(2009) 09 MAD CK 0173

In the Madras High Court

Case No : Criminal O.P. No''s. 1932 of 2008 and 5060 of 2009 and M.P. No''s. 1 and 2 of 2008 in Criminal O.P. No''s. 1932 and M.P. No''s. 1 and 4 of 2009 in Criminal O.P. No. 5060

Nandagopal APPELLANT

Vs

State
Padma Balasubramaniam and Thirupuravalli Vs Mr. G. Subramania Bhatta RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 409, 419, 420

Citation : (2009) 09 MAD CK 0173

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : C. Rajan, for R. Ramanlaal, for petitioners 1-3, for the Appellant; N.R. Elango, Assistant Public Prosecutor for R1 and R. Rajarathinam, for R2, for the Respondent

Judgement

R. Regupathi, J.—The petitioners are accused in C.C. No. 374 of 2006 for offences punishable u/s 409, 419, 465, 467, 468, 471 and 420 r/w 120-B of IPC. Crl.O.P. No. 5060 has been preferred by A3 & A4 of the case. A1 is the Managing Director of the company & A2 is the Director and custodian of the shares of the company. A3 is the wife of the Chairman and A4 is the mother of A1. A6, the petitioner in Crl.O.P. No. 1932 of 2008 is one of the staff of the company.

2. The case of the prosecution is that the defacto complainant was working in the company of the 1st accused from 1992 to 1997 and during which period salary was not given, but 1,20,000 shares were allotted as original allotment. It is the claim that the value of the shares is Rs. 50,00,000/-. It is alleged that the 1st accused, without the knowledge of the defacto complainant transferred one lakh shares to A3 and 20,000 to A4. For effecting such transfer in the transfer form, prepared by the 1st accused, A6 is alleged to have attested his signature of transferees.

3. Counsel for the petitioner submits that though A3 and A4 are closely related to A1, shares were transferred by A1 to A3 & A4 and the materials are available to substantiate that A3 & A4 have assigned their signature in the transfer form to constitute the offences alleged, the ingredients of the offences must be proved and on perusal of the entire materials, allegations against these accused are not constituted. Admittedly, A3 & A4 are the transferees and it has been prepared only by A1. The fraudulent transfer of the shares has been attributed only to A1 and the petitioners A3 & A4, who are also equally shared those dishonest and fraudulent intention with A1 cannot be attributed. The petitioners were not even aware that transfer has been effected by fraudulent means. Both the petitioners in Crl.O.P. No. 5060 are ladies aged about 57 and 83 respectively. They have not played any active role in this transfer. It is A1 and other Directors, who are in-charge and responsible for the affairs of the company including share transfer. Under such circumstances, the transfer of shares by fraudulent means was effected without the knowledge of A3 and A4. Though signatures of A3 and A4 were obtained, it must be proved beyond any doubt that petitioners are consciously aware that it was done with the dishonest intention along with 1st accused. Unless there are materials to constitute and every reason to believe that the petitioners have committed offences in collusion and conspiracy with the 1st accused, the offences alleged cannot be made out. In so far as the petitioner A6 is concerned, admittedly, the role played by the petitioner/A6 is that he attested his signature for A3 & A4. He is an employee of the company and merely because of the reason for his attestation in the share transfer, he cannot be implicated with knowledge and dishonest intention attributed to the 1st accused. A6 was not the custodian of the shares and he was not aware of the fact that under what circumstances the shares were transferred and admittedly, it came to him after preparation for receiving signature as an attestor. Though the signature is found in the transfer form, it cannot be attributed that he signed the same knowingly. At the most, it may be stated that certain documents were executed wherein he attested and no criminal intention can be attributed against him. Learned Counsel for the petitioner further submitted by adverting Sections 467, 468 and 471 that firstly it must be proved that the accused has forged the documents and secondly, that such forged documents have been used by the accused as genuine and taken any personal advantage and further done the same with dishonest and fraudulent intention. Unless such knowledge on the part of the petitioners are substantiated, it cannot be claimed that the petitioner is a party to the fraudulent offence committed by the 1st accused. Admittedly, A6 is not the beneficiary and though transfer of the shares to the name of A3 and A4 was made, such transaction was known consciously to A3 & A4 is in doubt and there is no allegation or averments in this regard. In order to substantiate his submissions, learned Counsel for the petitioners relied on a case law reported in Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, wherein it is held as follow:

The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on the forged signatures, nothing further has been stated and thereis not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion even if the allegations made in the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out.

In support his submissions, learned Counsel for the petitioners further relied on a case law reported in AIR 1979 1890 (SC) .

He further submitted that the petitioners have not done any forgery and they have not presented the forged documents for any personal advantage with dishonest and fraudulent intention. The offences, alleged as against the petitioners are not made out and hence, seeks to quash the proceedings.

4. Per contra, learned Counsel for the defacto complainant submits that the defacto complainant was allotted 1,20,000 share in the company of the 1st accused and the 1st accused, with the help of others transferred the entire shares to co-accused. Prima facie allegations have been made in the complaint to constitute the offences and on perusal of those materials including the statement of witnesses, such allegations are made out. Under such circumstances, the grounds, agitated by the petitioners could be made before the trial court and submits that it is not a fit case to quash the proceedings.

5. Learned Additional Public Prosecutor submits that A3 is the wife of the Chairman and one lakh shares have been transferred in her name. In the transfer form, she has assigned her signature and the same was attested by A6. Opinion has been received from the hand writing expert and it is proved that it is the signature of A3. In view of the relationship of A3 with the 1st accused, it must be assumed that she is the beneficiary of the shares along with A1 and under such circumstances, shares have been transferred only with her knowledge and the fraudulent and dishonest intention attributed to the 1st accused is equally attributable to A3 also. He further submits that there are materials to constitute offences against A3. In so far as A6 is concerned, it is submitted that he will be knowing about the defacto complainant as well as the circumstances in which shares were transferred and since he attested the signature of the transferee, knowledge of dishonest and fraudulent intention can equally be attributed to A6. Adverting to the case against A4, learned Additional Public Prosecutor submits that based on the report, given by the handwriting expert, stating that it is not the signature of A4, fairly conceaded that case pending against her may be quashed.

6. I have perused the materials available on record having regard to the facts and circumstances of the case.

7. On perusal of the charge sheet, it is stated that the accused conspired and

committed offences. The 1st accused in his capacity as Managing Director of the company was in charge and responsible to the affairs of the company. The 2nd accused, one of the Directors was the custodian of the shares of the company. It has been repeatedly stated in the charge sheet that the 1st accused has transferred the shares to A3 and A4 and the signatures of A3 and A4 were attested by A6. Though fraudulent and dishonest intention were apparent on the allegations made as against the 1st accused, similar such intention cannot be equally inferred to other accused namely the petitioners herein. In view of the submissions made by the learned Additional Public Prosecutor, it appears that there is no material available as against A4 who is aged about 83 years, mother of the 1st accused. Therefore, it appears that her signature has been forged by some one else. Even as against A3, based on the signature found in the transfer form alone, she has been included as accused. On perusal of the statement of witnesses, I do not find any other materials to connect A3 with the 1st accused except the relationship. She is also aged about 57 years. The signature of A3 would have been assigned in the transfer form at the request of her husband namely the Chairman of the company or other accused. Under what circumstances shares were transferred may be unknown to her. Modus operandi of the 1st accused was not known to A3. There is no material available to constitute her knowledge of fraudulent and dishonest intention for transfer of shares in conspiracy with A1. It is alleged that the 1st accused transferred shares of the defacto complainant and for such purpose, he has used the names of A3 & A4. Since signature of A4 does not tally, it appears that the signature of A4 has been assigned by some third party. In so far as A6 is concerned, though it is stated that he is aware of the allotment of the shares to the defacto complainant, it cannot be known to him under what circumstances, shares were transferred. Admittedly, A4 never signed the form. It appears that the form was produced before A6 for attestation and A6 attested the same believing the same as that of A4 and since he happened to be a servant of the company, he has done so on request. Only because of the reason, that A6 attested the signatures of A3 and A4, the fraudulent and dishonest intention cannot be attributed to A6. Admittedly, A6 is not the beneficiary of the transaction and the content of the documents was not forged by A6. He has not used any of this document as genuine for getting any undue advantage for himself. On perusal of the statement of other witnesses, the participation of A6 in the alleged fraudulent transaction was not substantiated. Under such circumstances, by accepting the contention raised by the learned Counsel for the petitioners, I am of the considered opinion that it is a fit case to quash the proceedings pending in C.C. No. 374 of 2006 on the file of the Chief Metropolitan Magistrate, Egmore against the petitioners viz. A3, A4 and A6 and accordingly the case pending against them are directed to be quashed. However, the learned Magistrate can proceed with the case as against other accused and conclude the same in accordance with law.

6. Accordingly, the Criminal Original Petitions are ordered. Consequently, connected Miscellaneous Petitions are closed.

