(2011) 11 MP CK 0050

In the Madhya Pradesh High Court

Case No : Criminal R. No. 1501 of 2011

Ramlal Athya APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2011) 11 MP CK 0050

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—The applicant/accused, has filed this revision being aggrieved by the order dated 3.8.2011 passed by the Ist A.S.J. Sagar in S.T No.391/10 framing the charges against him for the offence of section 420 read with section 34, 467 read with 34 and 468 read with section 120-B of the IPC.

2. The facts giving rise to this revision in short are that on 13.6.08, at police out-post Shahpur, a letter signed by J.P. Sen, Chief Municipality Officer, Shahpur, was received contending that the State Govt. implemented a scheme named of "National Family Relief Fund" for the persons who are living below poverty line, according to which, on death of Karta of the family, Rs.10,000/-, is given to the successor of such Karta. On 26.11.07, one Smt Phoolabai alias Kamalrani w/o Bhujbal had got the death certificate of her alive husband Bhujbal Sour S/o Kashiram by adopting the wrong process and contrary to the procedure. Subsequent to it, on dated 27.11.07, said Phoolabai filed another application contending that her husband said Bhujbal Sour, whose name was stated in S.No.2469 in the list of the persons being under below poverty line, has passed away with a prayer for giving the sum under the aforesaid scheme. Said application was forwarded by C.M.O to Branch Assistant Ramlal Athya, the applicant herein for appropriate proceedings. Such application was filed in a

prescribed form in which some of the information was filled by the Ward Member Prem Rani. After processing the application, the Branch Assistant produced such form before him, on which, he placed the same in the meeting of Municipality. In the meeting dated 28.12.07, in presence of said Member Premrani, such application was allowed. Pursuant to that, through cheque dated 31.1.08, Rs.10,000/-was given to said Phoolabai under the aforesaid scheme. After disbursement of such sum, the office of said C.M.O came to know from news paper that said Bhujbal did not die and was still alive but with the assistance of official of Nagar Panchayat, said Phoolabai, by practicing fraud with personation got the fabricated death certificate of Bhujbal and on that basis, the above mentioned sum of the Govt. Fund (scheme), was taken by her under wrong premises, on which, by passing the resolution No.4 dated 23.5.08 by the Nagar Panchayat the decision to get register the offence was taken. It was also revealed that subsequent to obtaining the aforesaid cheque, by supplying wrong information to the Bank, she opened the account and got the cheque encashed. On the aforesaid information, prima facie offence of section 420, 467, 468, 409 read with section 34 were made out, on which, Crime No.0/08 was registered at Police outpost Shahpur and the same was sent to P.S. Sanodha for registration of regular crime where on dated 28.6.08, the offence was registered as Crime No.120/08. In the course of the investigation, various papers including the papers showing that said Bhujbal is alive, the application submitted by accused Phoolabai in the office of the Nagar Panchayat Shahpur, proceedings of Nagar Panchayat were seized. The case diary statements of various witnesses including the aforesaid Bhujbal, the alive husband of accused Phoolabai, were recorded. In investigation it was also revealed that the present applicant Ramlal Athya being branch Assistant working in the office of Nagar Panchayat Shahpur, was also involved with the accused Phoolabai in the criminal conspiracy and committed such offence. Pursuant to which the application for aforesaid scheme was processed and said accused had received the aforesaid sum of Rs.10,000/-by submitting the forged and fabricated document and also by practicing the fraud with personation and concealing the fact that her husband is alive. On completion of the investigation along with the aforesaid main accused Phoolabai, the applicant was also charge sheeted.

3. After committing the case to the Sessions Court on evaluation of the papers of the charge sheet on framing the charges of section 420/34, 467/34 and 468/120-B of the IPC against the present applicant, he abjured the guilt and thereafter being aggrieved by such order has come forward to this court with this revision with a prayer to discharge him from said charges. 4. Shri Vijay Nayak, learned appearing counsel of the applicant after taking me through the papers of the charge sheet including the FIR and the interrogatory statements of the witnesses, said that mere perusal of such papers, it is apparent that the impugned application was neither prepared nor anything was done in it by the present applicant. The same was submitted in the office of the Nagar Panchayat before the C.M.O by the aforesaid accused Phoolabai with her signature and

other necessary requisites. As per requirement of the Rules of such scheme some information in such form were filled-up by Premrani, the ward member of such Nagar Panchayat. As per the available record of the charge sheet, after filing the aforesaid application by co-accused Phoolabai in the office of the CMO, the same was forwarded to the applicant to process the same and the applicant has carried-out his duty to process and prepare the matter for placing it before the meeting of Nagar Panchayat and same was placed by the CMO in the concerned meeting of Nagar Panchayat in which the resolution, accepting such application was passed. In such situation, it would not be inferred that at any stage of the matter, the applicant had assisted Phoolabai either in obtaining the fabricated forged and false document or in practicing the alleged fraud with personation or otherwise for obtaining the sum of the aforesaid scheme. According to his submission, there is no prima facie evidence in the charge sheet showing the involvement of the present applicant in the alleged offence or it''s criminal conspiracy with the co-accused Phoolabai and by placing his reliance on a decision of the Apex Court in the matter of Dilawar Balu Kurane Vs. State of Maharashtra, prayed for discharging the applicant from the alleged charges by admitting and allowing this revision.

5. Having heard the counsel at length, keeping in view his arguments, I have carefully gone through the papers of the charge sheet placed on the record as well as the impugned order and the charges framed by the trial court. It is apparent from the FIR that Phoolabai alias Kamalrani w/o Bhujbal Sour had filed the application in the office of CMO of Nagar Panchayat Shahpur stating that her husband Bhujbal Sour passed away. The death certificate of her alive husband was also obtained by her under the wrong process and contrary to the prescribed procedure. Some requisite information was filled-up in the form by the elected ward member with her signature. After receiving such application, said CMO has directed and handed-over the same to the present applicant to process and prepare the same for placing in the meeting of Nagar Panchayat for its approval to pay the requisite sum under the aforesaid scheme. In such premises while processing such application, the applicant was duty bound to verify the fact, whether said Bhujbal Sour had passed away or not ? It appears from the charge sheet that without verifying such information, the present applicant with the connivance of said Phoolabai placed the matter before the CMO and such act was committed by the applicant without verifying the information regarding death of said Bhujbal from the concerned record of Nagar Panchayat in which the birth and death are registered. In such premises it appears that inspite knowing the fact that Phoolabai had filed the claim under the aforesaid scheme on the basis of false and fabricated document, obtained by practicing fraud and personation stating her alive husband to be a dead person, while the applicant has processed the matter and involved himself in such criminal conspiracy with the other co-accused of the case for the reasons best known to the applicant and other co-accused which is yet to be examined by the trial court after recording the evidence.

6. It is settle proposition of the law that whenever on the basis of the evidence collected by the investigating agency and placed on the record along with the charge sheet if slight prima facie ingredients of the alleged offence are made out against the accused like the applicant then there is no option with the trial court except to frame the charge of the alleged offence. In the light of this proposition of the law, on examining the papers of the charge sheet, it is apparent that Phoolabai in the life-time of her husband Bhujbal with the assistance of official of Nagar Pancyayat, obtained his aforesaid death certificate by personation and practicing the fraud and on that basis filed the application for extending her the benefit of above mentioned scheme. It is also apparent that knowing all such things without verifying from the record such application, being official of the Nagar Panchayat, was processed by the applicant along with some other person of his office. Accordingly applicant involved himself not only in processing the application but also facilitated the co-accused in committing the alleged offence of practicing fraud with personation and fabricating the false document. In such premises, prima facie it would be deemed that applicant involved himself with Phoolabai in her criminal conspiracy for committing the alleged offence.

7. So far the case law cited on behalf of the applicant Dilawar Balu (supra) is concerned, the same being distinguishable on facts and principle both with the present matter is not helping to the applicant. Such case was decided in some different scenario and also taking into consideration the provision of section 5(2) of the Prevention of Corruption Act which is not the situation in the case at hand. So, the applicant could not be benefited on the basis of such citation.

8. Apart the above, by referring the case diary statements of some witnesses it was argued by the applicant''s counsel that no witness has stated anything against the applicant implicating him with the alleged offence, therefore, in such premises, also the charge could not be framed against the applicant is concerned, it is suffice to say that at the initial stage of sending the report in writing by the CMO to the police, the averments regarding involvement of the applicant with the alleged offence are stated. Such fact is yet to be examined and appreciated by the trial court after recording the evidence. Without recording the evidence and its appreciation, the aforesaid averment of the FIR and other available prima facie evidence in the charge sheet against the applicant could not be ignored at the stage of framing the charge. Besides this, it is apparent from the case diary statement of Bhujbal that he was alive on the date of filing the application by Phoolabai and also at the time of processing the same by applicant. In such premises also, the applicant does not deserve to be discharged from the charges framed by the trial court.

9. In view of the aforesaid discussion, it appears that keeping in view all the aforesaid circumstances, the trial court has rightly framed the charges against the applicant for the aforesaid offence and therefore the impugned order does not require any interference at this stage under the revisional jurisdiction of this court. Consequently, this revision, being devoid of any merit is hereby dismissed

at the initial stage of motion hearing.