(1971) 03 AHC CK 0008

In the Allahabad High Court

B.M. Lamba APPELLANT

Vs

The State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 15-03-1971

Acts Referred:

Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 165A, 216A
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 165A, 216A
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 165A, 216A

Citation : (1971) CriLJ 1357

Hon'ble Judges : O.P. Trivedi, J

Bench : Single Bench

Judgement

O.P. Trivedi, J.—On 6-12-1962, J. N, Shukla, Manager of the Premier Credit and Instalment Corporation (P) Limited carrying on business at Lucknow, lodged a report against the revisionist B. M. Lamba before the Superintendent of Police, Lucknow alleging that he alone with his brothers Harish Chandra Lamba, Kailash Chandra Lamba, Ratan Lai, Kun-dan Lai, Narain Das and Krishna Kumar had committed offences punishable Under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code; upon which a charge sheet was filed against B. M. Lamba and others by the police in the court of the Special Magistrate, Lucknow on 13-5-1965. In the months of April or May, 1963, B. M. Lamba was enlarged on bail. Thereafter on 2-3-1965 one Om Prakash filed a complaint in the court of the Additional District Magistrate III (Judicial), Delhi against Prithvi Nath, Kundan Lai, Prem Tandon, Smt. Swaran Lata Tandon, J. N. Shukla, S. P. Langer, Grish Chandra Gupta, M. M. Agarwal and A. K. Ganjoor. It was alleged that the said persons along with B. M. Lamba had committed offences punishable Under Sections 467, 468, 471, 420 and 120-B of the Indian Penal Code read with Section 109 of the Code. This case was transferred by the Additional District Magistrate III (Judicial), Delhi the same day to the Sub-Divisional Magistrate Karolbagh ''for inquiry and report u/s 202 of the Code of Criminal Procedure''.

Before the Sub-Divisional Magistrate Karolbagh, B. M. Lamba was summoned by the said complainant as a witness. During the course of his deposition B. M. Lamba refused to answer questions on the ground that the same may criminate him. The Magistrate was thereupon moved by the complainant Om Prakash with a prayer that pardon may be tendered to B. M. Lamba u/s 337 (1) of the Code of Criminal Procedure and his evidence may be recorded treating him as an approver and it was further urged that the protection contemplated by Section 132 of the Evidence Act may also be granted to him. The Sub Divisional Magistrate tendered pardon to B. M. Lamba u/s 337 (1) of the Code of Criminal Procedure and gave him protection against criminal prosecution not only under that provision of the Code of Criminal Procedure but u/s 132 of the Evidence Act also.

Thereafter the statement of B. M. Lamba was recorded before the Sub Divisional Magistrate. The statements of Om Prakash complainant and some other witnesses produced on his side were also recorded by the said Magistrate. On a consideration of this evidence the Sub Divisional Magistrate, however, came to the conclusion that no prima facie case had been made out against the persons charged in the complaint showing that they were guilty of commission of the said offences. This report was forwarded by him to the Additional District Magistrate III (Judicial), Delhi who concurred in the finding of the Sub Divisional Magistrate that no prima facie case in support of the complaint had been made out and dismissed the complaint of Om Prakash on 21-8-1967. When the trial arising out of the report of J. N. Shukla proceeded before the Special Magistrate at Lucknow, B. M. Lamba raised an objection that he could not be prosecuted as protection against prosecution had been granted to him by the Delhi Court u/s 337 (1) of the Code of Criminal Procedure. This contention was rejected by the Lucknow Court.

A revision was filed by B. M. Lamba before the Sessions Judge, Luck-now which was heard and decided by Sri Gur Sharan Lai Srivastava as he then was (now Gur Sharan Lai, J.). This revision was dismissed holding that B. M. Lamba could not claim protection against prosecution in the case arising before the Lucknow Court on the report of J, N. Shukla and that there was no substance in his claim for an order of discharge by the Special Magistrate, Lucknow. One of the points raised in the revision before the Sessions Judge was that the pardon granted by the Sub Divisional Magistrate, Karolbagh was itself invalid and illegal because within the meaning of Section 337 (1) of the Code of Criminal Procedure such a pardon could be granted only in the course of an inquiry contemplated by Chapter XVIII of the Code of Criminal Procedure and not a limited inquiry envisaged by Section 202 of the Code of Criminal Procedure. This contention, however, was not accepted by the learned Sessions Judge who held that the pardon could be validly granted by a Magistrate holding an inquiry u/s 202 of of the Code of Criminal Procedure and its scope was not limited to an inquiry contemplated under Chapter XVIII of the Code. This point is canvassed before this Court also and for reasons which I shall shortly outline I am in agreement with the view taken by the learned Sessions Judge in this respect.

2. Upon rejection of the revision by the learned Sessions Judge B. M. Lamba comes to this Court in revision. The revision is resisted on behalf of opposite parties firstly on the ground that the pardon granted by the Sub Divisional Magistrate, Karolbagh was invalid, being without jurisdiction as the inquiry contemplated by Section 337 (1) of the Code of Criminal Procedure is the inquiry held under Chapter XVIII of the Code and does not cover an inquiry u/s 202 of the Code of Criminal Procedure. Another submission made on behalf of the opposite parties is that even if the pardon granted by the Sub Divisional Magistrate to Lamba may be held to be valid u/s 337 (1) of the Code it afforded him protection against a criminal prosecution only with respect to the offence in the inquiry of which the pardon was granted and did not provide immunity against prosecution with respect to the criminal case pending before the Special Magistrate at Lucknow. To take up the first argument first, the wordings of Section 337 (1) of the Code of Criminal Procedure-are as follows;

337 (1), In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to seven years or any offence under any of the following sections of the Indian Penal Code, namely, Sections 161, 165, 165-A. 216-A, 369, 401, 435 and 477-A, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor, in the commission thereof.

Inquiry'' has been defined u/s 4 (k) of the Code as including every inquiry other than a trial conducted under this Code by a Magistrate or Court.

Section 202 (1) of the Code reads:

202 (1). Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him u/s 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

A proceeding u/s 202 therefore, as the wordings of the section themselves indicate, is also treated by the Code of Criminal Procedure as an inquiry and is therefore covered by the aforesaid definition of the word which is of a very wide connotation. It is a well known canon of interpretation that if the language of a statute is plain and unambiguous its words should be given their ordinary meaning and no words should be added which do not find place in the text. It is noteworthy that the relevant words of Section 337 (1) are ''at any stage of inquiry into or the trial of the offence.'' If the interpretation canvassed for the opposite parties is accepted then it will imply that pardon u/s 337 (1) of the Code of Criminal Procedure ran be granted only at any stage of inquiry under Chapter XVIII of the Code. This will amount to adding the words ''under Chapter XVIII of the Code of Criminal Procedure'' after the words ''inquiry into'' occurring in Section 337 (1) of the Code which is not permissible. The wordings of Section 337 (1) in so far as inquiry is concerned being very general, it must follow having regard to the definition of ''inquiry'' in the Code that the power to grant pardon can be granted by a Magistrate in the course of an inquiry u/s 202 of the Code of Criminal Procedure also and on this ground the validity of the pardon granted to Lamba by the Sub Divisional Magistrate, Karolbagh cannot be successfully assailed.

Another argument in this connection which was addressed by learned Counsel for the opposite parties was that in any case a pardon could not be granted by the Sub Divisional Magistrate, Karolbagh under the proviso to Section 337 (1) of the Code and it could be granted only by the District Magistrate. This argument also to my mind does not bear scrutiny having regard to the language of the proviso. The proviso to Section 337 (1) reads:

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial .....

What the proviso says is this that the power granted u/s 337 (1) cannot be exercised by a Magistrate of the first class other than a District Magistrate where the offence is under inquiry or trial, the only exception being that the said power can be exercised by a Magistrate making inquiry or holding the trial. In this case, upon my view, the Sub Divisional Magistrate, Karolbagh was making an inquiry into the offence u/s 202 within the meaning of the word ''inquiry'' used in the proviso to Section 337 (1) and he being a Magistrate making ''inquiry'' was competent to exercise the power conferred by Section 337 (1) of the Code.

Coming now to the more difficult question and which to my mind is the main question falling for my determination in this revision, namely, whether having obtained a valid pardon from the Delhi Court u/s 337 (1) of the Code B. M. Lamba could claim protection against his prosecution for offences in the case pending before the Special Magistrate, Lucknow it is urged on behalf of Lamba that he is so protected. The question in short is what is the scope of the pardon granted to B. M. lamba by the Delhi Court u/s 337 (1). The wordings of Section 337 (1) do not throw any light on this question but the language of Section 339 (1) appears to indicate that a pardon tendered and accepted u/s 337 (1) will protect the person pardoned not only from prosecution for the offence in which the pardon was granted but also other offences of which he appears to have been guilty in connection with the same matter. Section 339 (1) of the Code reads:

339. (1) Where a pardon has been tendered u/s 337 or Section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by willfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

3. In the case of Queen-Empress y. Ganga Charan ILR(1889) All 79 it was observed that the wordings of Sub-section (2) of Section 337 ''every person accepting a tender under this section shall be examined as a witness in the case'' mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by Section 339) such a person ceases to be triable for the offence or offences under inquiry or (with reference to Section 339) for ''any other offence of which he appears to have been guilty in connection with the same matter.'' This question was considered by the Supreme Court also in the case of The The State Vs. Hiralal Girdharilal Kothari, D.P. Chadda and F.X. Jacobs, . I am respectfully of the view having regard to the language of Section 339, which to my mind provides the cue to the scope of the pardon granted u/s 337 (1) of the Code, that such a pardon protects the person concerned not only against prosecution for the offence in which the pardon was granted but also from prosecution for any other offence of which he appears to have been guilty in connection with the same matter. The question therefore is whether the offence with which B. M. Lamba is charged before the Special Magistrate, Lucknow can be regarded as an offence connected with the same matter in which the pardon was granted to him by the Delhi Court. The prosecution case with regard to the case pending in the Lucknow Court has been summarised in the charge sheet as follows:

From the investigation it came to light that B. M, Lamba, along with other accused at Delhi and Lucknow formed a criminal conspiracy to cheat the Premier Credit and Instalment Corporation (P) Lucknow, to defalcate its funds, forge the documents for the purposes of cheating, obtaining ''money from the company to have known them as genuine and in pursuance thereof the aforesaid offences were committed. B. M. Lamba duped the company in getting his appointment in the Delhi Branch Office of the company on commission basis on the false representation that he was M. A., in History and diploma holder in business administration from London. He thereafter opened two accounts in Laxmi Commercial Bank Delhi in the names of two fictitious firms viz., (1) M/s. Universal Financiers with an initial amount of Rs. 101/-In the month of May, 1961 and (2) M/s. Bharat Auto Financiers with an initial amount of Rs. 100/-. One of the accused Kundan Lai Shangari was appointed as the manager of M/s, Bharat Auto Financiers and allowed to operate on the accounts. The accounts of M/s. Universal Financiers were operated by accused B. M. Lamba himself as Ramlal. B. M. Lamba got a non-existent leyland truck No. BRN 2435 -financed to N. N. Joshi (Harbans Lai) on the basis of forged and false documents submitted to the company and obtained money.

The accused persons including B. M. Lamba, N. N. Joshi (Harbans Lai), Madan Gopal, Jitendra Nath further made a similar false representation that Leyland and T. M. Bz. were available with M/s. Bharat Auto Financiers and M/s. Universal Financiers and executing and submitting forged documents viz., sale receipts, bills and particulars of vehicles etc., got 38 more trucks financed from P.C. I. C, Lucknow, 5 Dodge trucks were also obtained from M/s. Premier Motors, Lucknow, a sister concern and that were got financed to Harbans Lai and others from P.C.I.C., Lucknow which have also been misappropriated and are untraceable.

Cheques after cheques were issued by the Regional Manager, P.C. I. C, Delhi from the instructions of Head Office, Lucknow on the furnishing of false and forged documents in respect of the sale of these vehicles. The money of these cheques was then credited in the two accounts of the said two fictitious firms of B. M. Lamba and later on withdrawn from these accounts dishonestly. Other accounts with this money were opened in other banks and property including several vehicles was purchased by B. M. Lamba in the names of his relations and friends to deprive the P.C. I. C, Lucknow of the money it has spent. Investigation in respect of 22 such vehicles has been completed including those 5 Dodge trucks in which B. M. Lamba and other accused cheated M/s. P.C.I.C., Lucknow to a tune of 5 lacs of rupees."

The case in the complaint of Om Prakash which was filed in the Court of Additional District Magistrate (Judicial), Delhi briefly was that M/s. Premier Credit and Instalment (P) Limited, Lucknow with its head office at Lucknow carried on business of financing the purchase of hire purchase system of motor vehicles by transport operators and others and for this purpose this company was itself obtaining credit from Banks situate at Delhi by pledging hire purchase documents. There was a Branch Office of this company at Delhi also of which Prithvi Nath was the Regional Manager, A. K. Ganjoor was the Sales Manager of the Company; J. N. Shukla was the Accountant, Prem Tandon was the Managing Director and Smt. Swaranlata Tandon was the Director of another company working under the style Premier Motors (Private) Limited with its headquarters at Lucknow and the Premier Credit and Instalment Corporation (Private) Limited was the sister concern of this company started in 1960 of which Smt. Swaran Lata Tandon became the Managing Director and J. N. Shukla was the Director. In the year 1961 the finances of Premier Motors (Private) Limited became straitened and in order to obtain finances for the new venture the persons accused in the complaint hatched a conspiracy to forge documents in order to obtain money from the Banks and insurance companies on the basis of forged documents. The said persons along with B. M. Lamba were alleged to have forged documents and by pledging them with the various Banks at Delhi succeeded in securing substantial amounts of money which they would not otherwise have obtained.

It would thus appear from the above that the criminal case which was started in the Delhi Court upon the complaint of Om Prakash and the criminal case which was pending with the Special Magistrate at Lucknow on the report of J. N. Shukla disclosed two distinct conspiracies. Whereas the object of the conspiracy in the Lucknow x case was to cheat the Premier Credit V. and Instalment Corporation (Private) Limited by forging certain documents and by false and fraudulent misrepresentation, the object of the conspiracy in the Delhi case was to cheat certain banks and insurance companies at Delhi by forging documents which were to be hypothecated with the victims. The case pending before the Lucknow Court therefore has no connection at all with the offences in the proceeding of which pardon was granted to B. M. Lamba and having regard to the above facts it cannot be said that B. M, Lamba appears to have been guilty in connection with an offence with the same matter u/s 339 (1) of the Code of Criminal Procedure with the result that the protection against prosecution which was granted by the Delhi Court u/s 337 (1) of the Code does not afford any protection to him against prosecution for the offence with which he is charged in the case pending before the Special Magistrate at Lucknow. learned Counsel for the opposite parties raised another legal point also challenging validity of the pardon which was granted to B. M. Lamba by the Delhi Court but it is no longer necessary to enter into that point as upon my finding that the pardon granted to Lamba at Delhi does not afford any protection to him against prosecution in the case pending before the Special Magistrate at Lucknow. This revision is liable to be dismissed.

4. The revision is accordingly dismissed.

