
(2005) 07 DEL CK 0037

In the Delhi High Court

Case No : Criminal Revision Petition No. 47 of 2005

Shashi Lata Khanna

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 420, 448, 463

Citation : (2005) 121 DLT 522 : (2005) 84 DRJ 577

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : K.B. Andley and M.L. Yadav, for the Appellant; V.K. Malik, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

R.S.Sodhi J.

1. This criminal revision petition is directed against the judgment and order dated 1.11.2004 of the Metropolitan Magistrate in case arising out of FIR No. 362/83, u/s 120-B/ 448/465/420/468/471/34 IPC, Police Station, Vinay Nagar, whereby the learned Metropolitan Magistrate has acquitted the accused persons of all charges.

2. Facts of the case, as noted by the learned Metropolitan Magistrate, are as follows :

"1. In this case the aforementioned 4 accused were sent up for trial with the case of the prosecution that on or about 24/6/83 in Delhi all these accused persons entered into criminal conspiracy to commit house trespass in the house No. B-6/104 S.J.Enclave, New Delhi, The accused persons in pursuance of this conspiracy allegedly forged one rent note dated 2nd June 1983 in favor of M/s Rajeev Pharmaceuticals purportedly executed by the complainant. On the basis of this rent note it is alleged that all the four accused persons committed house trespass on the said date. For the sake of brevity instead of mentioning the

names of accused, the accused Durgesh Pal is mentioned as accused No.1, accused, Tulsi Dass Verma is mentioned as accused No.2, accused Tilak Raj is mentioned as accused No.3 and accused Pradip Chander is mentioned as accused No.4 herein below.

2. Accordingly a charge was framed against all accused persons under Sec. 120-B of IPC for criminal conspiracy, u/s 448/34/120-B of IPC for committing house trespass, u/s 465/468/471/34/120-B of IPC against the accused persons for allegedly forging the said rent note and using the same. A charge u/s 420/34/120-B of IPC was also framed against the accused persons for dishonestly inducing the complainant to deliver an empty paper bearing her signature and thereafter converting the said paper into the alleged rent note. All accused persons pleaded not guilty and claimed trial.

3. Before proceeding further and appreciating the evidence it may be mentioned her that it was never the case of the prosecution or the complainant that the accused persons or any of them ever induced the complainant or anybody else in obtaining the alleged blank letterheads upon which the alleged rent note was prepared. Rather it was the case of the prosecution throughout that the complainant alleged that the said letterheads were lying duly signed blank in the office of the complainant and her husband and the accused persons obtained them after committing theft of the same and converted those blank signed letterheads into the alleged rent note. Even otherwise not even an iota of evidence have come on record in the testimony of any of the witnesses that anybody was ever induced by any of the accused persons in delivering of the said blank signed letterheads upon which the alleged rent note has been prepared. The ingredients required to constitute the offence of cheating are:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or not to do anything which he would not do or on it if we were not so deceived; and

(iii) in cases covered by the (ii)(b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. Ram Jas Vs. State of U.P.,

4. Thus for an offence of cheating it is necessary that there should be fraudulent and dishonest inducement by the accused persons and on the basis of that fraudulent and dishonest inducement there should be delivery of property. In the present case it is not so and accordingly the necessary ingredients for the offence of cheating are not fulfilled in the present case. Accordingly there is not an iota of evidence on record to suggest that any of the accused in conspiracy committed the offence of cheating. All the four accused persons are accordingly

acquitted of the charges u/s 420/120-B of IPC. Here I have also given thoughtful considerations to the fact that whether in the present case the charge could have been altered or amended for the offence of committing theft of the said letterheads. After perusal of the evidence of the prosecution witnesses as has come on record in the present case it is found that there was never sufficient evidence to do so after the charge was framed in the present case as above.

5. Before proceeding further in the present case it may be mentioned that the alleged rent note dated 2nd June 1983 which is stated to have been forged by the accused persons and which is stated to have been used by the accused persons knowing or at least having reasons to believe the same to be forged was never produced in original in the court. For an offence of forgery of document it is necessary that the original document should have been produced in the court. Although it is the case of the prosecution that the original rent note was in the possession of the accused persons and they have produced the same and on the other it is the case of the accused that they tendered the original rent note to the investigating officer at the time of the investigation but it was deliberately not produced by the prosecution, the fact remains is that the original alleged forged document was never produced before the court. We cannot forget that the burden to prove a criminal case is on the prosecution and quite heavy.

6. In the case of K.V.R. Iyyanger vs. State of Andhra Pradesh 1988 (2) CRIMES 882 it was held, that in order to establish an offence of forgery u/s 463 IPC punishable u/s 465 IPC the presence of the original document before the court concerned is necessary. Copy or photo stat copy is not sufficient in order to establish offence of forgery. In the present case also the original was never produced in that court nor it was proved in the court in accordance with law hence the offence of forgery or using the said forged document has not been proved. Once the offence of forgery is not proved there is no question of using the forged document as genuine. Accordingly the accused persons cannot even be convicted u/s 465/468/471/120-B of IPC.

7. Now the only offence which remains is conspiracy to commit trespass and committing trespass. Before proceeding further and before appreciating the evidence it may further be mentioned that the accused persons are not challenging their presence in the property in question on the date in question. Rather it is the case of the accused themselves that the accused persons were in possession of that property on the basis of the rent note dated 2nd June 1983 which the complainant herself executed in favor of M/s Rajeev pharmaceuticals of which accused No.1 and accused No.2 were partners. It is the case of the accused persons that they had business dealings with the complainant and her husband and this rent note was executed by the complainant in their favor but subsequently the complainant turned dishonest. Accordingly while appreciating evidence we would confine the discussion on that point only.

3. The prosecution, in order to establish its case, examined nine witnesses. The trial court has elaborately dealt with each one of them to arrive at the conclusion

that the prosecution has not been able to establish its case.

4. PW-1, Shashi Sehgal, was the Architect of the property in question. He deposed that on 24.6.1983 on the request of the complainant, PW-3, he accompanied PW-3 to the property in question which was under construction. At that time he found all the four accused persons present in the property with their luggage and belongings. When challenged by the 3rd respondent and asked to vacate the property, the accused claimed that they had entered the same by virtue of being tenants. PW-3, is the complainant who deposes that on 24.6.1983 her chowkidar informed her that some persons had entered into the property forcibly. Upon this information, the witness along with her son, Sanjay, reached the property and found the accused persons present in the house. Thereafter, the witness made a complaint, Ex. PW-2/A, upon which the case was registered. The witness deposed that she never executed any rent agreement in favor of M/s Rajeev Pharmaceuticals. The alleged rent note was not filed but a photo copy of the same was marked as "A". This witness admitted her signature but explained that the rent note is forged and has been prepared on a blank signed letterhead.

5. PW-4A, Sanjay Khanna, is the son of PW-3 and supports the deposition of PW-1. PW-5, M.M. Khanna is the husband of PW-3. He states that he did not let out the premises in question to the accused nor his wife had done so.

6. From the statements of witnesses it appears that the case of prosecution rests primarily on the testimony of PW-3 who deposes to the effect that the rent note was never executed by her and that it is forged. From the cross-examination it appears that she contradicts herself as also PW-5 on material particulars. The witness appears to be unreliable for reasons elaborately set out in the judgment of the trial court which need not be repeated. Suffice it to say that the reasoning given by the trial court and its evaluation of the evidence on record is sound and needs no interference.

7. Criminal Revision Petition No. 47 of 2005 is dismissed.