(2000) 08 DEL CK 0054

In the Delhi High Court

Case No : Criminal Misc. (Main) 368 of 2000 and Criminal Misc. 1395 of 2000

State (C.B.I.) APPELLANT

Vs

Ashok Kumar Aggarwal RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) CriLJ 1905 : (2000) 4 RCR(Criminal) 824

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

Bench : Single Bench

Advocate : Mr. Gopal Subramaniam and Mr. A.K. Dutt, for the Appellant; Mr. D.C. Mathur, Mr. Aman Vachher and Mr. Surender Miglani, for the Respondent

Judgement

R.S. Sodhi, J:

1. This is a petition u/s 482 read with Section 401 of the Code of Criminal Procedure (for short ''the Code'') on behalf of the Central Bureau of Investigation (for short ''CBI'') for quashing the order dated 29.1.2000 of the Special Judge, Delhi, In Case No. RC S18199 E 0001 (pending investigation). The brief facts of the case, as stated by the petitioners in their petition, are as follows :

2. A criminal case bearing FIR no. RC S18 1999 E 0001 was registered on 29.1.99, in SIUVIII branch of Central Bureau of Investigation, S.P.E. under sections 120-B read with Sections 193, 467 & 471 IPC against unknown officials of Delhi Zone of Enforcement Directorate, New Delhi, on the basis of a written complaint of Sh. Abhijit Chakarvertty, Addl. Director, Enforcement Directorate, New Delhi.

3. It is alleged in the complaint that the Delhi Zonal Office of the Enforcement Directorate had conducted a search on 01.01.98 at the office and residential premises of one Sh. Subhash Chandra Barjatya. During the searches, the officers of the Enforcement Directorate seized a FAX message from one of the shops of Sh. Barjatya. The fax message was a debit advice, purportedly from Swiss Bank

Corporation, Zurich, Switzerland which reflected a debit of US $ 150,000/- from the account of Royally Foundation, Zurich, Switzerland to the account of on Sh. S.K. Kapoor, holder of account No. 002-9-608080, Hong Kong & Shanghai Banking Corporation, as per the advice of the customer viz. Royalle Foundation. Thereafter, Sh. Barjatya had filed a complaint dated 04.01.98 addressed to the Director Enforcement wherein he alleged that:

(i) the FAX message from Swiss Bank Corporation was a forgery and was planted in his premises during the course of search on 01.01.98 in order to frame him.

(ii) he and his employee were illegally detained by the officers of Enforcement Directorate on the night of 01.01.98 and were threatened and manhandled.

4. The complaint submitted to CBI by Additional Director, Enforcement Directorate further stated that subsequent enquiries indicated that the file related to the search action against Mr. Barjatya was created by backdating the entries to 23.12.97. Mr. Barjatya was arrested on 28.01.98 on the basis of the above mentioned FAX message. Later, in March 1998, Mr. Barjatya submitted to the Enforcement Directorate, a letter obtained by Mr. M. Kapoor (Chartered Accountant of Mr. S.C. Barjatya) form Mr. Eric Huggen berger. Attorney of Swiss Bank Corporation, Zurich, Switzerland, which was later authenticated by the Bank and the Indian Embassy in Berne, confirming that the said FAX message was a forged document and was never issued by the Swiss Bank Corporation, Zurich, Switzerland.

5. The investigation by CBI has revealed that the Delhi Zone of Enforcement Directorate was investigating a case connected with alleged violation of Foreign Exchange Regulation Act by Ms. Asmita Verma, estranged wife of on Mr. Abhishek Verma resident of 4, Safdarjung Lane, New Delhi for maintaining an account in Swiss Bank Corporation, Zurich, Switzerland without the permission of competent authority. In the course of investigation of the case, Sh. Abhishek Verma was also summoned and examined by the Enforcement Directorate. During this investigation, Mr. Ashok Kumar Aggarwal, working as Deputy Director, Engorgement Directorate developed good relations with Mr. Abhishek Verma. Mr. Ashok Kumar Aggarwal suggested to Sh. Abhishek Verma that in case he provided specific information about the foreign account of Ms. Asmita Verma, he would be treated as an informer which would entitle Sh. Abhishek Verma to a reward, as per laid down rules, on the successful completion of the case against Ms. Asmita Verma. The understanding arrived at between Sh. Ashok Kumar Aggarwal and Sh. Abhishek Verma was that the reward money would be shared between them equally.

6. Thereafter, Mr. Abhishek Verma started gathering more information about the activities of Ms. Asmita Verma, in the course of which, he came to know that Ms. Asmita Verma was bringing money in India through Hawala Channels with the help of one Mr. Subhash Chandra Barjatya, a jweller, having business premises in Hotel Maurya Sheraton, New Delhi, who was also known to Mr. Abhishek Verma.

Therefore, Mr. Abhishek Verma started visiting the shop of Mr. Barjatya more frequently.

7. During one such visit, on or after December 25, 1997, Mr. Abhishek Verma happened to see a fax message related to Swiss Bank Corporation, Zurich lying in the shop of Mr. Barjatya under a telephone equipment. Thereafter, with the help of an employee of Mr. Barjatya, he obtained the details of the said fax which was related to a transaction dated 23.12.97 of US $ 150.000 from the account of Royalle Foundation in Swiss Bank Corporation, Zurich, Switzerland to the account of Mr. S.K. Kapoor in Hong Kong and Shanghai Banking Corporation, Hong Kong. He took the aid information to Mr. Ashok Kumar Aggarwal, the then Deputy Director, Delhi Zone, Enforcement Directorate. On the basis of this information, they entered into a conspiracy to frame Mr. Subhash Chandra Barjatya in a Foreign Exchange Regulation Act (FERA) case. In pursuance of the conspiracy it was planned to transmit a forged fax message on the fax machine of Mr. Barjatya. The forged fax, as per the plan, would contain the same text as the fax showing debit advice of US $ 150.000 which had been seen by Mr. Abhishek Verma during one of his visit to Mr. Barjatya''s shop and whose handwritten details were made available to Mr. Abhishek Verma by one of the employees, who had been compromised by Mr. Abhishek Verma. Further, to show that the fax had originated from a Swiss Bank, it was planned to change the machine identity details of the machine from where the fax would be sent as well as the time of transmission.

8. As per the conspiracy, the searches were to be conducted on 1.1.98 by a team of Enforcement Directorate officials sent by Mr. Ashok Kumar Aggarwal. Therefore, Mr. Abhishek Verma was directed by Mr. Ashok Kumar Aggarwal to get the forged debit advice transmitted to the fax machine of Mr. Barjatya in the night of 31.12.97 so that same could be seized by the raiding team of Enforcement Directorate and Mr. Barjatya would be fixed up. During his interrogation, a confession would be extracted from him which would disclose the involvement of Ms. Asmita Verma in Hawala activities. Mr. Ashok Kumar Aggarwal also demanded and accepted illegal gratification of Rs. 10 lacs from Mr. Abhishek Verma for framing Mr. Barjatya.

9. Following the advice of Mr. Ashok Kumar Aggarwal. Mr. Abhishek Verma assigned the job of transmitting a forged fax to one of his employees and he himself proceeded to Thailand on the night of 30/31 December, 1997. From Thailand, in the night of 31.12.97, Mr. Abhishek Verma rang up the number of the Fax machine of Mr. Subhash Chandra Barjatya and after ensuring that the machine was switched on, he instructed his employee in India to transmit the forged Tax message with doctored identity details of the sender as per his instructions.

10. Subsequently, the searches at the residential and business premises of Mr. Subhash Chandra Barjatya were conducted on 1.1.1998 at the directions of Mr. Ashok Aggarwal, the then Dy. Director, Delhi Zone, Enforcement Directorate.

During the searches, the aforesaid forged fax message was seized by the raiding team of Enforcement Directorate. The fax so seized bore the sender''s identity as that of "Swiss Bank Corp., Zurich". The date of transmission was 31.12.1997 and the time was 1750 hrs.

11. After searches, Mr. Bharjatya and two of his employees were taken to Enforcement Directorate Office for questioning. Although both the employees were allowed to go on 1.1.1998. Mr. Bharjatya was detained for the night on the instructions of Mr. Ashok Kumar Aggarwal and was allowed to leave only in the night of 2.1.1998. Thereafter, Mr. Bharjatya made a complaint to Director, Enforcement Directorate alleging planting of the fax at his shop by the Enforcement Directorate.

12. As Mr. Subhash Bharjatya, during the examination by Enforcement Directorate did not admit any knowledge and involvement in the transaction of money as mentioned in the aforesaid forged fax message, on the directions of Mr. Ashok Kumar Aggarwal, Mr. Abhishek Verma, who was still in Thailand, contacted Hong Kong and Shanghai Banking Corporation, Hong Kong posing himself as S.K. Kapoor. After giving details of the Account Number, it (telephonic transfer) number etc. of the original debit advice, he asked the bank to fax the copy of remittance advice to him in India. On the Hong Kong and Shanghai Banking Corporation, Hong Kong informed him that the same can be transmitted to the New Delhi branch of the Hong Kong and Shanghai Bank and he could collect it from there, after proper identification. This information was also passed by Mr. Abhishek Verma to Mr. Ashok Aggarwal. Thereafter, Mr. Abhishek Verma remained in touch with both Hong Kong and Shanghai Banking Corporation, Hong Kong and Shanghai Banking Corporation, New Delhi.

13. Mr. Ashok Kumar Aggarwal also arranged to send a letter to the New Delhi branch of Hong Kong and Shanghai Banking Corporation on 2.1.1998 and a copy of the remittance advice sent by Hong Kong and Shanghai Banking Corporation, Hong Kong to its New Delhi branch was got collected on 5.1.1998 by Mr. Ashok Aggarwal by deputing on of his hand picked officers whose posting was actually in Jaipur but who had been pressed into service for this specific operation even though he was in Delhi on leave.

14. Thereafter, Mr. Subhash Chandra Bharjatya was arrested on 28.1.1998 on the grounds, which existed even on 2.1.1998 and was remanded to judicial custody. During his judicial custody, Mr. Mandeep Kapur, Chartered Accountant of Mr. Bharjatya, went to Zurich, Switzerland in second half of February, 1998 and met the officials of Swiss Bank Corporation, Zurich on behalf of Mr. Bharjatya to verify the authenticity of the fax message in question. The attorney of the Bank issued a letter in the name of Mr. Mandeep Kapur stating that the fax was a forgery and was never written by the bank. The signatures of the attorney were attested by the Notary. Thereafter, the signatures of the Notary were got attested from the Chancery of the Canton of Zurich. Then Mr. Kapoor took the letter to the Indian Embassy in Berne and Mr. K.N. Rao, Second Secretary in

Embassy of India attested the signatures of the Chancery.

15. When this letter was produced in the Court in India, Enforcement Directorate suspected its authenticity. Therefore, Mr. Mandeep Kapur again went to Zurich and obtained a letter from the bank stating that Mr. Eric Huggenberger was the Attorney of the bank and was authorised to write the said letter. Later Mr. Bharjatya was released on bail by the Sessions Court.

16. After getting bail, Mr. Bharjatya again submitted a complaint to the then Director, Enforcement Directorate, alleging that the fax was planted at his shop and he was falsely Implicated in the FERA case. He also alleged illegal detention and manhandling.

17. In June, 1998, when Mr. Ashok Aggarwal was on leave and Mr. Abhi jit Chakervertty was looking after the additional charge of Delhi Zone, during this period he reviewed the case of Mr. Bharjatya on 11.6.1998 and enquired from Mr. J.P. Kujur (Investigating Officer) about the facts of the case. On this Mr. Kujur told him that the file of the case was prepared after the searches by back dating the nothings in the file. Then on the directions of Mr. Chakervertty, Mr. Kujur gave these facts in writing, addressed to Director, Enforcement Directorate. He also enclosed the three page information sheet, containing detailed information about the Hawala activities of Mr. Bharjatya and other persons which was given to him by Mr. Ashok Kumar Aggarwal through Mr. R. Ravindernath, the then Assistant Director Enforcement Directorate. He further mentioned in the letter that the information sheet was not taken on the record as per the directions of Mr. Ashok Kumar Aggarwal.

18. During the course of investigation by CBI, Mr. Ashok Kumar Aggarwal was examined. He tried to mislead the Investigation by stating that the information regarding Bharjatya was given by Mr. M. Bezbouruah, the then Director, Enforcement Directorate on the basis of which searches and arrest were made. However, the same was denied by the then Director, Enforcement Directorate.

19. On the basis of the case file of the FERA case of Mr. Bharjatya, Mr. Abhishek Verma was summoned and examined by the CBI. During his interrogation, Mr. Abhishek Verma accepted his involvement in the crime and also disclosed the role of Mr. Ashok Aggarwal including the demand and acceptance of illegal gratification of Rs. 10 lacs by Mr. Ashok Kumar Aggarwal from Mr. Abhishek Verma for framing Mr. Bharjatya in FERA case.

20. As Mr. Abhishek Verma was cooperating with the investigation he was arrested on 29.11.1999 and released on bail by the C.B.I. Thereafter, Mr. Abhishek Verma applied for recording of his confessional statement and the same was recorded by the Metropolitan Magistrate on 2.12.1999. During the course of recording of his confessional statement, he also produced a document before the Court corroborating his statement.

21. Earlier Mr. Ashok Kumar Aggarwal was attending CBI office, as and when

called. But after learning that his co accused, Mr. Abhishek Verma, was making a confessional statement u/s 164 Cr. P.C., he moved away from his normal residence along with his family. Mr. Ashok Kumar Aggarwal applied for earned leave to his department (Ministry of Finance) on 30.11.1999 for the period 14.12.1999 to 14.1.2000. on the pretext of going on pilgrimage and left Headquarters without waiting for the sanction of leave. In the leave application he did not furnish his leave address with his department nor did he disclose the places he wanted to visit.

22. Mr. Ashok Kumar Aggarwal was evading investigation to avoid arrest by the CBI since 2.12.1999 and was arrested by the CBI after strenuous efforts on 23.12.1999 from Hotel Taj in Sharanpur, where he was staying under the assumed name of "Ravi Garg" and a fake address of Chandigarh.

23. During the course of investigation, it has come to light that Mr. Ashok Kumar Aggarwal had tried to intimidate Mr. Subhash Chandra Bharjatya on 21.1.1999 so that the complaint against Mr. Ashok Kumar Aggarwal is withdrawn.

24. It has also come to light that in July, 1998 when Mr. Ashok Kumar Aggarwal joined duties after availing leave, he was informed by Mr. J.P. Kujur regarding the circumstances leading to his writing the letter dated 11.6.1998 in which he had admitted that the file of Mr. Bharjatya was created after the searches. On this Mr. Ashok Kumar Aggarwal forced Mr. J.P. Kujur to give a statement in writing that the said letter was got written by Mr. Abhijit Chakervertty, Additional Director, by force and under threat.

25. Mr. Ashok Kumar Aggarwal had also made attempts to intimidate Mr. Abhishek Verma to prevent him from making a confessional statement u/s 164 Cr. P.C. An Advocate of Mr. Ashok Kumar Aggarwal had also contacted Mr. Abhishek Verma on 30.11.1999 in Tis Hazari Court requesting him not to make confessional statement implicating Mr. Ashok Kumar Aggarwal which was conveyed by Mr. Abhishek Verma to the Investigating Officer of the case.

26. Mr. Abhishek Verma also intimated CBI vide his letter dated 15.12.1999 that he and his mother were approached by various politicians and influential persons for the sole purpose of pressurising him to retract his confessional statement implicating Mr. Ashok Kumar Aggarwal and his associates. These facts show that Mr. Ashok Kumar Aggarwal had tried to intimidate the important witnesses of the case from time to time.

27. It is also the case of the petitioners that during investigation, Ashok Kumar Aggarwal moved an application for bail before the Special Judge, Delhi, who by his order dated 6.1.2000 was of the opinion that:

"there is prima facie evidence on record to link Ashok Kumar Aggarwal with the present conspiracy. Co accused, Abhishek Verma, in his confessional statement has categorically stated that petitioner has taken Rs. 10 lakhs as bribe from him in connection with above said matter. Moreover, the conduct of the accused during investigation is such that a possibility cannot be ruled out that in the event of release on bail he may abscond from law. So far as plea of bail on the principle of parity is concerned. I am of the view that aforesaid plea is not available to the applicant, firstly because co accused has not been released by the orders of Court; secondly, the petitioner accused is a public servant and there is a serious allegation against him of having accepted bribe of Rs. 10 lakhs from co accused, Abhishek Verma. Besides that there is evidence on record to suggest that during investigation petitioner has tried to avoid his arrest and he even absconded and stayed in hotel at Saharanpur under assumed name to defeat the process of law."

28. And, Therefore, by his order dated 6.1.2000 declined bail. In this order declining bail, the learned Judge had taken into consideration that there was information received by the CBI to the effect that from 10.2.1999 to 14.2.1999 Ashok Kumar Aggarwal had visited Singapore on a social visit pass which entry was not made in the passport No. S 243227 seized by the CBI and this circumstances gave rise to reasonable apprehension that the petitioner was having some other passport as well. Mr. Ashok Aggarwal once again moved the Court of the Special Judge by a second bail application in which he attacked the CBI for having tried to influence the mind of the Court by introducing the so called social visit to Singapore from 10.2.1999 to 14.2.1999 which was factually incorrect and, Therefore, sought bail on the ground that had this misleading information not been before the Court, the Court would certainly have entertained the application and enlarged him on bail.

29. The aforesaid application came up for hearing and the learned Judge by his order dated 29.1.2000 came to the conclusion that while dismissing the application for bail by order dated 6.1.2000, considered various pleas of the prosecution but, mainly was influenced by the fact that Mr. Aggarwal had visited Singapore with effect from 10.2.1999 till 14.2.1999 which entry was not reflected in the passport of Mr. Ashok Aggarwal and, Therefore, gave rise to suspicion that he was having some other passport on which he might have travelled. The learned Judge noted the admission of the Investigating Officer that another message from Interpol, Singapore, had been received confirming that Mr. Aggarwal did not visit Singapore during 10.2.1999 to 14.2.1999 and, Therefore, there was no reason believing his having a duplicate passport having the same number. The learned Judge then went on to note that in view of the change in the circumstance, he admitted the petitioner to bail upon his furnishing a personal bond in the sum of Rs. 2,00,000/- with two sureties of the like amount by his order dated 29.1.2000. It is this order dated 29.1.2000 that is sought to be challenged before me:

30. At the out set, the learned counsel for the petitioner submitted that this petition may be treated to be a petition u/s 439(2) of the Code and that the mere nomenclature of the petition should not defeat the ends of justice. It is argued by learned counsel for the petitioner that merely because one incident

mentioned in the first bail order was incorrect, it did not mean that the other grounds upon which bail had not been granted, were washed off and that if there was a reasonable suspicion on the basis of credible material that if Mr. Aggarwal was enlarged on bail, it would impair the course of justice even then bail should not have been granted. On the other hand, it is argued by Mr. Dinesh Mathur, learned senior counsel, that the prosecution has deliberately introduced falsities time and again to prejudice the mind of the court which had then refused bail in the first instance but upon reappraisal of the facts had granted bail. He went on to argue that in order to cancel bail there should be positive material on record to show abuse of trust. Those grounds, he submitted, must be real and not imaginary. Both the parties have referred to various judgments. A perusal of the judgments only goes to show that the basic fundamental principles which are required to be followed while cancelling bail, must be cogent and overwhelming and broadly are; interference or attempt to interference in the due course of administration of justice or evasion or attempt to evade due course of justice or abuse of the concessions granted to the accused in any manner. The satisfaction of the Court must be based on material placed on record and that bail once granted should not be cancelled in a mechanical manner without considering any supervening circumstance which may render continuing the bail order to impair the conduct of fair trial or investigation. The Supreme Court in Dolat Ram and Others Vs. State of Haryana, , has held that rejection of bail in a nonbailable case at a initial stage and cancellation of bail already granted had to be considered and dealt with on different basis. Very cogent and overwhelming circumstances and necessary for an order directing cancellation of bail.

31. In Kali Mohan Das (Senior) Vs. Kali Mohan Das (Junior), , the Supreme Court has held :

"Rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application a nonbailable case than to cancel a bail granted such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over."

32. In this backdrop, if the matter is considered, the material that has been placed before me to interfere is primarily the complaints by the co accused that Mr. Ashok Kumar Aggarwal is attempting to intimidate him. These are in the nature of telephonic calls which no way mentions are made by Mr. Aggarwal himself. Even otherwise it does not appear to reason that an accused, fully knowing that an application for cancellation of bail has been moved, would create grounds for cancelling his bail. It certainly does not sound to reason that an intelligent person such as Mr. Aggarwal is made out to be would indulge in its such moves. I have also taken into consideration the fact that the so called

telephonic calls that have been made have been investigated by the Delhi Police who have found that no case is made out and reported the matter as ''untraced''. Learned counsel for the petitioner has failed to show anything substantial from the material on record that during the period Mr. Aggarwal has been on bail, he has done nothing which would warrant cancellation of bail at the hands of this court. It thus appears to me that no case is made out to warrant any interference by this court with the order dated 29.1.2000 of the Special Court admitting Mr. Aggarwal to bail.

33. In this view of the matter, Crl. Misc. (Main) 368 of 2000 is dismissed.