

Om Kr. Dhankar vs State Of Haryana & Anr on 28 February, 2012

Author: R.M. Lodha

Bench: H.L. Gokhale, R.M. Lodha

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 464 OF 2012
(arising out of S.L.P. (Crl) No). 6908 of 2008)

OM KR. DHANKAR

Appellant (s)

VERSUS

STATE OF HARYANA & ANR.

Respondent(s)

J U D G M E N T

R.M. LODHA, J.

Leave granted.

2. The complainant is in appeal, by special leave, aggrieved by the order dated May 17, 2007 of the High Court of Punjab and Haryana whereby the single Judge of that Court dismissed the Criminal Revision Petition filed by the appellant and affirmed the order dated February 1, 2002 passed by the Additional Sessions Judge, Gurgaon. The Additional Sessions Judge by his order allowed the Criminal Revision filed by the present respondent No. 2 and quashed the order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon, summoning him to face trial under Sections 420, 406 and 161 of the Indian Penal Code (IPC).

3. The appellant (hereinafter referred to as 'the complainant') filed a criminal complaint against the respondent No. 2 in the court of duty Magistrate, Gurgaon. In his complaint, the complainant stated that he was a transporter and operating buses on the contract basis in the name of M/s Chaudhary Bus Service. On May 1, 2000, his two buses bearing registration Nos. DL-1P-7077 and DL-1PA-3927 were impounded. On that date, the third bus bearing registration No. DL-1PA-4007 belonging to the complainant was also impounded. The respondent No. 2 at the relevant time was working as Deputy Excise and Taxation Commissioner, Gurgaon. The complainant visited his office and enquired about

the impounding of his three buses. He was told that he (complainant) had not paid the passenger taxes in respect of these three buses. The respondent No. 2 told the complainant that Rs. 2 Lakhs were due towards the passenger taxes in relation to these three buses and asked the complainant to deposit that amount at his residence if he wanted the buses to be released. The complainant arranged Rs. 1,50,000/- and paid this amount to respondent No. 2 at his residence at about 1.45 p.m. on May 1, 2000. The respondent No. 2, according to the complainant, promised him to issue receipts from the office. The complainant visited the office of the accused at about 4 p.m., but there was no one in the office except one office clerk who told him that two buses have been released and the third bus would be released on payment of Rs. 50,000/- at the residence of the respondent No. 2. The complainant paid Rs. 50,000/- at about 9.30 p.m. at the residence of the respondent No. 2 and the third bus was also released. In the complaint, the complainant alleged that the respondent No. 2 had cheated him and the public money has been embezzled and the accused also received illegal gratification; the intention of the respondent No. 2 was malafide while issuing directions to Inspector posted at different tax collection points not to accept passengers tax at tax collection points. It was thus alleged that the accused had committed offences under Sections 420, 409 and 427 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The complainant appeared before the Magistrate in support of his complaint and examined himself. Two other witnesses were also examined on his behalf. Certain documents were also placed before the Magistrate.

5. The Magistrate vide order dated June 2, 2001 found that sufficient grounds existed to proceed against respondent No. 2 to be summoned to stand trial under Sections 420, 406 and 161 IPC.

6. The respondent No. 2 challenged the summoning order in Criminal Revision before the Sessions Judge, Gurgaon which was finally heard and disposed of by the Additional Sessions Judge, Gurgaon on February 1, 2002. The Additional Sessions Judge, inter alia, held that in the absence of sanction by the competent authority, the summoning order could not have been issued. The Additional Sessions Judge, accordingly, vide order dated February 1, 2002 set aside the summoning order.

7. As noted above, the complainant challenged the order of the Additional Sessions Judge before the High Court but was not successful there.

8. The counsel for the appellant is not present. However, from the special leave petition, it transpires that two questions have been raised, namely, (one) whether Criminal Revision Petition against the order of summoning is maintainable, and (two) whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure (Cr.P.C.) is required.

9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in the case of Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another¹. In Rajendra Kumar Sitaram Pande case (supra) this Court considered earlier decisions of this Court in the cases of Madhu Limaye Vs. State of Maharashtra², V.C. Shukla Vs. State³, Amar Nath Vs. State of Haryana⁴ and K.M. Mathew Vs. State of Kerala⁵ and it was held as under :-

"6... This being the position of law, it would not 1 (1999) 3 SCC 134 2 (1977) 4 SCC 551 3 1980 Supp. SCC 92 4 (1977) 4 SCC 137 5 (1992) 1 SCC 217 be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same...."

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C. was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.

11. The second question, is whether sanction under Section 197 Cr.P.C. is mandatorily required for the prosecution of respondent No. 2 for the offences under Sections 420, 406 and 161 IPC as he happened to be Deputy Excise and Taxation Commissioner at the time of incident.

12. Mr. Anis Ahmed Khan, learned counsel for the respondent No. 2, heavily relied upon the decision of this Court in Rakesh Kumar Mishra Vs. State of Bihar⁶ while supporting the view of the High Court.

13. In our view, the controversy with regard to the second question is concluded by the decision of this Court in Prakash Singh Badal and Another Vs. State of Punjab and Others⁷. Rakesh Kumar Mishra case (supra) was 6 (2006) 1 SCC 557 7 (2007) 1 SCC 1 considered in Prakash Singh Badal case (supra) in para 49 of the report. This Court thus held that the offence of cheating under Section 420 or for that matter offences relateable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. This Court stated in paragraphs 49 and 50 of the report thus:

"49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under Sections 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in Rakesh Kumar Mishra case. That decision has no relevance because ultimately this Court has held that the absence of search warrant was intricately (sic linked) with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under Section 420 or for that matter offences relateable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

14. In view of the above legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting the respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority under Section 197 Cr.P.C. is required. The view of the Additional Sessions Judge and the High Court is bad in law being contrary to the law laid down by this Court in Prakash Singh Badal case (supra). The second question is answered in the negative and in favour of the appellant.

15. As a result of the above discussion, the Appeal is allowed. The order dated May 17, 2007 of the Punjab and Haryana High Court and the order dated February 1, 2002 of the Additional Sessions Judge, Gurgaon are set aside. The order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon in the criminal complaint filed by the present appellant is restored. Trial court shall now proceed against the respondent No. 2 as per the summoning order.

.....J.
(R.M. LODHA)

NEW DELHI;
FEBRUARY 28, 2012

.....J.
(H.L. GOKHALE)