

Rajasthan High Court - Jodhpur

Chhotu Khan vs State on 6 January, 2012

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. CRIMINAL MISC. PETITION No.2516/2011 Chhotu Khan V/s. State of Rajasthan S.B. Criminal Misc. Petition under Section 482 of the Criminal Procedure Code, 1973 Date of Judgment :: January 06, 2012 HON'BLE MR. JUSTICE R.S. CHAUHAN Reportable Mr. Vineet Jain for the petitioner.

Mr. Mahipal Bishnoi PP for the State.

The petitioner is aggrieved by the order dated 21.10.2009 passed by the Judicial Magistrate No.4, Jodhpur, whereby the learned Magistrate has framed the charges against the petitioner for offences under Sections 468, 471 and 120B IPC. The petitioner is equally aggrieved by the order dated 15.11.2011 passed by the Additional Sessions Judge No.3, Jodhpur Metropolitan, whereby the learned Judge has confirmed the order dated 21.10.2009 and dismissed the revision petition filed by the petitioner.

The brief facts of the case are that on 09.01.2006, Sub-Inspector, Karan Singh, lodged a report wherein he claimed that while he was investigating the case against Jahid Ali @ Parvez, who allegedly is a Pakistani spy, he realized that Parvez had submitted an application for issuance of a ration card. In the said application, he stated his address as Gabbo Ka Chowk, Udaimandir, Jodhpur. The said application for the ration card was attested by the petitioner, in his capacity as a ward member of ward No.39. The said form was subsequently notarized by Vijay Singh, a Notary Public. On the basis of the said application, Parvez was issued a ration card. According to the complainant Parvez and the petitioner had prepared false documents for the purpose of cheating.

On the basis of the said report, a FIR, FIR No.26/2006 was registered at Police Station Udaimandir, Jodhpur for offences under Sections 420, 467, 468, 471, 474 and 120B IPC. Subsequently, the charge-sheet was also filed for the said offences. However, vide order dated 21.10.2009, the learned Magistrate framed the charges against the petitioner for offences under Sections 468, 471 and 120B IPC; the learned Magistrate discharged the petitioner for offences under Sections 420, 467, 474 IPC. Since the petitioner was aggrieved by the said order, he filed a revision petition before the learned Judge. However, vide judgment dated 15.11.2011, the learned Judge dismissed the revision petition, and upheld the order dated 21.10.2009. Hence, this petition before this Court.

Mr. Vineet Jain, the learned counsel for the petitioner, has vehemently raised the following contentions before this Court: firstly, while Section 463 IPC defines the offence of forgery, Section 464 IPC defines "making of false documents". According to Section 464 IPC, a false document has to be made with dishonest and fraudulent intention. The person has to make, sign, seal or execute a document, or part of a document with an intention of causing it to be believed that such document is by an authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. Moreover, in case, such document is either altered after the document has been made, executed and affixed then a false document is said to be made. In the present case, an application for issuance of a ration card was submitted by Parvez. The said application contained certain information entered by Parvez. It is only at the bottom of the application that the petitioner

has signed his name in the capacity of a ward member, whereby he has attested the contents on the basis of an inquiry; he has found that the contents are true. However, neither the signature of Parvez, nor the signature of the petitioner, have been forged. Although, the contents of the application may be incorrect, but even then the case would not fall within the definition of "making false documents" as defined under Section 464 IPC. Since the act of attesting the application form does not fall within the definition contained in Section 464 IPC, obviously, the ingredients of offence under Sections 468 and 471 IPC are not made out even on a prima facie basis. Therefore, according to the learned counsel, both the courts-below have committed an illegality in framing the charges for offences under Sections 468, 471 IPC. As far as the offence under Section 120B IPC is concerned, the charge for offence under Section 120B IPC is simpliciter. However, there is no evidence available on record to show that the petitioner had entered into a conspiracy with Parvez for making a false document. Therefore, the charge framed under Section 120B IPC simpliciter is unsustainable.

On the other hand, Mr. Mahipal Bishnoi, the learned Public Prosecutor, has strenuously contended that before the petitioner could have attested the said form, he was duly required to find out whether the contents of the application were true or not? Without finding out about the truthfulness of the contents, he has merely attested the form and has claimed that he has examined the veracity of the contents. Secondly, Parvez is alleged to be a Pakistani spy. Therefore, by attesting the said application, the petitioner has helped Parvez in getting the ration card. Therefore, he has conspired with Parvez for making a false document. Hence, the learned Magistrate and the learned Judge were justified in framing the charges for offences under Sections 468, 471, and 120B IPC. Hence, he has supported the impugned orders.

Heard the learned counsel for the parties, perused the impugned orders and examined the record.

Sections 463 and 464 IPC are as under :-

463. Forgery.- Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464. Making a false document.- [A person is said to make a false document or false electronic record-

First--Who dishonestly or fraudulently--

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.] Section 463 IPC deals with making a false document with the intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or with the intention that fraud may be committed. Since Section 463 IPC deals with "making false documents", obviously, one has to turn to Section 464 IPC which defines under what circumstances, a document is said to be made falsely. A bare perusal of Section 464 IPC clearly reveals that a person is said to make a false document when it is done with dishonest and fraudulent intention, when a part of document is made with the intention of causing it to be believed that such a document was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person whom or by whose authority, the maker knows that it was not made, signed, sealed, executed or affixed by the said authority. Moreover, if the maker, without a lawful authority, canceled or otherwise altered the said document after the document was made. Only under these circumstances is it said a document is made falsely.

Before a charge can be framed against the offender, it is the bounden duty of the courts to see whether the ingredients of the offence exist or not? The Court cannot possibly be swayed by extraneous facts. Therefore, before a charge can be framed by the learned Magistrate and could be upheld by the learned Judge, both the courts below were duty bound to see whether the ingredients of Sections 463 and 464 IPC existed or not. A bare perusal of the impugned order clearly reveals that both the courts below have failed to carry out this exercise. In the case of Sajjan Kumar Vs. Central Bureau of Investigation [(2010) 9 SCC 368], the Hon'ble Supreme Court has reiterated the principles which should govern the framing of charge by the learned trial Court. It would be beneficial to reproduce as under :-

On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

A bare perusal of the application clearly reveals that the application has been printed and issued by the Government; it contains Parvez's and petitioner's signatures. Therefore, the application has not been altered in any of its contents, as printed and published and issued by the Government. Moreover, it contains Parvez's and petitioner's signatures without any alteration. It is not the case of the prosecution that either Parvez or the petitioner have altered any part of the application; nor is it the case of the prosecution that they have made, sealed, executed, transmitted or affixed any part of the document. Nor is it the case of the prosecution that the signs on the application purport to be of an authority knowing that it was not made, signed, sealed, executed or affixed by the said authority. Moreover, it is not the case of the prosecution that they altered any part of the application, after the application was duly filled. Thus, the first two parts of Section 464 IPC are not satisfied in the present case. The third part of Section 464 IPC is not relevant to the controversy in issue. Hence, the

prosecution has failed to make out a, prima facie, case that Parvez and the petitioner have made a false document. Since there is no evidence to show that they have made a false document, it cannot be said that they have committed an offence of forgery under Section 463 IPC.

Section 468 IPC is as under :-

Forgery for purpose of cheating :-

Whoever commits forgery, intending that the [document or Electronic Record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A bare perusal of the said section clearly reveals that first ingredient of Section 468 IPC is the commission of forgery i.e., as defined in Section 463 IPC. It is only after the forgery has been committed that one would examine the purpose of committing forgery i.e., whether it is done for the purpose of cheating or not? However, in the present case, since the first ingredient is conspicuously missing i.e., commission of forgery, the charge for offence under Section 468 IPC could not be framed by the learned Magistrate.

Section 471 IPC is as under :-

Using as genuine a forged [document or electronic record] --

Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

The said section also requires the person to fraudulently or dishonestly use as genuine any document which he has reason to believe to be forged. However, in the present case, the petitioner and Parvez were not using the application as "genuine", although they knew the application to be "forged". None of the contents in the application were forged as no false document was made. Therefore, the essential ingredients of Section 471 IPC are clearly missing in the present case.

Although the prosecution may have a prima facie case against the petitioner for dereliction of duty, but mere dereliction of duty would not bring the case within the four corners of offences under Sections 468 and 471 IPC. Moreover, there seems to be no prima facie evidence to show that there was a conspiracy between Parvez and the petitioner for the purpose of committing offence under Sections 468 and 471 IPC. Therefore, it is rather surprising that charge for offence under Section 120-B IPC has been framed.

Framing of a charge is a serious step to be taken by the courts. It is not a mere ceremony that the courts are expected to perform. The courts cannot make a subjective assessment of the evidence produced by the prosecution. The courts are expected to objectively assess the evidence and to examine whether the commission of offence actually exists or not? The objective assessment would

require that the judicial officers are not swayed by emotions. Therefore, merely because Parvez is alleged to be a Pakistani spy, a person who may pose threat to this country, merely on this ground, offences which cannot be sustained in the eyes of law cannot be framed.

Lastly, although the FIR was registered for offences under Sections 420, 120B IPC, the learned Magistrate has not framed the charges for offences under Section 420 read with 120B IPC. Surprisingly, the learned Magistrate has not given any reasons for discharging the petitioner for offence under Sections 420 read with 120-B IPC.

Therefore, while quashing and setting aside the order dated 20.10.2009 and the order dated 15.11.2011, this Court remands the case back to the learned trial court to rehear the petitioner and the prosecution and to re- examine the evidence produced by the investigating agency and to re-frame the charges strictly in accordance with law.

(R.S. CHAUHAN) J.

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