

Smt. Amrita Choudhary vs The State Of Madhya Pradesh on 26 October, 2015

MCRC-2698-2015

(SMT. AMRITA CHOUDHARY Vs THE STATE OF MADHYA PRADESH)

26-10-2015

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Miscellaneous Criminal Case No.2698/2015

Smt. Amrita Choudhary

Vs.

State of Madhya Pradesh

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..... Present: Hon'ble Shri Justice C.V. Sirpurkar
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Shri P.R.Bhave, Senior Advocate with Shri Devdatt Bhave,
Advocate for the applicant.
Sushri D.K.Bohre, Government Advocate for the
respondent/State.
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ORDER

(26-10-2015)

1. This Miscellaneous Criminal Case has been instituted on an application under section 482 of the Code of Criminal Procedure, filed on behalf of applicant/accused Amrita Choudhary. It is directed against the first information report dated 12-06-2014 lodged in Crime No.611/2014 by P.S. Kotwali, District Seoni, under sections 420, 467 & 468 of the Indian Penal Code and sections 66-C & 66-D of the Information Technology Act, 2000.

2. The facts necessary for disposal of this M.Cr.C. may briefly be stated thus: Applicant/accused Amrita Choudhary was Task Manager and co-accused Neelam Vishwakarma was Quality Monitor in-charge of Mid-Day Meal programme in the office of Chief Executive Officer, District Panchayat, Seoni. They were contract employees. At the relevant point of time, Smt. Priyanka Das (IAS) was posted as Chief Executive Officer of District Panchayat, Seoni. Applicant Amrita Choudhary and co-accused Neelam Vishwakarma were entrusted with the task of preparing the note-sheets and formats for sanction and disbursement of the amounts to various agencies under the Mid-Day Meal Scheme of the State Government. The computer installed in the room allotted for the purpose of Mid-Day Meal Programme in the office of Chief Executive Officer, District Panchayat, Seoni, was operated by Sultana Khan.

3. On 15-05-2014, the applicant in order to cheat, put up a note sheet and an order for signatures before the Chief Executive Officer Priyanka Das for sanction and disbursement of advance amount for preparation meals in the Middle School in Development Block, Keolari, for the month of March and April, 2014. Smt. Priyanka Das signed the note sheet and it came to her notice that the copies of the order, which were endorsed to various authorities, already contained her signatures. It transpired that the applicant and co-accused Neelam Vishwakarma had scanned and saved the signatures of Priyanka Das and her predecessor Sanket Bhondve, in the computer operated by Saraf Sultana Khan. Thus, scanned signatures were interpolated in the soft copies of the orders endorsed to various authorities and thereafter print outs were taken. It was also noted that the scanned signatures of the Chief Executive Officer were counter signed by either Amrita Choudhary or Neelam Vishwakarma. On discovering all this, Priyanka Das immediately encircled her scanned signatures and put a question mark thereon. Priyanka Das and her predecessor Sanket Bhondve had never authorized either Amrita Choudhary or Neelam Vishwakarma to scan their signatures and paste them on documents. In any case, it is grave financial irregularity as use of scanned signatures of an authority for any purpose is not permissible under the Rules.

4. During investigation, it was found that scanned signatures of aforesaid two officers were found in 37 files. Scanned signatures of aforesaid two officers as well as Amrita Choudhary were also saved in the hard disk of the computer. When confronted with the aforesaid situation, Amrita Choudhary and Neelam Vishwakarma admitted that they had committed mistake and begged to be pardoned. During investigation, it was found that scanned signatures were pasted in no less than 84 documents. After investigation, the charge sheet was filed in the Court.

5. The first information report and the proceedings arising therefrom have been challenged on behalf of applicant Amrita Choudhary mainly on the grounds that applicant Amrita Choudhary was entrusted with the task of preparing note sheet etc. and had nothing to do with scanning of documents with the computers. The first information report was lodged after a delay of about 1 year. The computer was being operated by Sultana Khan and the applicant cannot be charged with scanning, storing and use of signatures of Chief Executive Officers. Sultana Khan has not been investigated and has not been joined as co-accused in the case.

6. Learned counsel for the applicant had laid special emphasis during the arguments on the fact that applicant Amrita Choudhary had filed a writ petition No.8461/2014 challenging the orders dated 15-05-2014, 29-05-2014 & 04-06-2014 removing her from service wherein it was held by the High Court that no financial irregularity was committed by the applicant and no loss to the exchequer had been caused; therefore, the orders removing her from service were quashed and she was directed to be reinstated in service of contract appointment by extending her period of contract. She was also held to be entitled to back wages.

7. It has further been contended on behalf of the applicant that it is not the case of the prosecution that any amount was illegally sanctioned or disbursed on account of the scanned signatures. The amounts were sanctioned and disbursed only on the basis of the documents which were duly signed by Chief Executive Officer Priyanka Das and Sanket Budwe. The prosecution has only alleged that the copies of such orders endorsed to various authorities were found to contain scanned signatures.

As such, there is no allegation that any loss was caused to the exchequer or any gain was caused to any person including the applicant. Therefore, even if all the allegations made in the charge sheet and the documents filed therewith are taken at their face value, no offence against the applicant would be made out. Therefore, it has been prayed that the first information report and the proceedings arising therefrom be quashed.

8. Learned Government Advocate for the respondent/State on the other hand has supported the charge sheet.

9. Having perused the copies of the charge sheet and the documents filed therewith as also case diary of Crime No.611/2014 and having considered the rival contentions, this Court is of the view that this petition under section 482 of the Code of Criminal Procedure must succeed for the reasons hereinafter stated:

10. In this regard, the judgment rendered by the Apex Court in the case of State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604, may profitably be referred to. It has been held therein that the High Court may exercise powers under section 226 of the Constitution or section 482 of the Code of Criminal Procedure for interfering in the proceedings relating to cognizable offences in rarest of rare cases to prevent abuse of the process of any Court or otherwise to secure the ends of justice, wherein the allegations made in the first information report, even if they are taken at their face value and accepted in their entirety, do not prime facie constitute any offence or make out the case against the accused.

11. It may be noted here that charge sheet has been filed under sections 420, 467 & 468 of the Indian Penal Code and sections 66-C & 66-D of the Information Technology Act, 2000. Now the Court shall proceed to consider each the aforesaid offences one by one on the basis of allegations made in the charge sheet to see whether any of the aforesaid offences is prime facie made out.

12. Section 420 of Indian Penal Code:

Section 420 of the Indian Penal Code reads as follows:

420. Cheating and dishonestly inducing delivery of property.â 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.

13. The offence punishable under section 420 of the Indian Penal Code involves dishonesty inducing, delivery of the property etc. Term â dishonestlyâ has been defined in section 24 of the Indian Penal Code which reads as follows:

24. âdishonestlyâ - whoever does anything with the intention of causing wrongful gain to one person or causing loss to another person is said to do that thing
âdishonestlyâ .

14. In the instant case, the prosecution does not allege that scanned signatures were used on the documents which sanctioned or permitted disbursement of any amount. Though, there was no authorization for use of scanned signature on any document, it is also not the case of the prosecution that scanned signatures were found on any of the documents, original whereof was not signed by the concerned authority. The case of the prosecution in nutshell is that when a document sanctioning advance amount for preparation of Mid-Day Meal was signed by the concerned authority, she discovered that copies of that documents, endorsed to various authorities already contained her scanned signatures. The copies with scanned signatures endorsed to various authorities, were placed below the original document which was submitted for the signatures of the authority. The endorsed copies were also counter initialed by the applicant. This tends to indicate her bona fides. If she had intended to defraud any one, she would not have counter signed such documents nor would she have placed those copies under the original documents for them to be discovered by the authority.

15. Moreover, it is nowhere alleged that by pasting scanned signatures to any document any wrongful loss was caused to the exchequer or to any other person nor has it been alleged that any wrongful gain has been caused to the applicant or to any other person.

16. In aforesaid circumstances, even if all the allegations made in the charge sheet and the documents filed therewith are taken to be true, the dishonest intention on the part of the applicant is not established even prima facie and the ingredients constituting offence under section 420 are not disclosed.

17. Section 467 of the Indian Penal Code:

The offence punishable under section 467 relates to forgery of valuable security or will etc. The term âvaluable securityâ has been defined under section 30 of the Indian Penal Code which is reproduced hereinbelow:

30. âValuable securityâ .â The words âvaluable securityâ denotes a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he is under legal liability, or has not a certain legal right.

18. In the instant case, the advance amount for preparation of Mid- Day Meal, was sanctioned by the note sheet and the order signed by the Chief Executive Officer. It was not sanctioned by the copies thereof endorsed to various authorities. As such, those copies would not fall under the category of
âvaluable securityâ .

19. In any case, the offence of forgery, as defined under section 463 of the Indian Penal Code, involves an element of 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 the property or to enter into any express or implied contract or with intent to commit fraud. Such element is totally missing in the present case. There is no allegation that any of the aforesaid intents existed when the scanned signatures were affixed to the copies of the documents.

20. Section 468 of the Indian Penal Code:

The offence punishable under section 468 of the Indian Penal Code relates to forgery for the purpose of cheating. As already observed under the foregoing paragraphs, the element of cheating is missing in the present case. As such, offence under section 468 of the Indian Penal Code is also not made out.

21. Section 66-C of the Information Technology Act:

Section 66-C of the Information Technology Act, 2000 reads as follows:

66-C. Punishment for identity theft.â Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

22. This again involves fraudulent or dishonest intent which is missing in the present case, as such offence under section 66-C of the Information Technology Act is also not made out.

23. Section 66-D of the Information Technology Act:

Section 66-D of the Information Technology Act, 2000 reads as follows:

66-D. Punishment for cheating by personation by using computer resource.â Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

24. Affixing scanned signatures to the copies of the documents, which were subsequently signed by the concerned person, does not tantamount to cheating by personation as envisaged under section 66-D of the Information Technology Act. Thus, the elements constituting the offence under section 66-D of the Information Technology Act are also not disclosed prima facie in the present case.

25. On the basis of aforesaid discussion it is clear that even if all allegations made in the FIR and other documents filed with charge-sheet are taken at their face value and presumed to be true, none

of the aforesaid offence is made out against the applicant and if trial is allowed to be continued, it would amount to abuse of process of law.

26. Consequently, this application under Section 482 of the Code of Criminal Procedure is allowed and First Information Report No. 611 of 2014 registered by Police Station Kotwali, District Seoni, and the proceedings in criminal case arising therefrom so far as they relate to applicant Amrita Chaudhari, are quashed.

(C V SIRPURKAR) JUDGE