

(2018) 02 DEL CK 0276

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2730 Of 2019

Mahender Kumar Sharda

APPELLANT

Vs

State & Another

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

Indian Penal Code, 1860 — Section 420, 468

Citation : (2018) 02 DEL CK 0276

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Rajat Bhalla, Meenakshi Dahiya

Judgement

Anu Malhotra, J

1. The petitioner vide the present petition seeks the quashing of the FIR No. 575/1997, Police Station Kashmere Gate, registered under Sections 420/468 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the petitioner and the complainant of the FIR.

2. A perusal of the records and of the status reports indicate that vide order dated 1.4.2009, the charges against the petitioner were framed by the learned Metropolitan Magistrate of the alleged commission of the offence punishable under Sections 420 and also of the alleged commission of offence punishable under Section 468 of the Indian Penal Code, 1860.

3. The allegations against the petitioner as set forth through the charge sheet, copy of which is placed on record, and the status report dated 14.8.2019 and 9.10.2019 under the signatures of the SHO Police Station Kashmere Gate and also charges dated 1.4.2019 framed by the learned Trial Court

indicate that the petitioner herein was charged with having been employed as a Manager during October, 1990 till 9.5.1992 with the complainant Hari

Om Maheshwari who was a member of the Delhi Stock Exchange for the period from 1990 to 1995 and was also pursuing his business in the name &

style of H. Maheshwari & Co. at 5/5761, Dev Nagar, Karol Bagh, New Delhi as a sole proprietor where the petitioner herein worked as a Manager

in the said firm from October, 1990 till 9.5.1992 and thereafter left the firm of the complainant after committing various frauds. It is further submitted

through the status reports and the charge sheet that the complainant had shifted his office to Essel House, 10, Asaf Ali Road, New Delhi during

January/February 1997 and it came to his notice that one company has posted a cheque of brokerage and commission in the name of his firm, i.e., H.

Maheshwari & Co. which was delivered at his address, i.e., 5/5761, Dev Nagar, Karol Bagh, New Delhi which cheque bore the number 142045 dated

17.1.1994 and was for a sum of Rs.2242.50 issued by M/s Triveni Engineering Works Ltd. which was allegedly fraudulently received by the petitioner

herein who deposited the same with the Punjab & Sindh Bank, Kashmere Gate, in the account No. 3546 opened by him in the name of H.

Maheshwari & Co. by showing himself as the proprietor and also encashed the same. It has further been submitted through the status report

submitted on behalf of the State that after the registration of the case, the investigation was taken up and the petitioner was arrested and the relevant

documents were seized and the statements of the witnesses were recorded and the seized documents in question i.e., the cheque no. 142045, were

sent to FSL for expert opinion and that the Account Opening Form was also obtained by the Investigating Officer on which the photograph of the

petitioner herein was affixed bearing his signatures and the said document was also sent to the FSL and his signatures Q1 on the back side of the

cheque and his signatures Q2 and Q3, on the account opening form were found to be the same and matched with his specimen signatures.

4. The charges against the petitioner dated 1.4.2009 are to the effect that on 04.04.94 at Kashmere Gate, Delhi, the petitioner herein opened a current

account with the Punjab & Sindh Bank bearing no. 3546 in the name of H. Maheshwari & Co., 5/5761, Dev Nagar, Karol Bagh, New Delhi,

declaring himself as Proprietor thereof, despite knowledge that the title H. Maheshwari & Co. was registered with Delhi Stock Exchange Association

Ltd. whose proprietor was Hari Om Maheshwari (Membership Code No. 05/0273) and where he was employed as a Manager during October, 1990

to 09.05.1992 and thus allegedly cheated and defrauded Hari Om Maheshwari and thereby committed an offence punishable u/s 420 IPC and that on

8.4.94 at Kashmere Gate, Delhi, he deposited the cheque bearing No.142045 dated 17.1.1994 for Rs.2242.50 issued by M/s Triveni Engineering

Works Ltd. in the name of H. Maheshwari & Co., in the current account No. 3546 with Punjab & Sindh Bank after putting his signatures at the back

of the cheque as a payee thereof, despite knowledge that the said cheque did not belong to him and that the petitioner herein also got the cheque

encashed thereby committing an offence punishable under Section 468 of the Indian Penal Code, 1860.

5. During the course of the hearing of the present petition on 21.5.2019, it was observed to the effect:-

The petitioner has not filed copy of the complete charge-sheet. It will be appropriate that the same is filed alongwith its true typed copy in

vernacular. The counsel needs time to do the needful.

The Additional Public Prosecutor opposes the prayer in the petition referring, inter alia, to the ruling of the Supreme Court in Parbatbhai

Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another, (2017) 9 SCC 641, pointing out that the

gravamen of the charge which was framed on 01.04.2009, copy whereof has been submitted as Annexure â??Câ?? with the paper book,

reveals far graver offences which seem to have been overlooked.

A bare look at the two heads of charges, which appear to have been framed by the Metropolitan Magistrate on 01.04.2009, prima facie

shows something amiss. Though the first head of the charge refers to Hari Om Maheshwari (second respondent) being defrauded and

cheated, particulars of the acts constituting the said offence seem to indicate even Punjab and Sindh Bank to be the victim. There is no

explanation worth the name as to how the petitioner had come in possession of cheque no.142045 dated 17.01.1994 issued by a third party

in the name of H. Maheshwari & Company, the first charge seeming to indicate the petitioner to have falsely projected himself as the

proprietor of the said company while opening a bank account fraudulently in

name of the said entity. Though some endeavour was made at the hearing by the counsel for the petitioner to say that the petitioner and the second respondent had worked as business associates at one point of time, in the said arrangement the petitioner having been shown as employee of the second respondent, he was not clear as to how the petitioner had come in possession of the said cheque which was used for obtaining credit in the account which is stated to have been opened fraudulently by impersonation. It needs to be examined as to whether the acts of commission and omission constitute offences far graver than those on the basis of which trial has been initiated. The petitioner is directed to place on record complete copy of the charge-sheet accompanied by documents and the order whereby the question of charge was adjudicated upon.

Be listed on 29.05.2019.

6. In terms of the said order dated 21.5.2019, the status report dated 9.10.2019 indicates that the account No. 3546 was opened in the name of H.

Maheshwari & Co. on 4.4.1994 by the petitioner herein and that the said account was introduced by Mr.Raj Kumar, Proprietor of Royal Traders,

Guru Nanak Auto Market, Kashmere Gate and Mr. M.S. Itan the then Branch Manager of the bank who opened the said account and Mr.M.S. Itan,

the then Branch Manager is reported to have retired from the services of the bank and the introducer of account Sh. Raj Kumar stated that since the

matter has become more than 25 years old, he is unable to recall as to how he introduced the account No. 3546.

7. The status report that has been submitted dated 14.10.2019 indicates that during trial 7 of the prosecution witnesses have been examined and one

defence witness has also been examined and that the matter was then at the stage of defence evidence.

8. Though it has been sought to be submitted on behalf of the petitioner that in view of the settlement that has been arrived at between the petitioner

and the complainant vide agreement dated 13.5.2019 vide which it is indicated that an amount of Rs.50,00,000/-has been agreed to be paid by the

petitioner to the complainant in view of the settlement dated 13.5.2019 arrived at between the parties in relation to the FIR No. 575/1997, Police

Station Kashmere Gate, registered under Sections 420/468 of the Indian Penal

Code, 1860, the respondent i.e the State submitted that though undoubtedly the averments in the FIR were made in relation to the cheque dated 17.1.1994 for a sum of Rs.2242.50 which is alleged to have been received by the petitioner fraudulently in relation to the account of H.Maheshwari & Co. the petitioner had deposited the cheque in the account No. 3546 opened by the petitioner at the Punjab & Sindh Bank fraudulently, in the name of H. Maheshwari & Co. at 5/5761, Dev Nagar, Karol Bagh, New Delhi, declaring himself to be the proprietor thereof, the petitioner had thus allegedly committed the offences punishable under Sections 420 of the Indian Penal Code, 1860 and 468 of the Indian Penal Code, 1860.

The allegations thus levelled against the petitioner are grave and as laid down by the Hon'ble Supreme Court in Parbatbhai Aahir alia Parbatbhai Bhimsinhbhai Karmar and Other V. State of Gujarat & Anr. (2017) 9 SCC 641, it would not be appropriate to quash the proceedings in relation to the FIR No. 575/1997, Police Station Kashmere Gate, qua the alleged commission of the offences punishable under Sections 420 and 468 of the Indian Penal Code, 1860 which have criminal overtones, as the offences allegedly committed by the petitioner are not in personam against the complainant but are in rem for as submitted vide the status report submitted by the State dated 9.10.2019 it indicates that apart from the petitioner, the other persons Raj Kumar and Mr. M.S. Itan, the Branch Manager, Punjab & Sindh Bank had participated in introducing and opening of the account and it cannot be overlooked that as per the status report as submitted by the State, the matter was then at the stage of defence evidence and the trial has already been completed.

9. In the circumstances it is not considered appropriate, at this stage, to grant the prayer made by the petitioner seeking quashing of the FIR No.

575/1997, Police Station Kashmere Gate, registered under Sections 420 and 468 of the Indian Penal Code, 1860 though the aspect of the settlement

between the petitioner and the complainant may be considered by the learned Trial Court as a mitigating circumstance at the final stage in terms of the

verdict of the Hon'ble Supreme Court in Inspector of Police, CBI V. S. Raja Gopal & Ors. arising out of SLP CrI. No. 2843/2001 a verdict dated

21.1.2002.

10. In view thereof, the petition seeking quashing of FIR No. 575/1997, Police

Station Kashmere Gate, registered under Sections 420/468 of the Indian Penal Code, 1860 submitting to the effect that a stated settlement has been arrived at between the petitioner and the complainant of the FIR is thus declined.

Nothing stated herein above shall however amount to an expression on the merits or demerits of the trial.