

(2019) 12 DEL CK 0251

In the Delhi High Court

Case No : Criminal Revision Petition No. 287 Of 2017, Criminal Miscellaneous Application No. 6411, 6413 Of 2017, 5026 Of 2018

Manohar Lal Kohli

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420
Code Of Criminal Procedure, 1973 — Section 446

Citation : (2019) 12 DEL CK 0251

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : R. K. Dhawan, Richa Dhawan, Anuj Chaturvedi, V. K. Teng, Meenakshi Dahiya, Ranjan Sharma

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns two orders both dated 17.10.2016. By the first order dated 17.10.2016 petitioner and co-accused Rakesh Bhasin have been charged under section 420 Indian Penal Code (hereinafter referred to as IPC) and in the second order also dated 17.10.2016 charges have been framed against the petitioner and the co-accused under section 120-B and section 420 IPC.

2. A complaint was lodged on 05.09.2013 by one Vijay Rustagi alleging that the petitioner along with co-accused one Rakesh Bhasin promised to get the complainant a flat in Ghaziabad Development Authority (hereinafter referred to as GDA) by using their connections with the Uttar Pradesh Government and in return demanded Rs 30 Lakhs as booking charge.

3. It is alleged that on the said assurance complainant gave a sum of Rs 30 Lakhs to the accused persons on an acknowledgement receipt being executed by Rakesh Bhasin and witnessed by the son of the complainant and the petitioner

herein. It is further alleged that the money was paid by the complainant on the assurance that the plot will be got allotted to the complainant within a period of one month and in case of failure to do so, accused persons shall repay the said amount. The accused are alleged to have given four cheques of 10 Lakhs each totalling to Rs 40 Lakhs as against Rs 30 Lakhs paid by the complainant. It is alleged that on the expiry of one month when the accused persons failed to fulfil their promise, the complainant deposited one cheque of Rs 10 Lakhs in the bank. However, the same was dishonoured due to insufficient funds. Consequently, subject complaint was made. FIR was registered on the said complaint under section 420 IPC.

4. On 20.08.2014, after investigation, charge sheet was filed by the Investigating officer.

5. A report of Central Forensic Science Laboratory was filed on 28.12.2015 opining that the signatures of the petitioner did not match on the receipt/undertaking.

6. On 31.03.2016, the Trial Court framed charges against the petitioner under section 120B IPC and no charge was framed under section 420 PC against the petitioner.

7. Petitioner assailed the order dated 31.03.2016 before the Revisional Court and the Revisional Code allowed the Revision and set aside the order framing charge against the petitioner under section 120B IPC and remitted the matter to the Trial Court for a fresh hearing on the question of framing of charge against the petitioner.

8. The trial court after perusing the material on record held that there was sufficient material to give rise to grave suspicious against the petitioner, accordingly framed charge against the petitioner under section 120-B and 420 IPC.

9. Learned counsel for the petitioner submits that the petitioner has been falsely implicated and that the petitioner is unaware of any deal. No deal was struck in his presence and even as per the CFSL report, the alleged signatures of the petitioner on the receipt are forged.

10. It is submitted by learned counsel for the petitioner that on 04.06.2016, arguments were heard on point of charge on behalf of the petitioner before the trial court. Thereafter, the matter was adjourned for orders/clarification on 06.06.2016.

11. On 06.06.2016, the matter was posted for 10.06.2016 and thereafter to 29.06.2016. On 29.06.2016, one of the co-accused was not produced from the judicial custody; hence production warrants were issued against him. On that day, petitioner was not present. On other dates, the petitioner was present before the trial court.

12. On 10.08.2016, an application was moved by the petitioner seeking exemption from his personal appearance. The prayer of the petitioner was allowed and next date was fixed for 24.08.2016.

13. It is contended that on 24.08.2016, petitioner appeared in person and orders were pronounced and petitioner was discharged.

14. On 03.10.2016, the wife of the petitioner, who has stood surety for him, came to know that non bailable warrants had been issued against the petitioner for 04.10.2016.

15. It is contended that on 04.10.2016, petitioner and the surety appeared before the court and moved an application for cancellation of NBW and appraised the court about the petitioner having been discharged on 24.08.2016. It is alleged that the NBW was cancelled but fine was imposed.

16. Thereafter, it is alleged that the impugned orders both dated 27.10.2016 were passed. By one order petitioner has been charged under section 420 IPC and the other order petitioner has been charged under section 420 read with 120B IPC.

17. It is contended by learned counsel for the petitioner that the petitioner did not appear before the Trial Court after 24.08.2016 as the petitioner had been discharged. It is submitted that on 29.08.2016, the petitioner was not present, still the trial court marked his presence and the case was adjourned to 13.09.2016. Since 13.09.2016 was declared a holiday, the case was posted on 14.09.2016. On that day also, the petitioner was not present but he was marked present.

18. Further, on 28.09.2016, after marking the petitioner absent, non-bailable warrants of arrest was issued against him and notice under Section 446 Cr.P.C. to the surety, i.e. the wife of the petitioner was issued, returnable on 04.10.2016.

19. Petitioner filed an application seeking cancellation of NBW, an affidavit was also filed by the wife of the petitioner stating that the court had passed an order of discharge on 24.08.2016 in her presence and in the presence of other members of the court.

20. On 04.10.2016, on the aforesaid application, the trial court cancelled the NBW and the proceeding was adjourned to 17.10.2016.

21. On 17.10.2016, the impugned orders were passed.

22. By order dated 01.08.2017, in this proceedings a report was called for from the Trial Court as to under what circumstances two orders on charge were passed on the same date and as to how it is recorded in the order that an application for discharge had been filed, when no such application is on record.

23. The Trial Judge has submitted here report, clearly indicating that no order of discharge was passed or pronounced on 24.08.2016 as alleged by the Petitioner.

However, it is stated that an error occurred on the part of the stenographer, who typed two orders and they were signed and inadvertently placed on the judicial record.

24. The Supreme Court of India in *State of Maharashtra v. Ramdas Shrinivas Nayak*, (1982) 2 SCC 463 has held that "Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." [Per Lord Atkinson in *Somasundaram Chetty v. Subramanian Chetty*, AIR 1926 PC 136: 99 IC 742] We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence."

25. Since the judicial record does not show that any order of discharge was passed on 24.08.2016, the contention of the petitioner to the contrary cannot be accepted.

26. However, with regard to the two orders on charge both dated 17.10.2016, the trial Judge in her report has admitted that both the orders were signed and placed on the judicial record.

27. Both the orders are at variance. One order records that prima facie case for the offence punishable under section 420 IPC is made out and the other order records that prima facie there is sufficient material to frame charge against the accused under section 120B and 420 IPC.

28. In view of the above, the orders dated 17.10.2016 and the consequent charge framed on 17.10.2016 in so far as they pertain to the petitioner are set aside. The case is remitted to the Trial Court to hear arguments on the question of framing charges against the petitioner afresh.

29. Petition is allowed in the above terms.

30. It is clarified that this court has neither considered nor commented upon the merits of the case.

31. Order Dasti under signatures of the Court Master.