(2014) 03 DEL CK 0080

In the Delhi High Court

Case No : Criminal M.C. No. 1617 of 2012

Shri T.V. Dattamurthy APPELLANT

Vs

The State of Delhi RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B 420 468 471

Citation : (2014) 03 DEL CK 0080

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : R.S. Juneja and Mr. Sugriv Dubey, for the Appellant; Yogesh Verma, APP for the State SI Ramtirth, P.S. Kotwali and Mr. Pramod Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—By way of these petitions the petitioners Manoj Kumar and Arjun Yadav in Crl. M.C. No. 3403/2012 have challenged the order dated 22.10.2011 passed by learned Additional Sessions Judge (North) Delhi and Petitioner T.V. Dattamurthy in Crl. M.C. No. 1617/2012 has challenged the order dated 03.03.2012. In both the petitions charges for the offence under Sections 420/468/471 were framed against the petitioner Manoj Kumar and Arjun Yadav and Anil, and the charge for the offence u/s 120B IPC was ordered to be framed against the petitioner T.V. Dattamurthy by learned Metropolitan Magistrate (North) Delhi vide order dated 2.4.2011 in case FIR No. 145/1998 under Sections 420/468/471 IPC registered at P.S. Chandni Chowk, Delhi. Since both the petitions raise common question, therefore, both the petitions are being disposed of by this common judgment.

2. Shorn off unnecessary details about the challenges made in the present petitions assailing the impugned order, suffice to state that on 17.6.1998 complainant Sheela Rani lodged a complaint that she had deposited cheque

bearing No. 330245 dated 8.6.1998 for Rs. 8,99,571/- (Rupees eight lakhs ninety nine thousand five hundred and seventy one only) issued by M/s. Jwala India Pvt. Ltd. in her favour, drawn on Corporation Bank, Laxmi Nagar. On the request of the complainant, the petitioner Manoj Kumar Aggarwal sent his employee Arjun to deposit the said cheque in her account with Karnataka Bank, Chandni Chowk, Delhi. On 11.6.1998, the petitioner Arjun along with pay-in-slip put the cheque in the box in which cheques used to be deposited. The said cheque was signed by Manoj Kumar who is related to her and to whom she had requested to send a reliable employee to deposit the cheque in her account. On 15.6.1998 Manoj Aggarwal went to complainant''s bank to enquire about the clearance of the cheque and was shocked to know that no such cheque was received by the Karnataka Bank, Chandni Chowk Branch for collection and on further enquiry it was revealed that the said cheque was debited by the drawee bank namely Corporation Bank, Laxmi Nagar Branch from his account on 15.6.1998 and the same was credited into a newly opened saving account of the same branch. It was also revealed that a sum of Rs. 8,90,000/- (Rupees eight lakhs and ninety thousand) was fraudulently withdrawn from the said Bank by a fictitious depositor on the same day i.e. 15.6.1998. On the basis of the said complaint, FIR bearing No. 145/1998 u/s 420/468/471 IPC was registered.

3. During the course of investigation, supplementary statement of the complainant was recorded. Statement of Ajay Aggarwal, son of the complainant was recorded wherein he has stated that Manoj Kumar Aggarwal, a relative of the complainant had issued the cheque in favour of the complainant since the complainant has sold her jewellery to him and he had made a request to Manoj Aggarwal to deposit the said cheque in the account of the complainant. On 15.6.1998 Manoj Kumar Aggarwal informed him that the cheque was not credited in the complainant''s account. In the supplementary statement of Ajay Kumar Aggarwal recorded on 17.7.1998 he has stated that on 8.6.1998, Manoj Aggarwal had given the photocopy of the cheque to him and requested to present the said cheque after three/four days and on his request, he asked Manoj Aggarwal to deposit the said cheque in the account of the complainant. He also stated that when the cheque was not credited in the account of the complainant, Manoj Kumar Aggarwal (petitioner) told him that he is not liable to pay any amount because he had already made the payment.

4. During investigation, it was revealed that on 12.6.1998, a saving bank account was opened in Corporation Bank at Laxmi Nagar Branch by one lady representing herself as Shila Rani and the cheque in question was credited in her account and the said lady had withdrawn the money on the same day with the help of one person namely Sudesh. The accused Anil Kumar introduced the said lady Shila Rani at the time of opening of the saving account in Corporation Bank.

5. The allegations against the petitioner, T.V. Dattamurthy is that he was the Branch Manager of Corporation Bank, Laxmi Nagar Branch, Delhi and he being the Manager, without following the mandatory rules and regulations for opening a

new bank account allowed Shila Rani to open an account and withdrawal of the huge amount.

6. The learned counsel for the petitioner, T.V. Dattamurthy urged that the petitioner was working as Manager and was responsible and incharge of the branch. According to him, there is no evidence of conspiracy and the essential ingredients of Section 120B IPC are not made out.

7. The counsel for petitioner Manoj Kumar Aggarwal urged that the petitioner had issued the cheque and is not responsible for missing of the cheque. The petitioner had not filled pay in slip of the cheque in question. According to him, there is no material to frame charge against the petitioners.

8. I have given my anxious thought to the submissions made by learned counsel for the petitioners and the learned Additional Public Prosecutor for the State.

9. The scope of interference in the petition u/s 482 Cr.P.C. is limited in view of the decisions of the Division Bench of this Court in Shri Anur Kumar Jain Vs. Central Bureau of Investigation,

10. The Supreme Court of India in Ashish Chadha Vs. Smt. Asha Kumari and Another, observed that at the time of framing of charge the trial court has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. It cannot conduct roving and fishing enquiry into the evidence at this stage.

11. In State of Bihar, etc. Vs. Bihar Chamber of Commerce, etc., it was observed that if court finds that the accused might have committed the offence, it can frame the charges. This is because at the stage of framing of the charge, the probative value of the material on record cannot be gone into.

12. At this juncture it may be mentioned that the guidelines issued by the Corporation Bank on 17.1.1994 have been filed along with the chargesheet regarding opening of new account and conduct of accounts. The relevant portion of the same is as under:

1 Opening of New Accounts

i) Obtention of Introductions: Obtention of proper introduction before opening a new account is a must. If it is from an existing customer of standing who has been an account holder himself for a minimum period of six months, his account should be a well operated one. Branches should not routinely confirm the signature of a customer who has recently opened an account with a view to enabling him to open another account at some other branch without carefully verifying the operations in the new account and satisfying themselves about the genuineness of such a request.

The person who introduces the account should be properly educated about the implications of introducing an account. The introducer should be able to identify the person in future, if required.

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ii) Obtention of photographs........................

iii) Obtention of correct address of the depositor as well as introducer: Full details as regards address, occupation etc. should be correctly noted in the account opening form. Even the details of the introducer should be obtained though he is an existing customer of the branch. The same should be correctly copied on the master sheet of the account.

iv) Operational Instructions:.............

v) Safe custody of the AOF and Specimen signature card:...........

2. Conduct of The Accounts

i)..................

ii) Whenever instruments for large amounts are tendered for clearing/collection into a new a/c, before allowing withdrawal of the proceeds of such instruments, the Branch Manager or any authorized officer should make a visit to the stated address of the a/c holder to ascertain the genuineness and the correctness of the address.

iii) Caution should be exercised when a draft or cheque bearing a date prior to the opening of a/c is presented by the a/c holder for credit of the a/c.

iv) The operation in the new accounts be watched for a minimum period of six months. Any credit for large amounts received in the account should put the passing officers on extra care of and enquiries should be made with the account holder as to the nature of the transaction and source of the payment received to get himself satisfied as to the bona fides of the account holder. The passing officer should obtain authentication from the Branch Manager for withdrawals of Rs. 1000/- and above in the new accounts for about six months from the date of opening.

v).................

vi)...............

13. Indisputedly, the petitioner T.V. Dattamurthy was the Branch Manager at the relevant time. According to the guidelines issued by the Corporation Bank on 17.1.1995, which is part of the chargesheet, the petitioner was obliged to follow the said rules and regulations. The petitioner T.V. Dattamurthy allowed the withdrawal of such a huge amount of Rs. 8,90,000/- (Rupees eight lakhs and ninety thousand) without verifying the address and other details of the said Shila Rani. It is pertinent to mention here that the cheque in question was issued in the name of ''Sheela Rani'' and the new account was opened in the name of ''Shila Rani''. The cheque was deposited and encashed in the account and amount was withdrawn on the same day of ''Shila Rani'' due to negligence of the bank officials.

14. The allegations against the petitioner Manoj Kumar and Arjun Yadav are that the petitioner Manoj Kumar gave the cheque to the complainant and on the request of complainant Manoj Kumar sent his employee Arjun Yadav to the bank of the complainant to deposit the cheque into her account. The cheque along with pay-in-slip was dropped in the box for depositing the cheques maintained by the Karnataka Bank, Chandni Chowk Branch, Delhi. Original pay-in-slip has been filed along with the chargesheet. The officials of Karnataka Bank have denied to have issued another pay-in-slip regarding the deposit of said cheque and, therefore, prima facie, the pay-in-slip is forged one.

15. Thus, a perusal of the allegations as set out in the chargesheet shows that the petitioners were actively involved in the alleged offence. At this stage, it is sufficient to note that the evidence collected by the prosecution prima facie raises a strong suspicion on the petitioners having committed the offence for which they have been charged. None of the grounds raised by the petitioners show that the order on charge against the petitioners is an abuse of process of court, warranting interference of this Court in the present petition.

16. Thus, both petitions are dismissed. Trial Court record be sent back forthwith. Since the trial is pending since 1998, learned trial court is directed to conclude the trial at the earliest.

Crl. M.A. No. 5652/2012 in Crl. M.C. No. 1617/2012

Crl. M.A. No. 17033/2012 in Crl. M.C. No. 3403/2012

Dismissed as infructuous.