

(2019) 12 DEL CK 0122

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4544 Of 2019

Ashok Kumar @ Ashoki

APPELLANT

Vs

State (Gnct Of Delhi)

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Arms Act, 1959 — Section 25, 54, 59

Indian Penal Code, 1860 — Section 341, 342, 354, 354A, 354B, 376(2)(f), 376(2)(k)

Code Of Criminal Procedure, 1973 — Section 161

Delhi Public Gambling Act, 1955 — Section 3, 4

Citation : (2019) 12 DEL CK 0122

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Vineet Jain, Mayank Jain, Kamal Kr. Ghei

Final Decision : Allowed

Judgement

1. By way of the present petition, the petitioner seeks directions thereby quashing the criminal proceedings and charge sheet in case FIR No. 136/2018, dated 14.04.2018, registered at Police Station - Nabi Karim for the offences punishable under Sections 25/54/59 of the Arms Act and consequent proceedings arising therefrom.

2. The case of petitioner is that he was arrested in afore-noted case on 13.04.2018 and after arresting, the I.O. recorded his first disclosure statement on 13.04.2018 itself. However, in order to falsely implicate the petitioner under Arms Act, I.O. recorded his supplementary disclosure statement on 14.04.2018 and in the disclosure statement, allegation of pistol in possession of the petitioner was shown. Accordingly, a raiding party was constituted which was led by the IO SI Mehrab Alam along with other 10 police officials of PS Nabi Karim and a pistol was shown to have been recovered from the house of petitioner. Consequently, present case was registered. Subsequently, another disclosure statement dated 17.04.2018 was recorded by the I.O., wherein the name of the

son of the petitioner came on record with the allegation that weapon had been arranged by him (son) and he absconded with the another pistol and cartridges. He moved anticipatory bail application before the Sessions Court as well as this Court, however, he could not get relief from any Courts and therefore, he surrendered himself. During investigation, nothing incriminating i.e. any pistol or live cartridges were recovered from the possession of son of the petitioner, following which the IO moved an application for release and the Metropolitan Magistrate vide its Order dated 06.09.2018, released the son of the petitioner from this case.

3. It is further the case of the petitioner that apart from the two cases including the present one, in another F.I.R. No.140/2018 U/s 3/4 of Delhi Gambling Act was registered to falsely implicate him. The police officials of Police Station Nabi Karim took all the articles and money of the petitioner from his house at the time of raiding and the IO SI Mehrab Alam implicated the petitioner and his family falsely in illegal acts.

4. It is contended that the petitioner is innocent and has nothing to do with the alleged offence, however, the investigation is totally against all the cannons of law, unconstitutional and also against the powers conferred on the Investigating Officer by the Cr.P.C.

5. Learned counsel for petitioner submits that in the present case, complainant is SI Mehrab Alam and investigation was also carried out by him alone and surprisingly he himself was an IO, which is against the natural justice. Moreover, investigation is biased. It is a well settled law that the complainant and IO cannot be the same person but in the present case, this has happened. The petitioner was falsely implicated in the present case and the charge sheet in the present case suffers with defects and petitioner cannot be held guilty for the offences mentioned in the charge sheet.

6. To strengthen his arguments, learned counsel for the petitioner has relied upon the decision of the Hon"ble Supreme Court in Mohan Lal vs. State of Punjab: AIR 2018 (SC) 3853 wherein it was held by the Apex Court that:

"In a criminal prosecution, there is an obligation case on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair.

The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof."

7. On the other hand, learned APP has relied upon the case of Tarun Jit Tejpal vs. The State of Goa and Anr., [Criminal Appeal No. 1246/2019, arising out of SLP (Crl.) No. 1383/2018], decided by the Hon"ble Supreme Court, whereby it is held that 'the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.'

8. He further relied upon the case of Varinder Kumar vs. State of Himachal Pradesh: 2019 SCC OnLine SC 170, whereby, the Hon"ble Apex Court held as under:

"18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (Supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, prosecutions, trials and appeals prior to the law laid down in Mohan Lal (Supra) shall continue to be governed by the individual facts of the case."

9. In case of Tarun Jit Tejpal (Supra), the Hon"ble Supreme Court opined that "the decision of this Court (Supreme Court) in case of Mohan Lal (Supra) shall not be applicable to the facts of the case on hand as criminal prosecution has been initiated in the present case much prior to the decision in the case of Mohan Lal (Supra). Therefore, the appellant herein cannot be discharged on the ground mainly that the Investigating officer and the complaint/ informant are the same and the trial is vitiated, relying upon the decision of this Court in the case of Mohan Lal (Supra)."

10. It is not in dispute that the complainant is the Investigating Officer of the case in hand and there is no material on record that on said date, another Investigating Officer was not available in the Police Station.

11. In case of Tarun Jit Tejpal (Supra), the case was registered for the offences punishable under Sections 354, 354A, 354B, 341, 342, 376(2)(f) and 376 (2)(k) of IPC. In the said case, though informant was the Investigating Officer of the case, however, the case was registered on the complaint of the prosecutrix and in that case, the Investigating Officer will be the formal witness and the conviction or acquittal shall be based upon the statement of the prosecutrix. Whereas, in the present case, statement of IO is sufficient for conviction. Thus, it is against the principles of natural justice and fair trial.

12. In case of Varinder Kumar (Supra), it is observed that "..... the only issue surviving for consideration is with regard to the case of the prosecution being vitiated in view of Mohan Lal v. State of Punjab: (2018) 17 SCC 627 because PW

- 10 was the informant as also the Investigating Officer. In this case, this particular ground, not having been raised at any earlier stage, the prosecution never had a chance to contest the same. It had not even been pleaded in the appeal."

13. Whereas, the present case is registered under the Arms Act and petitioner raised this issue at the initial stage, at the time of passing order on charge. Therefore, both the cases relied upon by the learned Public Prosecutor have no relevance in the facts and circumstances of the present case.

14. In case of Babu Bhai vs. State of Gujarat: 2002 (12) SCC 254 has held as under:-

"The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth"

15. In the State of Bihar vs. P P Sharma: 1991 AIR 1260, 1991 SCR (2) 1 it was observed by the Hon"ble Supreme Court that :-

"Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism.... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court...."

16. In the case of Megha Singh vs. State of Haryana: 1996 (11) SCC 709, it was held that:-

"He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

17. It is observed in State vs. Rajangam: (2010) 15 SCC 369 that the accused preferred an appeal before the High Court by stating that the officer who had registered the crime, also investigated the said case. According to the submission advanced on behalf of the accused, the crime ought to have been investigated by another independent officer and not by P.W.6 (complainant). Accordingly, the High Court found substance in the submission and acquitted the accused.

18. In case of State of Himachal Pradesh vs. Atul Sharma: 2015 (2) shimLC 693 (CRL.M.A. Appeal No.246 of 2008, decided on 28.02.2015), under the NDPS Act, it was observed as follows:-

"..that complainant is SI Bahadur Singh as per FIR Ext.PW12/A and it is proved on record that entire investigation was conducted by the complainant himself and there was no evidence on record in order to prove that investigation was handed over to some other independent Investigating Officer. It was not the case of prosecution that no other independent Investigating Officer was available to conduct impartial investigation. We are of the opinion that conducting entire investigation i.e. preparation of seizure memo, site plan, recording statements of witnesses by complainant himself has caused miscarriage of justice to accused qua fair investigation."

19. In *Laltu Prasad vs. State of West Bengal*: 2017(2) R.C.R. (Criminal) 237 (Calcutta) (DB), held that the complainant himself acted as the investigating officer by violating the principles of fair and impartial investigation, but should not be resorted to and it is a disturbing feature.

20. Accordingly, keeping in view the facts of the present case and the settled position of law, I hereby quash the FIR No. 136/2018, dated 14.04.2018, Police Station - Nabi Karim for the offences punishable under Sections 25/54/59 of the Arms Act and emanating proceedings thereto qua the petitioner.

21. The petition is allowed and disposed of.

22. Order dasti.