



2024:DHC:5784



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:05.08.2024

+ **CRL.M.C. 5381/2019**

RAJU GARG @ NAVEEN

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nihit Dalmia, Mr. Jeevesh Mehta, Mr. Gaurav Singh, Mr. Varun Singh & Mr. Arjun Gupta, Advs.

For the Respondent : Mr. Utkarsh, APP for the State along with Adv. Siddhant Tyagi.
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HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 06.09.2019 (hereafter '**impugned order dated 06.09.2019**') passed by the learned Additional Sessions Judge (ASJ), Rohini Courts, Delhi in Crl. Revision No.174/2019. The petitioner also challenged the order dated 30.05.2019 (hereafter '**impugned order dated 30.05.2019**')

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passed by the learned Chief Metropolitan Magistrate (CMM), Rohini Court, Delhi, in CC No.5281162/2016.

2. The learned ASJ, by the impugned order dated 06.09.2019, had dismissed the revision petition filed by the petitioner and upheld the impugned order dated 30.05.2019, whereby charge under Sections 420/467/468/471 of the IPC was framed against the petitioner.

3. The seminal facts relevant for the purpose of the present petition are as follows:

3.1. FIR No. 37/2009 dated 27.02.2009 was registered at Police Station Economic Offences Wing for offences under Sections 406/420/467/468/471/120B of the IPC at the behest of the complainant, Punjab National Bank, Delhi (PNB) through its authorized person, namely, P D Khurana, who is stated to be the Chief Manager of PNB. It is alleged that one Kamal Kishore Shukla/Accused No. 1 and Shashi Shukla/Accused No. 2(wife of Kamal Kishore), had approached the bank for availing loan facility of CC hypothecation ₹10 lakhs and term loan of ₹14 lakhs, for the purchase of plant and machinery. It is alleged that in lieu of that loan, they mortgaged the property bearing no. 587, Sector-4, Vaishali, Ghaziabad. It is alleged that thereafter, it transpired that the same property having a sale deed dated 24.10.2003, was already mortgaged by Accused No. 1 with GIC Finance, Punjab National Bank, Chander Nagar. It is alleged that GIC Finance also took over the possession of the said property under the provisions of the SARFAESI Act, 2002, and the same was auctioned to one Jitender. It is further alleged that



the bank account of Accused No. 1 was declared as Non-Performing Assets ('NPA') on 31.03.2007, due to non-payment of principal amount and interest. It is alleged that during the course of the investigation, the sale deed of the property in question was found to be forged.

3.2. Chargesheet in the present case was filed against Accused Nos.1-2. Thereafter, supplementary chargesheet was filed against Late Girish Tyagi/Accused No. 3, Dinesh Chandra Saxena/Accused No. 4, and Raju Garg @ Naveen/Accused No. 5/petitioner.

3.3. It is alleged that during the investigation, *qua* term loan for the purchase of machines of ₹20 lakhs, Accused No. 1 allegedly had to contribute ₹6 lakhs as margin. It is alleged that thereafter, Accused No. 1 allegedly submitted a quotation dated 02.01.2006 from vendor M/s National Sales Corporation, and also a receipt of ₹6 lakhs with the PNB for the loan. It is alleged that consequently, the said ₹14 lakhs were transferred by the PNB to the account of M/s National Sales Corporation in their account situated at Vijaya Bank, Ghaziabad.

3.4. It is alleged that Accused No. 3, who is stated to be the proprietor of M/s National Sales Corporation, in connivance with the petitioner, withdrew the said amount. It is further alleged that the said firm was found to be a bogus entity having no business of sales/machines as allegedly represented before the PNB. It is stated that Accused No. 3 passed away before he could be arrested.



4. The learned CMM *vide* the impugned order dated 30.05.2019 had framed charges against the petitioner under Sections 120B read with Sections 420/467/468/471 of the IPC, and observed as under:

“Now coming to the role of accused Naveen @Raju, his role is quite apparent at this stage, qua the withdrawal of amount disbursed by bank in the account of M/s National Sales Corporation. Even the FSL report is in his handwritten on the bearer cheques and it goes against him. “

5. Aggrieved by the order passed by the learned CMM, the petitioner had preferred a revision petition before the learned ASJ, Rohini Courts, Delhi *vide* Crl. Rev. No. 174/2019. The learned ASJ, subsequently by the impugned order dated 06.09.2019 dismissed the petitioner's revision petition, and upheld the charges framed by the learned CMM. The learned ASJ observed as under:

“5. There is evidence on record that accused Raju Garg @ Naveen has filled-up the cheques for withdrawal of amount of ₹14 lakhs and he also gone to the bank to receive the said money on 3 occasions by presenting the cheques. It is the defence of the revisionist/ accused Raju Garg @Naveen that he was only part-time Accountant and had filled-up cheques which were duly signed by Proprietor of M/s National Sales Corporation. The defence of the revisionist/ accused can not be considered at this stage of framing of charge.

6. I considered the evidence against the revisionist/ accused and the facts of the present case. I am of the view that there is sufficient ground for framing of charge against revisionist/ accused and there is no illegality and infirmity in the order dated 07-05-2019. Therefore, the revision petition is dismissed.”

6. Aggrieved by the said order, the petitioner has preferred the present petition.

7. The learned counsel for the petitioner submitted that the petitioner was neither named in the complaint nor the FIR. He



submitted that the petitioner did withdraw the said amount of ₹13,79,000/- from the bank account of National Sales Corporation. He however submitted that the said amount was withdrawn on the instructions of Accused No. 3, as part of the normal course of business and responsibilities of the petitioner. He submitted that the petitioner was a part-time accountant in Accused No. 3's firm.

8. He further submitted that no amount so withdrawn by the petitioner was utilized by the petitioner for his benefit. He submitted that the firm National Sales Corporation was not a bogus firm, and was very much in existence, since the petitioner, as a part-time accountant wrote the books of the accounts of the firm, and also managed the bank operations on the instructions of Accused No. 3.

9. On the other hand, the learned Additional Public Prosecutor (APP) for the State submitted that there is no infirmity in the impugned order. He further submitted that the present petition is liable to be dismissed as this Court under Section 482 of the CrPC shall not upset the concurrent findings of the two courts below in the absence of any perversity and the petitioner cannot be allowed to initiate a second revision petition in the garb of Section 482 of the CrPC.

10. The Learned APP for the State also submitted that when a *prima facie* case is made out against an accused, a detailed inquiry into the merits of the case cannot be conducted at the stage of framing of the charge. It is, thus, contended that the present petition be dismissed.



Analysis

11. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”

12. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. The Hon’ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

*“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. **In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.**”*

(emphasis supplied)



13. Since the petitioner has assailed the impugned order dated 06.09.2019 whereby, charge framed by the learned CMM against the petitioner was upheld by the learned ASJ, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

14. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well



settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. [Ref: ***Amit Kapoor v. Ramesh Chander* : (2012) 9 SCC 460**].

15. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material



placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

(emphasis supplied)

16. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under :-

"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the



opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

17. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

18. For there to be an offence of cheating, the said act must be both unlawful and deceitful, that is, there must be a preceding deceitful act and the same must be done to dishonestly induce a person to deliver/part with any valuable security. The offence of ‘forgery’ and ‘cheating’ intersect and converge since the act of forgery itself is committed with an intent to deceive/cheat an individual [Ref: **Mariam**



Fasihuddin & Anr. v. State by Adugodi Police Station & Anr. : 2024 INSC 49].

19. From a bare perusal of the complaint, this Court finds that no *prima facie* case under Sections 420/467/468/471 of the IPC is made out against the petitioner. It cannot be said that the petitioner was hand in glove with the accused persons in cheating the bank. Although it is undisputed that the petitioner withdrew ₹13,79,000/- from the account of National Sales Corporation, the does not same appear to have been done in furtherance of the conspiracy to cheat PNB.

20. The allegation against the petitioner, as per the chargesheet, is that he used to work as part time accountant with late Girish Tyagi and had taken two banker cheques amounting to ₹14 lakhs for encashment. It is alleged that the co-accused Dinesh Chandra Saxena wanted to encash the said two cheques against the bills of papers and he had never met co-accused Dinesh Chandra Saxena. The allegation against co-accused Dinesh Chandra Saxena is that he facilitated the accused K.K. Shukla for arranging the bills which could be used for obtaining the loan from PNB and that the said bills were arranged by the petitioner from M/s National Sales Corporation. It is alleged that since the said firm, namely, National Sales Corporation was found to be bogus, all the accused persons have conspired with the accused K.K. Shukla and cheated PNB.

21. The charges are sought to be framed against the petitioner under Sections 420/467/468/471 of IPC by invoking the provisions of Section 120B of IPC. From the allegation made, as noted above, it is



not the case of the prosecution that the petitioner in any manner conspired with accused K.K. Shukla for obtaining the loan from PNB.

22. It is an admitted case that the cheques were encashed by National Sales Corporation which was a proprietorship concern of late Girish Tyagi. The allegation that the petitioner had arranged for encashing the said cheques at the instance of Dinesh Chandra Saxena is solely based on the statement of late Girish Tyagi, who has admittedly expired. There is no other material to corroborate or substantiate the said statement. Even otherwise, even if the statement is taken at the highest, the petitioner was working as an accountant with late Girish Tyagi and the liability for any alleged act of encashment of the cheques could not be fastened on the petitioner.

23. On being pointedly asked, it was admitted that the beneficiary of the alleged cheating, that is, K.K. Shukla and Shashi Shukla have not named the petitioner as one of the accused who has conspired with them to commit the offence. Admittedly, the petitioner is not the beneficiary of any offence. No allegation has been made that any part of the cheated amount has been paid to the petitioner.

24. It was also pointed out that co-accused Dinesh Chandra Saxena, who allegedly approached the petitioner for arranging the bills for ₹14 lakhs has already been discharged by the learned Trial Court. In the absence of any charges being framed against Dinesh Chandra Saxena, who as per the case of the prosecution, is the link between the main accused and the petitioner, no charges can be framed against the petitioner.



2024:DHC:5784



25. In view of the above, the present petition is allowed and the petitioner is discharged in FIR No. 37/2009.

26. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 05, 2024

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