

(1998) 05 AHC CK 0127

Allahabad High Court (Lucknow Bench)

Case No: Criminal Miscellaneous Case No. 507 of 1997

Mridul Kumar Dwivedi, Advocate

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 5, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 205, 417, 419, 420

Citation: (1998) 2 ACR 1426

Hon'ble Judges: Virendra Saran, J

Bench: Single Bench

Advocate: Rakeshwar Prasad, for the Appellant; G.A., for the Respondent

Judgement

Virendra Saran, J.

Mridul Kumar Dwivedi, a practising Advocate at Hardoi has preferred this application u/s 482, Cr. P.C. for quashing criminal proceedings against him u/s 205/417/419/420/467/ 468/120B, I.P.C. pending against him in the Court of C.J.M., Hardoi, who on 1.4.1997 has ordered framing of charges against the applicant.

2. The prosecution case against the applicant is that the applicant in his capacity as an advocate identified one Krishna Pal Singh who stood surety in a criminal case. Subsequently, it was revealed that the person who filed the surety bond was not Krishna Pal Singh but Brijeshwar (co-accused). At the stage of framing of charges, the applicant pleaded that he identified the surety bona fide on the basis of papers produced by the surety including copy of Khataunis which satisfied the applicant that the person coming forward as surety was in fact Krishna Pal Singh.

3. The plea of the applicant did not find favour with the learned Magistrate, who by means of the impugned order dated 1.4.1997 directed that the charges be framed. Hence the applicant has come up to this Court.

4. I have heard Sri Rakeshwar Prasad, learned Counsel for the applicant and Sri Brijendra Singh, learned Government Advocate.

5. I have given my anxious considerations to the points raised by learned Counsel on either side. The prosecution case is that since the applicant in conspiracy with Brijeshwar wrongly identified Brijeshwar as Krishna Pal Singh, he was guilty of the offence u/s 205/417/419/420/467/468, I.P.C. with the aid of Section 120B, I.P.C. Thus the point which needs reflection is whether ingredients of the offence of criminal conspiracy are spelled out against the applicant from the material in possession of the prosecution which if, unrebutted, would result in his conviction. The prosecution stakes its case on the wrong identification of Krishna Pal Singh by the applicant but in my view, mere wrong identification is not *per se* evidence of criminal conspiracy. Beyond the evidence of wrong identification, there is nothing else to fasten the guilt of the applicant.

6. It is common knowledge that at the district level, very often lawyers identify sureties. It is not always possible to personally know all the persons coming forward as sureties. Lawyers sometimes identify a surety on the basis of papers in possession of the surety by which they are satisfied that the person coming forward as surety is that person.

7. I am of the view that such wrong identification by itself is not evidence of criminal conspiracy and the circumstances appearing from the evidence have to be seen in each case. In the present case, there is not even an iota of evidence of dishonest or fraudulent intention on the part of the applicant. I am fortified in my view by the following observations of the Supreme Court in the case of *Hira Lal Jain v. Delhi Administration* 1973 SCC 309 :

Admittedly, the applicant has neither impersonated nor committed any forgery.

The real charge against him is that of conspiracy u/s 120B, I.P.C. But there is no *prima facie* evidence in respect of this charge. The documentary evidence only shows that the Appellant made application on behalf of the other accused, that he filed his *vakalatnama* and that he identified them as the real claimants.

It is well known that the main income of many lawyers in the District Courts is derived from the work of identifying persons and sureties in the Courts.

The other accused must have told the Appellant that they were the real claimants. He believed them and agreed to act for them. It seems to us that he did nothing beyond what a lawyer is authorised to do in a Court of law. There is no evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants. Again there is no evidence whatsoever that there was any concert between him and other accused antecedent to the filing of the applications and *vakalatnamas* in Court by him. In the absence of such evidence, it cannot be said that there is *prima facie* evidence for the offence of conspiracy against him.

8. In the case at hand, too, there is nothing to suggest that the applicant had identified Krishna Pal Singh knowingly and thus prepared false documents with fraudulent or dishonest intention. Evidence of the above ingredients is wholly wanting.

9. To overcome the above shortcoming of the prosecution case, the learned Magistrate has referred to the statement of co-accused Brijeshwar about whose wrong identification the applicant is charged. Brijeshwar stated that he had delivered the papers to the applicant who did not make any enquiry from him and asked him to sit and got his thumb impression affixed on the application. Brijeshwar added that he gave out his name as Brijeshwar at that time. The learned Magistrate lost sight of the fact that Brijeshwar himself was an accused facing trial for impersonation and he was out to save his skin. It does not stand to reason that if Brijeshwar had not given out his wrong name, why he will give papers including Khataunis regarding land of Krishna Pal Singh to the counsel, i.e., the applicant. The exculpatory statement of co-accused Brijeshwar does not impart any strength to the prosecution case which has to stand on its own legs.

10. Thus, even if, the prosecution allegations against the applicant remain unrebutted, there are no chances of the case ending in the conviction of the applicant and I am inclined to quash the criminal proceedings and the charges framed against the applicant.

11. I, however, clarify that any observations made in this judgment will not bind the learned Magistrate while considering the case of Brijeshwar as his case is neither before me nor he has been heard in this application. The learned Magistrate will be free to form his own opinion regarding Brijeshwar's case on the basis of evidence adduced at the trial and will not in any way feel bound to convict Brijeshwar by any observations made above. I would also like to clarify that each case of wrong identification by counsel will depend on the facts, circumstances and evidence of that particular case.

12. Accordingly, this application is allowed and the criminal proceedings as well as charges formed against the applicant are quashed.