

Soma Chakravarty vs State Through Cbi on 10 May, 2007

Author: Markandey Katju

Bench: Markandey Katju

CASE NO. :
Appeal (crl.) 710 of 2007

PETITIONER:
Soma Chakravarty

RESPONDENT:
State Through CBI

DATE OF JUDGMENT: 10/05/2007

BENCH:
Markandey Katju

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 710 OF 2007 (Arising out of Special Leave Petition (Crl.) No.552/2006) Markandey Katju, J.

1. Leave granted.
2. This appeal has been filed against the judgment and order of the Delhi High Court dated 22.10.2005 in Criminal Revision Petition No. 10/2005.
3. Heard learned counsel for the parties and perused the record.
4. The Criminal Revision Petition was filed in the High Court challenging the order of the Special Judge, Delhi in Case CC No. 63/2001 titled CBI vs. Priya Uppal & Ors., by which the appellant and two others had been charged for offences under Section 420 read with Sections 120-B, 429, 468 and 471 of Indian Penal Code as well as under various provisions of the Prevention of Corruption Act. The appellant along with the other accused in this case allegedly entered into a criminal conspiracy and by misusing their official position caused undue pecuniary advantage to themselves to the tune of Rs.30,30,057/- and caused a corresponding loss to the Indian Trade Promotion Organization (ITPO) which is a wing of the Central Government, from whose account money was released against bogus receipts of advertisements which had actually never been carried by any newspaper or other publication.
5. The prosecution case is that the publicity department of ITPO was concerned with the release of advertisements in newspapers. There were two types of advertisements; (1) regular advertisement & (2) ad hoc advertisements. Regular advertisements were given to the national dailies and other

leading newspapers and magazines, whereas ad hoc advertisements were those which were issued on ad hoc basis from time to time with the specific approval of the Chief Managing Director or Executive Director only. The procedure for release of advertisements on behalf of ITPO was as follows:

6. Requests were received from Indian and foreign magazines/newspapers/publications for the advertisements which were processed by the publicity officer of the rank of Deputy Manager level and were put before the CMD/ED through the Senior Manager/Deputy General Manager for his approval. On receipt of the approval from the CMD/Executive Director by the publicity Division the concerned manager sent letters/release orders to the party for publication of the material. After the advertisements were published the concerned officer of the publicity Division of ITPO had to process and pass the bills for making payment to the advertising agency. Copy of the letter sent and copy of the newspapers/magazine were also forwarded or attached to the bill submitted by the agency.

7. The prosecution alleged that at the relevant time Shri Bal Krishan, Deputy Manager was in charge of the work relating to ad hoc advertisements. He was the authorized officer to process the bills for such advertisements. It is alleged that Shri Ajay Uppal, proof Reader/Senior Assistant of ITPO floated 6 bogus firms and submitted 76 bogus bills worth Rs.30,30,057/- for payment by signing under fictitious names like, Sanjay Gupta, Neeraj, Atul, etc. With these bills he enclosed photocopies of fake advertisements. Out of 76 bogus bills, 14 were dishonestly processed and verified by the accused Soma Chakravarty and P. K. Jindal, in connivance with the co-accused to cheat the ITPO and give wrongful gain to themselves and to the other accused in this case. It is stated that the appellant also had the knowledge that Bal Krishan had been authorized to verify the bills pertaining to ad hoc advertisements. All the bogus vouchers had been filled in by the co-accused Gyase Ram who was neither posted in the publicity division nor was authorized to do so. It is further alleged that the appellant knew that those bogus bills had not been entered in the bills register of the publicity Division of ITPO and no file had been opened/created in respect of these firms claiming to have published advertisements. The file numbers written on the fictitious bills were also fake. None of these bills bore initial or signatures of Shri Balkrishan, who was incharge of the ad hoc advertisements of ITPO at the relevant time. As regards the other accused, P.K. Jindal, the allegation is that he as Senior Manager of Accounts passed bills worth Rs.1,75,000/- related to these transactions. On these facts, the CBI concluded that there was sufficient evidence of conspiracy to cheat along with the other evidence of forgery, cheating and corruption. Accordingly a charge sheet was filed. The trial court after examining the allegations and evidence collected by the investigation framed the impugned charges against the appellant Ms. Soma Chakravarty & Mr. P.K. Jindal. Against the framing of charges a criminal revision was filed in the High Court which dismissed the same by the impugned judgment.

8. On behalf of the appellant it was contended before the High Court that there was no material before the Special Judge entitling him to frame charges against the accused. It was submitted on behalf of the accused Soma Chakravarty that she did nothing more than processing some of those 14 bills and sending them to the accounts division of ITPO from where the payments had been collected by cheques. It was submitted that the appellant was working as Deputy Manager in the

publicity division of I.T.P.O. and had signed 13 bills and sanction forms after they had been processed by Gyase Ram and all the 13 bills contained the signatures of Gyase Ram when they were put before her for her signature. She contended that she had signed those bills in the normal course of her duties and the bills were passed by the accounts section. She attributed lack of vigilance to the accounts section which was required to verify those bills with reference to the sanction for the advertisement. She claimed that Bal krishan, the officer authorized to deal with the ad hoc advertisement, was himself a beneficiary of part of the alleged money cheated out of ITPO. It was claimed on behalf of the appellant Soma Chakravarty that the investigation had failed to reveal any mens rea on her part. She contended that she was implicated only because of her failure to take sufficient care while initialing the bills in question. She contended that it was not possible for her to detect at the time of initialing the bills that any fraud was being played on her by co-accused Gyase Ram and others. Accordingly she sought to be discharged from the case. Similarly, the other co-accused P.K. Jindal also denied any involvement in the offence and alleged that there was hardly any allegation against him in the charge sheet.

9. The High Court dismissed the Criminal Revision Petition filed by the appellant, and hence this appeal by special leave.

10. Learned counsel for the appellant relied on the decisions of this Court in *Union of India and another vs. Major J. S. Khanna etc.* 1972 (3) SCC 873, *State of Maharashtra and others vs. Som Nath Thapa and others* 1996 (4) SCC 659 and *L Chandraiah vs. State of A.P. and another* 2003 (12) SCC 670 and contended that before framing the charges the court must have some material on the basis of which it can come to the conclusion that there is a prima facie case against the accused. In our opinion there was such material before the Court while framing the charge.

11. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of 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. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

12. Learned counsel for the appellant contended that in view of the aforesaid decisions no charge could be framed against the appellant as there was no material to show that she was prima facie guilty or had any mens rea. We cannot agree.

13. The facts of the present case disclose that advertisements of six bogus firms had been published and 76 bogus bills worth Rs.30,30,057/- were submitted for payment by signing under the fictitious names like, Sanjay Gupta, Neeraj, Atul, etc. Out of these 76 bogus bills 14 were said to be dishonestly processed and verified and signed by the appellant Soma Chakravarty and co-accused P. K. Jindal. All the bogus bills were filled by co-accused Gyase Ram who was neither posted in the publicity

division nor was authorized to do so. These bogus bills had not been entered in the bills register of the ITPO and no file had been opened or created in respect of these firms claiming to have published the advertisements. The file numbers written on the fictitious bills were also fake. None of these bills bore the initial or signatures of Shri Bal Krishan who was incharge of the ITPO at the relevant time.

14. It was contended by the learned counsel for the appellant that the appellant had signed the aforesaid 13 bills in the normal course of her duty and it was the Accounts section which was negligent in not verifying these bills.

15. In our opinion once a person signs on a document he or she is expected to make some enquiry before signing it. In fact, accused Soma Chakravarty was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director.

16. No doubt Soma Chakravarty contended that she signed these fake bills by negligence but without any mala fide intention, but this is a matter which, in our opinion, is to be seen at the time of the trial. There are serious allegations of misappropriation of a huge amount of money belonging to the government, and it cannot be said at this stage that there is no material at all for framing the charge against her. Hence, we agree with the view taken by the High Court in this connection.

17. In view of the above, we find no infirmity in the impugned judgment and this appeal is consequently dismissed. However, we make it clear that any observation made by us in this judgment or in the impugned judgment of the High Court will not influence the trial court, which shall decide the case on its merits, as expeditiously as possible.