(2013) 02 AHC CK 0092

In the Allahabad High Court

Case No : Criminal Application No. 37398 of 2012

Vipin Sahni and Another — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120A, 120B, 415, 420, 482
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2013) 2 ACR 1551 : (2013) 81 ALLCC 574

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Suneet Kumar, for the Appellant; N.I. Jafri, for the Respondent

Final Decision : Allowed

Judgement

Sunil Hali, J.—Applicants have been summoned by the Special Judicial Magistrate, (C.B.I.), Ghaziabad in Case No. 456/2012 (in F.I.R. No. RC-219/2011 (E) 0016), C.B.I. v. Vipin Sahni and others, u/s 120B read with Section 420, I.P.C., registered at P.S. C.B.I./EO-1, New Delhi. The applicants have come up before this Court seeking quashment of the aforementioned case through this petition. In order to resolve the controversy involved in the present case, certain facts are required to be noted:

An F.I.R. No. RC-219/2011 (E) 0016 lodged u/s 120B read with Section 420, I.P.C., and Section 13(2) read with Section 13(1) of Prevention of Corruption Act at P.S. C.B.I./EO-1, New Delhi was registered against the applicants and some unknown officials of All India Council for Technical Education (in short as ''the A.I.C.T.E.''). The allegations contained in the F.I.R. are that one Sunshine Educational and Development Society, C-42, Sector-2, Noida, District Gautam Budh Nagar, was granted approval for three management institutions at a single plot of 4.8 acres at 28/1, Knowledge Park-III, Greater Noida. It was alleged that the said society dishonestly and fraudulently got approval for Business School of Delhi (Post Graduate Diploma in Management Course) from A.I.C.T.E. on

17.8.2007. Subsequently, the approval for Business School for Women (P.G.D.M. Course) and International Business School of Delhi were obtained from A.I.C.T.E. on 29.5.2008 and 19.6.2008 respectively on the same plot. It is further stated in the F.I.R. that during the enquiry, it was revealed that plot No. 28-1, Knowledge Park-III, Greater Noida was already mortgaged by the Society on 29.1.2007 with Corporation Bank, Sector-18, Noida. This information was concealed by the applicants from the A.I.C.T.E., as a result of which, by concealment of the fact, the approval was obtained by the applicants. The said information was required to be given in terms of Rule 4.2(iii) of A.I.C.T.E. Approval Process Rules, 2006. The approval could be granted only in case the land was free from all encumbrances. On the basis of the F.I.R., the investigation was initiated by the C.B.I. and consequently Charge-sheet No. 11/2012 was filed on 19.10.2012 against the applicants u/s 120B read with Section 420, I.P.C.

2. The allegations contained in the F.I.R. are that the land (plot No. 28/1, Knowledge Park-III, Greater Noida, U.P. was already mortgaged by the Society on 29.1.2007 with the Corporation Bank, Sector-18, Noida. The approval was obtained and given under Rule 4.2(iii) of A.I.C.T.E. Approval Process Rules, 2006, which says that the land where any technical institution is established should be free from any kind of mortgage and free from all kinds of encumbrances. The charges-sheet further reveals that applicant Vipin Sahni, Chairman, Pradeep Goel Chartered Accountant and Dr. J. Sanwalkar, Director represented M/s. Sunshine Educational and Development Society held meeting with Hearing Committee regarding establishment of Business School of Delhi on 20.6.2007 at A.I.C.T.E. Headquarters, New Delhi. It is revealed that in the Hearing Committee Report dated 20.6.2007, the approval bureau in Col. Bureau Observation (M&T/E&T) has mentioned in Col. No. (xiv) of Land Details (whether the land is free from mortgage) as ''No'' (as mentioned in application form Point 6-v) whereas, the members of the Hearing Committee have mentioned ''Yes'' in the column of Hearing Committee observations. The relevant paragraph 5.2 of the charge is being extracted below:

5.2. Investigation further revealed that Vipin Sahni. Chairman Shri Pradeep Goel, Chartered Accountant and Dr. J. Sanwalkar, Director represented M/s. Sunshine Educational and Development Society in the meeting of the Hearing Committee regarding establishment of Business School of Delhi held on 20.6.2007 at A.I.C.T.E. Headquarters, New Delhi. It is revealed that in the Hearing Committee Report dated 20.6.2007 the approval bureau in Col. (xiv) of Land Details (whether the land in free from mortgage) as ''No'' (As mentioned in application form Point 6-v) whereas, the members of the Hearing Committee have mentioned ''Yes'' in the column of Hearing Committee Observations. The proposal of the Society for establishment of Business School of Delhi was approved by the members of the Hearing Committee of A.I.C.T.E. constituted for the same with a condition...

3. The proposal of the society for establishment of Business School of Delhi was

approved by the members of the Hearing Committee of A.I.C.T.E. constituted for the same with a condition ''subject to the condition of furnishing revised course structure, admission process'' at para "A" of the recommendation and forwarded the same to the competent authority. The competent authority approved the conditions suggested by Hearing Committee. Another committee was formed in which it was ensured that revised course structure was submitted by the applicant Society. After the fulfilment of the conditions, the competent authority recommended to issue Letter of Intent in favour of the applicant Society. The Member Secretary of A.I.C.T.E. Headquarters, New Delhi recommended three names as the members of the Expert Visit Committee for conducting Expert visit at Business School of Delhi. The Expert Visit Committee conducted physical inspection at Plot No. 28/1, Knowledge Park-III, Greater Noida, U.P. and physically verified the required parameters as per the guidelines of the approval process of A.I.C.T.E. After completion of the visit/inspection, the Expert Committee recommended for 60 intake for the period 2007-08 (P.G.D.M. Course) for Business School of Delhi. A letter of approval dated 17.8.2007 with terms and conditions was issued by the then Advisor (M&T) A.I.C.T.E.

4. In respect of another technical institution in the name of Business School for Women (P.G.D.M. Course) at Plot No. 28/1, Knowledge Park-III, Greater Noida for the academic year 2008-09, similar allegations were levelled. It was mentioned in the application form that the land on which the society proposed to establish their technical institute in the name of Business School for Women was neither mortgaged nor any loan/mortgage was raised against the title of the land where this institute was to be established. This institution was also through in the same process and thereafter approval was granted in favour of the applicants.

5. In respect of the International Business School of Delhi (P.G.D.M. course), similar allegations have been levelled that the land on which the Institution was built up was neither mortgaged nor any encumbrances were created. The approval was granted in respect of the said institution.

6. The charge-sheet also reveals that the land of the institution was mortgaged on 29.1.2007 at Rs. 575 Lacs which was sanctioned in favour of the applicants for raising construction of the institutions. It also appears from the charge-sheet that the applicants in their letter dated 10.1.2007 requested the bank to relinquish one acre of land, out of 4.89 acres at Plot No. 28/1, Knowledge Park-III, Greater Noida, as it was earmarked for establishment of a technical institute in the name of Business School of Delhi. This application was filed keeping in view the fact that for the purpose of obtaining approval it has to be shown that the land in question is free from any kind of mortgage and free from all kind of encumbrances.

7. The crux of the allegations against the applicants are that while submitting their form, they have mentioned that the land in question was not mortgaged and was free from all kinds of encumbrances, as a result of which, they have obtained approval from the A.I.C.T.E. by concealing this information. This

information was required to be given in terms of Clause 4.2(iii) of the Approval Process Rules of the A.I.C.T.E. It is specifically provided that the land should be free from mortgage/encumbrances. The applicants have committed an offence punishable u/s 120B read with Section 420, I.P.C.

8. The contention of the applicants is that they had applied for establishment of a technical institute in the name and style of Delhi Business School in an area of one acre out of 4.89 acres of land. The application was made on behalf of the society on 22.1.2007 in which all the necessary facts including the fact that the property is mortgaged has been mentioned. A photocopy of the said application dated 22.1.2007 has been filed as Annexure-6 to the petition. It is admitted in the summary submitted alongwith the application that the property is not mortgaged with the bank. However, in the detailed application in column No. 6, it is admitted that the property has been mortgaged. Both the application and form are part of the petition (pages 96 and 98). In face of this, the applicants have not concealed any information from A.I.C.T.E. It is stated that due to inadvertence in the summary, the property is not shown mortgaged while in the form filled up, it is clearly stated that the property has been mortgaged. Mere reading of these documents, it clearly establishes that no offence has been committed by the applicants.

9. The contention of the respondent is that the applicants have wilfully concealed this information from the A.I.C.T.E. and got an approval to run the institute. It is further stated that the applicants with criminal intention induced the A.I.C.T.E. to accord approval in their favour by concealing this information.

10. I have heard learned counsel for the parties.

11. While scanning through the allegations levelled against the applicants, it appears that the applicants have concealed this fact from the respondent that the land in question was not under any mortgage/encumbrances. This information was required to be disclosed by the applicants while submitting their form. The facts as is revealed from the charge-sheet and the appended document is that the applicants in the summary appended alongwith the application had mentioned that the land in question was not mortgaged. However, in the form submitted by them, it has clearly been stated that the property was under mortgage. This fact has also been affirmed in the charge-sheet. It has been stated that the applicants had stated that the land was not mortgaged but the Hearing Committee had acknowledged this fact that the property was mortgaged. This fact is not disputed. It clearly emerges that while granting approval, the Hearing Committee has perused the application form submitted by the applicants, which clearly said that the land in question was under mortgage. After observing this fact, the process for granting approval to the applicants was initiated. No objection was taken by the Committee at any stage in this behalf. However, it was observed that certain other formalities were required to be done which was complied with and approval was accordingly granted.

12. The question which calls for consideration is as to whether any offence was committed by the applicants. In order to appreciate this fact, it is to be seen as to whether the applicants have committed offence of cheating. ''Cheating'' has been defined u/s 415, I.P.C., which reads as under:

Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ''cheat''.

13. For the purpose of constituting an offence of cheating, the complainant is required to show deception of a person either by making a false or misleading representation or by other action or omission. The deception should free from inception.

14. u/s 120A criminal conspiracy means when two or more persons agree to do or cause to be done:

(i) an illegal act, or

(ii) an act which is not illegal means, such an agreement is designated as criminal conspiracy provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

15. Applying this principle in the present case, what is alleged against the applicants is that in summary of form, it has been stated that the land was not mortgaged while in the application, they had stated that the land was mortgaged. Both these informations were available with the A.I.C.T.E. officials. This fact has been acknowledged in the charge-sheet also. Both the informations were available with the A.I.C.T.E. and they had an option at that stage to reject the approval of the applicants. To attribute the element of wrong intention from inception does not arise in the present case. The applicants had disclosed the information that the land was under mortgage, as such, there was no occasion for the prosecution to have concluded that the applicants had concealed this Information from the officials of the A.I.C.T.E.

16. The first ingredient of Section 420, I.P.C. is not made out against the applicants. Not only the case of the applicants was processed by the department but approval was also granted. The officials of A.I.C.T.E. after being aware, as is reflected from the observations made by the Hearing Committee that the land in question was under mortgage and approval was granted, which by itself shows that they were not induced by the applicants fraudulently or dishonestly to

deliver the property in the shape of approval. Neither were they compelled to do such thing which they would omit to do. At no point of time, the officials of A.I.C.T.E. were induced in granting approval by the applicants after they were aware that the property was under mortgage.

17. The second aspect of the matter is that the complaint has not been filed by the A.I.C.T.E. but has been filed by the Central Bureau of Investigation (C.B.I.). The locus to file the complaint was with the A.I.C.T.E. as the officials of the A.I.C.T.E. were cheated. The complaint filed by a third person would be at the best considered as an information which was required to be investigated by the C.B.I., but for constituting an offence u/s 420, I.P.C., it is necessary that person who has been cheated must show that there was criminal intention to induce to do thing which he would omit to do. The officials of the A.I.C.T.E. never acknowledged this fact that they were induced by the applicants with criminal intention to grant approval to their institution, even after knowing of the fact that the land in question was mortgaged. The concealment of the said information at the best can be considered as a violation of rule for which the approval of the applicants'' institution can be revoked. At any cost, it cannot be said that while obtaining approval by the applicants they were cheated with the element of criminal intention.

18. As to whether by deceiving A.I.C.T.E. in granting approval for establishment of the institutions, any damage or harm to that person in body, mind, reputation or property has been caused, there is no such allegations contained in the charge-sheet that as a result of such deception, loss has been caused to the A.I.C.T.E. as already discussed hereinabove, it at the best can be said that the approval has been granted in violation of the rules or conversely this condition has been waived off while granting the approval. It may also be mentioned that periodical approval has been granted to the applicants'' institution till date. This by itself confirms the fact that withholding of the information that the land in question is mortgaged by itself is not fatal for grant of approval. It may also be pertinent to mention that the C.B.I., in paragraph 5.4 of the charge-sheet clearly stated that during the course of investigation, the role of the A.I.C.T.E. officials namely, Dr. S.P. Singh and Dr. D.S. Bagri concerned Regional Officers were examined but criminality on their part was not established. No charge-sheet was filed against them. After having said so, would the applicants be allowed to go through the rigour of trial or is it one of the rare cases where the court will be within its right to quash the proceedings.

19. In the facts of the present case, the ingredients of criminal conspiracy between the applicants is also not made out as there was no such agreement to mislead the official of the A.I.C.T.E. The fact that the property was mortgaged was disclosed at the time of submission of the form. Since the substantive offence u/s 420, I.P.C. is not made out, theory of conspiracy fails, therefore, the charge u/s 120B, I.P.C. cannot be sustained.

20. Hon''ble Apex Court in R.P. Kapoor v. State of Punjab, AIR 1960 SC 862

broadly laid down categories of cases where inherent provision to quash the criminal proceedings should be exercised, which are as under:

The following are some categories of cases where the inherent jurisdiction could and should be exercised to quash the proceedings:

(i) where there was a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint did not make out the offence alleged; and

(iii) Where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly filed to prove the charge.

21. One of the criteria laid down by the Supreme Court is that where the allegations made in the F.I.R. or charge-sheet or complaint even that they are taken and accepted in their entirety would not constitute an offence as alleged while there is no question for appreciating the offence but is a matter merely at looking material fact constituting substantive offence.

22. Applying this principle in the present case, it clearly emerges that as discussed hereinabove, no offence u/s 420, I.P.C. is made out against the applicants. I say so because the essential ingredient of the offence that the applicants had induced with the criminal intention to obtain the approval of the institution by withholding information that property was not mortgaged is not made out. This information was disclosed by the applicants as is admitted by the Hearing Committee that the property was mortgaged and despite that approval has been granted so the A.I.C.T.E. was not induced by the applicants in granting this approval. Despite this information being available, the approval has been granted which at the best could be waiving off this condition.

23. The reliance has also been placed on Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, , where the following things have been observed by the Supreme Court:

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied, (i) deception of a person either by making a false or misleading representation or by other action or omission; (ii) fraudulently or dishonestly inducing any person to deliver any property; or (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence u/s 420 of the Indian Penal Code can be said to have been made out one of the ingredients of cheating as defined in Section 415 of the

Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract. The element of wrongful intention should ordinarily exist from the inception of the contract. F.I.R. does not satisfy the aforementioned test.

24. In view of the aforesaid discussion, it is one of the rare case where the proceedings are required to be quashed. Accordingly, the application u/s 482 is allowed and the proceedings in Case No. 456/2012 (in F.I.R. No. RC-219/2011 (E) 0016), C.B.I. v. Vipin Sahni and others u/s 120B read with Section 420. I.P.C., registered at P.S. C.B.I./EO-1. New Delhi, pending in the court of Special Judicial Magistrate (C.B.I.) Ghaziabad are quashed.