
(2020) 02 DEL CK 0046

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 6429 Of 2018, Criminal Miscellaneous Application No. 49928 Of 2018

Sukhdev Singh & Ors

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 420, 468, 471

Citation : (2020) 02 DEL CK 0046

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Gaurav Goel, Mukesh Kumar

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the FIR No.154/2006 registered under Sections

420/468/471/120B IPC P.S. Chanakyapuri, New Delhi.

2. Briefly, the present case came to be registered on the complaint of Mr. Reed Beck Meyer, Assistant Regional Security Officer, US Embassy, New

Delhi. In the complaint it was alleged that the petitioners applied for US Tourist/ Business Visa and along with their visa applications, forged and

fraudulent documents were submitted. The Investigating Officer has filed charge-sheet against four other persons including Jai Prakash Ojha. It is

stated that two of the co-accused namely, Pardeep Kumar @ Bittu and Devender Pal Singh have expired and Jung Bahadur @ Jung has been

declared proclaimed offender.

3. The Metropolitan Magistrate vide order dated 21.08.2017 directed obtaining of original /fake documents from US Embassy which were submitted

by the petitioners. A request letter dated 06.11.2017 through Ministry of External Affairs, Government of India was sent seeking original visa

application forms, original affidavit of support in name of one Balbir Singh Thind (American citizen) and original affidavit of support in name of

Jaswant Kaur (U.S. permanent resident). As per the complaint, neither Balbir Singh Thind nor Jaswant Kaur were related to the petitioners. The

documents relating to them were stated to have been purchased by the petitioners from co-accused Jung. As per the Status Report, a reply was

received from the US Embassy that the inviolability accorded to the documents requested cannot be waived however, as and when a request from the

Indian Court in the required format is received, a limited waiver of immunity for the purpose of enforcing the US and Indian Laws, may be approved.

4. Learned counsel for the petitioner contended that there is very bleak possibility of the prosecution resulting in conviction as the original documents

are yet not seized and neither the complainant nor aforesaid Balbir Singh Thind nor Jaswant Kaur have been arrayed as witnesses.

5. The parameters to exercise the powers at this stage have been enunciated time and again. In State of Maharashtra and Ors. v. Arun Gulab Gawali

and Ors. reported as (2010) 9 SCC 701 the Supreme Court held as under:-

“27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case

of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/Complaint on such a

ground cannot be held to be justified in law.

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29. Thus, while exercising such power the court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and

affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a

general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit

and the facts warranting exercise of such power.”

6. In State of A.P. v. Gourishetty Mahesh and Ors. reported as (2010) 11 SCC

226, the Supreme Court held as under:-

18. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence

in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial

Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into

consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any

person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its

closure without full-fledged enquiry.

19. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the

ends of justice, the power should be exercised sparingly.

21. That being so, the interference at the threshold quashing the FIR is to be exceptional and not like routine as ordered by the High Court in the

present case. It is not a case where it can be said that the complaint did not disclose commission of an offence. The acceptability of the materials to

fasten culpability on the accused persons is a matter of trial.

7. Recently, the Supreme Court in *State of Madhya Pradesh v. Yogendra Singh Jadon and Ors.* reported as 2020 SCC Online SC 111 held that the

power under Section 482 Cr.P.C is not to be exercised where allegations are required to be proved in the court of law.

8. It has been informed that the matter is pending before the concerned Metropolitan Magistrate at the stage of prosecution evidence. Along with the

charge-sheet, the Investigating Agency has filed the copies of the visa applications, affidavit of support, immigration and naturalisation service letters,

copy of the U.S. visa of Balbir Singh, copy of the permanent resident visa and other supporting documents.

9. In view of the above enunciation of law, this court is not inclined to accept the petitioner's contention that the continuation of prosecution will be

a futile exercise. The exercise of power at this stage has to be exercised only sparingly. Accordingly, the petition is devoid of merit and is dismissed

alongwith the pending application.