
(2012) 06 DEL CK 0029
In the Delhi High Court
Case No : Criminal M.C. 2082 of 2012

S.K. Mittal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(1), 397(3), 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2012) 06 DEL CK 0029

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Anender Kr. Saraswat, for the Appellant; M.N. Dudeja, APP., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.

Crl. M.A. No. 7224/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

Crl. M.C. 2082/2012 & Crl. A. No. 7223/2012

1. This is a petition u/s 482 Cr.PC for setting aside the summoning order dated 18.01.20011 passed by the learned ACMM for an offence u/s 120B and Section 420 IPC and impugned order of the learned ASJ vide order dated 24.03.2012, dismissing the revision petition of the petitioner. The brief facts necessitating the disposal of the present petition are that M/s Ramkrishan Kulwant Rai Agencies Pvt. Ltd ("RKKRAL"), one of the promoters of Koshika Telecom Ltd. (KTL) approached the complainant bank namely "IFCI" for grant of various term loans and other facilities. KTL was sanctioned various loans for doing business of mobile telephony in UP, Bihar and Orissa, under license from Department of

Telecommunication (DOT). On the request of KTL, the complainant bank IFCI issued "Bank Gaurantee" to the tune of Rs. 92.86 Crore in favour of DOT. As per the terms of the agreement, RKKRAL pledged its 22,65,000 shares held by it in M/s ITIL and entered in pledge agreements with the complainant bank dated 11.12.1995, which was reconfirmed vide another pledge agreement dated 21.09.2000. The aforesaid shares were pledged on its face value of Rs. 10/-. It is alleged that M/s KTL, M/s RKKRAL and ITIL being group companies, conspired together and converted the 22,65,000 of Rs. 10/- each to Rs. 5/- each and transferred the said shares in violation of the power of Attorney. It is alleged that the directors and officers of ITIL, KTL and RKKRAL knowing fully aware that the shares were pledged to IFCI as security delivered 22,65,000 shares of Rs. 5/- each to IFCI and dishonestly retained 22,65,000 shares of Rs. 5/- each and/or passed on to RKKRAL who in collusion with ITIL and KTL misappropriated them. It is alleged that the petitioner was a Director Finance of ITIL and was entrusted with the substantial power of management and was appointed by the Board of Directors to supervise the day-to-day functioning of the company. He used to look after all the matters of M/s Usha Group with financial institutions. This fact stands substantiated from the letter which he wrote to CJM of IFCI on 16.3.1998 in respect of proposal for sanction of term loan of Rs.90 crores as group director. It is alleged that though the affairs of the Usha Group of companies were centrally managed by Rai family, but in this specific case of loan/bank guarantee in favour of M/s KTL by RKKRAL, the petitioner after having entered into conspiracy with M/s Vinay Rai committed the offence of cheating of total 22,65,000 shares of the face value of Rs.5/- of M/s ITIL on the pretext of demineralization. It is specifically alleged that the companies i.e. M/s ITIL and RKKRAL, in active complicity of Vinay Rai, the petitioner and Mr. Pathak committed the offence of cheating of total 2265000 shares of the face value of Rs.5/- of M/s ITIL thereby causing wrongful loss to IFCI Bank.

2. The learned counsel for the petitioner argued that the petitioner was not part of the transaction between the accused company and the complainant. It was submitted that there are no specific allegations against the petitioner, and no vicarious liability could be fastened upon him for an offence under the IPC. It was further submitted that the ingredients of cheating are not made out in the complaint and at best the dispute could be a civil nature.

3. The learned APP has vehemently opposed the plea of the petitioner submitting that there are specific allegations against the petitioner in the complaint that he was involved in the day to day affairs of the conduct of the company and all the financial matters of the company were looked after by the petitioner in his capacity as Director, Finance. It was further submitted that the present petition being against the order of the learned ASJ amounts to a second revision which is barred u/s 397(3) Cr.P.C.

4. I have heard the learned counsel for the petitioner and the learned APP and perused the impugned judgment of the learned ASJ.

5. It was the contention of learned APP that the present petition against the order of the learned ASJ amounts to a second revision, hence barred u/s 397 (3) CrPC. In the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation and Another, it was held that,

6. It may also be noticed that this Court in Rajathi Vs. C. Ganesan, said that the power u/s 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred u/s 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court u/s 397(1) of the Criminal Procedure Code as it is prohibited u/s 397(3) thereof. However, the High Court can entertain a petition u/s 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

6. Though the present petition is U/s 482 Cr.P.C. but having gone through the petition as also and also the impugned order and also order of the ACMM and material on record, it is seen that this petition is nothing but a second revision petition. Thus, it is seen to be a second revision petition under the guise of Section 482 CrPC. The power U/s 482 Cr.P.C. is to be exercised very sparingly and with great caution. I do not see any abuse of the process of law or any miscarriage of justice nor I see any violation of provision of law by the courts below. At the stage of summoning, the ACMM is neither supposed nor required to sift and weigh the evidence meticulously. What is required to be seen is as to whether the allegations as also the material witnesses prima facie against the accused persons warranting their summoning to hear their views.

7. I find no infirmity or irregularity with the order of the learned ASJ. The petition is dismissed.