

(2021) 08 DEL CK 0213

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 996 Of 2021, Criminal Miscellaneous Application No. 5072 Of 2021

Shekhar Kumar @ Shekhar Singh

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 227, 482
Prevention Of Corruption Act, 1988 — Section 7, 8, 13(1)(d)
Indian Penal Code, 1860 — Section 120B, 161

Citation : (2021) 08 DEL CK 0213

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Sanjay Gupta, Neelam Sharma

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of the order dated 17.03.2020 passed in CC No. 335/2019 by the learned Special Judge, PC Act, ACB-01, Central District, Rouse Avenue Courts, Delhi whereby charges were framed against the petitioner and co-accused SI Amit Kumar in FIR No. 5/2018 registered under Sections 7/8/13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') at Police Station Vigilance, Delhi.

2. The brief facts of the case as noted by the learned Trial Court in the impugned order are as under:-

"1. Brief facts of the case are that the complainant Sh. Surender Singh gave a hand written complaint to Insp. Ajay Tyagi at PS Vigilance in the presence of panch witness Sh. Ramesh Chandra Kesharwani on 23.05.2018 alleging that complainant is the registered owner of vehicle bearing no. HR-46D-5396. It is

further stated that Jasvir, driver left for Madras from New Green Transport, Rampura in the aforesaid vehicle loaded with goods on 07.05.2018. It is further stated that the said vehicle was stopped at the instance of Sh. Shekhar (owner of New Green Transport) who lodged a complaint against the complainant at PS Punjabi Bagh. Thereafter, on 16.05.2018, Sh. Shekhar had taken the complainant to PS Punjabi Bagh where accused SI Amit Kumar met who threatened to send the complainant to jail if his demand of Rs. Five Lakh is not fulfilled. On the next day accused SI Amit Kumar obtained Rs.2,50,000/- from the complainant at the PS and asked the complainant to pay the balance amount on the next day. Thereafter, on 18.05.2018, the complainant has further given Rs.30,000/- to accused SI Amit Kumar who warned the complainant and asked him to pay the remaining amount till 21.05.2018. Thereafter, the complainant reached at the PS alongwith Rs.50,000/- (25 currency notes of Rs.2,000/- each) and made a complaint on 23.05.2018 which was signed by panch witness Ramesh Chander Kesharwani and the serial numbers of the currency notes were noted down and phenolphthalein powder was applied on the aforesaid GC notes and demo was given to the complainant before proceeding for raid. Thereafter, the amount of Rs.50,000/- was handed over to the complainant which was kept by the complainant in his right side pocket of pant and was briefed to keep the panch witness alongwith him so that he could hear the conversation between the complainant and the accused. Thereafter, the complainant made a telephonic call to accused SI Amit Kumar who asked the complainant to meet Shekhar. Thereafter, the raiding team including RO Insp. Ajay Tyagi, complainant Surender Singh, panch witness Ramesh Chander Kesharwani, HC Rakesh, HC Tara Chand, HC Kanwar Singh and driver ASI Amardeep left in government vehicle no. DL-1CJ-5549 and reached near PS Panjabi Bagh at about 02:30 pm. It is further stated that the complainant and panch witness were sent to PS Punjabi Bagh and raiding team remained outside the PS Punjabi Bagh. Thereafter, complainant called on the mobile phone of the Shekhar who asked the complainant to reach at the office of Shekhar which is situated at Rampura and accordingly the complainant alongwith the raiding team reached at the office of Shekhar at about 03:30 pm. Complainant and panch witness went at the first floor and other staff remained near the office. Thereafter, after 35-40 minutes panch witness came down and made a pre-appointed signal to the raiding team and the raiding team reached at the first floor where the panch witness told that the person wearing Kakhi pant and yellow shirt had obtained Rs.50,000/- from the complainant from his right hand and that person was apprehended by the RO, the said person disclosed his name as SI Amit Kumar. Thereafter, on the personal search of accused SI Amit Kumar, currency notes of Rs.50,000/- (25 currency notes of Rs.2,000/-) was recovered from his right hand, the serial number of the recovered currency notes were tallied with the serial numbers noted in the pre-raiding proceedings. Thereafter, right hand of accused was taken into sodium carbonate solution which turned pink which was seized in two bottles. Thereafter, the exhibits of the case were taken into possession. The present case was registered against SI Amit Kumar and Shekhar and investigation was assigned to

Insp. D.V. Gautam who arrested the accused and prepared the site plan at the instance of complainant Surender Singh. During the course of investigation, accused Shekhar Kumar was also interrogated who revealed that he had sent a wine consignment to Chennai in the truck of the complainant Surender Singh who removed half of the consignment on the way to Chennai and therefore, accused Shekhar reported the matter to PS Punjabi Bagh and approached accused SI Amit Kumar who got recovered the stolen consignment of wine from Bahadurgarh, without lodging any FIR."

3. The Trial Court, after considering the material placed on record, framed charges against the petitioner and co-accused SI Amit Kumar under Section 120B IPC & Sections 7/13(1)(d) of the PC Act.

4. Learned counsel for the petitioner has contended that the offence is alleged to have been committed on 23.05.2018 under the unamended Section 7 PC Act, and as per which, a public servant could be charged on taking of gratification other than legal remuneration in respect of an official act. He contended that SI Amit Kumar could not have entertained and proceeded upon the petitioner's complaint as no offence had been committed in the jurisdiction of Police Station Punjabi Bagh, Delhi where he was posted. In support of his submission, learned counsel for the petitioner has placed reliance on the statement of Insp. Rajiv Bhardwaj, SHO, Police Station Punjabi Bagh which was recorded under Section 161 Cr.P.C. In this statement, it has been stated that the petitioner had come to the Police Station on 16.05.2018 and met SI Amit Kumar regarding pilferage of his goods which were sent from Okhla to Chennai. It was also mentioned in this statement that Police Station Punjabi Bagh had no jurisdiction in the matter and co-accused SI Amit Kumar acted unofficially. Learned counsel also contended that the Investigating Agency has not cited any witness to prove the alleged conspiracy. In support of the submissions, he has placed reliance on the decision of the Allahabad High Court in Vishnu Prasad v. State of U.P. reported as 1981 SCC OnLine All 566.

5. I have heard learned counsel for the petitioner and have also gone through the material placed on record.

6. The short issue involved in the present case is that of the interpretation of Section 7 PC Act prior to its amendment by Act No. 16/2018 which came into effect on 26.07.2018. The present incident is stated to have occurred on 23.05.2018. Section 7 PC Act, prior to its amendment in the year 2018, read as under:-

"7. Public servant taking gratification other than legal remuneration in respect of an official act.-Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour

to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Explanations.-(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

7. A perusal of the aforesaid Section and the appended Explanations (d) and (e) would show that to constitute an offence thereunder, it is enough if a public servant receives illegal gratification as a motive for rendering service by holding out that he would render assistance whether or not he is capable of doing it.

8. The issue involved in the present case also arose before the Supreme Court in relation to the offence punishable under Section 161 IPC (repealed by the PC Act) in Mahesh Prasad v. State of Uttar Pradesh reported as AIR 1955 SC 70. The Supreme Court while negating the contention observed that to constitute an offence under the aforesaid Section, it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver with any other public servant and the giver gives the money under that belief. The receiver of the money may not be in a position to render such assistance. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. Nonetheless he is guilty of the offence punishable under Section 161 IPC. Later, these observations were reiterated by the Supreme Court in Chaturdas Bhagwandas Patel v. State of

Gujarat reported as (1976) 3 SCC 46 as under:-

"21.The section does not require that the public servant must, in fact, be in a position to do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to the giver "with any other public servant" and the giver gives the gratification under that belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing. This is clear from the last explanation appended to Section 161, according to which, a person who receives a gratification as a motive for doing what he does not intend to do, was a reward for doing what he has not done, comes within the purview of the words "a motive or reward for doing." The point is further clarified by Illustration (c) under this section. Thus, even if it is assumed that the representation made by the appellant regarding the charge of abduction of Bai Sati against Ghanshamsinh was, in fact, false, this will not enable him to get out of the tentacles of Section 161, although the same act of the appellant may amount to the offence of cheating, also (see Mahesh Prasad v. State of U. P.; Dhaneshwar Narain Saxena v. Delhi Admn.)

22. Indeed, when a public servant being a police officer, is charged under Section 161 of the Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, the question whether there was any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider whether or not the public servant was capable of doing or intended to do any official act of favour or disfavour (see Bhanuprasad Hariprasad Dave v. State of Gujarat and Shiv Raj Singh v. Delhi Administration.)"

9. In the present case, the complainant has alleged that on a complaint filed by the petitioner, co-accused SI Amit Kumar demanded Rs.5 lacs on 16.05.2018 for not taking legal action against him. In furtherance thereof, the complainant paid Rs.2.5 lacs on 17.05.2018 and Rs.30,000/- on 18.05.2018 to SI Amit Kumar in Police Station Punjabi Bagh. When the complainant was threatened to pay the remaining amount by 21.05.2018, he made a complaint on 23.05.2018 which resulted into the registration of the present FIR. A trap was laid. The complainant was told to reach the petitioner's office. The raid team apprehended SI Amit Kumar in the office of the present petitioner with the bribe amount of 50,000/-. It is thus apparent that the acts of the co-accused squarely fall within the purview of Section 7 PC Act as it stood prior to the 2018 amendment.

10. Insofar as the second contention, with respect to the offence of conspiracy, is concerned, it is oft quoted that a conspiracy is hatched in privacy or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the

existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused [Refer: State through Superintendent of Police, CBI/SIT v. Nalini and Others reported as (1999) 5 SCC 253]. In the present case, since the petitioner and the co-accused SI Amit Kumar were apprehended at the petitioner's office with the bribe amount, the contention is meritless and is rejected.

11. Learned counsel for the petitioner has also placed reliance on Vishnu Prasad (Supra) to support his arguments, however, the decision therein is of no help to the present petitioner, inasmuch as it was passed in the peculiar facts and circumstances of that case.

12. It is settled law that at the stage of framing of charge, where material placed on record discloses grave suspicion which has not been properly explained, the Court would be fully justified in framing the charge. It is also well settled that a Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

13. Considering the facts and circumstances in the light of the aforementioned exposition of law, this Court finds no illegality, infirmity or perversity in the impugned order. The same is upheld and the present petition is dismissed along with the pending application.

14. Needless to state that the observations made hereinabove are only for the purpose of deciding the present petition and shall not affect the merits of the case in the trial.

15. A copy of this order be communicated electronically to the concerned Trial Court.