

**(1989) 12 CAL CK 0001**

**Calcutta High Court**

**Case No:** Criminal Revision No. 1387 of 1989

J. Th. Zwart and Others

APPELLANT

Vs

Indrani Mukherjee

RESPONDENT

**Date of Decision:** Dec. 12, 1989

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 190(1), 2, 401, 482
- Penal Code, 1860 (IPC) - Section 120A, 120A(2), 120B, 34, 463

**Citation:** (1990) 1 CALLT 99

**Hon'ble Judges:** Siba Prasad Rajkhowa, J; Monoj Kumar Mukherjee, J

**Bench:** Division Bench

**Advocate:** B.C. Roy and A.K. Roy, for the Appellant; D.K. Dutt and S.B. Singha Roy, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Monoj Kumar Mukherjee, J.

On a complaint filed by Mrs. Indrani Mukherjee (hereinafter referred to as "the complainant"), the opposite party herein, the four petitioners and one Sri S. N. Banerjee have been summoned by a learned Metropolitan Magistrate, Calcutta to stand trial for offences punishable u/s 465 read with Section 34 and Section 471 read with Section 120B of the Indian Penal Code. Aggrieved thereby, the petitioners have filed this application under Sections 401 and 482 of the Code of Criminal Procedure for quashing of the proceeding arising out of the said complaint.

2. At all material times the complainant was an employee of K.L.M. Royal Dutch Airlines ("Company" for short) in its Calcutta office and the petitioner Nos. 1, 2, and 3 are its General Manager, Sales Manager and Accounts Manager respectively for India, Nepal and Bangladesh while the petitioner No. 4 is its Regional Manager at Calcutta. On February 24, 1989, the complainant was placed under suspension by the Company and on March 9, 1989 was served with a chargesheet containing four

charges, second of which reads as under :

"It has been reported that the agent-ERA Travels applied for the refund of ticket 2407576755/6 for the unused stretch for which the extra commission calculated amounted to Rs. 1510. This amount was handed over to you on January 6, 1989 by the agent. However, this amount has not been accounted for by you in the books."

3. By her letter dated March 18, 1989, the complainant showed cause against the charge sheet; and in controverting the above quoted charge she stated that on January 6, 1989 she was at Bhubaneswar and that she did not receive the sum of Rs. 1510 or any part thereof from M/s. ERA Travels or anybody else. Thereafter the Company by its letter dated May 15, 1989 informed the complainant that the date "January 6, 1989" as appearing in the above quoted charge be read as January 5, 1989 as records indicated that it was a typographical error.

4. A domestic enquiry was thereafter held in which the Company besides examining other witnesses examined Sri S. N. Banerjee (the other accused), Managing Partner of ERA Travels, Patna to prove the above quoted charge. In his examination, he stated, inter alia, that on February 3, 1989 he had given a letter to Sri Nevil D. Monte (the petitioner No. 4 herein) confirming that a sum of Rs. 1510 was refunded to Mrs. Indrani Mukherjee (the complainant) in cash on January 6, 1989. He further stated that sometimes in March, 1989 the Company wanted him to recheck when the money was handed over to Mrs. Mukherjee. He then checked his records and found that the money was actually handed over to Mrs. Mukherjee on January 5, 1989 and not on January 6, 1989 as mentioned in his letter dated February 3, 1989. Sri Banerjee lastly stated that he wrote another letter on March 30, 1989 to the Company confirming that the money was handed over to Mrs. Mukherjee on January 5, 1989 and not on January 6, 1989.

5. On conclusion of the enquiry, the Enquiry Officer submitted his report adjudging the complainant guilty of all the four charges levelled against her and relying upon the same the Company terminated her services with effect from June 5, 1989. Thereafter, the impugned complaint was filed on June 14, 1989.

6. The gravamen of the complaint is that with a view to illegally terminating the services of the complainant, owing to her refusal to collude with the petitioners in their sinister design to violate income tax and other laws they entered into a criminal conspiracy with the other accused to forge documents and with that ulterior object in view made the two forged documents dated 3.2.89 and 30.3.89 and used the same to support the above quoted charge. 7. Mr. Roy, the learned Advocate appearing for the petitioners submitted that the allegations made in the complaint, for what they were worth, did not make out any offence whatsoever, far less offences under Sections 465/34 and 471/120B of the Indian Penal Code for which the petitioners had been summoned. Mr. Roy urged that as admittedly the two letters dated 3.2.89 and 30.3.89 were written by the other accused they could

not answer the description of "false document" within the meaning of Section 464 of the Indian Penal Code even if it was assumed that the contents thereof were false. Consequently, Mr. Roy argued, the petitioners could not be made liable for a criminal conspiracy within the meaning of subsection (2) of Section 120A of the Indian Penal Code in respect of offences of forgery. Mr. Roy lastly argued that no fact or circumstance was averred in the complaint from which it could be said, even *prima facie*, that the petitioners were guilty of the offences of conspiracy or forgery. According to Mr. Roy, in the complaint it has only been stated that the petitioners committed certain offences without disclosing the necessary facts from which such conclusion was being drawn.

8. Mr. Dutt, the learned Advocate appearing for the complainant, on the other hand submitted that the averments made in paragraphs 5, 10, 11 and 15 of the complaint clearly disclosed commission of offences for which the petitioners had been summoned and as such there was no scope for quashing the proceeding at this stage. Mr. Dutt further submitted that detailed facts and circumstances in support thereof would be proved during trial and an opportunity should be given to the complainant for that purpose.

9. To appreciate the respective contentions of the parties, it will be profitable to refer to the contents of paragraphs 5, 10, 11 and 15 of the complaint, which are as under :

5. That thereafter in the beginning of 4th week of February, 1989 at Calcutta and in Delhi the accused Nos. 1 to 4 entered into an agreement to humiliate and illegally and unlawfully terminate the service of the complainant by resorting to all sorts of unlawful and illegal means including by making or cause to be made forged documents. In pursuance of the said object of the criminal conspiracy the accused Nos. 1 to 4 caused to be made the forged documents dated 03.2.89 and 30.3.89 which overt acts were committed by the accused No. 5 after he joined the said criminal conspiracy. All the above accused persons were involved in the said conspiracy and they had and have the unity of will and purpose amongst them all and in pursuance whereof one performing one part of the act and the other another part of the same act so as to complete it with a view to the successful attainment of the said object of conspiracy which they were consistently pursuing since they conspired together to effect the said object. The said agreement of all the accused persons to cause termination of service of the complainant was in violation of law. The accused Nos. 1 to 5 are therefore guilty of the offence punishable u/s 120B IP. Code.

10. That in furtherance of the object of the said illegal and un- lawful common intention of all the accused persons, a certificate dated 03.2.89 on the letter pad of M/s. ERA TRAVELS, Patna was made and executed which was signed by the accused No. 5 and that he did so with the intention of causing it to be believed that the said certificate was executed on the date mentioned thereon and that the contentions made therein were true.

11. That the accused No. 1, inter alia, based the charge No. II of the purported charge sheet dated 09.3.89 on the allegation made in the said certificate dated 03.2.89 and in furtherance of the said object of conspiracy issued the same against the complainant obviously with the dishonest intention to wrongfully dismiss her from the said Company and to cause irreparable loss and injury to her in above mind, reputation and financially.

...    ...    ...    ....    ....

15. That the accused No. 5 at the instance of the accused Nos. 1 to 4 executed with fraudulent intent the above two letters dated 03.2.89 and 30.3.89 (viz. said two documents purporting to have been executed on a date other than the one on which those were actually executed) which were and are false documents and those documents were made with the intent to cause injury to the complainant and to support the false charge number two of the said charge sheet and obviously these were done so that the fraud might be committed on her by the accused persons aforesaid."

10. According to the allegations made in paragraph 5 of the complaint, the petitioners entered into an agreement to illegally terminate the services of the complainant by various illegal means including by making or causing to be made forged documents. Such alleged act of the petitioners; would come within the purview of the proviso under sub-section (2) of Section 120A of the Indian Penal Code which defines conspiracy, as the alleged agreement to illegally terminate the services of the complainant was not an agreement to commit an offence. Consequently, to sustain a charge of criminal conspiracy, it would be necessary for the complainant to prove that some act, besides such agreement has been done by any of the parties to such agreement in pursuance thereof. In the instant case, the complainant seeks to fulfill the above requirement by proving that two forged documents were made or cause to be made by the accused persons to illegally terminate her services. Let us therefore look into the contents of the other paragraphs of the complaint, referred to by Mr. Dutt and quoted above, in the light of the relevant provisions of the Indian Penal Code which define and forged documents, to ascertain whether a *prima facie* case has been made but against the petitioners or not.

11. u/s 470 of the Indian Penal Code "false document" made wholly or in part by "forgery" is designated a "forged document". "Forgery" has been defined in Section

463 of the Indian Penal Code to mean making of a "false document" with any of the intents mentioned therein; and "false document" has been defined u/s 464 of the Indian Penal Code. Under the first clause of Section 464 which is relevant for our purposes, a person makes a false document if he makes or signs a document-(i) intending it to be believed that it was made or signed or executed by, or by the authority of, some person by whom, or by whose authority, he knows it was not made or signed, or (ii) with the intent that it shall be believed that it was made or signed at a time when he knows it was not so made or so signed.

12. The allegation in the complaint is that the contents of the two documents dated 3.2.89 are false and that they have been manufactured to sustain a false charge against the complainant. In our considered view incorporation or inclusion of a false statement in a document would not ipso facto make the document false for a document to be false it has to tell a lie about itself. In the instant case the documents were admittedly written and signed by Sri S. N. Banerjee and therefore it would not be false even if the complainant's receipt of Rs. 1510 from Sri Banerjee as contained therein was a lie.

13. Mr. Dutt in his usual fairness conceded that the two documents were not "false document" under the first part of the first clause of Section 464 of the Indian Penal Code. He, however contended that they were false documents under its second part as they were not made on the dates appearing thereon. In support of his contention, he relied upon the contents of paragraph 15 of the complaint.

14. It is true that in paragraph 15 of the complaint there is the allegation that the two documents in question were not executed on the dates appearing thereon and such allegation fulfills the requirement of the second part of the first clause of Section 464 to bring it within the meaning of "making a false document". It is equally true that the allegation so made any answer the description of "complaint" u/s 2(d) of the Code of Criminal Procedure ("Code" for short). But then, a Magistrate may take cognizance of an offence u/s 190(1)(a) of the Code-as has been done in the instant case-upon receiving a complaint of facts which constitute such offence. The underlined words unmistakably indicate that to entitle a Magistrate to take cognizance u/s 190(1)(a) of the Code, there should not only be a complaint, which means allegation of commission of offence, but it must contain facts which constitute the offence. That necessarily means that the basic facts and materials on which the allegation is founded are required to be stated.

15. Factual details or evidential details need not be however incorporated in the complaint, but it must contain the pith and substance of primary facts on the basis of which the allegation of the commission of an offence is being made. To cite an example.

To be a "complaint" u/s 2(d) of the Code only an allegation of the sort that somebody has committed the murder of "A" is sufficient. But to enable a Magistrate

to take cognizance of such a complaint, such allegation would not be sufficient; and the basic facts and circumstances on the basis of which the above allegation are being made are required to be stated.

16. Having considered the impugned complaint in the light of the above principle of law, we must hold that the learned Magistrate was not justified in taking cognizance of the same. Within the four corners of the complaint, we have not found any fact or material on which the allegation of the two documents having not been created on the dates appearing thereon was being made. As it appears from the complaint, only a factual inference of making a false document has been made without detailing the facts from which the inference was being drawn.

17. Faced with this difficulty, Mr. Dutt submitted that the complainant should be given an opportunity to prove her case by producing materials which she had in her possession and in support of his submission Mr. Dutt asked us to consider the documents now filed by her. We are unable to accept this submission of Mr. Dutt for at this stage we are concerned only with the question whether the Magistrate was justified in taking cognizance upon the complainant and whether the issuance of the process against the petitioners was an abuse of the process of the Court or not. If really, the documents now disclosed by Mr. Dutt were in the possession of the complainant and were relevant to prove her case, nothing prevented her to disclose the same at the time of filing the complaint so as to entitle the Magistrate to legally take cognizance of the same.

18. In view of the above discussion, we must hold that the learned Magistrate was not justified in taking cognisance upon the complaint filed by the complainant. We therefore allow this application and quash the proceeding. Needless to say, the benefit of this order goes to the other accused also.

Siba Prasad Rajkhowa, J.

19. I agree.