
(2007) 03 DEL CK 0151
In the Delhi High Court
Case No : Criminal Rev. P. 264 of 2004

Dinesh Chand Sukhla

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 397, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 463, 471

Citation : (2007) 1 ILR Delhi 191

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.S. Singh and Tripta, for the Appellant; V.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner invokes the revisional jurisdiction of this Court, in respect of a summoning order issued by the trial court. The brief facts of this case are that one M/s. Karam Chand Thapar & Brothers had applied for L-1 license in order to market certain brands of Indian made foreign liquor. The applicants had declared that they had sold the requisite minimum quantities of the relevant brands, in the previous years in other parts of the country. Details of those brands and sale figures for the relevant time i.e. 1993-94 and 1994-95 were disclosed. On the strength of the application, L-1 licenses were issued by the Collector of Excise, Govt. of NCT of Delhi. Apparently, subsequent investigations revealed that the declarations were false and that the sale figures were in correct. Consequently, proceedings were initiated which culminated in cancellation/non-renewal of the licenses.

2. The petitioner, a Chartered Accountant had inter alias furnished two certificates, supporting the applications for the grant of L-1 license. The certificates were premised on examination of books and records of the concerned applicants which included inter alias M/s. Karam Chand Thapar & Brothers (C.S.)

Ltd. The two certificates were issued on the same date, namely, 24.4.1995. One mentioned the quantities in respect of each brands for two financial years and the other mentioned the minimum ex-factory price net of all dues, discounts, rebate etc. in respect of the said brands for different cases containing varied sizes of bottles.

3. The complainant inter alias claimed that the accused were guilty of offences under Sections 420/463/471/120B IPC. The FIR alleged that the firm which applied for the licenses by submitting false documents including affidavits in support of its claim dishonestly with intention to commit fraud and was, Therefore, guilty of offences of forgery and causing unlawful gain for the firm as well as cheating.

4. The petitioner had on an earlier occasion approached this Court u/s 482 Cr.P.C. at the state of investigation claiming a quashing order; apparently since this Court was not persuaded, the petition was dismissed as withdrawn. Subsequently, a summoning order was issued against all the accused. Some co-accused approached this Court u/s 397. The Court was of the opinion that the summoning order issued at that stage had to be revised since it did not disclose any reason. Accordingly, the matter was remanded for fresh decision. In these circumstances, the present impugned order was issued.

5. It is contended by learned Counsel Mr. K.S. Singh, that the entire role attributable and even alleged to have been performed by the petitioner is the issuance of the two certificates. Learned Counsel contended that by no stretch of imagination can it be construed as an intention to commit forgery or the petitioner be a conspirator to the offence. Learned Counsel submitted that ex facie the document disclosed that the certificates were issued upon the materials disclosed. Petitioner acted as a professional i.e. Chartered Accountant. Considerable reliance was placed on the wording used in both the certificates such as "we have examined the books and records of M/s. Karam Chand Thapar & Brothers (C.S.) Ltd., Distillery Division" and "we have examined the books and the records of M/s. Karam Chand Thapar & Brothers (C.S.) Ltd., Distillery Division". Learned Counsel contended that the figures mentioned in the certificates were entirely based upon the records made available and that if the petitioner as a professional was expected to doubt the genuineness of the same, the issuance of relevant certificates even in the normal course would be an impossibility.

6. Learned Counsel relied upon the decision in Hiralal Jain Vs. Delhi Administration, where the Supreme Court had held that an advocate could not be charged for conspiracy to the offence of forgery/falsification of documents merely on the strength of his capacity as a lawyer. In that case certain pleadings were found to have been executed on false premises and by impersonation.

7. Learned Counsel for the State opposed the petition and submitted that one of the reasons why the license was issued by the concerned authorities, was the

furnishing of certificates authenticating the quantities said to have been sold by the applicant in the other parts of the country as well as their ex-factory prices. Learned Counsel contended that the petitioner had to discharge his obligation as a professional to be completely satisfied that contents of the certificates were true and correct. He placed reliance on Auditing and Assurance Standards said to have been issued by the Institute of Chartered Accountants, in accordance with which every Chartered Accountant is required to maintain working papers, files and certified copies of the documents which he certifies. It was contended that the petitioner, Therefore, has got all his defenses and can raise them in the course of the trial.

8. The above narrative shows that there is no serious dispute about the facts; by M/s. Karam Chand Thapar among others applied for L-1 licenses. That concern was a client of the petitioner. In the course of its business, it forwarded some documents containing claims as to sales figures concerning liquor brands in different parts of the country. The petitioner, on the basis of those figures, issued two certificates. The question is whether the petitioner could be said to have been involved to the extent of being a conspirator to the alleged offences, as it was later found that the sales figures furnished were false.

9. Some guidance in this regard can be had from the decision of the Supreme Court in Hira Lal Jain's case. In that case, the accused was a lawyer who had verified the identity of a impersonator who fraudulently claimed compensation which was otherwise not legally due to him. The Court in those circumstances held as follows:

9. Admitted, the appellant has neither impersonated nor committed and forgery. The real charge against him is that of conspiracy u/s 120B I.P.C. But there is no prima facie evidence in respect of this charge. The documentary evidence only shows that the appellant made applications on behalf of the other accused, that he filed his vakalatnamas and that he identified them as the real claimants.

It is well known that the main income of many lawyers in the District Courts is derived from the work of identifying persons and sureties in the Courts.

The other accused must have told the appellant that they were the real claimants. He believed them and agreed to act from them. It seems to us that he did nothing beyond what a lawyer is authorised to do in a Court of law. There is no evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants. Again, there is no evidence whatsoever that there was any concert between him and the other accused antecedent to the filing of the applications and vakalatnamas in court by him. In the absence of such evidence, it cannot be said that there is prima facie evidence for the offence of conspiracy against him.

10. Counsel for the respondent could not dispute before us that there was no direct evidence in respect of the offence of conspiracy against him. But he has submitted that there is circumstantial evidence. According to him there are two

incriminating circumstances against the appellant. Firstly, there is the circumstance that he was engaged only for the purpose of identifying the other accused, secondly, he has appropriated a sum of Rs. 1,400/- towards his fees and it is a heavy fee.

10. In this case the role attributable to the petitioner is not that he applied, or was a party to the application that was eventually granted by the Excise Department; what is alleged against him that he issued two certificates which were enclosed along with the application. The said two documents, if read carefully, do not certify personal satisfaction - they merely certify that on the basis of the records of M/s. Karam Chand Thapar & Brothers (C.S.) Ltd., the quantities were said to have been sold by them. I am of the opinion, in the facts of this case, and upon analysis of the reasoning in Hira Lal's case that the petitioner's role cannot be characterised as a conspirator under these circumstances.

11. As far as the question of maintenance of the records required by the Indian Institute of Chartered Accountants is concerned, that is a matter between the Institute and the petitioner. There can be no dispute that the petitioner, as an enrolled Chartered Accountant is subject to its discipline and that all times he is accountable to behave as per its norms. In the event of any deviation, the Institute is empowered in the other provisions of law to take measures to discipline him. However, that cannot confuse the role of the petitioner, who by no stretch of the imagination be called a conspirator.

12. For the above reasons, I am of the view that the impugned order has to be set aside. The summoning order in respect of the petitioner is hereby quashed. It is made clear that in the course of proceedings if the trial court deems it necessary to proceed against the petitioner at any stage the right to do so u/s 319 Cr.P.C. is reserved.

13. The petition is accordingly allowed in the above terms.