
(1967) 08 AHC CK 0037

In the Allahabad High Court

Case No : Criminal Rev. No's. 726, 771 and 784 of 1965

Jagannath

APPELLANT

Vs

Estate

RESPONDENT

Date of Decision : 30-08-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B

Citation : (1967) 37 AWR 838

Hon'ble Judges : Rajeshwari Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajeshwari Prasad, J.—This petition in revision has been filed by one Shri Jagannath. Connected with this petition are revision petitions Nos. 778 of 1965 and 784 of 1965. Criminal Revision No. 771 of 1965 has been filed by three persons, namely, Banshi Lal, Kamta Prasad and Kedar Nath while revision petition No. 784 of 1965 has been filed by one Sitamber.

2. All the three revision petitions arise out of an order of Sri K.C. Sinha, Magistrate I Class, Mirzapur dated 30-9-1963 by which the learned Magistrate committed the Petitioners along with five others to the court of session to stand trial for various offences.

3. Against the order of commitment made by the learned Magistrate, some petitions in revision were filed before the Sessions Judge Mirzapur which were dismissed by the learned Sessions Judge by his order dated 16-3-1965.

4. Jagannath who has filed revision petition No. 726 of 1965 was committed to stand trial before the court of sessions for offence u/s 120-B IPC. Sitamber who has filed Criminal Revision No. 784 of 1965 was committed to stand trial for offences Under Sections 120-B, 109/409, 408/34 and 231/34 IPC and Banshi Lal, Kamta Prasad and Kedar Nath for offences Under Sections 120-B and 411/34 IPC.

5. I will first deal with the case of Jagannath who as mentioned above was committed to stand trial for offence u/s 120-B IPC only.

6. The case for the prosecution was that there was a firm by the name of "Brahmdeo Singh Dubey" at Pasarhatti Mirzapur. Brahmdeo Singh Dubey and Kalyan Das were the two partners of that firm and Shri Sri Niwas Prasad Singh Raja of Kantith was the creditor of the firm. Later on Th. Makrand Rao joined the partnership. Thereafter Kalyan Dass approached the Raja through Br-ahmadeo Singh Dubey, who happened to be the Mukhtareaum of the Raja and made a request that the Raja should become a partner instead of continuing as a creditor. On 22-10-1957, a deed of partnership was executed between the Raja, Brahmdeo Singh Dubey, Makrand Rao and Kalyan Das. This new partnership firm, however, continued to carry on the business under the old firm named "Brahmdeo Singh". This firm was registered on 1-4-1958. According to the terms of the deed of partnership, the Raja was the Financing partner while the others were working partners. Kalyan Das was entrusted with the entire business of the firm including the business of purchase and sale of goods as well as realisation of sums due to the firm, so also general management and of keeping and maintenance of proper accounts. The accounts of the firm were to be closed on every kartik badi amavasya. According to the prosecution case, Kalyan Das employed Badri Prasad, Dwarika Prasad and Sitambarnath to carry on the work of the firm. On 12-12-1960, certain merchants from Kanpur went to Brahmdeo Singh Dubey and demanded payments of their dues against the firm. Brahmdeo Singh Dubey asked Makrand Rao to look into the affairs of the firm which they had not seen for about four or five months previous to that date. He also directed Makrand Rao to make enquiries from Kalyan Dass with regard to the yearly account of the firm which had not been submitted till then. Makrand Rao went to the firm where he found scanty stock. Kalyan Dass promised to show accounts to him but he omitted to do so. On 14-12-1960, Brahmdeo Singh Dubey heard that the firm's shop had been closed and that Kalyan Dass had disappeared with the cash and account books. Thereupon, Brahmdeo Dubey got suspicious and lodged a report on 15-12-1960 with the Superintendent of Police, Mirzapur. A formal first information report was registered at the police station Kotwali city Mirzapur. As a result of investigation it was found that the Petitioner along with remaining five persons had entered into a criminal conspiracy to defraud the financing partner of his money and that in pursuance of that conspiracy different conspirators did different acts.

7. During the course of investigation, the investigating officer took search of the shop of the firm and recovered clothes, some cash memos and somebahis that were available, in the presence of the witnesses and Brahmdeo Singh Dubey, Makrand Rao and Ramesh Prasad and recovery memo about the same was prepared. On the basis of a list furnished by Makrand Rao containing details of goods and list of dealers from Kanpur and Bhagalpur who had sent goods to the firm, the investigating officer made search of the shops of accused Banshi Lal, Kamta Prasad, Kedar Nath and Ganesh Prasad as well as of Sri Narain and Badri

Prasad and of the house of Sitamber Cloth purporting to be of the firm were recovered from those places. The investigating officer further seized the bahi of the shop of Jagannath at Sultanpur which contained an entry showing payment of Rs. 8,000/- in the name of Ganesh Prasad through Sri Narain. It was as a result of that investigation, that charge-sheet was submitted against all the Petitioners and the other co-accused.

8. The evidence against Jagannath Petitioner consists of the statement of the investigating officer. The investigating officer stated about the entry in the bahi of Jagannath according to which on 6-12-1960, payment of Rs. 8,000/- was shown to Ganesh Prasad through Sri Narain, although in the rokar bahi of 5-12-1960 there was only a balance of Rs. 4,700/-. The accused Ganesh Prasad denied receiving the alleged amount of Rs. 8,000/- from the Petitioner Jagannath, The accused Sri Narain admitted to have received the alleged amount from Jagannath. Sri Narain, however, added that he paid back that amount to Jagannath Petitioner. The Petitioner himself admitted to have paid Rs. 8,000/- to Ganesh Prasad through Sri Narain and to have received back that amount.

According to the evidence of the prosecution, cloth from different dealers of Kanpur and Bhagalpur were sent to this firm during the months of September and October 1960 for Rs. 1,48,079.82 P only. No entries with regard to them were, however, found in the bahi of the firm. The learned Magistrate has found that the sale of goods by the firm was never so brisk and that, therefore, he took the view that the accused had conspired to dispose of the goods in such a short time to defraud the financing partner. The learned Magistrate also found that only trusted persons and relations of Kalyan Dass were selected for the disposal of the said goods. Accused Dwarka Prasad and Sitamber Nath are the sons of Kalyan Dass, who, however, died during the pendency of these proceedings. Accused Ganesh Prasad and Jagannath the Petitioner are sons-in-law of Kalyan Das. Accused Banshi Lal is samdhi of Kalyan Dass and Kamta Prasad and Kedar Nath are the sons of accused Banshi Lal. Accused Sitamber son of Bahadur is sarhoo of Sitamber son of Kalyan Dass. The learned Magistrate further found that cloth worth about Rs. 45,000/- was sold to accused persons and cloths worth about Rs. 47,000/- was sold to other 200 persons. On the testimony of the investigating officer, the learned Magistrate took the view that the part played by Jagannath Prasad Petitioner in, the conspiracy was that he made bogus entry showing payment to Ganesh Prasad through Sri Narain Rs. 8,000/- on 6-12-1960 with a view to enable the firm Ganesh Prasad Sri Narain to show that the said firm Ganesh Prasad Sri Narain actually made payment to the firm Brahmedo Singh for the goods received by it from the firm Brahmedo Singh. The learned Magistrate also took the view that the testimony of the investigating officer proved that Jagannath accused had only Rs. 4,700/- in his rokar bahi as balance. According to the learned Magistrate, there was no cogent reason why the sum of Rs. 8,000/- was paid to Sri Narain for Ganesh Prasad by Jagannath Petitioner. It is only on such consideration that the learned Magistrate found that a prima facie case for offence u/s 120-B IPC had been made out against the Petitioner

Jagannath.

9. Shri C.S. Saran learned Counsel for Jagannath has urged that the only circumstances against the Petitioner that have been alleged by the prosecution is that firstly he is a son-in-law of Kalyan Dass deceased accused and secondly there was an entry in his account book of the payment of Rs. 8,000/- to Shri Ganesh Prasad through Sri Narain. According to the learned Counsel, the entries of the account books of Shri Jagannath clearly established that it was not true that there was only a balance of Rs. 4,700/- in the rokar bahi of Jagannath Petitioner on 5-12-1960. It was pointed out that that figure represented the amount brought forward on that date; there were other amounts also which were received on that date.

10. After hearing the learned Counsel for the parties, I find that there is hardly any evidence of conspiracy against Jagannath Petitioner in this case. According to the prosecution case, the object of the conspiracy between Kalyan Dass and the other accused was to commit criminal breach of trust in respect of properties of the firm Brahmdeo Singh Dubey with a view to defraud the financing partner. Direct evidence of agreement between conspirators is in most cases not possible but the question in the present case is whether the two circumstances sought to be used against Jagannath Petitioner, which I have mentioned above, are sufficient to lead to the inference that Jagannath Petitioner had also entered into an agreement with the other accused with the object of committing criminal breach of trust in respect of the properties of firm Brahmdeo Singh. I am of the view that such an inference did not necessarily flow from the aforesaid circumstances. Before a prima facie case u/s 120-B IPC can be said to have been made out against a particular person, it is to be shown either by direct evidence or by circumstantial evidence that such a person had connection with the alleged conspiracy. Proof of connection of such a person with an overt act of one of the conspirators alone, is not sufficient to lead to the inference that such a person had connection with the conspiracy itself. All that is alleged against Jagannath Petitioner is that he made an entry in his account book to show that a sum of Rs. 8,000/- was paid by him to Ganesh Prasad, through one of the conspirators, Sri Narain, It may be that without being a party to the conspiracy with the object of committing criminal breach of trust in respect of the properties of firm Brahmdeo Singh Dubey, the Petitioner may have been a party to making an incorrect entry in his account book or alternatively may have paid the sum of Rs. 8,000/- to Ganesh Prasad through Shri Narain. This by itself would not lead to the inference that he was one of the conspirators who had projected to commit criminal breach of trust in respect of properties of firm Brahmdeo Singh Dubey. The further fact that he was the son-in-law of Kalyan Dass, who was alleged to be one of the conspirators, by itself, would not lead to the inference that the Petitioner Jagannath Prasad was in league with the conspirators. In order to make out a prima facie case against Petitioner Jagannath, some evidence to show that he was a party to the agreed conspiracy itself, was necessary. In the absence of such evidence, it is difficult to agree with the courts below that a prima facie

case was made out against the Petitioner Jagannath for his being committed to the court of session to stand his trial for offence u/s 120-B IPC.

11. So far as the revision petition of Sitamber, Banshi Lal, Kamta Prasad and Kedar Nath is concerned, I am unable to find any force to the same. Search was actually made of the shop; and house of these persons and cloth belonging to the firm had been recovered from their possession. This alone is sufficient to make out a prima facie case against these persons of their being parties to the conspiracy, the object of which was to commit criminal breach of trust in respect of the properties of firm Brahmdeo Singh Dubey.

12. The revision petition No. 726 of 1965 of Jagannath is allowed and the order of the learned Magistrate and the learned Sessions Judge committing him to the court of sessions to stand his trial for offence u/s 120-B IPC is set aside. He is discharged. The revision petition No. 771 of 1965 on behalf of Banshi Lal, Kamta Prasad and Kedar Nath and the revision petition No. 784, of 1965 on behalf of Sitamber are dismissed.