(2021) 11 DEL CK 0019

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1214 Of 2021, Criminal Miscellaneous Application No.6160 Of 2021

Praveen Singh And Anr APPELLANT

Vs

State & Ors RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:
Indian Penal Code, 1860 — Section 34, 420, 468, 471

Citation : (2021) 11 DEL CK 0019

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Satish Tamta, Puneet Kumar Rai, Meenakshi Chauhan, Shariq Iqbal, Divakar Kumar

Final Decision : Disposed Of

Judgement

Subramonium Prasad, J

1. The petitioner seeks to challenge the order dated 12.03.2021, passed by the learned Additional Sessions Judge - 02, East District, Karkardooma Courts, in Crl. Rev. Petition No.177/2019.

2. The learned Additional Session Judge by the order impugned herein has allowed the revision petition filed by the respondent No.2 herein by setting aside the order dated 12.07.2017 passed by the learned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi, and has directed the Trial Court to frame charges against the petitioners herein for offences under Sections 420/468/471 of the IPC and proceed further as per law.

3. Shorn of details, facts leading to the present petition are as under:

a) FIR No.632/2013 was registered at Police Station Kalyan Puri for offences under Sections 420/468/471/34 IPC on the complaint of respondent No.2 herein. It is alleged in the complaint that in September, 2010 the petitioner herein introduced himself to the complainant as the owner of M/s Shivan Auto Centre and Petrol Pump of Indian Oil Corporation situated at NH 24, Mayur Vihar, Phase II, Delhi. It is stated that the petitioner No.1 lured the complainant for 50% partnership in the said petrol pump and asked for Rs.3.75 crores for the partnership and also signed a tripartite agreement (MOU) with him and agreed to replace one Sukhpal, who was earlier partner in the petrol pump. It is stated that the complainant paid Rs.52 lakhs in cash and Rs.31.50 lakhs through RTGS and NEFT on various dates. It is stated that later on the complainant came to know that the petitioner No.1 herein was not the owner of the petrol pump. It is stated that the petitioner No.2 was the real proprietor of the said petrol pump. It is stated that the complainant asked petitioner No.1 to return his Rs.83.50 lakh. It is stated that the petitioner No.1 assured the complainant that he would return the amount but he did not return even a single rupee.

b) During investigation it was revealed from the record of Indian Oil Corporation Ltd. that the petitioner No.2 herein was the dealer/owner of M/s Shivan Auto Centre. It was also found that Rs.31.5 Lakhs were transferred in the account of M/s Shivan Petrol Pump. It is stated that the complainant also produced one receipt of Rs.22.95 Lakhs given in cash to the petitioner No.1 herein.

c) During investigation, petitioner No.1 produced a GPA executed between him and petitioner No.2 in the year 1994, whereby petitioner No.1 was authorised for maintenance, promotion of sale and for entering into any agreement on behalf of petitioner No.2 qua the petrol pump in question. On investigation from Indian Oil Corporation it was revealed that as per the guidelines formed by Indian Oil Corporation, no retail outlet dealer was empowered to authorise any other person on his behalf for maintenance, operating or any other purpose in respect of the petrol pump. Investigation reveals that information was given to the Indian Oil Corporation that petitioner No.1 was managing the petrol pump. Material on record reveals that the specimen writing/signature of petitioner No.1 have been sent to FSL for comparison with MOU as well as the receipt.

d) Charge-sheet has been filed against the petitioners.

e) The petitioner No.1 was granted anticipatory bail and he was formally arrested and released on personal bonds. Petitioner No.2 was not arrested.

f) The arguments were heard on point of charge. The complainant/respondent No.2 contended that the petitioners are cousins. It was contended by the complainant that the petitioner No.1 represented himself to be the owner of the petrol pump and induced the complainant to enter into MOU with him and transfer a sum of Rs.83.5 Lakhs to him. It was contended by the complainant that the GPA which has been produced by the petitioner No.1 was later on fabricated by the petitioners in order to save themselves from criminal prosecution. It was stated by the complainant that the dealership agreement does not give any authority to the petitioner No.2 to authorise someone else on his behalf to enter into any kind of agreement in respect of the petrol pump. It is also submitted that the civil suit for recovery filed by the complainant/ respondent No.2 has already been decreed in favour of the complainant/ respondent No.2. However, on an appeal filed by the petitioners the matter has been remanded back to the trial court and is pending disposal.

g) On the other hand, the petitioner herein contended that it is purely a civil transaction which has been given a colour of criminality. It is stated that the complainant/respondent No.2 has not fulfilled his part of the agreement and the instant FIR is only a ruse to wriggle out of the same. It is stated that the petitioner No.1 has only represented himself as the operator of the petrol pump. It is stated that the money given by the complainant has been put in the account of M/s Shivan Auto Centre and not in the account of the petitioner No.1 herein. It is stated that the allegation that fake agreement/ document has been prepared was false and therefore no offence of forgery has been committed by the petitioners.

h) The learned Trial Court, after considering the documents, came to the conclusion that the MoU does not show that the petitioner No.1 has represented himself as the owner of the Petrol Pump and has only represented himself as an operator "Sanchalak" of the Petrol Pump. It was also held that no payment was made to the petitioner No.1 in his personal capacity and the entire payment was made in the name of M/s Shivan Auto Centre. The cash receipt has also been issued by the petitioner No.1 on behalf of M/s Shivan Auto Centre. The Trial Court was also of the opinion that there was no misrepresentation on behalf of the petitioner No.1 and he has not received any benefit of any kind. It was also held by the Trial Court that, the GPA which is alleged to have been an act of forgery is executed by the petitioner No.2 in favour of the petitioner No.1 is an invalid document. It held that, the GPA was in violation of the agreement between the Indian Oil Corporation and the petitioner No.2 and, therefore, has not caused any prejudice to the complainant/respondent No.2. It is further held that, the clause in the agreement between the Indian Oil Corporation and the respondent No.2 itself does not imply that false and dishonest representation has been made to the complainant/respondent No.2 and that respondent No.2 has been fraudulently deceived by the petitioners. The petitioners were, therefore, discharged.

i) Thereafter, the complainant/respondent No.2 challenged the said order by filing a revision petition being Crl. Rev. Petition No.177/2019 before the learned Additional Sessions Judge - 02, East District, Karkardooma Courts. The learned Additional Session Judge held that irrespective of the description of petitioner No.1 in the MoU, its terms reflect petitioner No.1 to be running Shivan Auto Centre Petrol Pump as a partner with Sukhpal Singh and the complainant/ respondent No.2 was to be inducted as a partner upon payment of 50% of the asset value of Shivan Auto Centre Petrol Pump. The learned Additional Session Judge held that Rs.31.5 Lakhs has been received in the bank account of M/s Shivan Auto Centre Petrol Pump of which petitioner No.2 is the Proprietor. The learned Additional Session Judge further held that even though the petitioner No.1 is described as a 'Sanchalak' but the MoU represents him to be a partner of M/s Shivan Auto Centre Petrol Pump whereas it was the Petitioner No.2 who was its sole and exclusive dealer/owner. The learned Additional Session Judge held that induction of a partner for running any enterprise can only be effected by a person who himself is the proprietor/owner/partner of such enterprise. It was held by the learned Additional Session Judge that the petitioner No.1 inducted the complainant/respondent No.2 as a partner which he should not have done. The learned Additional Session Judge held that there is sufficient material on record giving rise to grave suspicion against the petitioners for dishonestly concealing material facts from the complainant and inducing him to enter into the said MOU and making investments with them. The learned Additional Session Judge, therefore, allowed the revision petition and directed the Trial Court to frame charges against the petitioners for offences under Sections 420/468/471 IPC and proceed further as per law.

j) It is this order which has been challenged by the petitioners in the instant petition.

4. Mr. Satish Tamta, learned Senior Counsel appearing for the petitioners, states that the petitioner No.1 has only projected himself as a "Sanchalak" and not as an owner. He further states that the petitioner No.1 has not received any benefit. He further states that the money has directly gone to the account of M/s Shivan Auto Centre Petrol Pump and, therefore, the petitioner No.1 has not got any benefit from it. It is further stated by the learned Senior Counsel that the ingredients of Sections 468 and 471 IPC are not made out. He further submits that there is no discussion in the impugned order as to why charges under Sections 468/471 IPC should be framed against the petitioners. He states that the entire discussion revolves around Section 420 IPC.

5. Per contra, Ms. Meenakshi Chauhan, learned APP for the State, and Mr. Divakar Kumar, learned counsel for the respondent No.2, contends that the petitioners were well aware that they could not induct the complainant as a partner in terms of the Petrol/HSD Pump Dealer Agreement, entered into between Indian Oil Corporation and the petitioner No.2 herein. It is stated that despite knowing that no agreement could be entered into, the petitioner induced the complainant/respondent No.2 to pay a sum of Rs.83.50 Lakh which itself prove that there was intention to cheat right from the inception. It is further submitted that the GPA was prepared on a later date only to absolve the petitioners of criminal liability.

6. Heard Mr. Satish Tamta, learned Senior Counsel appearing for the petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and Mr. Divakar Kumar, learned counsel for the respondent No.2, and perused the material on record.

7. The facts reveal that the Petrol/HSD Pump Dealer Agreement was entered into between the Indian Oil Corporation and the petitioner No.2. The relevant clause

of the agreement reads as under:

"2. The corporation do hereby grant to the dealer leave and license and permission for the duration of this agreement to enter on the said premises and to use the premises and the outfit for the sole and exclusive. purpose of storing, selling and handling the products purchased by the dealer from the corporation, save as aforesaid, the dealer shall have no right of lessee, sub-lessee, tenant or any other interest in the premises or outfit, is being specifically agreed and declared in particular that the dealer shall not be deemed to be m exclusive possession of the premises.

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46. Except with the previous written consent of the Corporation:

i) The Dealer shall not enter into any arrangement contract or understanding Whereby the operations of the Dealer hereunder are or may be controlled carried out and/or financed by any other person firm or company whether directly or indirectly and whether in whole or in part."

8. A perusal of the abovementioned clause shows that there is a bar on the person with whom dealership agreement has been entered into restraining the allottee from leasing/sub-leasing or inducting a tenant or creating interest in the premises or outfit. Clause 46 of the dealership agreement also states that the dealer cannot enter into any agreement, contract or understanding whereby the operations of the dealer are or may be controlled carried out and/or financed by any other person, firm or company whether directly or indirectly and whether in whole or in part without any previous written consent from the Corporation. There is nothing on record that any form of consent was obtained from the Indian Oil Corporation. Despite the said bar, petitioner No.1 has entered into a tripartite agreement. This tripartite agreement is between the complainant/ respondent No.2, M/s Shivan Auto Centre Petrol Pump which has been operated by its "Sanchalak" i.e. the petitioner No.1 and one Sukhpal Singh who had 49% share with the petitioner No.1 in Shivan Auto Centre Petrol Pump. Under the said agreement, the complainant was to replace Sukhpal Singh on payment of Rs.3.75 Crores. The said agreement is, therefore, in complete violation of Petrol/ HSD Pump Dealer Agreement which was entered into between the Indian Oil Corporation and the petitioner No.2.

9. Knowing fully well that the petitioners could not induct any other person without the previous consent of the Indian Oil Corporation, a tripartite agreement has been entered into by the petitioner No.1 just by calling himself as an operator. Whether the petitioner No.1 has actually represented to the complainant that he was the owner of the Petrol Pump and whether they knew about the MoU between the Indian Oil Corporation and petitioner No.2, is all a matter of trial. The amount has gone into the account of M/s Shivan Auto Centre Petrol Pump which is in the name of petitioner No.2 and it cannot be said that the petitioner No.2 was completely unaware of the fact that the petitioner No.1

has entered into an agreement with the complainant/respondent No.2.

10. The clause of GPA executed by the petitioner No.2 in favour of petitioner No.1 giving authority to the petitioner No.1 to do all the acts and deeds necessary for maintenance of Petrol pump and promotion of sales of the Petrol Pump, is completely contrary to the terms of the Petrol/HSD Pump Dealer Agreement. This clause cannot absolve the petitioner No.1 because petitioner No.2 and petitioner No.1 both knew that no authority could be given or delegated to anyone to enter into any dealership agreement.

11. The order of the learned Additional Session Judge, therefore, cannot be found fault with as all the ingredients of Section 420 IPC are present in the instant case. As far as the question as to whether the provisions of Section 468/471 are made out or not against the petitioners and whether the General Power of Attorney was made after the complaint was filed, there is no discussion on this aspect either by the Trial Court or by the learned Additional Session Judge. The Trial Court is, therefore, directed to look into the allegations afresh to see whether an offence under Section 468/471 IPC or any other offence under the IPC is made out against the petitioners or not.

12. With these observations the petition is disposed of along with the pending application(s), if any.