(2007) 05 DEL CK 0140

In the Delhi High Court

Case No : Criminal Rev. P. 584 of 2006

Ms. Shreya Jha APPELLANT

Vs

CBI RESPONDENT

Date of Decision : 28-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409, 419, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2007) 2 ILR Delhi 19

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Pankaj Gupta, for the Appellant; R.M. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This revision is directed against the order on charge dated 22-03-2006 and charge dated 04-04-2006. The learned Special Judge (hereafter "the trial court") charged the Petitioner, for commission of offences punishable u/s 120-B read with Sections 409, 419, 420, 467, 468 and 471 of the Indian Penal Code, 1860 and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Other co-accused too were charged.

2. The prosecution (hereafter "the CBI") alleged offences under Sections 120-B read with 420, 468 and 471 IPC and substantive offences against M/s Juniper Jewellery Pvt. Ltd, Shri. Vijay Kumar Jha and Mrs. Nandita Bakshi both Directors of the first accused company and against other unknown persons. The alleged that directors of the company, in connivance with others had submitted forged property documents as collateral security to cheat the Canara Bank, and gained undue pecuniary benefit to the tune of Rs. 596.11 lakhs from the bank.

3. According to allegations of CBI, in furtherance of the said criminal conspiracy accused Ms. Shreya Jha, daughter of Shri V.K. Jha, proprietor of M/s Anamika Enterprises and M/s Nupur Enterprises aided and abetted the commission of

offence, as an amount of Rs. 5,50,000/- and Rs. 39,95,000/- were transferred in the accounts of those firms, maintained with Canara Bank, Chandni Chowk and the Punjab and Sind Bank, Safdarjung Enclave, New Delhi, from the account of M/s Juniper Jewellery Pvt. Ltd. The petitioner''s role as abettor and conspirator in the offence, was alleged, in dishonestly misappropriating the money, at the instance of Smt. Nandita Bakshi and V.K. Jha. The CBI filed a charge sheet on 11-03-2003 against 13 persons including the petitioner Accused No. 9, and the company M/s Juniper Jewellery Pvt. Limited Accused No. 1. The trial court arraigned and charged all those 13 accused by the CBI.

4. Mr. Pankaj Gupta, the learned Counsel for the petitioner challenged the order on charge on as far as the petitioner was concerned. He submitted that the petitioner was neither the director of the company, nor mortgagor nor the borrower/ guarantor. It was also contended that that the petitioner, being the daughter of main accused, M/s V.K. Jha and was only about 23 years old at the time of the alleged commission of the offence. She could not be held liable for the offence as the chargesheet itself categorically stated that Sh. Vijay Kumar Jha and Mrs. Nandita Bakshi opened certain accounts in the name of their relatives and managed the affairs of those concerns or firms; the money was transferred and withdrawn at their instance. It was submitted that the charges leveled against the petitioner lacked the basic essential ingredients to hold a person guilty of the offences punishable u/s 120-B read with Sections 409/419/420/468/471 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

5. Counsel for the petitioner argued that to hold an accused guilty of committing an offence of criminal conspiracy u/s 120-B of IPC, there must exist some agreement, link or nexus between the petitioner and the other accused. Yet, the chargesheet completely failed to establish such vital link. It was submitted that a charge could validly have been framed, if there existed something beyond the opening of accounts, and issuance of some cheques, pointing to dishonest intention or motive of the petitioner. The petitioner had no knowledge nor was part of the transaction at any point of time. Nothing was shown to have been done by her petitioner in furtherance of the common intention with the other accused. Merely because she was daughter of accused number 2, Shri Vijay Kumar Jha, there could be no conclusion that she knew the alleged intention of her father to commit the offences. The counsel for the petitioner also drew attention to the chargesheet, a bare perusal of which shows that an element of fraud or dishonest intention on the part of the petitioner could not be demonstrably inferred or discerned from the allegation set out in the complaint.

6. Learned Counsel for CBI submitted that there was no infirmity with the order of the trial court. It was submitted that at this stage, the role of the petitioner could not be pinpointed, but the fact remained that she had opened the accounts which were used by the other accused, to siphon off the amounts, fraudulently. Also cheques were issued, maybe at her father''s instance. She could not

distance herself from these transactions, on the ground that the entire operations were done by someone else. At the stage of framing charges, the court should not meticulously weigh the evidence, or see whether it can secure a conviction; the allegations leveled were primarily in the nature of a conspiracy. The trial court''s prima facie determination of existence of grave suspicion was neither unjustified, nor unfounded, calling for interference in revision.

7. The question is regarding the charge u/s 120-B of the IPC. To draw a case under the said section, it must be shown that there was an agreement, link, nexus between the petitioner and the accused. The chargesheet filed by CBI mentions the petitioner Ms. Shreya Jha but once where it states as follows:

Investigation has revealed that in furtherance of the said criminal conspiracy accused Shreya Jha d/o V.K. Jha r/o B-180, Sector-31, NOIDA, prop. of M/s Anamika Enterprises and M/s Nupur Enterprises aided and abetted the commission of offences as an amount of Rs. 5, 50,000/- and Rs. 39, 95,000/- were transferred in the respective accounts of the above said firm maintained at Canara Bank, Chandni Chowk and Punjab and Sind Bank, Safdarjung Enclave, New Delhi from the said account of M/s Juniper Jewellery Pvt. Ltd. In this way, Shreya Jha was found involved in siphoning of the money at the instance of Smt. Nandita Bakshi and V.K. Jha dishonestly.

8. In Sanjeev Kumar Vs. State of Himachal Pradesh, , the Supreme Court, speaking about what is the essential nature of conspiracy held that the offence u/s 120-B is an agreement between the parties to do a particular act. Association or relation to lead a conspiracy is not enough to establish the intention. It is true that conspiracies are products of stealth, and seldom evidenced by direct material; largely it is to be inferred on the circumstances, and attendant facts. Yet, there should be some bedrock facts which can lead to such inferences, even at the charge framing stage. Thus, the sine qua non for a charge to be sustainable u/s 120-B, IPC is the agreement between the parties. Such an essential ingredient is singularly absent; the CBI has been unable to show anything in that regard. I find no infirmity with that approach.

9. The next question is whether the charges framed under Sections 409, 419, 420, 467, 468 and 471 of the Indian Penal Code, 1860 and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 against the petitioner are sustainable.

10. In Bhikalal Ramjibhai Zavsri Vs. State of Maharashtra, , the Supreme Court observed that mere association of one person with another, maybe as a partner was insufficient to show inducement practiced by one of them. A more active role, with positive pointer to the involvement in regard to the inducement, has to be shown. Similarly, in in Devender Kumar Singla v. Baldev Krishan Singh AIR 2004 SC 3084, the Supreme Court observed:

Deception is the quintessence of the offence. The essential ingredient to attract Section 420 are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) the means read of the accused at the time of making the inducement....

11. A fundamental principle of criminal jurisprudence is ''actus non facit reum nisi means sit rea''. In the present case, the respondent CBI has been unable to show a clear case against the petitioner. The circumstances pitted against her are based entirely on her being the daughter of one of the main accused in the alleged fraud, and fraudulent deception, which led to loss to the bank. The role assigned, or attributed to the petitioner, i.e opening bank accounts which were used by her father to siphon off and misappropriate funds, after opening proprietorship concerns, which were always used by her father, are insufficient to draw an inference of existence of a grave suspicion of such nature as to warrant charges against her. In fact, the chargesheet merely states that the petitioner "at the instance of'' Smt. Nandita Bakshi and V.K. Jha was found involved in siphoning of the money." No other link or attendant circumstance, as far as the petitioner''s role is shown, or alleged in the chargesheet.

12. In the light of aforementioned observations, no substantiating prima facie case was made out against the petitioner, at least no prima facie case that about the grave suspicion of her involvement was made out. The trial court could not have proceeded to charge the petitioner as it did, on the available materials, and the allegations leveled in the charge sheet. Its order Therefore, cannot be sustained.

13. For the above reasons the petition has to succeed; it is accordingly allowed. The charges framed against the petitioner-accused are hereby set aside.

