(2009) 04 DEL CK 0377

In the Delhi High Court

Case No : Criminal Revision Petition No. 708 of 2006

Vikesh Pandey @ Vickey — APPELLANT

Vs

State of NCT of Delhi — RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 173, 227, 228, 239

Citation : (2009) 04 DEL CK 0377

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Sunil Sethi and Kiran Singh, for the Appellant; Amit Sharma, Additional Public Prosecutor and Mahesh Kumar, Inspector, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Petitioner is aggrieved by order of 27th April, 2006, of Additional Chief Metropolitan Magistrate, New Delhi, who has directed the petitioner to stand trial for the offence under Sections 420/471 read with Section 120-B of Indian Penal Code.

2. The charge against the petitioner is that on 11th February, 1998, he alongwith his co-accused had criminally conspired to cheat the complainant and the HDFC Bank and also Sh. Anit Mehrotra by forging his signatures as Introducer to open a fictitious account of co-accused in the name of K.C. Mohta, at HDFC Bank for withdrawal of money from the Bank.

3. Learned Counsel for the petitioner contends that the FSL Report is inconclusive to connect the petitioner with the crime in question and except the disclosure statement of co-accused, there is nothing on record to incriminate the petitioner, and therefore, the petitioner deserves to be discharged.

4. Learned Additional Public Prosecutor for the State submits that the present case is not for forging signatures but is of tracing of the signatures of Anit Mehrotra on the bank documents by the petitioner and that the petitioner had

conspired with co-accused- Abhisher Pandey and since there cannot be direct evidence of criminal conspiracy, therefore, discharge of the petitioner would be detrimental to the entire prosecution case.

5. The law on the subject needs to be noticed. In the case of State of Orissa Vs. Debendra Nath Padhi, , the Apex Court has reiterated that at the stage of framing of charge, trial court is required to consider whether there are sufficient grounds to proceed against the accused. The evaluation of the materials/ documents on record has to be limited one with a view to find out if sufficient ground exists for the purpose of proceeding with the trial.

6. Apex Court, in the aforesaid decision, has dealt with the scope of powers of the courts in putting accused on trial, in the following words:

All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam 1999 SCC (Crl.) 373 where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to u/s 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.

7. In the case of State of Bihar Vs. Ramesh Singh, , considering the scope of Sections 227 and 228 of the Code, it was held by the Apex Court that at the stage of framing of charge it is not obligatory for the Judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether, there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

8. In the light of the aforesaid legal position and the facts of the present case, I am of the prima facie view that it would be premature to declare at this stage that no case is made out against the petitioner. There is strong suspicion about the involvement of the petitioner in the commission of the crime in question. There is no illegality or infirmity in the impugned order.

9. This revision petition is dismissed with the observation that anything stated herein shall have no bearings on merits at trial.

