

(2020) 08 DEL CK 0197

In the Delhi High Court

Case No : Criminal Appeal No. 73 Of 2017, Criminal Miscellaneous (Bail) No. 879 Of 2019

Rajesh Kumar Sharma @ Rajesh Kumar

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471, 473
Prevention Of Corruption Act, 1988 — Section 13(1), 13(1)(c), 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 08 DEL CK 0197

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Kamlesh Kumar, Prakarsh Airan, Harpreet Kalsi

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The appellant has filed the present appeal impugning a judgment dated 29.11.2016 in A.C. No. 54/2016, whereby the appellant and his brother (Ravinder Sharma) were convicted for the offences punishable under Section 120B of the Indian Penal Code, 1860 (IPC) read with Sections 420/476/468/471 of the IPC and Sections 13(2) and 13(1) of the Prevention of Corruption Act, 1988 (hereafter the 'PC Act'). The appellant was sentenced to undergo three years of rigorous imprisonment along with a fine of Rs. 4,00,000/- and in default of payment of fine to undergo simple imprisonment for a further period of six months. The appellant's brother Ravinder Kumar (since deceased) was also sentenced for committing offences punishable under Sections 120B/420/467/468/471 of the IPC and Sections 13 (2) and 13 (1) of the PC Act.

2. The appellant and his brother were prosecuted pursuant to an FIR bearing no. RC DAI 2011 A 0010 under Sections 120B/420/467/471 & 473 of the IPC and Section 13(2) read with Section 13(1)(c) and (d) of the PC Act. The said FIR

(Ex.PW37/A) was registered on 29.07.2011 on the basis of the information received from a reliable source that Sh. Ravinder Kumar, Assistant Manager (F), RITES had during the years 2004 to 2008 entered into a criminal conspiracy with his wife Smt. Bala Devi and his brother Rajesh Kumar (appellant herein), pursuant to which funds to the extent of Rs. 10,25,789/- were withdrawn against claims of Group Savings Linked Insurance Scheme (hereafter 'GSLIS') in the name of fictitious persons. It was alleged that Sh. Ravinder Kumar (appellant's brother), while working with RITES, during the aforesaid period had dishonestly and fraudulently prepared vouchers against GSLIS claims under fictitious names. It was alleged that Sh. Ravinder Kumar had got the said vouchers signed from the authorized signatories and thereafter, prepared corresponding cheques in names similar to his name or that of his brother (the appellant herein). These cheques were encashed by Sh. Ravinder Kumar either in his bank account, the account of the appellant, or that of his wife Smt. Bala Devi. It was alleged that a total of twenty cheques were prepared by Sh. Ravinder Kumar to withdraw funds from the GSLI scheme under fictitious names. Nineteen of the said cheques were made in the name of R.K. Sharma, Rajesh Kumar or Rajesh Kumar Sharma. These cheques were deposited in the bank accounts maintained in the name of the appellant or the bank accounts of Sh Ravinder Sharma. One cheque was prepared in the name of Smt. Bala Devi (wife of Sh. Ravinder Kumar) and was deposited in her account.

3. All the employees of RITES Limited (hereafter 'RITES') were covered by a GSLIS (Group Savings Linked Insurance Scheme) against which premium for the policy was payable to the Life Insurance Corporation of India (LIC) partly by RITES and partly by employees. The employee contribution was deducted from the salary of the concerned employee. On the demise of an employee or cessation from service (retirement/termination/discharge), the Personal and Administration (P&A) Division of RITES would prefer a claim with LIC and on the basis of the same, LIC would make the payment to RITES. After receiving the said payments, the P&A Division used to send cheques to the Finance and Accounts Division for depositing in the accounts of RITES to the account of a particular employee. It was explained that thereafter, a cheque payment voucher would be prepared and the same would be sent to the Banking Division for preparation of a cheque and obtaining of signatures of authorized signatories and thereafter, the said cheque would be forwarded to the beneficiary.

4. It was alleged that Ravinder Kumar had used his position in the Finance and Accounts Department of RITES and prepared nineteen payment vouchers entering fictitious payee names which were similar to his or that of his brother and one payment voucher was made in the name of his wife.

5. During investigation, it was found that no payment had been received from LIC against these fictitious GSLI claims and there was no regular employee with the name of R.K. Sharma/Rajesh Kumar who was entitled to any payment from the GSLIS.

6. It was alleged that out of the twenty cheques, twelve cheques were deposited in the bank accounts of Ravinder Kumar and the remaining eight cheques were deposited in the bank accounts of the appellant maintained with various banks.

7. CBI examined thirty-seven witnesses to establish their case. Disciplinary proceedings were instituted by RITES against Sh. Ravinder Kumar and after inquiry, he was dismissed from service with RITES. Sh. Mohan Lal Gautam, Manager (P&A) RITES was examined as PW1. He testified to the effect that a disciplinary inquiry had been instituted against Sh. Ravinder Kumar on the charge that he had prepared a false GSLI claim. He testified that after conclusion of the disciplinary inquiry, Ravinder Kumar was dismissed from service. The order of the Disciplinary Authority, dismissing Ravinder Sharma from the services of RITES, was brought in evidence as Ex.PW1/A.

8. CBI led evidence to establish that three Cheques - Cheque No. 68017 dated 25.05.2006 for a sum of Rs. 21,986/- (Ex.PW2/A-28); Cheque No. 70226 dated 05.08.2006 for a sum of Rs. 44,833 (Ex.PW2/A-30); and Cheque No. 81845 dated 21.06.2007 for a sum of Rs. 49,816/- (Ex.PW2/A-34) were deposited in the appellant's bank account (Account No. 10817) maintained with Punjab & Sind Bank, Naya Bazar, Delhi. Similarly, CBI also led evidence to establish that Cheque No. 78845 dated 04.04.2007 for a sum of Rs. 53,565/- (ExPW2/A-32) was deposited in the appellant's account (bearing no. 02171600001375) maintained with HDFC Bank, Chandni Chowk, Delhi. Further, two Cheques being Cheque No. 90555 dated 26.03.2008 for a sum of Rs. 48,560/- (Ex.PW2/A-38) and Cheque No. 83801 dated 31.08.2007 for a sum of Rs. 40,812/- (ExPW2/A-36), were deposited in the appellant's account (Account No. 021716000037246) maintained with HDFC Bank, Chandni Chowk. In addition, it was also established that two Cheques being Cheque No. 90572 dated 31.03.2008) for a sum of Rs. 45,678/- (Ex.PW2/A-39) and Cheque No. 94070 dated 16.06.2008 for a sum of Rs. 61,856/- (Ex.PW2/A-41), were deposited in the appellant's account (Account No. 2379101012826) maintained with Canara Bank, Uttam Nagar Branch, New Delhi. It was, thus, established that an aggregate sum of Rs. 1,16,635/- was deposited in appellant's account with Punjab & Sind Bank; Rs. 53,565/- was deposited in the appellant's account bearing No. 02171600001375 maintained with HDFC Bank, an amount of Rs. 89,372/- was deposited in the appellant's account (Account No. 021717000037246) maintained with HDFC Bank; and Rs. 1,07,534/- was deposited in appellant's account (Account No. 2379101012826) maintained with Canara Bank, Uttam Nagar Branch, New Delhi. In all, a sum of Rs. 3,67,106/- was deposited in the bank accounts of the appellant.

9. Mr Kamlesh Kumar, learned counsel appearing for the appellant, assailed the impugned judgment, essentially, on four fronts. First, he submitted that the acts pertaining to forgery, fabrication and diversion of funds from RITES were allegedly done by Ravinder Kumar (brother of the appellant) and not by the appellant. He submitted that the only material on the basis of which the appellant has been convicted is that the cheques issued fraudulently against

GSLIS claims, were credited in the bank accounts maintained in the name of the appellant. But there was no evidence to establish that the said bank accounts had been opened or operated by the appellant. He stated that no witness had been examined to prove that the bank accounts were opened by the appellant. He contended that the prosecution had merely exhibited the bank statements, which reflected certain entries in the bank accounts and did not establish that the appellant was culpably involved in any manner.

10. Second, he submitted that there was no incriminating material to establish that the appellant had conspired with his brother for committing the offence. He submitted that there it was not established that there was meeting of minds in respect of commission of offences punishable under Sections 467/468/471 of the IPC and therefore, the appellant could not be convicted of conspiracy in respect of the said offences.

11. Third, he submitted that the essential ingredients of an offence punishable under Section 420 of the IPC were not established, inasmuch as, there was no evidence to indicate that there was any cheating; or that the appellant had dishonestly induced delivery of any property; or there was any mens rea on the part of the appellant.

12. Fourth, he submitted that there was no disclosure statement of the appellant, which showed his involvement in the present case. He submitted that, therefore, there was neither any direct evidence nor any disclosure statement to establish that the appellant was part of the alleged conspiracy to fraudulently withdraw funds from RITES Limited/RITES CPF Trust and divert the same for their benefit.

13. In addition to the above, Mr Kumar had also contended that the appellant had not been properly represented before the Trial Court. He submitted that the same counsel had represented the appellant and his brother Ravinder Kumar and none of the material witnesses had been cross-examined. According to him, the appellant was convicted without a proper defence and his conviction was the result of an unfair trial.

14. The officials of the concerned banks had testified that the bank accounts in question were opened in the name of the appellant. The account opening forms pertaining to the bank accounts were brought in evidence. It was also established that apart from the deposits of cheques obtained fraudulently, there were other deposits and withdrawals. Since the said accounts are in the name of the appellant and he alone could operate it, there is little doubt that the same were operated by the appellant.

15. It is also material to note that the evidence provided by the bank officials had been specifically put to the appellant while recording his statement under Section 313 of the Cr.PC. His response to all the questions was either that he cannot say or that it is a matter of record.

16. A plain reading of his statement under Section 313 of the Cr.PC indicates that

the appellant did not dispute the bank accounts, to which the witnesses had testified, were his or that the same were not opened or operated by him. His responses to evidence in regard to opening of the accounts, remained the same - that it was a matter of record or that he could not say. It is also relevant to refer to the appellant's response to question no. 54 put to him to record his statement under Section 313 of the Cr.PC. The same is set out below:

"Q-54 Have you anything else to say?

Ans. Yes. I am innocent and have been falsely implicated in this case. I was working as a commission agent and was getting two percent (2% commission for encashing the cheques. I have done no wrong. My account was operated by Ravinder Kumar."

17. In the light of the evidence led by CBI, there is little doubt that the accounts maintained in the name of the appellant were being operated under his signatures. In view of the above, there is no doubt that the bank accounts in question opened in the name of the appellant were operated by him. In the event there were any special circumstances in the knowledge of the appellant to dispel the same, it was necessary for the appellant to have led evidence in this regard. Once it is established that the accounts operated in the name of the appellant were opened pursuant to forms on which his photograph was affixed and on the basis of his self-attested documents; it must be accepted that the account was being operated by the appellant.

18. It is also relevant to note that none of the witnesses who had deposed as to the said accounts were cross-examined. No suggestion was put to them that the documents brought in evidence bearing the appellant's signatures were either fabricated or forged and they did not bear his signatures. Further, the appellant also did not lead any evidence to dispute the same.

19. The contention that the prosecution had failed to establish a conspiracy between the appellant and his brother, is equally unpersuasive. It is well accepted that in most cases, direct evidence for establishing meeting of mind of two or more persons may not be available. However, the same can be inferred by circumstantial evidence. In the present case, the fact that the funds were diverted into the bank account of the appellant and had been withdrawn thereafter, is sufficient to establish that the appellant was acting in consort with his brother in commission of the offences for which they were charged. He cannot escape the inference that he was fully aware of his bank accounts and thus, would have been fully aware of the diversion of funds. There was no occasion for RITES to issue any cheques in favour of the appellant. The fact that such cheques had been deposited in his accounts clearly indicated that false documents would have been made to wrongfully obtain the said cheques. This Court is also of the view that the offence of forgery and creating wrongful documents to divert the funds from RITES into the account of the appellant constitutes a single chain of acts involving the commission of the offence

punishable under Sections 467/468/471 & 420 of the IPC. The appellant has been a vital link in this chain and, therefore, the decision of the Trial Court to convict the appellant as a conspirator for commission of these offences cannot be faulted.

20. The absence of any disclosure statement also does not raise any doubts as to the case set up by the prosecution.

21. In view of the above, the decision of the Trial Court to convict the appellant for the offences for which he was charged cannot be faulted.

22. The appellant and his brother were also prosecuted in another case being A.C. No. 24/2016 arising from RC No. DAI 2009 A 0039 captioned "Central Bureau of Investigation v. Ravinder Kumar and Anr.". The FIR in that case was registered on the basis of a complaint received by the General Manager (Vigilance), RITES. He had alleged that Ravinder Kumar while functioning as a Junior Manager (Accounts) and Assistant Manager (Accounts) in RITES, in connivance with his brother Rajesh Kumar (the appellant herein), had fraudulently withdrawn funds from RITES as well as from the contributory Provident Fund of RITES (RITES CPF). The Trial Court had found that Ravinder Kumar had forged, fabricated and created documents to illegally withdraw funds from RITES CPF to his bank account and the bank account of the appellant herein. In all, an aggregate sum of Rs. 1,22,17,207/- had been dishonestly withdrawn from RITES/RITES CPF. This was done by Ravinder Kumar by essentially withdrawing funds lying to the credit of some of the employees in their contributory provident fund account. It was established that Ravinder Kumar had done so by either forging cheques and/or by fraudulently creating payment vouchers. The cheques so fraudulently drawn in the name of R.K. Sharma, Ravinder Kumar, Rajesh Kumar Sharma etc. were then deposited into the bank accounts maintained by Ravinder Kumar and the appellant. Out of the total amount of Rs. 1,22,17,207/-, which was illegally withdrawn, Rs. 98,42,557/- was deposited in the bank accounts of the appellant herein. It is relevant to note that the bank accounts of the appellant used in that case are the same bank accounts in which the funds against GSLIS claims were deposited. It is seen that the nature of offence for which the appellant was convicted in A.C. No. 24/206 was identical to the nature of offence in this case. The principal difference being that in A.C. No. 24/2016, funds were drawn from RITES / RITES CPF, which were lying to the credit of employees. In the present case, funds were withdrawn against the GSLIS. Whilst separate trials were conducted and the Trial Court rendered separate judgments convicting the appellant and his brother, there are several elements that are common in both the cases. The judgments convicting the accused were also on the same date, that is, on 29.11.2016. The Trial Court also awarded similar prison sentence to the appellant in both the cases - three years of rigorous imprisonment. However, the fine imposed in both the cases was different. Whereas a fine of Rs. 1 crore was imposed in A.C. No. 24/2016, in the present case the fine imposed on the appellant was Rs. 4 lacs.

This is commensurate to the quantum of funds withdrawn. As stated earlier in A.C. 24/2016, an aggregate amount of Rs. 1,22,17,207/- had been illegally siphoned off from RITES/RITES CPF, out of which Rs. 98,42,557/- had been deposited in the bank account of the appellant. In this case, an aggregate amount of Rs. 10,25,789/- had been withdrawn from RITES, out of which Rs. 3,67,106/- had been diverted into the bank accounts of the appellant.

23. This Court finds no reason to interfere with the term of the prison sentence awarded to the appellant (three years of rigorous imprisonment). However, considering the apparent common elements in both the cases; this Court is of the view that the said prison sentence awarded to the appellant ought to run concurrently with the sentence awarded to the appellant in A.C. 24/2016 arising from RC No. DAI 2009 A 0039. It is so directed.

24. The appeal is dismissed subject to the directions as above. The pending application is also disposed of.