# P.M. Kariappa Vs State

**Court:** Delhi High Court

**Date of Decision:** Dec. 23, 2011

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€" Section 195, 199, 200
Penal Code, 1860 (IPC) â€" Section 120B, 193, 194, 195, 196

**Citation:** (2012) 1 JCC 397

**Hon'ble Judges:** Mukta Gupta, J

**Bench:** Single Bench

**Advocate:** N. Hariharan, Mr. Amit and Mr. Vaibhav Sharma, for the Appellant; Manoj Ohri, APP for State, for the Respondent

**Final Decision:** Dismissed

## Judgement

Hon"ble Ms. Justice Mukta Gupta

1. A complaint was filed by the District Excise Officer on 5th December, 1995 on which case FIR No. 492/1995 was registered at PS IP Estate,

Delhi. The allegations in the complaint are that M/s Karam Chand Thapar and Brothers (C.S.) Ltd., Distillery Division, Unnao (UP) had applied

for renewal of L-1 License in the NCT of Delhi in respect of two brands of whisky namely Bonds Street Whisky and Lord Jin Whisky and one

brand of Marco Polo XXX Rum which were being manufactured at their distillery. According to the complaint the sales figure of the IMFL brands

for the years 1993-94 and 1994-95 produced by the attorney of the firm showed a sale of more than 60,000 cases for whisky and 25,000 cases

for Rum throughout India excluding Delhi. Thus according to the case of the Complainant on the basis of affidavits/documents filed by the attorney

of M/s Karam Chand Thapar and Brothers dated 28th April, 1995 and 8th May, 1995 respectively the L-1 license was renewed on 9th May,

1995. On further verification of the sales figure it was found that no sale of the abovementioned brands was effected during the years 1993-94 and

1994-95 excluding Delhi. Thus the firm and its attorney committed an offence of forgery by submitting forged documents including affidavits in

support of their claim, thereby causing unlawful gain to the firm and unlawful loss to the government exchequer. On investigation a charge sheet was

filed. Vide order dated 29th September, 2007 the learned Metropolitan Magistrate directed framing of charge under Sections

420/468/471/120B/199/200 IPC against the Petitioner herein who was the attorney of the firm. The said order was assailed before the learned

Additional Sessions Judge who dismissed the revision petition vide order dated 8th October, 2010. Thus in the present petition the orders dated

29th September, 2007 passed by the learned Metropolitan Magistrate and 8th October, 2010 passed by the learned Additional Sessions Judge

are impugned.

2. Learned Counsel for the Petitioner contends that as no sanction u/s 195 Cr.P.C. has been filed thus the cognizance for offences under Sections

199/200 IPC is bad in law. In view of the fact that there is a specific provision under the Punjab Excise Act providing penalty for furnishing false

information, the Petitioner can only be proceeded under the said provision. Further the Petitioner cannot be prosecuted for offences under Sections

420/468/471/120B IPC. The alleged affidavits were only filed with Appendix ""B"" which document was filed on 8th May, 1995, however the firm

was issued license on the 5th May, 1995. Thus while granting license the affidavits were not taken into consideration. Hence there being no

misrepresentation at the time of grant of license no forgery can be said to have been committed by the Petitioner. Thus he cannot be tried for the

offences charged.

3. It is further contended that merely issuance of L-1 license is not sufficient to market the products. After the receipt of L-1 license, the firm was

also liable to pay the brand fee and only thereafter they were entitled to use the license. In the present case the brand fee was not paid hence the

license was never used. Further the Petitioner was appointed only on 28th April, 1995 when as an attorney he was made to sign the affidavits. The

Petitioner had no personal knowledge of the accounts and the affidavits were based on the figures supplied by the General Manager of the Excise

Factory to the Chartered Accountant who in turn certified the same and provided it to the Petitioner. The summon qua the Chartered Accountant

has already been quashed by this Court. It is further contended that the Petitioner is only an employee of the company and no vicarious liability can

be fastened on the Petitioner in the absence of any statutory provision thereon. Reliance is placed on Nirmal Bhanwarlal Jain Vs. GHCL

Employees Stock Option Trust, . Thus the order framing charge passed by the learned Metropolitan Magistrate and order dismissing the revision

petition by the learned Additional Sessions Judge are a clear abuse of the process of the Court which deserve to be set aside by this Court.

4. Learned APP for the State on the other hand contends that the Commissioner of Excise has passed a final order in relation to the show cause

notice issued to the firm for cancellation of the L-1 license. The said order of the Commissioner of Excise returns a finding regarding the forgery

committed by the Petitioner, that is, he gave false information and thus the Petitioner cannot assail the said finding as the order has become final in

the absence of challenge. As a matter of fact on 12th September, 2009 the General Manager of the company itself sent a letter dated 12th

September, 1995 to the District Excise Officer admitting the said forgery and cheating. It is admitted that the sale figures shown are false and

fabricated. Further the affidavits filed by the Petitioner state that they are based on his personal knowledge. Thus, the Petitioner cannot now

wriggle out and say that since he was appointed as an attorney on 28th April, 1995 only and he had no knowledge of the entire facts. Not only the

sales figures were fabricated even the endorsement of the Excise officer was forged.

5. I have heard Learned Counsel for the parties.

6. I find no merit in the contention of the learned APP for the State that against the show cause notice for cancelling the license, the order passed

by the competent authority and the findings therein having become final the Petitioner cannot now claim that no forgery has been committed. The

order dated 16th November, 1995 passed by the Commissioner of Excise is a finding of fact in favour of the department. The finding of fact by the

department in its favour cannot be used as estoppel against the Petitioner.

7. The contention of the Learned Counsel for the Petitioner that the Petitioner had joined the company only on 28th April, 1995 as its attorney and

thus he would have no personal knowledge of the sales figure making him not liable for prosecution is wholly untenable. A perusal of the

verification in the affidavits filed by the Petitioner state that the contents of the affidavits were true and correct to the knowledge of the Petitioner

and nothing had been concealed therefrom. Thus, the Petitioner cannot absolve himself of the liability now by claiming that the Petitioner was

unaware of the true facts.

8. I do not find any merit in the contention of the Learned Counsel for the Petitioner that since the brand fee had not been deposited, the license

issued could not be used, hence no forgery has been committed. Section 463 IPC defines forgery as making any false document or part of a

document, with intent to cause damage or injury or to support any claim or title, with intent to commit fraud. From the facts on record it is prima

facie evident that the Petitioner filed false affidavits to support the claim. Hence prima facie the offence of forgery can be said to have been

committed in the facts of the case.

9. Copies of the affidavits which are the bone of contention show that one was attested on 28th April, 1995 and other though prepared on 27th

April, 1995 was attested on 28th April, 1995. The Petitioner had applied for renewal of the license. In this regard the license fee was deposited on

4th May, 1995. The date of issue of the license is 5th May, 1995 as per the photocopy of the license. It is strenuously contended on behalf of the

Petitioner that the documents, that is, the two affidavits have been submitted subsequently after the issuance of the license in order to complete the

formalities along with appendix ""B"" which itself is dated 8th May, 1995. No doubt the date of issue of the license is 5th May 1995, however the

case of the prosecution is that the license was granted only after the affidavits were furnished. At this stage merely on the basis of date of 5th May

1995 being noted it cannot be said that the license was granted to the Petitioner without considering the affidavits. The prosecution is entitled to a

trial to prove its allegation of forgery.

10. The next contention addressed by the Learned Counsel for the Petitioner is that the Petitioner is not liable to be prosecuted for the acts of the

company as there is no provision in the Indian Penal Code fastening vicarious liabilities on the officers of the company for an offence committed by

the company. In the present case the Petitioner has filed affidavits based on personal knowledge and on the strength of the said affidavits the

license was granted. As per the prosecution case the license was handed-over only on filing of the Appendix ""B"" along with the affidavits. Thus, it

cannot be said that the offence was attributable to the company alone and not to the persons who were acting on behalf of the company.

11. The contention of the learned APP is that the endorsements of the local Excise Officer on the certificate regarding sale of the brands was not

genuine deserves consideration. Though the CFSL report has not given any opinion in respect of the signatures of the local Excise Officer,

however the said Excise Officer has given a statement denying his signatures on the certificate.

12. The contention of the Learned Counsel for the petitioner that no prosecution for offences u/s 199/200 IPC can be continued in the absence of

sanction u/s 195 Cr.P.C. is also not tenable. Section 195(b) Cr.P.C. provides that no Court shall take cognizance of offences under Sections 193

to 196, 199, 200, 205 to 211 and 228 IPC, except on the complaint in writing of that Court, or of some other Court to which that Court is

subordinate. In the present case the offences u/s 199 and 200 Cr.P.C. have been committed in relation to proceedings before a public authority

and not a court. Hence there is no requirement of sanction u/s 195 Cr.P.C. In M.L. Sethi Vs. R.P. Kapur and Another, , their Lordships held:

11. In the interpretation of this clause (b) of sub-s. (1) of s. 195, considerable emphasis has been laid before us on the expression ""in or in relation

to"", and it has been urged that the use of the expression ""in relation to"" very considerably widens the scope of this section and makes it applicable

to cases where there can even in future be a proceeding in any Court in relation to which the offence under s. 211, I.P.C., may be alleged to have

been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of

cognizance if all the following circumstances exist, viz., (1) that the offence in respect of which the case is brought falls under s. 211, I.P.C.; (2) that

there should be a proceeding in any Court; and (3) that the allegation should be that the offence under s. 211 was committed in, or in relation to,

such a proceeding. Unless all the three ingredients exist, the bar under s. 195(1)(b) against taking cognizance by the Magistrate, except on a

complaint in writing of a Court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients

were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under s. 211, I.P.C., against

the appellant.

13. Thus, prima facie a case for charge under Sections 199/200/420/468/471/120B is made out against the Petitioner. Petition and application are

dismissed.