
(2007) 01 DEL CK 0202
In the Delhi High Court
Case No : Criminal M.C. 6154 of 2005

Sangeeta

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 451, 482
Penal Code, 1860 (IPC) — Section 380, 411, 506

Citation : (2007) 01 DEL CK 0202

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : J.R. Priani, for the Appellant; S.K. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This is a petition u/s 482 of the Code of Criminal Procedure 1973, seeking quashing of an order dated 29.11.2005, of the Metropolitan Magistrate (hereafter called the "impugned order" and "the trial Court" respectively). The petitioner is complainant in a First Information Report (FIR); she has alleged that the respondent (hereafter called "the Accused") committed offences punishable under Sections 380/411/506 IPC.

2. The petitioner claims to be operating under the name and style of M/s Isan Sky Explorers, is head of Ballooning India Association and also actively involved in aero adventure activities. She had applied for security clearance for operating Hot Air Balloon, from the Civil Aviation Department, the Government of India. She alleged that the accused, a Hot Air Balloon Pilot with the requisite certificate/license had come into contact with her concern, and had requested her for loan to purchase components and accessories for a second hand balloon donated to him by some one as well as for his personal necessities.

It is claimed that she advanced various sums of money, from time to time and had also given Rs. 2.35 lakhs to the accused for the purpose of hot air balloon

and accessories.

3. The petitioner complainant alleged that as the accused was unable to repay his loans, he sold the hot air balloon by an agreement dated 28.11.2002 and handed over the balloon to her which was kept in Western, Avenue Sainik Farm. She alleged that the accused dishonestly removed the balloon on 14.3.2003 which led to filing of the FIR. He allegedly avoided orders and moved an anticipatory bail application which was declined on 23.2.2004. He thereafter moved this Court and was granted protection by an order dated 21.5.2004 subject to his joining investigations. As he did not comply with the Court's order, his bail application was rejected on 6.8.2004. Eventually on 14.8.2004 the police recovered a property but the accused successfully avoided the police and moved an application for release of case property which was granted to him by the impugned order. It is alleged that the accused moved for anticipatory bail before the Supreme Court which granted that to him on 15.11.2004. He is now facing trial and the charges have been framed.

4. The impugned order has been attacked as based on misappropriation on the materials on record; the complainant has relied upon the agreement entered into between the parties whereby the balloon was to be transferred. Learned Counsel contended on her behalf that the accused had denied executing the agreement altogether but thereafter changed his version and falsely claimed that his signatures were obtained on blank paper. Learned Counsel also submitted that the trial Court misdirected itself that in another complaint by one Sanjeev Dhir to the Director General Civil Aviation, it was disclosed that the balloon had been delivered to that complainant by the accused and was in his custody. Learned Counsel submitted that the balloon said to be in the custody of Sh. Dhir is the different one and manufactured/ made locally in India.

5. Learned Counsel for the petitioner relied upon the judgments reported as V. Parakashan Vs. K.P. Pankajakshan and Another, ; Sharif Mohammed Vs. State of H.P., ; M.S. Jaggi Vs. Subaschandra Mohapatra, and submitted that although the order u/s 451 is by way of a temporary arrangement, during the pendency of enquiry or trial, nevertheless, the Court will have to consider some aspects of the merits and cannot act in an injudicious manner while dealing with property.

6. Learned Counsel contended that on an application of settled principles it is evident from a reading of the agreement that the petitioner, who had paid substantial amounts and with whom the accused had agreed to part with the balloon to its custody, did a volte face and took back its custody. Counsel urged that the rulings cited by him had uniformly held that the Court should prefer granting custody to persons having possession of custody prior to the dispute.

7. Learned Counsel for the accused relied upon the impugned order and submitted that it is a detailed and reasoned one, taking into consideration all the relevant and material aspects as to who ought to be entrusted with the custody of the case property, pending trial. It was contended that there are serious

disputes as to the veracity of the agreement which according to the accused is forged and fabricated. It was contended that even admitting the agreement to be correct, its contents nowhere disclosed that the ownership of the balloon were transferred to the complainant. Counsel submitted the agreement itself did not mention about loan advanced to the accused and the terms and conditions relied upon were vague.

8. Learned Counsel urged that the trial Court took into consideration the circumstance that there were disputes as to whether possession or custody of the balloon had ever been handed over to the complainant. He relied upon the observations of the trial Court to say that one of the witnesses had stated that after delivery of the balloon on 28.2.2003, it was taken back by the accused in March 2003 which clearly showed contradictions in the prosecution story. It was also contended that the trial Court considered other factors such as that the accused was not competent to sell the balloon without prior permission from the DGCA and that another complaint of Sh. Sanjiv Dhir disclosed that the balloon had been delivered to him and was in his custody. It is claimed that the accused continues to be the registered owner and the complainant failed to place on record any document in favor of her claim to be the owner except the agreement.

9. Learned Counsel relied upon the judgments reported as *Sikander Beg v. State of Rajasthan* and *Anr. 1993 Cri.L.J. 1114* ; *Nitin Gupta Vs. State of Meghalaya and Others*, ; *Ashok Kumar Vs. State of Bihar and Others*, in support of his contention that the Court granting an order of interim custody, pending trial has to consider not only the accusations and version of one or other party, but other factors as to the nature of property, whether it would be produced for the purpose of evidence at the appropriate stage and also whether it would be available at all times for the purposes of the proceedings. Viewed from this perspective, it is urged that the order of the trial Court does not require to be disturbed.

10. The complainant, as is evident from the above discussion, has placed the considerable reliance on the agreement dated 28.11.2002. Although its genuineness is disputed, the trial Court nevertheless took its contents into consideration. The agreement, facially, discloses that some amounts were paid by the complainant to the accused and that he was unable to return them. It there after proceeds to state that both parties agreed that the ownership of the balloon would be made over to the complainant who was assured that it was free from encumbrances/ mortgage/lien etc. The agreement further records that transfer of balloon/ equipments would be completed with necessary and requisite permission by the DGCA. Another stipulation is the willingness of the accused to provide necessary facilities for maintenance of equipments and extending flying services, to the complainant.

11. From the above narrative, it appears that the agreement records an intention to transfer ownership. It does not disclose as to whether and if so when possession was handed over to the complainant. In these circumstances, the

other materials relevant for deciding the case were necessarily the statements recorded during the course of investigation. The trial Court has observed that at the stage of issuance of the order there was no clarity about the time or the date when the balloon was handed over to the complainant; it even observed that there is some contradiction by the complainant's witness.

12. The case law cited by both parties establish that the broad probabilities have to be considered while making an order while making an order u/s 451 of the Code of Criminal Procedure. Although the order is by way of an interim arrangement, pending delivery of judgment after conclusion of trial, yet it is not an interlocutory order in the sense contemplated u/s 397(2). Apart from the allegations in the complaint and the contents of the agreement, the trial Court has in its decision considered the broad probabilities of the case and as to who would be the most appropriate person to be entrusted with the custody of the probability. As on date the registered owner of the property continues to be the accused. The agreement also records that he was to provide flying service personnel and maintenance support.

13. While granting custody one of the considerations that would necessarily weigh with the Court is that the person entrusted with the property should be in a position to maintain it so that it does not deteriorate; it is a practical alternative to custody being with the Court or with some one incapable of handling or looking after it. If this aspect were to be considered the materials taken into account by the trial Court and its opinion, cannot be termed as unreasonable or its order, issued in material irregularity of jurisdiction.

14. Besides the above, I am not unmindful of the limited nature of jurisdiction u/s 482 Cr.P.C; it is to be used sparingly, where injustice is established as the natural consequence of an order issued by the trial Court, or during the course of pending proceedings. Having carefully considered the materials on record and the reasoning of the trial Court, I find the impugned order unexceptional.

15. For the above reasons, the petition cannot succeed; it is accordingly dismissed with no orders as to costs.