(2014) 04 MP CK 0071

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 58 of 2010 (Arising out of S.T. No. 109 of 2005)

Abdul Karim Telgi and Sohail Khan APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120-B 255 258 259 420
Stamp Act, 1899 — Section 69

Citation : (2014) 2 JLJ 136

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.—Appellants are aggrieved by the judgment handed down by the Special Judge, C.B.I., Indore holding them guilty of the offences and sentences passed against them as under :-

Appeals involve common question of facts and law, therefore, this judgment shall govern the disposal of all connected appeals as mentioned above.

2. There was a huge scam of counterfeiting and sale of government stamp papers and criminal cases were registered in different parts of the country. Under orders of the Supreme Court, all such cases were transferred to the C.B.I. for investigation and prosecution of the offenders.

3. The C.B.I. after investigation filed the charge-sheets in two cases at Indore which were after committal sent up for trial by the Special Judge, C.B.I. at Indore that is how these appeals arise out of the two judgments delivered by the Special Judge, C.B.I. Indore in S.T. No. 108/2005 and 109/2005. For the sake of convenience we may notice the facts from S.T. No. 109/2005.

4. Facts which set the tone of investigation may be briefly noticed. A criminal case was registered at P.S. Tukoganj, Indore on the basis of FIR lodged by

Branch Manager, Bank of India, Simrol Branch, Indore. It was stated that the Bank used to purchase Special Adhesive Stamps from the Treasury. In June, 2002, the then Branch Manager was contacted by employees of M/s. Malwa Enterprises, 418, City Centre, M.G. Road, Indore and they further informed that Sohail Khan, Abdul Gafur Mujahid, Karim and Ashfaq were the owners of the firm. They further stated that their firm could supply stamps and stamp papers directly to the branch itself and the firm had licence to sell such stamps in the name of Jagjeevan Yadav. The Branch Manager was shown Xerox copy of licence of Jagjeevan Yadav. On being convinced complainant purchased 260 special adhesive stamps of Rs. 50/- denomination each and also purchased 4 non-judicial stamp papers of 1,000/- denomination each and one non-judicial stamp of 5,000/- denomination. On having learnt that fake stamps were being sold in Indore, he tried to contact M/s. Malwa Enterprises, but no one was available. The stamps so purchased were shown to the District Registrar who upon examination found the stamps to be fake. Since these facts reveal that Malwa Enterprises was engaged in sale of fake stamps through its various employees, a complaint was lodged by the Branch Manager, as stated above. This followed a thorough investigation and the investigation revealed the following facts.

5. During the year 2000, accused Abdul Karim Telgi entered into criminal conspiracy with Abdul Gafur Mujahid, Sohail Khan, Shabbir Ahmed Sheikh, Jagjeevan Yadav, Mansoor and accused Ashfaq Mulla with object to counterfeit Government stamps and sale thereof. In order to sell the stamps, Abdul Karim Telgi did various acts and omissions. It was revealed that in pursuance of said criminal conspiracy, M/s. Malwa Enterprises was opened by accused Abdul Gafur Mujahid at Indore for supply of fake stamps in and around Indore. Accused Abdul Gafur Mujahid arranged for the office premises at 418, City Centre, M.G. Road, Indore on a lease. For the same purpose, he also took another chamber viz. 307 in Trade Centre, Indore. Abdul Gafur Mujahid also took up one residential premises No. G-1, Regency Spring Building, 28, Chandralok Colony, Indore on rent. These premises were used for residence of accused Sohail Khan and his associates. Accused Sohail Khan also took premises No. 567/6, Giriraj Apartments, Indore on rent for running another office of M/s. Malwa Enterprises, Indore.

6. On 28.1.2000 and 11.2.2000, Abdul Gafur Mujahid published advertisements in Hindi Daily Newspaper Dainik Bhaskar seeking to employ local persons in different capacities in Malwa Enterprises.

7. Abdul Gafur Mujahid had applied for 4 telephone connections, as a result of which, telephone Nos. 240885 and 264016 were allotted to M/s. Malwa Enterprises at 418, City Centre, Indore and telephone Nos. 265738 and 265739 were allotted to the Malwa Enterprises at 307, Trade Centre, Indore. Abdul Gafur Mujahid used to stay in Hotel Chandralok near Sarwate Bus Stand, Indore during his visits to Indore.

8. Now, coming back to the advertisement, as mentioned above, accused Abdul

Gafur Mujahid and Shabbir Ahmed Sheikh had taken interviews of local persons who had applied in response to the advertisement. After conducting interviews, they recruited boys and girls who were imparted training for doing the work of Marketing Executives and Telephone Operators in Malwa Enterprises.

9. Accused Sohail Khan who was earlier working in Delhi on pay-roll of Abdul Karim Telgi was sent to Indore and he was appointed as In-charge of M/s. Malwa Enterprises, Indore for sale of fake stamps. Accused Sohail Khan opened a current Account on 27.3.2000 as Proprietor of Malwa Enterprises in State Bank of Indore, Y.N. Road Branch, Indore.

10. That one Jagjeevan Yadav, licenced stamp vendor of Indore in criminal conspiracy with Sohail Khan, Abdul Gafur Mujahid, Shabbir Ahmed Sheikh, furnished Xerox copy of his licence to the aforesaid persons and this photocopy was used by accused persons as proof of the authenticity of business of M/s. Malwa Enterprises.

11. Accused Abdul Gafur Mujahid, Shabbir Ahmed Sheikh, Sohail Khan informed the marketing executives that they were working for big firm having its offices at various places in India. They had also informed the executives that M/s. Malwa Enterprises was an authorized vending company and was running the work of sale of stamps in the name of Jagjeevan Yadav, licenced stamp vendor having the authorization to sell special adhesive stamps, insurance policy stamps, revenue stamps and non-judicial stamp papers of various denominations. The photocopy of licence of Jagjeevan Yadav was also provided to the marketing executives for convincing the financial institutions that the business of Malwa Enterprises was a legitimate business and was O.K.

12. M/s. Malwa Enterprises had supplied fake insurance stamps to United India Insurance Co. at Indore by showing the photocopy of stamp-vending licence of Jagjeevan Yadav. While making payment for the said purchase, Insurance Co. issued cheques in the name of Jagjeevan Yadav and further, Jagjeevan Yadav in criminal conspiracy with Sohail Khan and other accused persons deposited the said cheques in his account in State Bank of Indore, Court compound Branch and Mill Area Branch at Indore and also withdrew the amount, thereby establishing his role in the conspiracy.

13. That accused Abdul Gafur Mujahid used to sit in the office of M/s. Malwa Enterprises at 418, City Centre, Indore and remained in touch with Abdul Karim Telgi to update him about sales of fake stamps through Malwa Enterprises in Indore.

14. That accused Sohail Khan was the Incharge of all local staff working with M/s. Malwa Enterprises Indore. His duty was to supervise all activities including the collection of orders for sale of stamps obtained by various marketing executives from different banks/financial institutions. The sale proceeds of these stamps received in the form of various cheques/D.Ds./cash used to be deposited by Sohail Khan in the Current Account held by him as proprietor of Malwa

Enterprises in State Bank of Indore, Y.N. Road Branch at Indore. Said Account remained in regular operation till 28.9.2000 and a total amount of Rs. 35,80,000/- was transacted through cheques, demand drafts, cash and an amount of Rs. 35,30,000/- was withdrawn, debited from the said account by various cheques by accused Sohail Khan.

15. That accused Shabbir Ahmed Sheikh @ Shabbir used to visit Indore frequently from Mumbai and his duty was to supply fake stamps at Indore and to collect the sale proceeds from the sale of fake stamps from accused Sohail Khan.

16. That accused Ashfaq Mulla and Mansoor both from the village of accused Abdul Karim Telgi were deployed at Indore and they had worked as per directions of Sohail Khan. Their duties were to put the fake stamps in the envelope and to handover same to accused Sohail Khan in the office of M/s. Malwa Enterprises, Trade Centre, Indore.

17. Accused Abdul Karim Telgi visited Indore on various dates by JET Airways, used to stay in posh Hotels like Hotel Shrimaya and Hotel Sayaji. During His stay at Indore, he also visited the office of M/s. Malwa Enterprises on various occasions and he used to instruct the local staff in presence of co-accused Sohail Khan and Abdul Gafur Mujahid to increase the sale of stamps and also used to lure them with increase in salary and incentives for increasing the sale of stamps. He was introduced to the staff by Sohail Khan as overall Incharge of Malwa Enterprises.

18. That initially, fake stamps were used to be sent to M/s. Malwa Enterprises Indore from office of M/s. Metro Exports, a firm of accused Abdul Karim Telgi at Mumbai through Flyking Courier Services, Mumbai. Subsequently, the fake stamps used to be supplied directly through accused Shabbir Ahmed Sheikh who used to bring the stamps personally to Indore from Mumbai.

19. That accused Abdul Karim Telgi was involved in printing of counterfeit stamps at Pune and Mumbai. In the stamp scam cases, investigation throughout India by the C.B.I. and especially in the cases registered at P.S. Bundgarden, Pune, huge recoveries of fake stamps, printing machines and perforating machines were collected. During investigation, fake stamps supplied by M/s. Malwa Enterprises were seized and sent to Indian Security Press (ISP), Nasik for opinion. While expressing their expert opinion, authorities at ISP, Nasik have clearly mentioned that the stamps were not only forged, but were also similar to the stamps seized in Crime No. 135/2002 at P.S. Bundgarden, Pune. Thus, the same machinery was used for counterfeiting the Government stamps which were sold at Indore.

20. During investigation, accused Abdul Gafur Mujahid expired. Thus, after completing the investigation, charge-sheet was filed and the following were arraigned to face their trial for the offences punishable u/s. 120-B of I.P.C. read with Sections 255, 258, 259, 420, I.P.C. read with Section 69 of the Indian Stamps Act, 1899 and Rule 11(iii)(a) of the M.P. Stamp Rules, 1942 :-

(1) Abdul Karim Telgi;

(2) Sohail Khan

(3) Shabbir Ahmed Sheikh,

(4) Jagjeevan Yadav

(5) Mansoor Bacholikar

(6) Ashfaq Mulla.

21. At this stage, it may be pointed out that initially, trial proceeded against six persons and out of them, two viz. Mansoor Ahmed and Ashfaq and have been given pardoned and they turned approver. They have been examined as prosecution witnesses'' No. 22 and 24 respectively. It may also be mentioned that during the trial accused Jagjeevan Yadav died and prosecution against him abated that is how trial proceeded against three accused persons viz. Abdul Karim Telgi, Sohail Khan and Shabbir Ahmed Sheikh.

22. At trial, accused abjured their guilt and claimed trial. However, no defence evidence was led on their behalf.

23. Learned trial Judge after considering the prosecution evidence especially the evidence of independent witnesses viz. Udaikishore Sawant (PW-40), Sarfaraz (PW-21), Mansoor Ahmed (PW-22), Sachin Okley (PW-19), Ashfaq Mulla (PW-24) and Kadir Shah (PW-39) held that evidence of these witnesses goes to show that Abdul Karim Telgi hired an office at City Centre, Indore and he also took apartment on rent and was carrying on business of sale of fake Government revenue papers causing loss to the Government to the tune of Rs. 35,00,000/- odd and corresponding gain to himself. Trial Court also considered the evidence produced in the shape of documentary evidence and found that prosecution has successfully brought home the charges against the accused and thus, found them guilty of the offences and sentenced them to various terms of imprisonment as noticed above. It is worthy to mention that appellants had not challenged correctness of the sentences apart from those of fine and in our opinion very rightly so, looking to the evidence of approvers and other independent witnesses on record, which in absence of any challenge, has to be accepted.

24. At the time of arguments, learned counsel for appellants confined his arguments only to the propriety of the fine amount which has been imposed by the trial Judge and placed reliance on a decision of Supreme Court reported in Shahejadkhan Mahebubkhan Pathan Vs. State of Gujarat, . His submission was that substantial the sentence of various terms of imprisonment has been imposed upon accused persons; therefore, the trial Court was not justified in imposing the fine as has been done in the case.

25. On the other hand, learned counsel for respondents invited attention to the various judgments on which reliance was placed by appellants in their

statements u/s. 313 of Cr.P.C. and submitted that no interference is called for with the fine amount.

26. From a close scrutiny of material available on record, we find no merit and substance in this appeal.

27. The determination of right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down. It being a matter of discretion which is guided by various considerations, the Court has always to bear in mind the necessity of proportion or ratio between the offence and penalty. In imposing a fine, it is necessary to have regard to pecuniary circumstances of the accused persons as to the character and making out the offence where substantial measurement of punishment is inflicted; excessive amount should not accompany it except in exceptional cases.

28. Considering the making out of a consummate crime and resultant loss caused to the public revenue by sale of fake, counterfeit stamp papers, adhesive stamps, non-judicial stamp papers, Appellants have caused substantial loss to the Government and corresponding gain to themselves by their ''white collar'' crime. It was an economic crime which has cascading effect. In our considered opinion, this is one of those exceptional cases where the law should come down with heavy hands to deal such kind of persons who are a menace to the Society. In our considered opinion, the facts of this case are quite distinguishable from the facts of the case reported in Shahejadkhan Mahebubkhan Pathan Vs. State of Gujarat, . Hence, in our opinion, no interference is called for with the sentence of fine or the default stipulation imposed by the trial Court. There are no mitigating circumstances so as to interfere with the sentence of fine impose by the trial Court. Consequently, these appeal fail and are hereby dismissed. Judgment of the trial Court against appellants is hereby affirmed.

29. In view of the foregoing discussion, we find no merit and substance in this appeal. Same is accordingly dismissed. Let a copy of this judgment be retained in file of each connected Criminal Appeal. Ordered accordingly.

