



2024:DHC:2069



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

Date of decision: 13.03.2024

(7)+ CRL.M.C. 6149/2019 & CRL.M.A. 41581/2019

AMIT JAIN & ORS

..... Petitioners

Through: Mr.Jeetender Gupta &
Mr.Ashish Mishra, Adv.

versus

STATE & ANR

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.
Mr.Rahul Malhotra,
Mr.Kaustubh Punj &
Ms.Jutirani Talukdar, Adv. for
R-2.

(8)+ CRL.M.C. 3031/2022 & CRL.M.A. 12771/2022

K.K. GUPTA

..... Petitioner

Through: Mr.Arun Mehta, Adv.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

(9)+ CRL.M.C. 4441/2022 & CRL.M.A. 18121/2022

AKSHAY KUMAR JAIN

..... Petitioner

Through: Mr.Arun Mehta, Adv.

versus

THE STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed challenging the order dated 10.10.2019 passed by the learned Metropolitan



2024:DHC:2069



Magistrate-05, Central District, Tis Hazari Courts, Delhi, in the Criminal Complaint filed by respondent no.2/Narender Jain herein, that is, CIS No. 532896/2016, titled ***Narender Jain v. Amit Jain & Ors.***, summoning the petitioners herein as an accused for an offence under Sections 420/120B of the Indian Penal Code, 1860 (in short, 'IPC').

2. It is the case of the respondent no.2/complainant that the father of the petitioners in CRL.M.C. 6149/2019, namely, Sh.A.P. Jain, had disputes with respect to the joint properties held along with the father of respondent no.2, late Sh.Bhiku Ram Jain, and his children, including respondent no.2 herein. A Civil Suit for partition was also filed before this Court, during which an Arbitration Agreement was executed between the parties. In the arbitration proceeding, an Award dated 30.11.1998 came to be passed allegedly by a three-member Arbitral Tribunal, which comprised of the petitioners in CRL.M.C. 3031/2022 and CRL.M.C. 4441/2022, falsifying the proceedings of the arbitration by showing the presence of the third Arbitrator, Sh.Roopak Jain, and the representative of the Bhiku Ram Jain Group, that is, Sh. Ravinder Jain. The said Award was challenged by Sh.Bhiku Ram Jain by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act'), being OMP 70/1999. Another petition was also filed by one of the sons of Sh.Bhiku Ram Jain, that is, Sh.Ravinder Jain, being OMP 69/1999. The said OMPs



were allowed by the learned Single Judge of this Court vide the judgment dated 24.02.2012, *inter alia*, observing as follows:-

“25. Secondly, the writings of Mr. Roopak Jain, which are shown as having been made on loose sheets of paper, even if accepted on their face value, do not lead to the conclusion that all three members of the Arbitral Tribunal met on 15th October 1998 and the dates thereafter, or that any representative of the BR Jain Group was present at those hearings. There has been an attempt by the AP Jain Group and the two arbitrators who signed the impugned Award to falsify the arbitral record. The falsification stands clearly demonstrated by the fact that Mr. Ravinder Jain was not present in India on 15 October 1998 whereas the impugned Award as well as the purported minutes of the so-called meeting of the Arbitral Tribunal on that date shows him as having been present at the said hearing of the Arbitral Tribunal on 15th October 1998. The impugned Award is contrary to Clause 3 of the Arbitration Agreement dated 24th September 1998 which mandatorily requires all arbitrators to be present at each meeting of the Arbitral Tribunal and Clause 5 which mandates that none of the proceedings be conducted ex parte. These facts and circumstances are by themselves sufficient for this Court to conclude that the impugned Award is based on a fabrication of the arbitral record and, therefore, cannot be sustained in law.”

(emphasis supplied)

3. Based *inter alia* on the above observation, the abovementioned complaint has been filed by the respondent no.2.

4. The learned counsels for the petitioners submit that upon filing of the above complaint, the petitioners in CRL.M.C.



2024:DHC:2069



3031/2022, Mr.K.K. Gupta, filed an application, being IA No. 6505/2016 in OMP 69/1999, and the learned Single Judge of this Court, vide order dated 27.10.2016 was pleased to clarify that any observation made in the judgment dated 24.02.2012 of this Court will not influence the Criminal Court. They submit that in spite of the above clarification, the Impugned Order has been passed primarily based on the observation made in the judgment dated 24.02.2012 referred hereinabove.

5. They further submit that merely because the Award has been set aside by this Court, an offence under Section 420 of the IPC cannot be said to be made out against the petitioners. They submit that in the complaint and in the pre-summoning evidence, there is no allegation of any loss being caused to the respondent no.2 due to the said Award. In fact, the Award passed never got implemented.

6. The learned counsel for the petitioners in CRL.M.C. 6149/2019 further submits that as far as the petitioner no.1, that is, Sh. Amit Jain, is concerned, though he was a part of the arbitration proceedings, he was being represented by his father, late Sh.A.P. Jain, under a Power of Attorney executed by him in his favour. He submits that, therefore, the petitioner no.1 cannot be said to have played any part in the alleged falsification of the record of the arbitration proceedings, thereby making him liable to be proceeded against for an offence under Section 420 of the IPC.



2024:DHC:2069



7. He further submits that as far as petitioner nos. 2 to 4 are concerned, they were not parties to the arbitration proceedings; they were impleaded in the proceedings under Section 34 of the Act referred to hereinabove, on the death of late Sh. A.P. Jain, and only as his legal representatives, on an application filed by Mr. Virendar Kumar Jain, son of late Sh. Bhiku Ram Jain. Merely because they were so impleaded, they cannot be charged for an offence under Section 420 of the IPC in the alleged interpolation in the Arbitral Award that was passed in their absence and when they were not even parties to the same.

8. On the other hand, the learned counsel for respondent no.2 submits that even with the clarification given by the order dated 27.10.2016, there were other evidence placed on record before the learned Trial Court which would substantiate the falsification of the record by the Arbitral Tribunal and the petitioners in CRL.M.C. 3031/2022 and CRL.M.C. 4441/2022.

9. He further submits that as far as Sh. Amit Jain is concerned, he was part of the arbitration proceedings and also participated in those proceedings as also in the proceedings filed to challenge the Arbitral Award. He, therefore, cannot today feign ignorance to the falsification of the record.

10. He further submits that even the daughters of late Sh. A.P. Jain participated in the proceedings filed to challenge the Arbitral Award and defended the Arbitral Award, therefore, they have been rightly summoned as an accused.



2024:DHC:2069



11. On the issue of no loss being caused due to the Arbitral Award, he submits that certain properties were transferred due to the Arbitral Award and, in any case, even if an offence under Section 420 of the IPC is not made out, for the falsification of the record, the petitioners are liable to be charged.

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

13. As is evident from the above, the entire case of the respondent no.2 is based on the alleged falsification of the record of the Arbitral Tribunal, of which the petitioners in CRL.M.C. 3031/2022 and CRL.M.C. 4441/2022 were a part. It is also admitted that the petitioner no.1 in CRL.M.C. 6149/2019, Sh. Amit Jain, was also a part of those proceedings.

14. It is equally admitted that the petitioner nos. 2 to 4 in CRL.M.C. 6149/2019 were not a part of those arbitration proceedings and were impleaded only at the stage of the pendency of the challenge to the said Award on the death of their father late Sh. A.P. Jain. They can, therefore, be attributed no role on the alleged falsification of the Arbitral Award. By merely defending a petition under Section 34 of the Act they cannot be, in any manner, said to be complicit in the alleged falsification of the Award or be a part of the same.

15. It is now well settled law that an order summoning an accused in a complaint or in an FIR has drastic consequences for the accused and, therefore, where the offence is not made out against the accused, such order is liable to be set aside by



2024:DHC:2069



this Court. I may herein refer to the judgement of the Supreme Court in ***Shiv Jatia v. Gian Chand Malick & Ors.***, 2024 SCC OnLine SC 189, wherein it has been held as under:-

“12.The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.”

16. In view of the above, the complaint, as against the petitioner nos. 2 to 4 in CRL.M.C. 6149/2019, that is, Ms. Renu Gupta, Ms. Alka Gupta, and Ms. Achla Gupta, and the consequential summoning order dated 10.10.2019 passed by the learned Trial Court in the above mentioned complaint as against these petitioners, are hereby quashed.

17. A perusal of the Impugned Order dated 10.10.2019 also reflects that the learned Trial Court has not considered the essential ingredient of the offence under Section 420 of the IPC before summoning the remaining petitioners herein. Section 420 of the IPC reads as follows:

“420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either



2024:DHC:2069



description for a term which may extend to seven years, and shall also be liable to fine.”

18. It is, therefore, essential for the complainant to show that as a result of the cheating, the party has been induced and deceived to deliver any property to any person or to make, alter, or destroy the whole or part of valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security. The Impugned Order does not reflect the consideration of the learned Trial Court on this aspect.

19. In view of the above, the order dated 10.10.2019 is set aside. The matter is remanded back to the learned Trial Court to consider this issue afresh on hearing the respondent no.2 and considering the pre-summoning evidence that has been placed on record.

20. It is made clear that, barring the above, this Court has not expressed any opinion on the merits of the other contentions raised by the learned counsel for the petitioners and/or the respondent no. 2, and that the same shall be considered by the learned Trial Court remaining uninfluenced by any observation made in the present order.

21. The petitions and the applications are disposed of in the above terms.

NAVIN CHAWLA, J

MARCH 13, 2024/rv/RP

Click here to check corrigendum, if any