

(1983) 08 AHC CK 0007

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1605 of 1981

Smt. Shashi Kiran

APPELLANT

Vs

Amrit Lal Gupta and Another

RESPONDENT

Date of Decision : 19-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 120B, 418, 420, 423, 465

Citation : (1982) 8 ACR 18

Hon'ble Judges : R.C. Deo Sharma, J

Bench : Single Bench

Advocate : Nagendra Mohan, for the Appellant; Shyam Chandra Sinha, Arun Sinha and R.K. Nigam, for the Respondent

Judgement

R.C. Deo Sharma, J.—Through this application u/s 482, Code of Criminal Procedure, the applicant has prayed that the complaint lodged by the opposite party No. 2 against her and her husband under Sections 418, 420, 423, 465, 468 & 120-B of the Indian Penal Code, pending in the court of Special Judicial Magistrate, Lucknow, be quashed. The facts giving rise to this application are briefly like this.

2. Opposite Party No. 1 Amrit Lal Gupta was working as Branch Manager in M/s. Selvel Advertising Private Limited. One Satya Prakash, husband of the applicant, was his friend and at the desire of Satya Prakash it was agreed between the two that they will start their own business. Accordingly they started business under the name and style of Aarti Advertising. It appears that Amrit Lal Gupta deposited Rs. 5000/- whereas Satya Prakash deposited Rs. 100/- initially. More deposits were made by the private parties and similarly withdrawals were also made and the business continued for some time. Amrit Lal Gupta thereafter resigned from the firm Selvel Advertising Private Limited, and started in partnership with Satya Prakash another firm under the name of Ad-Aids. This business also continued for some time. It was alleged in the complaint that

thereafter Satya Prakash along with his wife Smt. Shashi Kiran and two minor children had got new firm registered in the name of Ad-Aids and the money of the old firm was also transferred to the accounts of the new firm. On protest by Amrit Lal Gupta he was told by Satya Prakash that the former was merely his agent on a monthly remuneration of Rs. 500/- with these allegations Amrit Lal Gupta filed the complaint referred to earlier and which is pending in the Court of Special Judicial Magistrate-, Lucknow.

3. Applicant Smt. Shashi Kiran has prayed that the proceedings be quashed as on the face of it the complaint does not make out a case against her. A similar prayer made before the learned Magistrate was rejected by him.

4. I have heard learned Counsel for the parties at quite some length. The complaint filed by opposite party No. 1 is Annexure No. 1 to this application. All that is alleged against the present applicant is that she is the wife of Satya Prakash and is living jointly in the same house and consequently very well knew that her husband and Amrit Lal Gupta were carrying on business in the name of Ad-Aids in partnership. It is also alleged that the registration of a new firm consisting of the applicant, her husband and two minor children should amount to cheating the complainant because she is living in the same house and must be knowing full facts of the matter. Having heard learned Counsel for the parties I am of the view that merely by these allegations no case of fraud or cheating or preparing false and forged documents can be said to be made out. Even with the aid of Section 120-B of the Indian Penal Code which has been referred to in the complaint, no case could be made out against her simply on the presumption that she must be a party to the conspiracy because as wife of Satya Prakash she must be knowing all the facts about the business of her husband. There can be no such presumption in the case of a house-wife in that matter because she was also free to assume that the old firm in the name of Aarti Advertising has come to an end that the good will of the firm has been sold in favour of her husband or the like. It is not necessary to speculate as to what was in the mind of the applicant because on facts alleged she can be charged only with the knowledge that there was an earlier firm of the same name and that there is a new firm of the same name in which she, her husband and their two minor children are partners. This alone will not make out a case of cheating against her. In the circumstances aforesaid, the complaint for the alleged offences in so far as it concerns the applicant is not maintainable. It was argued by the learned Counsel for the opposite party No. 1 that during the course of evidence more details will be brought on record to show that the applicant was also a party to the cheating and conspiracy and that whatever she has to say she would be free to say in her defence. I do not agree with the contention inasmuch as unless the complaint itself makes out a prima facie case against the applicant she could not be made to face the proceedings and say at the defence stage what she wanted to say in her defence.

5. In the result, the complaint so far as it makes the applicant also an accused is

not maintainable. The proceedings as against her are quashed. The case against the co-accused Satya Prakash will not be effected by any observations made in this judgment.

6. The application is decided accordingly.