(2011) 04 DEL CK 0345

In the Delhi High Court

Case No : Criminal M.C. 930 of 2011

Jacob Martin APPELLANT

Vs

State of NCT of Delhi RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 482, 82
Passports Act, 1967 — Section 12
Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2011) 2 JCC 1268

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Rakesh Dwivedi, Abhijat P. Medh, Rauf Rahim, Viplav Sharma and Yadunandan Bansal, for the Appellant; Pawan Sharma, Standing Counsel and Navin Sharma, APP for State, Harsh Prabhakar and R.A. Sanjeev, DCP, Dev Raj, ACP and Rang Lal, SI, for the Respondent

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioner u/s 482 of the Cr.PC, praying inter alia for quashing of the orders dated 5.3.2011, 26.11.2010 and 22.12.2010 passed by the learned ACMM and for quashing of process dated 3.1.2011 u/s 82 Cr.PC issued by learned ACMM in the proceedings arising from FIR No. 554/2004.

2. The brief facts of the case as set out in the status report filed by the State in the connected matter, i.e., Bail Application No. 218/2011, are that the Petitioner who claims to be a cricketer of repute at the international level and is currently employed by the Railways, was the Manager of a cricket club situated in Vadodara, by the name of Ajwa Sports Club. In his capacity as the manager of the said club, the Petitioner used to organize cricket teams, which would play friendly matches in United Kingdom with local English cricket clubs. In one such trip to United Kingdom, the Petitioner took a person by the name of Nemesh Kumar Manu Bhai Patel as a member of his cricket team. The said person however stayed back in United Kingdom, though the Petitioner returned to India.

On 11.12.2004, at the instance of the Immigration Department, IGI Airport, the aforesaid FIR was registered with Police Station: IGI Airport, New Delhi under Sections 420/468/471 IPC and Section 12 of the Passport Act, against Nemesh Kumar Manu Bhai Patel, who had been caught by the United Kingdom Immigration Department and deported back to India, as an illegal entrant on the ground that on a scrutiny of his passport, it was found that the home stamp of United Kingdom was counterfeit. In the course of the investigation, from the disclosures made by the accused/passenger, it was ascertained that the Petitioner alongwith one Rajubhai Patel had taken `7 lacs from the accused/ passenger and had arranged for him to travel to United Kingdom, by posturing as a member of a cricket team. For the said purpose, they had obtained a UK visa for accused/Petitioner from the British High Commission. He further disclosed that while in United Kingdom, they had got a counterfeit/forged United Kingdom home office stamp affixed on the passport of the passenger/accused, through an agent namely, Janakraj Bhogilal Pancholi, on payment of 3000 pounds. Further, three public witnesses, namely, Kritbhai Shankarbhai, brother-in-law of the accused/passenger, Rohit Purushottam Patel, a friend of Kritbhai and Rekha Ben Patel, mother-in-law of the accused/passenger were examined and they corroborated the facts disclosed by the accused/passenger. The British High Commission was also requested by the Investigating Officer that the documents and visa related to the accused/passenger be handed over, however he was informed that the said documents had been weeded out and could not be provided. It is stated that investigation was continued in the case and it was finally realized that further investigation into the said matter could only have been made with the assistance of the Petitioner.

3. The Petitioner has averred in the petition that he was informed about the registration of the case in May-June 2010. The IO issued a notice to the Petitioner u/s 160 Cr.PC on 13.07.2010, calling upon him to appear before him on 27.07.2010. However, the Petitioner did not join the investigation. A second notice was issued to the Petitioner on 28.07.2010 for his appearance before the Investigating Officer on 23.8.2010 and for providing a list of the players of Ajwa Sports Club, Baroda, who had gone to United Kingdom alongwith him. However, the Petitioner neither joined the investigation nor did he furnish the list of players to the Investigating Officer.

4. Finally, on 16.11.2010, the Investigating Officer approached the learned ACMM with a request that non-bailable warrants be issued against the Petitioner and the agent, Rajender Bhikhubhai @ Rajubhai Patel, for the purpose of further investigation. Non-bailable warrants against them were issued by the Court on the same date. Pursuant to that, raids were conducted at the houses of the Petitioner and the agent, but the warrants could not be executed as neither of the two could be found. On 22.12.2010, the Investigating Officer submitted an application before the learned ACMM stating inter alia that warrants against the Petitioner and his co-accused could not be executed and that they were deliberately avoiding arrest. It was prayed that in the said circumstances,

process u/s 82 Cr.PC be issued against the said persons. On 3.1.2011, the learned ACMM ordered for process to be issued against the Petitioner u/s 82 Cr.PC, for his appearance on 18.2.2011. On 03.1.2011 itself, the co-accused, Rajender Bhikhubhai @ Rajubhai Patel was arrested and after a period of one month he was released on bail. He had also made disclosures corroborating the story of the accused/passenger. On 18.2.2011, instead of appearing before the learned ACMM as directed, the Petitioner filed an application for recall of the NB Ws and process u/s 82 Cr.PC issued against him by the learned ACMM. The said application for recall was however dismissed vide order dated 5.3.2011. Hence the present petition.

5. Learned Senior Counsel for the Petitioner stated that the NB Ws and process u/s 82 Cr.PC were erroneously issued against the Petitioner and that the court below failed to appreciate the fact that he has always been ready and willing to join the investigation. It was stated that due to the ill health of his mother, the Petitioner could not join the investigation till December 2010. It is further stated that the Petitioner had travelled to Delhi on 26.12.2010 to appear before the Investigating Officer. On his arrival at Delhi, the Petitioner found out that the Investigating Officer was out of station and he therefore stayed on till 30.12.2010. On 30.12.2010, the Petitioner alongwith his lawyer approached PS IGI Airport, where he had met ACP Dev Raj and DCP Mr. R.A. Sanjeev and remained with them for two hours and subsequently, the said officers contacted the Investigating Officer over telephone and after a detailed discussion with him and on receiving an assurance from the Petitioner that he would join the investigation, he was allowed to return to Vadodara. The attention of this Court was drawn to the letters dated 18.01.2011 and 9.2.2011 sent by the Petitioner to the ACP/DCP, where he had expressed his willingness to co-operate with the investigation. It was submitted that the learned ACMM erred in issuing the NB Ws against the Petitioner without following the proper procedure of first issuing summons and other process to secure his presence.

6. Learned Standing Counsel for the State vehemently opposed the present petition on the ground that till date, the Petitioner had neither appeared before the Investigating Officer, nor joined the investigation. It was contended that inspite of issuance of NB Ws and process u/s 82 Cr.PC, the Petitioner has deliberately evaded arrest. It was pointed out that though the Petitioner is employed with the Western Railways where he is serving as a CTI, he has remained absent from duty for a period of one and a half years. It was submitted that the Petitioner had filed an application before the learned ASJ for grant of anticipatory bail and when the same was dismissed on 10.2.2011, he was strongly advised to join investigation, but he failed to do so. The attention of this Court was drawn to the letter dated 18.1.2011 faxed by the Petitioner to the ACP/DCP on 20.1.2011, where he mentioned his meeting with them at Delhi on 28.12.2010 and it was submitted that the Petitioner had made similar submissions before the learned ASJ on 7.2.2011 during the hearing on his bail proceedings. However, on 9.2.2011, when it came to his knowledge that the ACP/

DCP had filed an affidavit before the learned ASJ stating that the Petitioner had never met them and that DCPR.A. Sanjeev had remained on casual leave w.e.f. 27.12.2010 to 29.12.2010, the Petitioner suddenly changed track. On the very same date, i.e., 9.2.2011, the Petitioner faxed a letter to the ACP/DCP for amending his previous letter dated 18.1.2011 and claiming that the date of meeting was wrongly mentioned as "28.12.2010" and in fact the correct date was "30.12.2010". He simultaneously filed an additional affidavit before the learned ASJ seeking to amend his bail application, to state that his meeting with the DCP/ACP had actually taken place on 30.12.2010 and not 28.10.2010 as stated earlier. Learned Standing Counsel contended that the change of date was a sheer afterthought and an attempt on the part of the Petitioner to improve his case and that the fact of the matter is that the Petitioner never met the DCP/ACP at Delhi on either 28.12.2010 or 30.12.2010. It is the contention of the State that in the light of the fact that the Petitioner has all along been avoiding arrest and till date he has not joined the investigation and has further misled this Court, the impugned order of the learned ACMM needs no interference.

7. This Court has heard the counsels for the parties. The argument on behalf of the Petitioner that the learned ACMM erred in issuing the NB Ws without following the proper procedure of law, has been dealt with at length in the impugned order. The learned ACMM has not only dealt with the facts of the case, and the relevant provisions of the Statute, he has also examined all the decisions cited by the Petitioner in support of his arguments only to conclude that there was no merit in the said application seeking cancellation of the order dated 16.11.2010 by which NB Ws were issued against the Petitioner and the orders dated 22.12.2010, by which process u/s 82 Cr.PC was issued against him and finally, the subsequent process dated 3.1.2011.

8. This Court is inclined to agree with the learned ACMM that the authorities relied upon by the Petitioner would have come to his aid had he not neglected to join the investigation or not evaded arrest. Records reveal that the Petitioner was issued two notices dated 13.7.2010 and 28.7.2010 u/s 160 Cr.PC for his appearance as a witness before the Investigating Officer and only when he failed to appear for a period of over four months pursuant to the said notices, was a request made by the IO to the learned ACMM in last week of December 2010, that NB Ws be issued against the Petitioner. Even the said NB Ws could not be executed against the Petitioner as he continued to evade arrest. When all the above steps proved futile, as a last drop measure, the Investigating Officer requested the trial court to issue process u/s 82 Cr.PC to secure the presence of the Petitioner. Looking at the above measures taken by the IO to secure the presence of the Petitioner before him, it is evident that due diligence was exercised by the IO before approaching the Court for issuance of process u/s 82 Cr.PC.

9. Further, admittedly, fact of the registration of the FIR in the month of May-June 2010 was well within the knowledge of the Petitioner. Yet as per his version,

it was only in the month of December 2010 that he allegedly approached the Investigating Officer. It is also significant to note that even though the learned ASJ advised the Petitioner to join investigation while rejecting his bail application on 10.2.2011, he failed to do so. The Petitioner further did not appear before the learned ACMM on 18.2.2010, as directed in the process issued u/s 82 Cr.PC. Instead, he filed an application for recall of the orders without bothering to appear before the court of the learned ACMM. From the aforesaid conduct of the Petitioner, it is quite evident that he has been deliberately avoiding arrest and hence, the contention that proper procedure was not followed by the learned ACMM before taking coercive measures to secure the presence of the Petitioner before the court, is not borne out by the record.

10. The contention of the learned Senior Counsel for the Petitioner that the Petitioner had expressed his willingness to join the investigation in his letters dated 18.1.2011 and 9.2.2011, cannot be of any avail for the reason that the abovementioned letters were issued subsequent to the issuance of NB Ws and process u/s 82 Cr.PC. Further, in the order passed in Bail Application No. 218/2011, decided by a separate order passed today, this Court has expressed its serious reservations with respect to the contention of the counsel for the Petitioner that he had appeared before the DCP/ACP, at PS IGI Airport on 30.12.2010, and participated in the investigation, in view of the affidavits of the DCP/ACP denying that any such meeting took place either on 28.12.2010 or 30.12.2010, more so when the DCP had remained on casual leave from 27.12.2010 to 29.12.2010. It is apparent from the record that the Petitioner has been intentionally avoiding the Court''s proceedings. Records reveal that the IO had given a long rope to the Petitioner to present himself and participate in the investigation voluntarily, however the Petitioner has chosen to tie himself up with the very same rope, leaving no room for doubt in the mind that he was unwilling to co-operate in the investigation and it had become imperative to issue NB Ws and the process u/s 82 Cr.PC to secure his presence.

11. Given the aforesaid facts and circumstances, this Court declines to interfere in the present petition, by exercising its inherent powers vested u/s 482 of the Cr.PC. However, in view of the fact that upon the directions issued to the Petitioner by this Court on 15.3.2011, in his Bail Application No. 218/2011, calling upon him to present himself in Court on 4.4.2011, the Petitioner duly appeared, he is granted a period of one week to present himself before the trial court. If the Petitioner surrenders before the trial court within the time granted, the process issued against him u/s 82 Cr.PC shall be recalled.

12. The petition is disposed of.

