

(2011) 02 DEL CK 0173

In the Delhi High Court

Case No : Criminal MB 96 and 158 of 2011 in Criminal Revision Petition No. 34 and 60 of 2011

Rakesh Rai

APPELLANT

Vs

State
 Pardeep Kumar Aggarwal Vs CBI

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 468

Citation : (2011) 02 DEL CK 0173

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Manoj D. Taneja, in Criminal MB 96/2011 in Criminal Rev. P. No. 34/2011 and K.B. Andley and M.L. Yadav, in Criminal MB 158/2011 in Criminal Rev. P. No. 60/2011, for the Appellant; Vikas Pahwa, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this common order, I shall dispose of the applications for suspension of sentence preferred by the Petitioners during pendency of revision petitions against conviction of Mr. Pradeep Kumar Aggarwal u/s 120B read with Section 420 IPC and Petitioner Rakesh Rai u/s 120B read with Section 420 IPC and u/s 420 and 468 IPC upheld in appeal.

2. Four persons namely Javed Waqar Merchant @ Mohd. Waqar, Pradeep Kumar Aggarwal, Rakesh Rai and Smt. Sayesta Bano wife of Javed Waqar were put on trial in this criminal case before learned ACMM, Delhi for playing fraud upon the State by cheating the exchequer on the basis of forged documents, of duty drawback to the tune of Rs. 56,15,480/-. It was alleged that this conspiracy to cheat was hatched up by all the four accused persons. The main accused was Javed Waqar Merchant, Smt. Sayesta Bano was his wife and the other accused persons (the Petitioners herein) had participated in the conspiracy. During trial, accused Javed Waqar and his wife Sayesta Bano became proclaimed offenders and the trial proceeded against the remaining two accused persons (Petitioners).

The trial court considered the entire evidence as placed before it and came to conclusion that the both the accused persons/ Petitioners were part of the conspiracy hatched up to cheat the government and had also benefited from the conspiracy and got a part of the booty so obtained by cheating. Thus both the Petitioners herein were convicted u/s 120B read with Section 420 as well as u/s 420 IPC, however, it was found that accused Rakesh Rai had also forged shipping bills by forging signatures of S.N. Goel, Inspector Customs and Mr. Y.R. Kilana, Superintendent Customs posted at IGI Airport purported to show that they had inspected the goods at cargo section and on the basis of such shipping bills, an application for duty drawback was made.

3. It is submitted by the counsel for the Petitioner no original shipping bill could be traced by the investigating agency and only one shipping bill triplicate copy could be traced and seized during investigation being shipping bill No. 080089 and on the basis of this triplicate copy, the specimen signatures of the accused were compared and that no such comparison could have been made by the investigating agency with triplicate copy and the trial court could not have relied upon such an evidence since this was no evidence and even if it was considered evidence, it was a very weak evidence and, therefore, the conviction of the Petitioner Rakesh Rai was bad in law. It is also submitted by the counsel for the Petitioner Rakesh Rai that the offence against the accused persons were not made out. Similar was the plea of counsel for the Petitioner P.K. Aggarwal who stated that there was no involvement of P.K. Aggarwal and he was wrongly convicted by the trial court.

4. As far as comparison of signatures with the triplicate copy is concerned, I consider prima facie there is no illegality in comparison of specimen signatures of the Petitioners with the triplicate copy of the shipping bill. The shipping bill is submitted in triplicate and signatures put on the first copy appear on remaining two carbon copies also because of the preparation of bills in triplicate. Thus, there is a surety that the signatures on the last copy cannot be changed or altered later on and they will have to be the same as on the first copy and any change would immediately be reflected. Thus, comparison of signature of the Petitioner on the triplicate copy with specimen/ admitted signature is not weak evidence or no evidence in the eyes of law. Moreover, it was not the only evidence on the basis of which the Petitioners were convicted and appeal dismissed. The Petitioners were convicted after considering the entire chain of circumstantial evidence led by the prosecution showing the role of the accused persons. Both the accused persons/ Petitioners had opened fictitious accounts and a party of duty drawback received was put into these fictitious accounts either directly or indirectly and withdrawn. Accused Rakesh Rai had opened an account number 18046 with UBI, Moradabad in the name of M/s Indoptik Exports impersonating himself as Ravi Jain and through cheques dated 3rd May, 1991 and 13th May, 1991 issued by accused Javed Waqar Merchant, he received in this account a sum of Rs. 3,01,000/- from the account of M/s Soflense Export, on the basis of whose fake shipping bills, duty drawback was taken and this money was

withdrawn by the accused. Similarly, Petitioner Pardeep Kumar Aggarwal who was actually a taxi driver in Moradabad and used to ferry main accused in his taxi from Moradabad, became part of the conspiracy and he opened a current account number 18048 on 24th September 1981 in UBI, Station Road, Moradabad in the name of M/s Indoptik Exports in the name of Ravi Jain. This account of Petitioner Pradeep Kumar Aggarwal was introduced by wife of Javed Waqar accused number 4 and fictitious claims of duty drawback in the name of M/s Indoptik Exports against three shipping bills number 080088, 080108 and 0800099 all dated 7th March, 1991 amounting to Rs. 2,28,750/- were deposited and this amount was withdrawn by the accused. The entire chain of evidence about opening of account and withdrawals of money has been proved.

5. I, therefore, consider that the two Petitioners/ accused persons were not entitled to suspension of sentence. The applications for suspension of sentence are hereby dismissed. However, the petitions should be heard at an early date since the sentence in this case awarded is only one year, so that the petitions do not become in fructuous. In case the petitions are not heard early, the Petitioners would be at liberty to make another application for suspension of sentence.

Crl. Rev. P. No. 34/2011 & Crl. Rev. P. No. 60/2011

List these petitions for hearing now on 28th March, 2011.