the other accused persons to swipe the cloned cards at his shop for personal gains. Recoveries made at his instance are also under scrutiny. I do not find substance in the pleas taken on behalf of the petitioner that there is no material on record to establish petitioner's involvement in the offence in question. Trial in this case is in progress and petitioner will have the opportunity to prove his innocence at the time of evidence.

15. In the aforesaid view of the matter, I find that the learned Revisional Court has rightly upheld trial court's order. I find no reason to interfere with the same.

16. Before parting with the present petition, since FIR in question pertains to the year 2003, trial court is directed to expeditiously conclude trial, preferably not beyond one year.

17. With aforesaid directions, the present petition and application are accordingly dismissed, while refraining to comment upon the merits of the case.

(SURESH KUMAR KAIT)
JUDGE

MARCH 23, 2021/r

Crl.M.C.346/2017

Page 8 of 8