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(1990) 09 AHC CK 0031

Allahabad High Court (Lucknow Bench)

Case No: Criminal Revision No. 566 and Cr. Appeal No. 142 of 1982

Om Prakash Tewari APPELLANT

Vs

State RESPONDENT

Date of Decision: Sept. 13, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 307, 391, 397, 401, 482
- Penal Code, 1860 (IPC) - Section 419, 420, 467, 468

Citation: (1990) 14 ACR 743

Hon'ble Judges: Surya Prasad, J

Bench: Single Bench

Advocate: Shanti Prakash and Mridul Rakesh, for the Appellant;

Final Decision: Dismissed

Judgement

Surya Prasad, J.
This is a criminal revision under Sections 397/401 Code of Criminal Procedure read with Section 482 Code of Criminal Procedure against the order dated 23-9-1982 u/s 391 Code of Criminal Procedure passed by the then Vth Additional Sessions Judge, Faizabad in Criminal Appeal No. 142 of 1982 (Om Prakash Tewari v. State) filed against the judgment and order dated 18-5-1982 passed by the Judicial Magistrate I, Faizabad in Criminal Case No. 62 of 1980, State v. Om Prakash Tewari convicting and sentencing him under Sections 467, 468, 419 and 420 IPC.

2. Facts of the case, briefly stated are that one Udai Chandra Singhal was a commission ageat who used to get treasury bills, cheques etc. encashed for claimants and used to charge commission. On 13-5-1977 one Ram Baran, a servant of Vishnu Narain Visited Udai Chandra Singhal, Ram Baran was accompanied by the applicant Om Prakash Tewari who posed himself as Hamid Khan. The said Hamid Khan presented a pension bill No. C.F.P.P.O.T.S. 1578 for Rs. 18975/- and sought the assistance of Udai Chandra Singhal for the encashment of the said treasury bill. On 13-5-1977, Udai Chandra Singhal

paid Rs. 975/- to the said Hamid Khan and for the remaining sum of Rs. 18000/- asked the said Hamid Khan to contact him after a few days. Udai Chandra Singhal however left for Firozabad same evening. The identity of Hamid Khan was verified by a retired Wing Commander Sri D.S. Zafa. On 14-5-1977 Ajai Kumar and Abbai Kumar, sons of Udai Chandra Singhal somehow came to know that the said bill was a forged one and a sum of Rs. 975/- was obtained by the Appellant Om Prakash Tewari on that forged treasury bill. On 17-5-1977 when the applicant reached Udai Chandra Singalï¿½s place to collect the remaining sum of Rs. 18000/-, he was apprehended there and taken to the concerned Branch Manager, State Bank of India who informed the police. A case was, therefore, registered against the applicant-accused. The police investigated into the case and submitted a charge-sheet against the applicant. The charges under Sections 467, 468, 419 and 420 IPC were framed against him. He (the accused-applicant) pleaded not guilty and claimed to be tried.

3. The prosecution examined Abhai Kumar PW 1, Vishnu Narain PW 2, Ajai Kumar Singhal PW 3, Ram Baran PW 4 and a constable Omkar Nath Shukla PW 5 in support of its case.

4. The learned Judicial Magistrate I, Faizabad convicted in the aforesaid criminal case No. 62 of 1980 (State v. Om Prakash Tewari) the applicant Om Prakash Tewari under Sections 467, 468, 419 and 420 IPC and awarded him sentences and fine separately on each count thereunder vide his judgment and order dated 18-5-1982.

5 The accused-applicant filed an appeal being Criminal Appeal No. 142 of 1982 (Om Prakash Tewari v. State) in the Court of Sessions Judge, Faizabad. That appeal was transferred to the court of Vth Additional Sessions Judge, Faizabad. The learned Vth Additional Sessions Judge, Faizabad passed the impugned order dated 23-9-1982. The applicant-Appellant-accused felt aggrieved of the. said order, and, therefore, filed the present Criminal Revision under Sections 307/401 Code of Criminal Procedure read with Section 482 Code of Criminal Procedure against the same mainly on the grounds inter-alia that the impugned order amounts to filling the gap in the prosecution case.

6. Heard the Learned Counsel for the parties and perused the original record including the impugned order.

7. The impugned order inter-alia reads as under :

That original bill said to have been forged by Sri Otn Prakash Tewari was not produced by the prosecution nor the efforts were made to procure the said bill at the evidence stage from the person in whose supurdgi it was given. Prosecuting agency remained careless or ignorant with regard to the said basis (treasury bill) and that carelessness or ignorance from the side of the prosecuting agency rendered the Magistrate incapable to record the circumstances essential to the elucidation of truth. A trial of forgery cannot proceed in the absence of the documents alleged to be forged. Further, the attesting witnesses would

help the court to arrive at the just conclusion and for doing justice between the prosecutor and the person prosecuted.

Under such compelling circumstances, I invoke the provisions of Section 391 of the Code of Criminal Procedure for taking additional evidence in this case.

Let the original bill No. C.F.P.P.O.T.S. 1578 dated 12-5-1977 be summoned from Rajendra Sharma, Clerk of State Bank of India or Branch Manager, State Bank of India in whose custody the said bill was given. Further, the witnesses, namely, Sri Udai Cband Singhal, and D.S. Zafa, retired Wing Commander and the Investigating Officer be summoned.

8. The impugned order is an inter-locutory order. No revision can lie against the inter-locutory order. The appellate court may in suitable cases, take additional evidence. This is discretionary. All these legal propositions cannot be disputed.

9. The Learned Counsel for the applicant-Appellant-accused has very strenuously argued that the prosecution did not think it proper to produce the aforesaid treasury bill, nor did the learned Magistrete think it proper to press for the production of the same nor did he also summon any one as a court witness and, therefore, the impugned order amounts to filling up the gaps and lacuna left in the prosecution case.

10. The treasury bill No. CF.PPO.T.S. No. 1578 for Rs. 18975/- has been mentioned in the First Information Report. There is a specific mention of the same in the charges framed against the accused-Appellant. The treasury bill in question is, therefore, the very basis of the case. But the same was not produced in the court of the learned Magistrate nor was any of the witnesses material to that bill examined. The learned Additional Sessions Judge passed the aforesaid impugned order for the production of the said bill and Sri Udai Chand Singhal, Sri D.S. Zafa retired Wing Commander and the Investigating Officer mainly with a view to doing jusfice between both the parties or in other words, securing the ends of justice This being so, the contention of the Learned Counsel for the Appellant to the contrary is not tenable.

11. Therefore, this petition has no substance and is rejected. The impugned order is confirmed Let the lower court record be sent back at once to the learned lower court with a direction that it will dispose of the appeal expeditiously in accordance with the law and in the light of the observations made above. The interim order is vacated.