

(2004) 08 CHH CK 0008
In the Chhattisgarh High Court
Case No : M.Cr.C. No. 1530 of 2004

Gyan Chand Agrawal

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 469

Citation : (2004) 2 CGLJ 81

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : V.G. Tamaskar, in M.Cr.C. No. 1530 of 2004 and B.R. Ghosh, in M.Cr.C. No. 1668 of 2004, for the Appellant; P.K. Verma, Addl. A.G., for the Respondent

Judgement

L.C. Bhadoo, J.—M.Cr.C. No. 1530/2004 (Gyan Chand Agrawal v. State of Chhattisgarh) and M.Cr.C. No. 1668/2004 (Suresh Kejriwal v. State of Chhattisgarh) filed u/s 438 of the Code of Criminal Procedure are being disposed of by this common order, as these applications relate to the same Crime No. 76/2004.

2. The accused/applicants have preferred these bail applications u/s 438 of the Code of Criminal Procedure apprehending arrest in Crime No. 76/2004 registered at Police Station Bhilai Bhatti, for the commission of the offences under Sections 420, 467, 468, 469 and 471 read with Section 34 of the I.P.C., for releasing them on anticipatory bail before arrest.

3. The prosecution case in brief, relevant for the disposal of these bail applications is that work order for construction of 33 KV line from Dongergaon to Khujee 33 KV line from Dhara to Thelkadeeh and 33/11 KV sub station Khujee was given by the State Electricity Department Rajnandgaon to M/s Shiva Technomech Private Limited, Bhilai of which accused/applicant Gyan Chand Agrawal is the Managing Director. For execution of the said work M/s Shiva

Technomech Private Limited requested the State Electricity Board for supply of 575 Metric Tones of iron of different category. After scrutiny, the Electricity Board reached the conclusion that only 42 Metric Tones of iron of different category was required for the purpose. Accordingly, Additional Chief Engineer Mr. Ganesh Shankar Deshpande issued a recommendation letter to the Branch Sales Office of Steel Authority of India Limited, Bhilai for supply of 42 Metric Tones of iron to M/s Shiva Technomech Pvt. Ltd. Bhilai. In the months of March to April, 2004 there was excessive demand for iron in the market, as a result of which the price of iron in open market was increased and there was quite difference between the open market price and the concessional sale price at which the Bhilai Steel Plant was selling the steel. Looking to the more demand of iron in comparison to production by Bhilai Steel Plant it was decided that first of all steel will be sold to Govt. Departments and Corporations to meet their demand, thereafter only the left over steel will be sold to private purchasers. As per the allegations in the F.I.R. in order to take benefit of that situation Managing Director of shiva Technomech Pvt. Ltd., Mr. Gyan Chand Agrawal forged two letters shown to be issued by the Additional Chief Engineer, State Electricity Board to Branch Sales Office, one for supply of 202 Metric Tones extra steel and one authority letter shown to have been executed in favour of D.D. Agrawal by said Additional Chief Engineer Mr. G.S. Deshpande for supply of steel from the Branch Sales Office. It is also alleged in the complaint by G.S. Deshpande that, apart from that, one another letter was also forged which was shown to be issued by Executive Engineer, High Pressure Construction Division, Bhilai, and based on these three letters 444 Metric Tones of iron was demanded whereas, actual delivery of 327.6 MT steel was taken by D.D. Agrawal.

4. Shri Gyan Chand Agrawal sold the said steel to Sunil @ Pawan Agrawal of M/s Dinesh Trading Company and also to some other customers. When this fact came to the notice of Additional Chief Engineer Mr. G.S. Deshpande through news items published in the newspaper, after enquiry from Bhilai Steel Plant about the news items Mr. G.S. Deshpande came to know that M/s Shiva Technomech has taken delivery of the excessive steel on the strength of the forged letters shown to be issued by him and the Executive Engineer, as such he immediately reported the matter to the Police on 28th May 2004. Based on this report a case was registered for the above-mentioned offences and the matter is still under investigation. During the investigation, two persons namely D.D. Agrawal, who in fact took delivery of the steel on the strength of the forged letters and Sunil @ Pawan Agrawal who purchased the large quantity of steel were arrested 15th June 2004. However, the investigating team could not lay hand on the present accused/applicants in spite of their best efforts to arrest.

5. I have heard Mr. V.G. Tamaskar, learned Counsel for accused/applicant Gyan Chand Agrawal, Mr. B.R. Ghosh, learned Counsel for accused Suresh Kejriwal and Mr. P.K. Verma, Additional Advocate General for the State/non-applicant.

6. Mr. Tamaskar, learned Counsel for accused/applicant Gyan Chand Agrawal

argued that as far as accused/applicant Gyan Chand Agrawal is concerned, only 42 Metric Tones of steel was sanctioned in his favour. He took delivery of the same. Mr. Gyan Chand Agrawal was not aware about the other delivery taken by Mr. D.D. Agrawal. There is no evidence to connect accused Gyan Chand Agrawal with the forgery, of alleged letters and for taking delivery on the strength of those forged letters. He further argued that the supply of steel by B.S.O. is so systematic and perfect that nobody could take such a huge delivery without involvement of the officials of B.S.O. as the security of plant is with the Central Industries Security Force, the delivery is given only after verifying all the documents by the concerned officials and by Central Industries Security Force. He further argued that it is an admitted fact that after delivery of steel, largest quantity of steel was directly sent to the yard of Sunil @ Pawan Agrawal. In the circumstances, therefore, without having any benefit as the steel was directly delivered to Sunil @ Pawan Agrawal and others, it is not understandable as to why the accused/applicant without any profit had forged the letters and taken the criminal offence on his head. There is no other evidence which shows the involvement of the accused/applicant regarding forgery of letters and taking delivery. There are no allegations that any delivery was taken by the accused/applicant.

7. Shri B.R. Ghosh, learned Counsel for accused/applicant Suresh Kejriwal argued that accused/applicant Suresh Kejriwal used to purchase M.S. Wire from Gyan Chand Agrawal and Gyan Chand Agrawal took loan from the accused/applicant to the tune of Rs. 7,22,000/- for purchase of steel and that was returned to Suresh Kejriwal and no steel was taken by Suresh Kejriwal, therefore this accused was not involved in the crime, as such he is entitled for anticipatory bail.

8. On the other hand, Mr. P.K. Verma, Additional Advocate General argued that Chhattisgarh State Electricity Board Rajnandgaon allotted some construction work to accused Gyan Chand Agrawal and in the first instance he asked for 575 MT of steel, whereas, the State Electricity Board issued recommendation letter only for 42 MT. Such a huge demand raised by Gyan Chand Agrawal itself goes to show his involvement in the crime. He further argued that no one else than accused/applicant Gyan Chand Agrawal was knowing about the demand of steel by the Chhattisgarh State Electricity Board and as per the evidence of various witnesses even Gyan Chand Agrawal used to go to the B.S.O office for taking delivery. These facts show that Gyan Chand Agrawal was the person who sold the steel to Sunil @ Pawan Agrawal and other persons and Gyan Chand Agrawal, Suresh Kejriwal D.D. Agrawal and Sunil @ Pawan Agrawal and Ors. were party to the conspiracy and without their involvement such a huge quantity of steel could not have been taken. He further argued that as far as Suresh Kejriwal is concerned the story put forth by his counsel that he simply advanced loan to Gyan Chand Agrawal is not correct. In fact, the D.D. in the name of B.S.O. was prepared by Suresh Kejriwal and the delivery was taken together by D.D. Agrawal, therefore, Gyan Chand Agrawal cannot say that only the delivery of 42

MT of steel was taken by him.

9. After hearing learned Counsel for the parties, I have perused the case diary, it is an admitted position that the alleged forged letters recommending allotment of steel were in favour of M/s. Shiva Technomech Private Limited of which accused/applicant Gyan Chand Agrawal is the Managing Director. For delivery of steel D.Ds. of the amount were prepared directly in the name of the B.S.O. and the said D.Ds. were given by Sunil @ Pawan Agrawal and Suresh Kejriwal. Without connivance and knowledge of accused/applicants Gyan Chand Agrawal, Suresh Kejriwal and others it could not have been possible.

10. A perusal of the statement of one Sujoy Mukherjee Deputy Chief (Marketing) Bhilai Warehouse, reveals that the steel was handed over to D.D. Agrawal after checking the authority letter in the name of D.D. Agrawal and whose signatures were also obtained on the challan. During the delivery period, accused Gyan Chand Agrawal of M/s Shiva Technomech Pvt. Ltd. and D.D. Agrawal used to visit B.S.O. invariably. Similar is the statement of one Anup Nair of B.S.O., Bhilai, who has said that accused/applicant G.C. Agrawal along with D.D. Agrawal used to come to take delivery based on the letters. Therefore, at this stage, looking to above facts of the matter it cannot be inferred that accused/applicant Gyan Chand Agrawal and Suresh Kejriwal were not party to the conspiracy for taking delivery of the steel from B.S.O. Bhilai, on the strength of the forged letters. Without commenting upon the correctness or otherwise, of the allegations in the FIR, it is apparent that the allegations in the FIR pertain to conspiracy. Cheating and thereby causing personal gain to the accused/applicants by taking delivery of the huge quantity of steel on concessional rates on the strength of the forged letters the investigating Agency requires further detailed investigation in the matter. It is not out of place to mention here that in the present educated society and with increase of business activities where high stakes are involved, the crimes are being committed in a very systematic and most sophisticated manner, therefore, if the investigating Agency is not allowed to conduct custodial effective interrogation, then it is difficult for the investigating Agency to bring the real culprits to book. Therefore, in such a case, in order to find out the real culprits, for just and fair investigation and also in order to unearth the real culprits to the conspiracy I am of the considered opinion that the custodial effective interrogation is imperative and for this I am fortified in my view by the judgment of the Hon'ble Apex Court in the matter of State Rep. by the C.B.I. Vs. Anil Sharma, The following observations made by the Hon'ble Supreme Court in State Rep. by the C.B.I. Vs. Anil Sharma, may be noticed with advantage:

We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favorable order u/s 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information's of and also materials which would have been concealed. Success in such interrogation would elude if the suspected

persons knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need be countenanced for such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct them selves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders.

Therefore a detailed investigation, in the facts and circumstances of the case, is required to unearth the real culprits who were the party to the conspiracy of the forgery of the documents and delivery of large quantity of steel on confessional rates on the strength of forged letters for personal gain.

11. In the result, I am of the considered opinion that it is not a fit case in which the benefit of Section 438 of the Code of Criminal Procedure should be extended to the accused/applicants. The applications are, therefore, liable to be rejected and the same are rejected.

12. Bhilai Steel Plant is an undertaking of Central Government of India working under the Steel Authority of India, Ministry of Steel and Plant Govt. of India. In this case huge quantity of steel i.e. around about 300 MT of steel was issued by the authorities of B.S.O. on the strength of the forged letters and as per procedure number of officials of the B.S.O before actual delivery of the steel were required to verify, check and sign the papers, therefore, it is difficult to say that without connivance of the officials of B.S.O. office it could have been possible to issue such a huge quantity of steel on the confessional rates. The way the criminal conspiracy was hatched up by the businessmen dealing in the steel and officials of B.S.O., looking to the dimensions of the crime and the way the investigation so far conducted by the local police and that the Bhilai Steel plant is one of the prestigious plants of the country in which crimes are being regularly committed in a planned and sophisticated manner by the criminals in one way or the other, which is affecting the economy of the country, therefore, I feel it imperative that the investigation should be conducted by an expert investigating Agency. It is therefore, ordered that C.B.I shall take up the investigation with immediate effect to bring to book the real culprits involved in the crime. It is further directed that the local police should hand over the investigation to C.B.I. with immediate effect having jurisdiction over the area. The C.B.I. should investigate the matter and after completion of the investigation, submit charge sheet before the competent Court having jurisdiction over the area.