
(1984) 03 DEL CK 0010

In the Delhi High Court

Case No : Criminal Misc. No. (M) 121 of 1984

Lalji and Co. and others

APPELLANT

Vs

Delhi Administration and others

RESPONDENT

Date of Decision : 19-03-1984

Acts Referred:

Citation : (1984) 2 ILR Delhi 578

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Judgement

Khanna, J.—This petition under s. 482, Cr. P.C., and art. 227 of the Constitution of India has arisen in following circumstances :

A complaint stands filed by one R. K. Roye, ITO, District X(3), Delhi, against M/s. Shanti Vijay & Co. and 17 others, with allegations that they have committed offences under s. 277/278 of the I.T. Act, 1961, and s. 193/196 IPC. It is pending in the court of Addl. Chief Metropolitan Magistrate, Delhi. On its basis, summons were issued to all the respondents for appearance and facing trial. M/s. Lalji & Co. and its three partners, who are imp leaded as respondents No. 6 to 8 in that complaint, feeling aggrieved against the service of those summons on them, have now moved this petition for setting aside and/or quashing the issue of process to them by the Additional Chief Metropolitan Magistrate.

2. Notice to show cause this petition be not admitted, was issued to the respondents including the complaint-ITO. Some of them have been served. The petition is connotation and opposed by the complainant ITO.

3. After hearing the present petitioner and the said complainant, I am of the opinion that this is a fit case for admission. The petition is accordingly admitted.

4. Since arguments have been heard on the merits of this petition, I proceed to dispose of the same as I find that in the terms of the averments made in the complaint, no case was made out against the present petitioners which could

have justified the issue of process against them. Here, it may be mentioned that the petitioner is situated at Bombay and so are all its partners. The complaints as it is likely to take considerable time and hearings before if it finally gets decided, and I do not see any point in requiring the petitioners to continue making appearance in the Delhi Court in that protracted trial, when no case whatsoever has been made out against them in the complaint itself.

5. I am conscious in this regard that the inherent powers under s. 482, Cr. P.C., are not to be readily exercised when the complainant has had no opportunity to substantiate the allegations made against the accused persons, much less that any evidence was rendered by him. This court has also not to scan minutely the merits of the allegations made and embark upon assessing the possibilities which may ultimately result in bringing home to the accused, the offence alleged against him. In case a *prima facie* case existed with the trial court justifying the issue of process, the High Court would keep its hands off and decline to interfere. However, at the same time, where the averments made in the complaint, even if taken at their face value and accepted in their entirety, do not bring out the commission of the offence alleged, there would be no question of appreciation of the evidence or possibilities. It would be merely looking at the complaint to decide whether the offence alleged is disclosed or not and if it is patent that none such was disclosed, it would be manifestly unjust and an abuse of the process of the court to allow the issue of process to subsist and the trial to proceed. I am of the considered opinion that the present case falls in this latter category.

6. Briefly stated, the averments made in the complaint are that the Maharaja of Gwalior wanted to dispose of his jewelry worth about rupees 40 lakhs. M/s. Shanti Vijay & Co. (hereinafter mentioned as accused No. 1), entered into negotiations with the Maharaja and struck a deal. In this process, this accused associated M/s. Lalji & Co. as well (hereinafter mentioned as accused No. 6), and what they mutually agreed to was that the purchase of jewellery to the extent of Rs. 13,25,000 would be financed by the accused No. 6 with corresponding sharing of the jewellery so purchased. Thus each of these accused Nos. 1 and 6 had to arrange substantial cash for the purchase of jewellery. Accused No. 1 on its part claimed to have borrowed different amounts from 11 persons totaling rupees 8.15 lakhs. They were all from Bombay and are implicated as the other accused in the complaint filed in the trial court. The amounts so obtained from those persons were entered into the account books of accused No. 1 as cash credit obtained from them. During the course of assessment for the assessment year 1972-73 (the previous year of which these cash credits were), the ITO required accused No. 1 to substantiate that the cash credits were genuine which were obtained from the said third parties. The accused No. 1 then produced affidavits purported to be given by these persons affirming the giving of loans, but the enquiries later from those persons revealed that they had not given any such amounts nor had they stated so in any affidavit. The ITO, Therefore, held that those cash credits were fake and were mere hawala loans. Thereby the

accused No. 1 was purposed to have utilised its own concealed income in the guise of cash credits, and allowed some commission to those persons for lending their names. The amounts of those cash credits were, Therefore, treated as part of the income of accused No. 1. This addition in the assessment has been upheld by the Income Tax Appellate Tribunal.

7. Accused No. 6, i.e., M/s. Lalji & Co, in similar manner purported to obtain loans worth Rs. 13,25,000 from different persons and made entries of cash credits in their accounts books. Their scrutiny at the assessment stage of this accused at Bombay cast considerable doubt on their genuineness. Ultimately, this accused made a voluntary disclosure before the income tax authorities and entered into a settlement with them under s. 271(4A) of the I. T. Act. The settlement covered assessment years 1966-67 to 1971-72 and tax amounting to Rs. 2,65,000 was paid. So far as this accused is concerned, that settlement has closed the chapter of the loans which it had purported to obtain for the purchase of the said jewellery.

8. In the complaint which is now pending before the Additional Chief Metropolitan Magistrate, the ITO has alleged that accused No. 1 and its partners delivered false accounts, statements and declarations relating to their income chargeable to tax for the assessment year 1972-73, and thus committed an offence under s. 277 of the I.T. Act. The persons who had purposed to lend their names in the creation of those fictitious cash credit entries in the account books of accused No. 1 are alleged to have abetted and induced accused No. 1 and its partners in the making and delivery of the said accounts, statements and declarations. The trial has still to proceed against them.

9. The allegations against M/s. Lalji & Co., accused No. 6, and its partners, who are all the petitioners before this court are contained in para. 5 of the complaint. The same is to the following effect.

"M/s. Lalji & Co. of Bombay and partners, accused Nos. 7 to 10 had also claimed to have raised loans in respect of the amount of Rs. 13,25,000 and some of the parties from whom the loans were raised were common with accused No. 1. As a matter of fact these loans were bogus and were merely "Hawala unreiwa". No such loans were in fact advanced by any of these parties either to accused No. 1 or to accused No. 6. The amount of Rs. 8,15,000 in the books of accused No. 1 was in fact its concealed income from undisclosed sources. Investigations revealed that the most of these parties were introduced to the accused firm by accused No. 6. When the fraud came to light, M/s. Lalji & Co., accused No. 6, came up with a settlement petition u/s 271(4A) of the Act surrendering a total amount Rs. 2,65,009 which included the loans allegedly raised from the following parties :

1. M/s. Rasik Lal C. Shah,
2. Sh. Rasik Lal Tribhuvan,

3. Sh. Kanti Lal Khokhani,

4. Sh. N. R. Vakharia."

10. As already noted above, so far as the raising of loans of Rs. 13,25,000, the chapter already stands closed and it not germane to the trial of the present case. It is with respect to accused No. 6 having introduced accused No. 1 to those parties who had purported to give loans to accused No. 6 in the abatement and inducement envisaged by s. 278 of the I.T. Act Except for this allegation there is no averment against accused No. 6. Of course, in para. 11 of the complaint, it is further added as under :

"Accused Nos. 6 to 17 abetted and/or induced the accused Nos. 1 to 5 to make and deliver accounts/statements and declaration relating to income of accused No. 1 which was chargeable to tax which was false and which they either knew to be false and/or did not believe to be true. They have committed an offence punishable u/s 278 of the Act."

11. In the reply which the ITO has filed to the present petition before this court, various other allegations have been made against accused No. 6 and its partners and it is pointed out that some loans had been purported to be obtained by accused No. 6 from the same persons as well. Reference has also been made to earlier dealings between accused Nos. 1 and 6 and passing off some money of adjustment of the amounts in the course of those transactions. However, I am not inclined to allow new allegations and averments relating to the commission of the offence by accused No. 6 and its partners to be raised which go beyond the scope of the complaint. It is the complaint which has been filed in the trial court which has to be looked in to for ascertaining the nature and the extends of allegations and the complainant cannot travel beyond the same. The accused persons too have to meet the allegations made in the complaint, and not they are to be met unaware and with surprise with the new or additional allegations. The basic document thus remains to the complaint and it has to be ascertained on its plain reading whether any case at all it is made out against accused No. 1 and its partners.

12. As noted above, the only allegation against accused No. 6 is that it had introduced those parties to accused No. 1. Such introduction does not per se amount to commission of any offence or abatement in the filing later by accused No. 1 of any wrong return, statement or account. No mala fides, collusion or conspiracy in the said introduction is alleged. There is no averment that accused No. 6 or its partners had any hand or say in what followed between accused No. 1 and those persons thereafter. It has thus been a case of introduction simplicities with no motives or designs. Such introductions could as well have resulted in genuine transaction between accused No. 1 and those persons. In case they chose to indulge in fictitious hawala hundi deals, the matter was entirely between them, and accused No. 6 or its partners are not alleged in any manner to have a say or connivance in the same. Even the knowledge of what

transpired thereafter is not imputed to accused No. 6.

13. The loan transactions which accused No. 6 entered into with any of those persons were independent trisections, and the matters have been already settled with the Income tax Department. That settlement provides an immunity to this accused from prosecution qua those transactions. The deals which accused No. 1 had with those persons were entirely separate and inter se them only in the creation of which accused No. 6 did not come into the picture. This is irrespective of there being a sort of common venture between accused Nos. 1 and 6 for and the purchase of jewellery from the Maharaja of Gwalior.

14. As regards the averments in para. 11, they are more in the nature of deductions claimed to follow from the facts and allegations earlier stated in the complaint. It was accused No. 1 and its partner who had purported to file false return, statement of their accounts, etc. It at all, the persons who lent their names in the creation of factious cash credit entries in the account books may be said to have abated or induced the offence under s. 278. No opinion, however, is expressed about the same at thus stage. Accused No. 6 is not a partly to the return on statement of accounts filed by accused No. 1 before the income tax authorities. I, Therefore, do not see how the present petitioners, who are accused No. 6 and its partners, have, in any manner abated or induced the commission of a an offence envisaged by ss. 277 and 278 of the I.T. Act. There are no allegations of commission by them of any offence under ss. 193 and 196, IPC, either.

15. The result, Therefore, is that the petition is allowed, and the issue of process against the petitioners in the complaint pending in the trial court is quashed.