

Madhya Pradesh High Court

Balendra Prasad Dwivedi vs The State Of Madhya Pradesh on 3 October, 2019

Author: Rajendra Kumar Srivastava

THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

Hon'ble Shri Justice Rajendra Kumar Srivastava

Cr.R. No. 1345/2017

Balendra Prasad Dwivedi

Vs

State of M.P. and another

Shri Kaustubh Singh, learned counsel for the petitioner.

Shri Samarth Awasthi, learned G.A. for the respondent

No.1/State.

Shri Anirudha Mishra, learned Govt. counsel for the respondent

No.2.

ORDER

(03/10/2019) This revision petition under Section 397/401 Cr.P.C. has been preferred by the petitioner being aggrieved by the order dated 11.04.2017 in S.T. No. 34/2015 passed by 13th Additional Sessions Judge, Bhopal, whereby the learned ASJ has framed the charges against the petitioner for offence punishable under Sections 420, 467, 468 and 471 of IPC.

2. According to case, in compliance of order, passed by learned JMFC Bhopal in private complaint, filed by Smt. Chadrakali Dwivedi/respondent No. 2 against the petitioner, police has registered the FIR. According to complaint, it appears that complainant is wife of the petitioner and petitioner has deserted her for more than 10 years. Complainant has five children, one is son and 4 are daughters. Since after marriage, the petitioner/accused used to beat her. Subsequently, the complainant has filed a proceeding for getting Cr.R. No. 1345/2017 maintenance from the petitioner and in this proceeding, to prove the income of the respondent No. 2, the petitioner has filed a license of LIC agent and bank statement of the complainant. According to complainant, 10 years ago, on saying of the petitioner, complainant has given examination of LIC agent and thereafter petitioner has also taken her signature in form which are drafted in English. Complainant had never known that she is LIC agent, she came to know about the same when the petitioner has produced the document in Court proceedings. The petitioner gets commission of LIC and has also given income tax. For more than 10 years, commission in the name of her is being collected by the petitioner and her forged signature is being also marked by him in LIC policies. Moreover, petitioner is being withdrawn amount of commission from ATM belongs to her. She is under suspicious that the petitioner would have withdrawn the money by making her forged signature in withdrawal form before getting ATM card. The police authority has refused to take any action against petitioner, thus, the complainant has preferred private complaint before the Court.

3. After registering the FIR, police has inquired the matter and seized some documents from the Manager of LIC, Bhopal. Police has also seized two cheque from Bank Manager Axis Bank, branch MP Nagar, Bhopal. Some other documents have also been seized by the police to verify the signature. Police has also recorded the statements of complainant and other witnesses.

4. Learned counsel for the petitioner submits that on reading of FIR, no offence is made against the petitioner. In the Cr.R. No. 1345/2017 present case, the complainant appeared in the examination of LIC agent in the year 2001 and passed it successfully. She was well aware with the fact and working as LIC agent. She has filed the complaint in the year 2013 which makes it clear that petitioner has not committed any offence. To constitute offence under Section 420 of IPC, intention to cheat is very necessary, but herein there is no ingredient is found. It was never pleaded by the complainant that she is living separately with the petitioner, per-contra, petitioner is still maintaining her, thus, there is no question of dishonest in the part of petitioner. The CCTV footage or statements of the Bank Officers and LIC have not been taken by the police while filing final report under Section 173 of Cr.P.C. which are much relevant to this case. The respondent /complainant No.1 herself stated that she appeared in the examination of LIC and passed successfully, thus, pleading of complainant regarding unawareness about being her LIC agent is not acceptable. Due to dismissal of her application for seeking maintenance, complainant has filed this false complaint against the petitioner. With the aforesaid submissions, he prays for allowing this petition.

5. On the other hand, learned G.A. as well as learned counsel for the respondent No.2 oppose the prayer and submits that there is sufficient material is available on the record for framing the charges for the aforesaid offences. The petitioner has deceived the complainant by receiving amount from LIC in the name of complainant as a LIC agent. He has also manipulated the documents and committed the offence of forgery. At this stage, this revision Cr.R. No. 1345/2017 petition may not be allowed, petitioner may raise all the ground before the trial Court at appropriate stage of trial.

6. Heard all the parties and perused the case. Before embarking on the facts of the case, it would be necessary to consider the legal aspects first. Since, by filing this revision petition, the petitioner has challenged the charges framed by the trial Court, therefore, I deal with the relevant provision of Cr.P.C under Section 227 and 228, same reads as under:

"227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

7. If Court finds that there is sufficient material is showing to connect the accused with the aforesaid offences then Section 228 of Code of Criminal Procedure, 1973 comes into role, provision is also quoted as under:

"228. Framing of charge.(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has

committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause

(b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

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8. The Hon'ble Supreme Court in the case of Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja and others reported in AIR 1990 SC 1962 has held as under:-

"7. Again in Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, (1979) 4 SCC 274: (AIR 1980 SC 52) this Court observed in paragraph 18 of the Judgment as under: "The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence".

From the above discussion it seems well-settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may 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."

9. Further, in the case of Union of India Vs. Prafulla Kumar Samal and another reported in AIR 1979 SC 366, the Hon'ble Supreme Court again has held as under:-

"Thus, on a consideration of the authorities mentioned above, the following principles emerge:(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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: (2) 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.

Cr.R. No. 1345/2017 (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

10. Further, the Hon'ble Apex Court in the case of State of Orissa Vs. Debendra Nath Padhi reported in (2005) 1 SCC 568 has held as under:-

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material, Satish Mehra case, holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

11. The Hon'ble Apex Court in the case of State of M.P. Vs. S.B. Johari and others reported in 2000(2) M.P.L.J (SC) 322, has also held as under:-

"4.....It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination Cr.R. No. 1345/2017 or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijayya and Others etc. reported in (1990) 4 SCC 76, after considering the provisions of

Sections 227 and 228, Cr.P.C., the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4 and *Supdt. & Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunia* (1979) 4 SCC 274 and held thus:

"From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose shift the evidence as it cannot be expected even at the 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. (emphasis supplied)

12. In another judgment, the Hon'ble Apex Court in the case of *Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary & others* reported in 2010(1) M.P.J.R. (SC) 36 has held as under:-

"10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie case to be applied.

11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the Cr.R. No. 1345/2017 accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed."

13. Before proceeding further, it would also be necessary to read the relevant provisions of IPC, which charges are framed against the petitioner. On reading, charges for the offence under Sections 420, 467, 468 and 471 of IPC have been framed by the trial Court, same are mentioned as under:-

"420. Cheating and dishonestly inducing delivery of property.--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or

anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Forgery of valuable security, will, etc.-- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. 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.

471. Using as genuine a forged 1[document or electronic record].--Whoever fraudulently or Cr.R. No. 1345/2017 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 1[document or electronic record]."

14. Further, under IPC, the definition of cheating provides in Section 415, which is also reproduced as under:-

"415. 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".

15. In order to apply the Section 415 of IPC in this case, following ingredients has to prove:-

i. Fraudulent or dishonest inducement. ii. Dishonest inducement pursuance to delivery of any property.

16. On reading of Section 420 of IPC, it appears that it deals with offence of cheating and dishonestly inducing delivery of property, its essential ingredients are:-

"(i) cheating;

(ii) dishonestly inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens-rea of the accused at the time of making the inducement."

17. Under the IPC, the definition of forgery is provided under Section 463 and according to it, whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public Cr.R. No. 1345/2017 or to any person, or to support any claim or title, or to cause any person to part with property, or to enter any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Section 467 of IPC prescribes punishment for making forgery of valuable security, bill, etc. whereas Section 468 of IPC speaks about the punishment for forgery for the purpose of cheating. So far as Section 471 of IPC is concerned comes to effect when any person used the documents as genuine knowing the fact that the same is forged. Section 464 IPC provides about making a false document and to understand the scope of Section 464 IPC, it would be necessary to read the same, provision is also quoted as under:-

"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 electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic 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 electronic 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 electronic signature on Cr.R. No. 1345/2017 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."

18. In the case of Sheila Sebastian Vs. R. Jawaharaj and another Etc. reported in 2008(2) Crimes 449 (SC), the Hon'ble Apex court held that the offence of forgery can not lie against a person who has not created or sign the document. Relevant para is also quoted as under:-

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

19. On careful reading of above quoted provision and pronouncements of Hon'ble Apex Court, it is manifest that a charge of forgery can not be imposed on a person who is not the maker of the same. To convict the accused for the offence of the forgery it is imperative that a false document is made and the accused person is Cr.R. No. 1345/2017 the maker of the same, otherwise, an accused person is not liable for the offence of forgery. The definition of false document is a part of the definition of forgery and both must be read together.

20. After careful reading of aforesaid provision and principle, I revert back to the facts of the case to decide the same.

21. On perusal of documents annexed with the case, it seems that the petitioner and respondent No. 2 are husband and wife. The dispute arose when in maintenance proceeding, the petitioner has filed the license of the respondent No. 2 with regard to LIC to prove her income. The complainant/respondent No. 2 alleged that the petitioner has made several policies by making her forged signature upon it and he has received commission of her name from LIC. She has also expressed her suspicious that the petitioner has withdrawn the money by making her forged signature in withdrawal form. Police has also seized some documents for handwriting verification of the petitioner and same were sent to handwriting expert. The report of handwriting expert is not annexed with the case. Police has also recorded the statements of complainant as well as other witnesses. Complainant/respondent No. 2 has stated that she has appeared in the examination of

LIC agent on saying of petitioner and petitioner has taken her signature in form. Petitioner had never disclosed that he is going to make her LIC agent, she has also stated about her matrimonial dispute. She stated that, she came to know about the said fact when petitioner has submitted her license in maintenance proceeding to prove her income. Sunita Dwivedi, daughter of the complainant has also supported her version. Statements of some Cr.R. No. 1345/2017 policy holder have also been recorded, who have supported the fact that the petitioner has made their policy and they had not concerned with complainant/respondent No.2. On seized policies, signature of respondent No. 2 is appeared and same are under verification as the report of handwriting expert is not annexed in the record.

22. Therefore, prima facie shows that there is sufficient material available on record to constitute the aforesaid offences against the petitioner. in view of the principle laid down by the Hon'ble Apex Court, that while framing charges, Court should see only the documents annexed with the charge-sheet. Deep merits of the case cannot be considered at this stage.

23. Accordingly, this revision petition is hereby dismissed however petitioner shall be a liberty to raise all the grounds before trial Court at the appropriate stage of trial. Needless to say the learned trial Court shall proceed with the case on his own discretion without being influenced from any findings of this Court.

24. C.C. as per rules.

(Rajendra Kumar Srivastava) Judge L.R.

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