(1994) 03 DEL CK 0021

In the Delhi High Court

Case No : Criminal M. (M) 512/94, dated March 16, 1994

Subhash Chanana APPELLANT

Vs

State RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Citation : (1994) 03 DEL CK 0021

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : D.C. Mathur and Y.P. Narula, for the Appellant; Ms. Mukta Gupta and Mukul Rohatagi, for the Respondent

Judgement

1. Mr. Subhash Chanana who is proprietor of Sai Nath Traders having offices at Delhi and Bombay has sought anticipatory bail under S. 438 of the Cr.P.C.

2. Before I proceed to deal with the arguments advanced let me give a brief resume of the facts necessary for the appreciation of the whole matter.

3. On January 27, 1992 the firm of the petitioner sold two exam scripts to M/s. Indian Acrylics Ltd. The first exam script was dated January 2, 1992. Its number was AO 23086 and its value was Rs. 93,50,000/-. The premium charged was 20% making the total amount of premium comes to Rupees 18,70,000/-. I need not deal with the second exam script as the dispute relates only to the exam script noticed above. It may be noticed here that exam scripts are of two categories. The first category is GCA and the second category is RPA. In February, 1992 the Govt. of India stopped issuing exam scripts against export. After the scrapping of the policy of exam scripts the Govt. of India asked the exporters to surrender their exam scripts with State Bank of India and receive 20% of the value of the exam scripts as compensation. This compensation was payable only against the GCA exam scripts. As far as the RPA scripts are concerned no compensation was announced by the Government of India. It so happened that after the announcement of the said policy when M/s. Indian

Acrylics Ltd. lodged the exam script in question for receipt of compensation it was revealed that the document was forged. Consequent thereupon M/s. Indian Acrylics Ltd. lodged a First Information Report claiming that not only the exam script had been forged it had also been cheated of Rs. 18,70,000/- which amount had been paid towards premium.

4. The facts having been noticed by me above briefly, it is time to come into grip with the arguments advanced.

5. It was contended by Mr. D. C. Mathur, Senior Advocate for the petitioner that there was nothing on the record to show that the exam script in question had been forged or that, in any case it had been forged by the petitioner. My attention was drawn to two documents one dated January 10, 1992 issued by Amar Trading Company in the name of the firm of the petitioner and the other dated January 27, 1992 issued by the firm of the petitioner to Indian Acrylics Ltd. The first document shows the sale of the exam script in question to the firm of the petitioner and the second is with regard to the sale of the said exam script to Indian Acrylics Ltd. by the firm of the petitioner. On the basis of the first document it was argued that there was nothing in the said document to show that what had been purchased by the petitioner''s firm itself from M/s. Amar Trading Company was an exam script in the category of RPA and not in the category of GCA. With regard to the second document the contention was that there was nothing on the record to show that the exam script sold was of any particular description .To make it more clear, the contention of Mr. Mathur was that it could not be said on the basis of the said two documents that when the petitioner firm itself purchased the exam script in question it did not bear the category of GCA. In the alternative it was argued that where was the guaranty that the Indian Acrylics Ltd. had not itself changed the category of the exam script from RPA to GCA after the change of the policy by the Govt. of India so as to derive the benefit of 20% as compensation.

6. It is no stage to go deep into the evidence collected so far or to critically analyze the same. However, a few facts need to be noticed. The case of the prosecution is that the petitioner forged a transfer letter showing that the firm of the petitioner had actually purchased the exam script from M/s. Murli Dhar Rattan Lal although in truth it was not so. This, as per the prosecution was done by the petitioner to facilitate his plan to cheat M/s. Indian Acrylics Ltd. During arguments it was contended by the learned Counsel for the State that in fact the evidence so far collected would go to show that M/s. Murli Dhar Rattan Lal had sold the exam script to M/s. Mary time Agencies which in turn had sold it to M/s. Sunshine International. Thereafter M/s. Sunshine International sold the exam script in question to M/s. Amar Trading Company which in turn sold it to the firm of the petitioner. In this respect my attention was drawn to the statements of Prakash Sethia and Ashok Aggarwal. The statement of Prakash Sethia shows that when the exam script in question was purchased on 4th January, 1992 it was of the category of RPA. As per the statement of Ashok Aggarwal who is authorised

representative of M/s. Sunshine International when M/s. Sunshine International purchased the exam script in question on 6th January, 1992 at that time also it bore category RPA and that it bore the same category when it was sold to M/s. Amar Trading Company. The Investigating Officer has also collected evidence to show that when Amar Trading Co. sold it to the firm of the petitioner then also it was of RPA category. The Investigating Officer recorded the statement of Girish Thakar on January 1, 1994. Girish Thakar happens to be a commission agent. He has deposed that the petitioner had approached him for the sale of the exam script representing it to be of GCA category and that he got it sold on commission basis to M/s. Indian Acrylics Ltd. Thus this chain of evidence would go to show that till the exam script came into the hands of the petitioner it was of RPA category and that it had been changed to GCA category before it was sold to Indian Acrylics Ltd. through the commission agency of Girish Thakar.

7. It was contended by Mr. D. C. Mathur that the statement of Girish Thakar had been recorded on 19th February, 1994 under coercion and in this respect he drew my attention to a photo copy of a letter purported to have been written by Girish Thakar. However, as already noticed above, the statement made by Girish Thakar was on 11th January, 1994 and what appears from the zimnie of the investigating officer is that on 19th February he only confirmed his earlier statement. In any case it would not be desirable for me to go into the effect of the said letter. The truth remains that the evidence so far collected prima facie leads to the conclusion that it was only when exam script was in the hands of the petitioner that its category was changed from RPA to GCA.

8. It was contended by Mr. Mathur that the petitioner would not have gained anything by changing the category from RPA to GCA and that it Might have been the handwork of the complainant company to gain 20% compensation. The evidence collected so far belies this. In any case on this aspect of the matter the statement of G. D. Goenka, proprietor of Amar Trading Co. recorded by the Investigating Officer on 19th February, 1994 is not without significance. He not only says that when the exam script was sold to the petitioner''s firm its category was RPA but he also mentions that at the time of its sale premium on exam script of RPA category was 10 to 12 per cent whereas the premium on exam scripts of GCA category was 20 to 22 per cent and that he himself had sold an exam script of GCA category on a premium of 23% at the relevant time. This would indicate why probably the category of the exam script was changed from RPA to GCA.

9. As would be borne out from above the investigation is still in progress. The allegations are extremely of serious nature. Not only the documents have been allegedly forged but prima facie it is also a case of a cheating involving more than Rs. 18,00,000/-. Of course, while opposing the application for anticipatory bail the State did not express any apprehension that the witnesses would be tampered with but it was submitted that enlarging the petitioner at this stage on anticipatory bail would hamper smooth progress of investigation and that there

was every possibility of the petitioner''s presence not being secured at the trial. It was further argued that the investigating officer had been repeatedly trying to contact the petitioner but to no effect and that as and when the office premises of the petitioner in Delhi and Bombay were raided the same were found to be locked with whereabouts of the petitioner not known. It was further contended that in view of the seriousness of the charges it would not be in the interest of public and the State to enlarge the petitioner on anticipatory bail. Of course, I may hasten to add that as per Mr. Mathur the petitioner being well placed in life and being a respectable businessman and being in this trade since 1979 there could not be any apprehension of his running away from the course of justice.

10. It is neither pleaded nor is it the case of the petitioner that the accusation has stemmed from any ulterior motive. In view of the judgments of the Supreme Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, and Pokar Ram Vs. State of Rajasthan and Others, , while considering the application for grant of anticipatory bail the nature of seriousness of the proposed charges and the context of the events likely to lead to the making of the charges are relevant considerations. When a person is accused of an offence of forgery and cheating involving huge amount the court has to be careful and circumspect in entertaining such an application. The court can also ill-afford to ignore the contention of the State that the petitioner has been making himself scarce and that number of documents are yet to be recovered and evidence is yet to be collected and further, that the investigation is at a crucial stage. Such like frauds and acts of cheating have to be taken seriously as they tend to effect the larger interest of the public and so also the State. May be the petitioner has a clean past and has been in the trade since 1979. However, status in life, affluence or otherwise are hardly relevant considerations for anticipatory bail especially in a case like the present one.

11. For the reasons recorded above I find no ground for the grant of anticipatory bail. The application is rejected. However, nothing said in this order shall be read as an expression of opinion on the merits of the case.

12. Petition dismissed.

