

Delhi High Court

Akanksha Sharma vs State Govt. Of Nct Of Delhi on 20 April, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 555/2020 & CRL.M.A. 15589/2020

Reserved on : 25.03.20

Date of Decision : 20.04.20

IN THE MATTER OF:

AKANKSHA SHARMA

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Through: Mr. Mohit Mathur, Senior Advocate
alongwith Mr. Abhijat & Mr. Manikya Kh
Advocates.

Versus

STATE GOVT. OF NCT OF DELHI

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Through: Mr. Ashok Kumar Garg, APP for
Ms. Ekta, Advocate for Smt. Sunita Goyal
alongwith Smt. Sunita Goyal in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred under Section 341 read with Section 482 Cr.P.C. on behalf of the appellant seeking setting aside of the order dated 21.10.2020 passed by the learned ADJ-03, Patiala House Courts, New Delhi in PC No. 01/2019 and the consequent proceedings emanating therefrom.

2. The genesis of the appeal lies in probate proceeding filed by one Sh. Vijay Kumar Goel before the concerned Court. In support of the petition, affidavits of two witnesses, namely Smt. Sushila Kumar Gupta & Smt. Sunita Goyal, were filed.

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During the course of the proceedings, Smt. Sushila Kumar Gupta was examined as PW-1 and she tendered her above affidavit as Ex.PW-1/A. When Smt. Sunita Goyal appeared to tender her affidavit, it was enquired as to whether her affidavit dated 15.10.2020 (Ex.PW-2/A) bore her

signatures, to which she answered in the negative. Consequently, statement of Smt. Sunita Goyal was recorded to the said effect as PW-2 and she was asked to sign the same.

3. The affidavit in question was notarized by Notary Sh. Debajyoti Behuria, at which time the identification of the deponent, namely Smt. Sunita Goyal, was done by the present appellant. The counsel who had filed the said affidavit, namely Ms. Riya Thomas, Advocate, denied preparing the affidavit of Smt. Sunita Goyal. Vide order dated 16.10.2020, a Show Cause Notice was issued to the Counsel on record i.e., Sh. Apoorv Aggarwal, who tendered his apology before the Court on 21.10.2020.

4. Considering the aforesaid facts, the Trial Court came to a conclusion that an affidavit bearing forged signatures of Smt. Sunita Goyal was filed in the Court on behalf of the petitioner/Vijay Kumar Goel and thereby, prima facie offences under Sections 463/471 IPC appeared to have been committed. Accordingly, an inquiry was directed to be conducted. A complaint in this regard was also made to the Chief Metropolitan Magistrate, New Delhi District under Section 340 Cr.P.C. and the appellant was named as one of the accused persons.

5. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the appellant, contended that before passing the impugned order, although the Trial Court had issued a Show Cause Notice on 16.10.2020 to the main counsel, enquiring as to why action not be taken against him for filing a forged affidavit before the Court, no such Show Cause Notice was ever given to the present appellant. Without seeking any response from her, the Trial Court erroneously included the name of the appellant in the list of accused persons. It was Digitally CRL.A. 555/2020 SignedBy:SANGEETAANAND .SigningDate:20.04.2022 22:40:18 submitted that the appellant was not even present before the Court on the date of the passing of the impugned order i.e., 21.10.2020, as her paternal grandfather had expired a day prior in Ghaziabad, U.P. and pursuant to the same, the appellant had gone to Ludhiana, where the cremation was to take place on 21.10.2020. In this regard, learned Senior Counsel drew attention of the Court to the cremation certificate placed on record of the appellant's grandfather, issued by Mukti Dham, Civil Lines, Sudhar Sabha, Ludhiana-141001.

6. Without prejudice to the foregoing contentions, learned Senior Counsel also submitted that the aforesaid probate proceedings were filed before the concerned Court in the year 2019, whereas the present appellant, being a fresh law graduate had joined the office of Sh. Apoorv Aggarwal only in June, 2020. The appellant's name neither figured in the Vakalatnama nor she had appeared in the said probate proceedings at any point.

7. It was further submitted that the appellant had only identified Smt. Sunita Goyal at the time of notarisation on 15.10.2020 and it is not the allegation that she had signed the affidavit in question as the deponent. Lastly, it was submitted that from a perusal of the facts of the case, no offence under Sections 463/471 IPC is made out to warrant registration of complaint under Section 340 Cr.P.C. against the appellant.

8. In the course of present proceedings, on 25.03.2021, notice of the appeal was directed to be issued to Smt. Sunita Goyal.

9. Learned counsel appearing for Smt. Sunita Goyal drew the attention of the Court to an affidavit dated 02.11.2020 filed by Smt. Sunita Goyal before the Court of learned CMM, Patiala House Courts, New Delhi District, wherein she had stated that the contents of the sworn affidavit dated 15.10.2020 were true to the best of her knowledge and she further explained the circumstances under which the said affidavit was executed. It was stated that on 15.10.2020, she was aware that her counsel Sh. Apoorv Aggarwal was suffering from COVID-19 Digitally CRL.A. 555/2020 SignedBy:SANGEETAANAND .SigningDate:20.04.2022 22:40:18 symptoms since 10.10.2020. Sh. Anuj Yadav, from the Chamber of Sh. Apoorv Aggarwal, visited her residence on 15.10.2020 to get her affidavit signed for the purpose of filing the same in the aforesaid probate petition. However, fearing that other people in the Chambers of Sh. Apoorv Aggarwal might have contracted COVID-19 and considering her own co-morbidities, she refused to let Sh. Anuj Yadav inside her house or to touch the documents herself. It was also stated that in these circumstances, she had instructed Sh. Anuj Yadav to sign the said affidavit in her name while standing outside the residence. Accordingly, the affidavit in question was signed on grant of authority by Smt. Sunita Goyal and as per her instructions.

10. Learned counsel for Smt. Sunita Goyal also referred to a similar sworn affidavit dated 24.03.2022 filed on her behalf in the present case, where the aforesaid facts have been reiterated.

11. Smt. Sunita Goyal, who was present in the Court and was duly identified by her Counsel, on a specific query, stated that the affidavit in question was signed by Sh. Anuj Yadav only on her instructions, as she was under the fear that the office staff of Sh. Apoorv Aggarwal might have also contracted COVID-19.

12. Learned APP for the State, on the other hand, submitted that the State does not wish to file any Reply. He had drawn the attention of the Court to a statement recorded to the aforesaid effect on 05.02.2021.

13. I have heard learned counsels for the parties and also gone through the material placed on record.

14. As discernible from the facts noted above, the issue in the present case relates to filing of an affidavit of Smt. Sunita Goyal in probate proceedings bearing PC No. 01/2019.

15. Vide order dated 11.11.2020 in the present proceedings, this Court had stayed the operation of the impugned order, which continued from time to time.

16. In light of the issue involved, it is deemed apposite to refer to the decision Digitally CRL.A. 555/2020 SignedBy:SANGEETAANAND .SigningDate:20.04.2022 22:40:18 in Dr Vimla v. Delhi Administration reported as 1963 Supp (2) SCR 585, where the Supreme Court was in seisin of similar fact-situation as the appellant- Dr. Vimla had signed the proposal insurance form as her

daughter Nalini. Additionally, she had also signed the claim forms as well as the receipts acknowledging the payment of compensation money as her daughter Nalini. On the complaint made by the Insurance Company alleging fraud on part of Dr. Vimla, the Supreme Court observed that to constitute an offence under Section 463 IPC, that is of making any false document, two elements, viz. „deceit and „injury to the person deceived , ought to be present. Relevant excerpt from the decision is reproduced hereunder:-

"5. Before we consider the decisions cited at the Bar, it would be convenient to look at the relevant provisions of the Indian Penal Code:

"463: 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.

464: A person is said to make a false document -- First -- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or ** ** * The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows:

(1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in Digitally CRL.A. 555/2020 SignedBy:SANGEETAANAND .SigningDate:20.04.2022 22:40:18 Section 464 i.e. "fraudulently" and the intention to commit fraud in Section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in Section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions, bearing on the subject. The second thing to be noticed is that in Section 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus:

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing „dishonestly .

"Fraudulently" is defined in Section 25 thus:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so.

Should we hold that the concept of "fraud" would include not only deceit, but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of Digitally CRL.A. 555/2020 SignedBy:SANGEETAANAND .SigningDate:20.04.2022 22:40:18 "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.

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15. To summarize: the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

16. Now let us apply the said principles to the facts of the present case. Certainly, Dr Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any non- economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr Vimla said that the owner of the car who sold it to her suggested that the taking of

the sale of the car in the name of Nalini would be useful for income tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr Vimla and it was only put through in the name of her minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term.

17. In the result, we allow the appeal and hold that the appellant was not guilty of the offence under Sections 467 and 468 of the Indian Penal Code. The conviction and sentence passed on her are set aside. Fine, if paid, is directed to be refunded to the appellant."

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17. Coming to the facts of the present case, it is noted that without seeking an explanation from the appellant, the Trial Court directed filing of a complaint against her. From the material placed on record, it is further apparent that the appellant neither prepared the affidavit in question nor signed the same as Smt. Sunita Goyal. In fact, it was Sh. Anuj Yadav who carried the affidavit to Smt. Sunita Goyal at her residence and signed the same as Smt. Sunita Goyal under her authority and instructions.

18. It is also apparent from the case records that the appellant joined the Chambers of Sh. Apoorv Aggarwal, Advocate only in the month of June, 2020, whereas the probate proceedings were initiated in 2019. Further, by the time the affidavit in question came to be signed by the appellant for the purpose of identification, the same had already been signed in the name of Smt. Sunita Goyal and the appellant had no way of knowing as to whether the signatures had been appended by Smt. Sunita Goyal herself or not. Pertinently, it is not the case that the appellant had accompanied Sh. Anuj Yadav when he visited the residence of Smt. Sunita Goyal to get the affidavit signed.

19. Besides, in her subsequently sworn affidavits dated 02.11.2020 and 24.03.2022 as well as statement made before this Court, Smt. Sunita Goyal has admitted that the affidavit in question was signed by Sh. Anuj Yadav on her instructions and under her authority. She has also owned the contents of the affidavit in question and deposed as to the same being true and correct to her knowledge. From the material placed on record, it is seen that the photocopies of receipts of property tax, attached with the affidavit in question, were in fact relied upon by Smt. Sunita Goyal on 16.10.2020 as well, i.e., the day on which Show Cause Notice was directed to be issued to Sh. Apoorv Aggarwal, Advocate.

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20. Even otherwise, a perusal of the affidavit in question would show that statement of the deponent was confined to the factum of property tax relating to subject matter property having been paid regularly for the last three years. In this regard, the property tax receipts for the past three years were annexed alongwith the affidavit. No other statement was made on behalf of the deponent. It is not the case that the signing of the affidavit dated 15.10.2020 in the aforementioned terms has resulted in any benefit or advantage to the appellant or caused any injury to the deponent.

21. In view of the peculiar facts and circumstances of the case, as well as the exposition of law cited hereinabove, neither any knowledge nor any intention to commit forgery, or to use as genuine a forged document or electronic record, is made out against the appellant. She is accused only of having appended her signatures in identification of Smt. Sunita Goyal. It is an admitted case that the affidavit in question was not signed by the appellant on behalf of Smt. Sunita Goyal. Moreover, no material has been brought on record to aver that the appellant had any knowledge that the affidavit in question was not signed by Smt. Sunita Goyal herself.

22. The essential ingredients of the alleged offences being missing and the explanation given by Smt. Sunita Goyal seeming plausible, this Court is of the opinion that the impugned order suffers from infirmity to the extent that the appellant was named as an accused.

23. Keeping in view the aforesaid, the appellant is held not guilty of the offence punishable under Sections 463/471 IPC. The impugned order as well as the consequent proceedings emanating therefrom are set aside and quashed qua the present appellant.

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24. With the above directions, the appeal is disposed of. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

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