2024:DHC:2187

$~11

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

Date of decision: 18.03.2024

\+ CRL.M.C. 1084/2022 & CRL.M.A. 4702/2022

SH. HEMAL MEHTA & ANR. ..... Petitioners

Through: Mr.Randhir Jain, Mr.Dhanajai Jain, Advs

versus

STATE GOVT. OF N.C.T. OF DELHI THROUGH S.H.O ..... Respondent

Through: Mr. Shoaib Haider, APP with SI Vipin Kumar.
Mr.Manav Vohra and Ms.Divyangna Malik, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Judgment and Order dated 10.03.2021 passed by the learned Additional Sessions Judge-04, North, Rohini, New Delhi in Criminal Revision Petition No.116/2020, titled ***Hemal Mehra & Ors. v. State (Govt. of N.C.T. of Delhi)***, dismissing the said Revision Petition.

2. The above Revision Petition had been filed by the petitioners herein challenging the order dated 12.02.2020 passed by the learned Metropolitan Magistrate-04 (North), Rohini, New Delhi in Criminal Case No. 5296255/2016, titled ***State v. Jaydeep Vyas and Ors.***,

framing charges against the petitioners under Sections 120B/420/406/506/34 of the Indian Penal Code, 1860 (in short, 'IPC').

Factual Matrix

3. An FIR No.222/2011 was registered at Police Station: Prasant Vihar, Outer District, Delhi under Sections 406/420/120B of the IPC on 10.05.2011 on a complaint made by M/s Kundan Rice Mill Ltd., stating that the said company is trading in chemicals along with other articles. One Mr.Jay Deep Vyas has introduced himself to the management of the complainant stating that he is having a reputed and financially strong firm for the sale and purchase of chemicals in India. He visited the office of complainant in the month of May 2010 and allured the complainant to supply chemicals to him. He was introduced by the petitioners as a renowned trader in the chemicals market having a good reputation and financial capacity. The complainant stated that all the assurances were false and the accused persons had colluded together for inducing the complaint by gaining its confidence to supply the chemicals in favour of Mr.Jay Deep's proprietorship firm, namely, M/s J.D. Fine Chem. The complainant stated that upon believing the representation of the accused persons, the complainant supplied the chemicals to M/s J.D. Fine Chem against the purchase orders. Mr.Jay Deep Vyas issued several cheques for discharge of the dues, which, on presentation were returned back with remarks "*insufficient funds*" and "*exceeds arrangement*" vide Returning Memos dated 13.12.2010, 06.01.2010, 22.12.2010, etc. The complainant stated that when Mr.Praful Kumar, Director of the

complainant, visited the premises of M/s J.D. Fine Chem to resolve the issue of payments, the complainant came to know that the address mentioned in the invoices and purchase orders is not owned by M/s J.D. Fine Chem and that he had left the said address. The complainant asserted that it further found out that the accused persons are in the habit of cheating innocent companies by using the same *modus operandi* and they had sold the chemicals supplied by the complainant in the open market, received cash for the same, and misappropriated the funds to themselves.

4. Upon investigation a final report dated 28.07.2016 was filed wherein it was *inter-alia* mentioned that during the investigation, nothing incriminating surfaced against the petitioners herein and, therefore, they were being put in column no.11.

5. By a cryptic order dated 28.07.2016, summons were issued by the learned Trial Court to the petitioners.

6. Thereafter, by an equally cryptic order dated 12.02.2020, charges were framed against the petitioners under Sections 120B/420/406/506/34 of the IPC. The said order is reproduced herein below:

> *"None for the accused no. 1 Jaydeep Vyas.*
> *Arguments heard. Record perused.*
> *On the basis of material available on record, prima facie case for the offence punishable under section 120-B/420/34/406/506/34 IPC is made out against the accused persons. Accordingly, today charge framed against the accused no. 2 & 3 to which they pleaded not guilty and claimed trial.*
> *Issue NBWs against the accused no.1 Jaydeep Vyas to be executed through SHO concerned,*

returnable on NDOH."

7. The Charge framed against the petitioners is relevant, and is reproduced as under:

> *"I, Niharika Kumar Sharma, MM, Rohini Courts, Delhi hereby charged you accused no. 1 Hemal Mehta and no. 2 Mihir B Sanghvi S/o Sh.Bipin Sanghvi as under:*
> *That in the month of May 2010 or on different dates at D-17, Prashant Vihar, Delhi, within the jurisdiction of PS Prashant Vihar, both of you along with your associate / accused Jaydeep Vyas hatched a criminal conspiracy by entering into an agreement to cheat the complainant Sh. Praful Kumar C/o Kundan Rice Mill Ltd. 0-17, Prashant Vihar, Delhi, by offering him to sell chemicals to you and your company, which were not in the existence at Mumbai and thus all of you thereby committed an offence punishable u/s 120-8 IPC and within my cognizance.*
> *Secondly, in pursuance to the above mentioned criminal conspiracy hatched by both of you along with your associate / accused Jaydeep Vyas in furtherance of your common intention cheated the complainant by represented yourselves as the businessmen/proprietor/ broker/trader of the M/s JD Fine Chemicals and allured the complainant Praful Kumar C/o Kundan Rice Mill Ltd to supply the chemical i.e. Acidic Acid N. Butyle Acetate, N. Butanol etc. against the purchase order placed by all of you on various occasions (detailed description mentioned in the complaint Mark X) and thereby, all of you caused wrongful loss of the amount (as mentioned in para 3 of complaint Mark X or other amount legal debt by all of you) to the complainant and wrongful gain to yourselves and thereby, all of you committed the offence punishable u/s 420/34 IPC r/w Section 120-8 IPC and within my cognizance.*

> *Alternatively, all of you along with your associate Jaydeep Vyas being owner/businessmen/proprietor/ broker/trader of the M/s JD Fine Chemicals and other alleged reputed trader in chemical market in furtherance of your common intention misappropriated and converted the above said chemical supplied by the complainant for your own use by selling the same into open market and all of you refused to pay the amount of sale as and when demanded by the complainant, thereby all of you committed an offence punishable offence 406/34 IPC and within my cognizance.*
>
> *Thirdly, on the above said date, time and place all of you alongwith in furtherance of your common intention criminally intimidated the complainant to face the consequences if the complainant demanded the payment from all of you and caused alarm to him and thereby all of you had committed an offence punishable U/S 506/341PC within my cognizance.*
>
> *Both of you are hereby directed to be tried for the above said offence by this Court."*

8. The petitioners challenged the said order in a Revision Petition, which has been dismissed by the learned Additional Sessions Judge by Impugned Order, observing as under:

> *"5. Heard. During course of arguments, it came to notice of this Court that firm/office of accused Jaydeep Vyas (one of the accused before ld. Trial Court) is situated in Mumbai, Maharashtra & both the revisionists are also residents of Mumbai. If this fact is read with the complaint of the complainant, said Jaydeep Vyas was introduced to the complainant by both the revisionists and was allured to supply certain chemicals to his firm. It is not the case of the complainant that he was knowing accused Jaydeep Vyas. Prima facie it can be safely inferred from the*

complaint of the complainant that accused Jaydeep Vyas entered into an agreement with the complainant at the behest of both these revisionists under a conspiracy to cheat the complainant and pursuant to such agreement, the complainant supplied certain chemicals to the firm of accused Jaydeep Vyas, which were further sold in the open market thereby causing wrongful loss to the complainant and wrongful gain to the accused persons including the revisionists herein. It is quite surprising as to why the complainant would make an agreement with a person who is residing in Mumbai, without having an acquaintance with him through any person. Even the certain cheques were issued by accused Jaydeep Vyas on behalf of his alleged firm, which returned unpaid with the remarks "insufficient funds" & "Exceeds arrangement". The said accused prima facie cannot be said to be liable alone for the said cheating since he entered into an agreement with the complainant at the behest of both the revisionists and they are equally liable for the same as it was done under a conspiracy to gain financial benefit by all of them. Even the address on the invoice and purchase order i.e. 183/13, Milap Coop Housing Society, Charkop, Sector-1, Kandivali (W) Mumbai 40067 was not found to be owned by accused Jaydeep Vyas and he had left the said address and from this fact also, it can safely be inferred that all this was done under a conspiracy to cheat the complainant. The chemicals purchased from the complainant were also sold in the open market by which they gained themselves and not paid a single penny to the complainant, which also points towards the conspiracy. Thus, it can be said that from the very beginning, the sole intention of all the accused persons including the revisionists herein was to cheat the complainant and cause wrongful loss to him and wrongful gain for themselves. From the contents of the complaint, it is also clear that

> *when the complainant demanded his money back, all the accused persons including the revisionists threatened him with dire consequences. The contention of ld. Counsel for both the revisionists that ld. Trial Court could not have taken the cognizance of the offences in view of the prohibition contained in Section 468 Cr.P.C. since the offence was committed prior to 17/01/2011, whereas the challan was filed on 28/07/2016 i.e. beyond the period of limitation prescribed under that section is not tenable as the main accused Jaydeep Vyas was absconding earlier. Moreover, all the accused persons including the revisionists herein were residents of Mumbai, Maharashtra, so there would have been delay in the investigation. In this regard, Section 468 Cr.P.C. and Section 473 Cr.P.C. are applicable. Hence, no delay is material in the present case. Moreover, it is well settled that at the stage of framing of charge, the Court has to see the existence of strong or grave suspicion or a prima facie case. No meticulous and detailed examination of the case of prosecution including proposed testimony of the witnesses can be done at the stage of charge. Only bird's eye-view of the proposed testimony of the witnesses has to be taken. The material required at the stage of charge and at the final judgment, are different since at final stage of judgment, the prosecution has to prove its case beyond reasonable doubt."*

Submissions of the learned counsel for the petitioners

9. The learned counsel for the petitioners submits that upon investigation nothing incriminating has been found against the petitioners.

10. He submits that the petitioners have been roped in the trial only on the basis of the statement made by the complainant, without any

evidence at all on record to substantiate the same.

Submissions of the learned APP and the learned counsel for the complainant

11. On the other hand, the learned APP and the learned counsel for the complainant submit that the complainant has clearly stated that it is the petitioners who had introduced Mr.Jay Deep Vyas to the complainant as a person having a reputed company dealing in chemicals. It is on the basis of their assurance that the complainant supplied the chemicals to the firm, M/s J.D. Fine Chem. They submit that therefore, the charges have been rightly framed against the petitioners.

Analysis and Submissions

12. I have considered the submissions made by the learned counsels for the parties.

13. From the above sequence of the events, it is evident that the only allegation against the petitioners herein is that they have introduced Mr.Jay Deep Vyas to the complainant. As per the complaint also, the chemicals were supplied by the complainant to Mr.Jay Deep Vyas and it is the cheques issued by Mr.Jay Deep Vyas which had ultimately returned back unpaid. The allegation of selling of the chemicals in the open market and misappropriating the funds received from such sale, are also against the said Mr.Jay Deep Vyas.

14. As far as the allegation of introduction is concerned, even on investigation nothing incriminating has been found against the petitioners. Apart from the statement of the claimant, no other evidence involving the petitioners has been placed on record before

the learned Trial Court. Mere statement of the Complainant cannot suffice as the evidence of complicity of the petitioners in the offence.

15. It is well settled principle of law that a person cannot be made to suffer the agony of trial on a mere vague statement.

16. In ***State of Haryana v. Bhajan Lal,*** 1992 Supp (1) SCC 335, the Supreme Court has held that the power under Section 482 of the Cr.P.C. can be exercised to quash the FIR or the Charge Sheet where *inter alia* the evidence collected does not disclose the commission of the offence against the accused.

17. In the present case, the learned Trial Court by a cryptic order proceeded to frame charges, in fact, in the charges so framed, it is not even the allegation that it is the petitioners who introduced Mr.Jay Deep Vyas to the complainant. The learned Additional Sessions Judge in the Impugned Order has, only on the basis of conjectures and surmises, and primarily on the fact that the petitioners and Mr.Jay Deep Vyas are stated to have been the residents of Mumbai, proceeded to dismiss the Revision Petition filed by the petitioner. The prosecution is not even alleging whether the complainant and the petitioners had any previous dealings which would have made the complainant believe the petitioners when they allegedly introduced Mr.Jay Deep Vyas to the complainant. No document of such dealings or introduction, etc., has been placed on record.

18. In view of the above, the Impugned Order and the order framing charges against the petitioners in the above Criminal Case cannot be sustained.

19. Accordingly, the Impugned Order dated 10.03.2021 passed by

the learned Additional Sessions Judge is hereby quashed. The petitioners shall stand discharged from the abovementioned criminal case, that is, Criminal Case No. 5296255/2016, titled ***State v. Jaydeep Vyas and Ors.***.

20. The petition is allowed in the above terms. The pending application is also disposed of.

21. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 18, 2024/Arya/RP

Click here to check corrigendum, if any