

(1972) 11 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Criminal Revision (R) No. 27 and Cr. Revision No. 43 of 1971

M.L. Gupta and Dharam Singh

APPELLANT

Vs

C.P. Malhotra

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 200, 202 , 203, 438 , 439
Penal Code, 1860 (IPC) — Section 120A, 193

Citation : (1973) 2 ILR HP 285

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : D.P. Sud, for the Appellant; C.P. Malhotra, for the Respondent

Judgement

D.B. Lal, J.—These are, a criminal reference reported to High Court u/s 438 of the Code of Criminal Procedure and a criminal revision preferred by one of the two accused to High Court u/s 439 of the said Code. Since a common question of law and fact arises both in the reference and in the revision, the two can be disposed of together by one judgment.

2. One G.P. Malhotra filed a complaint on 10-9-1970 in the Court of the Chief Judicial Magistrate, Simla, for the offence u/s 193 read with Section 120A of the I.P. Code and the accused are Shri M. L. Gupta and Shri Dharam Singh. The allegations made in the complaint are, that the complainant and the two accused were litigating for company law matters before the High Court and that the two accused had also threatened the complainant that he would face some incriminating evidence against him at the hands of the accused. It was further stated that the complainant received a registered envelope on 9-9-1970 despatched by Devico Private limited and the postman who delivered the envelope obtained the signatures of the complainant on the "acknowledgment due" as well as on the postal receipt. When the complainant opened the envelope, he found to his surprise, kept therein, an old newspaper rapped up in a blank paper sheet. Upon this, the complainant thought that his two signatures

obtained by the postman were likely to be utilized by the two accused in connection with some judicial proceedings. He, therefore, at once lodged a police report on 9-9-1970 and on the next day on 10-9-1970, he filed his complaint before the Chief Judicial Magistrate. According to the complainant, the two accused committed the offence u/s 193 I.P. Code read with Section 120A of the Code.

3. The learned Magistrate recorded the statement of the complainant u/s 200 Code of Criminal Procedure and also considered it fit before issuing process to send the complaint for enquiry by the police u/s 202 of the said Code. The police completed investigation and sent its report on 30th September, 1970. After considering such report made by the police, the learned Magistrate issued process against the two accused and called for their appearance before Court.

4. Against this order of issuing process, the accused Shri M.L. Gupta filed a revision petition before the Sessions Judge, Simla. After considering the revision petition, the learned Sessions Judge is of the opinion that a prima facie case was not made out against Shri M.L. Gupta and that the complaint was required to be dismissed by the Magistrate u/s 203 of the Code of Criminal Procedure. He has made out a reference order and the same is required to be considered by this Court.

5. Shri Dharam Singh the other accused, has preferred a separate revision against the order of the learned Magistrate summoning him for appearance. He has also contested that no sufficient ground existed before the Magistrate for proceeding against him and, therefore, the process could not be issued against him. The two accused have, in fact, pleaded in this Court that an offence u/s 193 I.P. Code was not at all made out even upon the allegations made by the complainant in his report, in his statement given u/s 200 Code of Criminal Procedure and in the police report submitted on 30th September, 1970.

6. It is abundantly clear that an offence u/s 193 I.P. Code is only made out when there is some evidence to indicate that the two accused had the intention of giving false evidence or fabricating false evidence for the purpose of it being used in any stage of a judicial proceeding. The complainant did mention about the Company law matters in High Court, but never stated in his police report that the two signatures obtained from him were to be utilized for fabricating false evidence for the purpose of the judicial proceeding pending before the High Court. Rather, he made a general allegation that the said evidence might be used for showing that some documents or letter have been sent to him, while actually these were not received by him. Similarly in his statement before the Court u/s 200 Code of Criminal Procedure, it was not specifically pleaded by the complainant that the two signatures were to be utilized for fabricating false evidence and that such evidence was to be used for the purpose of a specified judicial proceeding. The allegation was made that the two signatures would be used for some false evidence against him and that any Court of law could be stated by the two accused that certain documents were received by the

complainant. These were against general allegations which made no reference to any specific judicial proceeding for which any false evidence was intended to be fabricated. Similarly the report submitted by the police also did not go any further than indicating that Dharam Singh accused perhaps despatched the envelope although, according to this accused, he had kept the agenda for the meeting and balance-sheet of the Company in such envelope, presumably stating that the complainant himself has fabricated false documents to substantiate his complaint.

7. Thus it is evident the main ingredients for the offence u/s 193 of the I.P. Code were not made out even prima facie in the police report or in the complaint. The allegation made in the complaint regarding threat given to the complainant has not been substantiated by any prima facie evidence. In the complaint also, it was never alleged that the two signatures were intended to be used in any specific judicial proceeding. Merely because the complainant had developed a feeling within himself that the two signatures might not be utilized in fabricating some evidence, would not be sufficient unless indication to that effect was available to him from some reasonable source which he was required to exhibit in his police report as well as in the complaint. For an offence u/s 193, it is very essential to prove that a judicial proceeding is pending between the parties and some false evidence has been fabricated with the intention of using such evidence in such judicial proceeding. The manner of fabricating false evidence is also required to be indicated. It is not known in this case, in what manner the two signatures were to be utilized. There is no nexus whatsoever between these two signatures and a judicial proceeding which might be pending between the parties. So the offence u/s 193 I.P. Code was not prima facie made out. No help either could be taken of Section 120A of the I.P. Code. There is no prima facie evidence that any illegal act with reference to Section 193 was at all committed by the two accused. There could not, therefore, be proved even prima facie the existence of a criminal conspiracy. In the circumstances, no aid can be procured from Section 120A. The learned Sessions Judge was, therefore, correct in holding that no sufficient cause existed for issuing process for the offence u/s 193 read with Section 120A of the I. P. Code. I would, therefore, accept his recommendation made u/s 438 of the Code of Criminal Procedure and would dismiss the complaint u/s 203 of Code of Criminal Procedure.

8. The case for the accused Dharam Singh does not stand on any better footing. The envelope despatched to the complainant shows that the sender was Devico Private Limited. The statement of the accused made before police merely indicated that he had sent the balance-sheet and agenda of the meeting in that envelope, meaning thereby that the complainant himself was speaking false when he alleged that an old newspaper wrapped up in a blank paper sheet was discovered inside the envelope. It is already made clear that the allegations made in the police report as well as in the complaint and in the statement of the complainant himself, did not make out even prima facie an offence u/s 193 I.P. Code. With this evidence on record, the learned Magistrate could not but give a

finding that sufficient grounds never existed for issuing process against the accused Dharam Singh either.

9. The learned Counsel for the complainant Shri M.L. Gupta did not press his objections against the reference-order made by the learned Sessions Judge and also in revision preferred by Shri Dharam Singh, because of a certain compromise which is likely to be arrived at between the parties and as a result to that compromise, the complainant: has agreed to withdraw this complaint.

10. I would, therefore, accept the revision submitted by Dharam Singh accused and would dismiss the complaint against him u/s 203 of the Code of Criminal Procedure.

11. In the result, both the reference submitted by the learned Sessions Judge and the revision submitted by Shri Dharam Singh are accepted and the complaint is dismissed u/s 203 of the Code of Criminal Procedure. The two accused are obviously discharged of the offences u/s 193 and 120A of the I.P. Code.