

(2016) 03 KAR CK 0391
In the Karnataka High Court
Case No : Criminal Petition No. 264/2016

Zameer Ahmed Khan

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), Section 482
Penal Code, 1860 (IPC) — Section 420, Section 468, Section 471

Citation : (2016) 03 KAR CK 0391

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : Ravi Verma Kumar, Sr. Counsel for Shaik Ismail Zabiulla, Advocate, for the Appellant; Chetan Desai, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—1. Petitioner is seeking to quash the proceeding initiated against him in C.C. No. 15036/2002 arising out of Crime No. 339/2002 of Kormangala Police Station for the offences punishable under Sections 468, 471, 420 of IPC.

2. One Syed Shafi Ahmed, RTO, Bangalore Central, lodged an information before the Kormangala Police Station on 05.06.2002, wherein it is alleged that the Inspector of Motor Vehicle (DCT squad) attached to the Office of the RTO, Bangalore Central, Kormangala intercepted a tourist vehicle bearing registration No. KA-01-B-5454 on 05.06.2002 at Hesaragatta Cross on N.H.-4 at 7.00 a.m. He found that the vehicle was plying on public road by carrying 28 + 2 adult passengers by collecting individual fares. The vehicle was coming from Kholapur to Bangalore. The Motor Vehicle Inspector on further verification found the Chasis No. LXG033956 and Engine No. LXE258272 on the Chasis frame and on the Engine block they found the Engine No. FZE281670. On demand, the driver of the vehicle failed to produce tax paid proof. They stated that since the registered owner has replaced the original Engine of the vehicle as found on the

Chasis frame and as per the registration certificate of the vehicle in question, they suspected the genuineness of the vehicle and came to the conclusion that one more vehicle of same registration mark, Chasis and Engine number might be plying on the public road. According to them, the registered owner of the vehicle has contravened the conditions of the permit. The Motor Vehicle Inspectors have brought the vehicle to the city to enable the passengers to get down and thereafter the vehicle was brought to the RTO office for cross verification of the records impounded by them with that of the records maintained in the RTO office. After verification of the records, the vehicle has been handed over to the Sub-Inspector of Police, Kormangala, Bangalore by issuing Form No. 27 pending detail investigation.

3. On further verification of the records maintained by the RTO office, it transpired that the registered owner of the vehicle had surrendered all the documents to claim exemption from payment of tax on 01.02.2002. In the intimation given to RTO, the registered owner stated that the vehicle would be kept under non use at M/s. Azad Coach Builders, Mysore Road for repairs. Thereafter, he got the vehicle released from surrender on 18.04.2002. As such, the authorities have suspected that the registered owner is plying two vehicles with the same registration mark, Chasis and Engine number. They went to M/s. Azad Coach Builders and found that one more vehicle of same registration mark KA-01-B-5454, Chasis No. LXG033956 and Engine No. LXE258272 on the Chasis frame and on the Engine Block they found different Engine No. MVE210600. A panchanama was drawn and complaint came to be lodged against the petitioner Zameer Ahmed Khan, the registered owner of Luxury Bus No. KA-01-B-5454 for the offences punishable under Sections 468, 471, 420 of IPC. The police upon completion of investigation, filed charge-sheet for the offences under Sections 468, 471 and 420 of IPC against one Firoz Ahmed Khan S/o. late Abdullakhan of Kalasipalya, Bangalore, by showing him as absconding accused by giving up Zameer Ahmed Khan who was shown as accused in the FIR.

4. It appears during the course of further investigation, the police recorded the statement of the petitioner herein Zameer Ahmed Khan, who in turn has stated that he was the registered owner of bus No. KA-01-B-5454. The bus was kept in M/s. Azad Coach Builders, Bidadi on Mysore Road for repair, that he is the owner of 50 buses and under M.V. Act, he is permitted to change the machine from the buses, if the machines are not working properly. On 22.04.2002, accused No. 1- Firoz Ahmed Khan requested him that he will take care of one bus and look after the business of one bus and as such he permitted Firoz Ahmed Khan to look after the bus that was kept in the Garage by executing GPA. Thereafter, the said Firoz Ahmed Khan used to change the Engine of the various buses belonging to the petitioner and by doing so he was running Bus No. KA-01-B-5454 from 05.06.2002 onwards along with the passengers. He also produced the copy of the GPA, delivery note executed in favour of Firoz Ahmed Khan with an assurance to produce the original documents before the Court. After recording his statement and upon further investigation, the Investigating Officer came to

the conclusion that it is the petitioner who was the registered owner of bus No. KA-01-B-5454 as on the date of the alleged offence who was running two passenger buses with one Chasis number, Engine number and registration number by fake documents and thereby caused huge loss to exchequer and cheated the Regional Transport Authority and as such additional charge-sheet came to be filed against this petitioner who is shown as accused No. 2. To quash the said charge-sheet filed against him in C.C. No. 15036/2002, he has filed this petition under Section 482 of Cr.P.C.

5. Heard the submission made by the learned Senior Counsel Sri. Ravi Verma Kumar, for the petitioner and learned Government Pleader.

6. The learned Senior Counsel for the petitioner relied upon the following decisions in support of the case of the petitioner:--

"1) , (2010) 12 Supreme Court Cases 254 in the case off Babubhai v. State of Gujarat and others.

2) , (1975) 3 Supreme Court Cases 706 in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh and others.

3) , (2013) 5 Supreme Court Cases 762 in the case of Vinay Tyagi v. Irshad Ali alias Deepak and others.

4) , AIR 2004 SUPREME COURT 2078 in the case of Hasanbhai Valibhai Qureshi v. State of Gujarat and others."

7. The learned High Court Government Pleader placed reliance on the unreported decision of this Court in Crl.P. No. 570/2006 dated 26.06.2009 in the case of Zamir Ahmed v. State of Karnataka.

8. I have gone through the ratio and principles laid down in the above decisions. Perused the entire investigation material. The complaint was lodged against the petitioner-Zameer Ahmed Khan as the registered owner of bus No. KA-01-B-5454. But during the course of investigation, he was given up and charge-sheet came to be filed against one Firoz Ahmed Khan who is beyond the reach of the police and has been absconding for all these years even after filing charge-sheet against him. It was argued that petitioner is a politician, he is in noway concerned to the alleged offence as he had parted with the possession of the bus in question in favour of accused No. 1-Firoz Ahmed Khan by executing delivery note. It is further submitted that the second FIR in respect of the same offence is not permissible in law and at the instance of his political rivals, a false charge-sheet has been filed against him though he was given up in the original charge-sheet. But the fact remains that FIR was registered against this petitioner for the offences punishable under Sections 468, 471, 420 of IPC. It appears he has produced Xerox copies of certain documents said to be delivery note and GPA said to have been executed by him in favour of Firoz Ahmed Khan, who is absconding for all these more than 4 years for the reasons best known to the petitioner and the so called Firoz Ahmed Khan. When the officials of the transport

department went to M/s. Azad Coach Builders, where the bus said to have been kept for repair, they noticed that the said vehicle was exempted from payment of tax on 01.02.2002 as it was surrendered with all documents. Within no time i.e., on 18.04.2002, the registered owner got the vehicle released from surrender. It is the case of the petitioner that when the said vehicle was intercepted by the officials of Transport Department, he was no more the owner of the vehicle and in fact the vehicle was entrusted to the accused No. 1 Firoz Ahmed Khan to look after the same by executing a power of attorney and delivery note in his favour. The petitioner also claims to be the owner of 50 buses. He also admits in his statement that accused No. 1 was running the bus by changing the engine, machines etc. All these facts and circumstances of the case speak that all is not well. Therefore, the trial is indispensable not only against the absconding accused No. 1 but also against the petitioner who is stated to be the registered owner of the bus and who said to have entrusted the bus by executing the power of attorney and delivery note in favour of Firoz Ahmed Khan though those documents were not produced before the transport officer for the change of ownership for the reasons best known to them. The documents produced are Xerox copies, the authenticity and veracity of those documents shall have to be gone into only during the course of trial, more so for the reason that these documents were not produced before RTO.

9. Be that as it may, the police during the course of further investigation under Section 173(8) of Cr.P.C. found this petitioner also guilty and therefore he has been arrayed as accused No. 2. No second FIR is registered against the petitioner and has been made as accused. What has been done is further investigation on discovery of fresh facts, which is permissible under Section 173(8) of Cr.P.C. dehors any direction from the court as such in order to bring out the real truth. What is filed is additional charge sheet in the same case under Section 173(8) of Cr.P.C. Since the petitioner claiming to be the owner of 50 buses and 2 buses with the same number plate, Engine number and Chassis number were plying causing huge loss to the Public Exchequer and that the so called Firoz Ahmed Khan/accused No. 1 is absconding for all these years and his whereabouts are not known, the matter requires full fledged trial to find out the real culprit. Definitely, it is not a fit case to quash the proceedings.

Accordingly, the petition is dismissed.