
(2012) 8 AD 48 : (2012) 4 JCC 2926

Delhi High Court

Case No: Criminal Rev. P. 497 of 2012 and Criminal M.A. 16134 of 2012

Ashwini Kumar Chopra

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision: Sept. 12, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 164#Penal Code, 1860 (IPC) " Section 469, 500

Citation: (2012) 8 AD 48 : (2012) 4 JCC 2926

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Vineet Malhotra with Mr. Vikas Arora and Mr. Aman, for the Appellant; Manoj Ohri, APP for State with SI Pramod Kumar, DIU/East, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

Present revision petition has been filed challenging the order dated 16th July, 2012 passed by the Additional Sessions

Judge-02, Karkardooma Courts, Delhi in C.R. No. 156/2011 whereby the order of the Metropolitan Magistrate, Delhi discharging the petitioner

in FIR No. 446/2000 was set aside and petitioner was directed to face trial. The relevant portion of the order passed by the Additional Sessions

Judge is reproduced hereinbelow:-

13. On perusal of file, I find that in his statement recorded u/s 164 Cr.P.C., PW Anil Lamba, inter alia, stated that original affidavit purportedly

signed by Smt. Natasha Kwatra was shown to him by Sh. Vijay Arora. Sh. Vijay Arora had a conversation with Ashwani Chopra on telephone.

In subsequent paras of his statement, he also disclosed that Sh. Ashwani Chopra had accepted that the affidavit shown by Sh. Vijay Arora was got

prepared by him. According to the statement of Mr. Anil Lamba not only the forged documents i.e. affidavit was got prepared by Sh. Ashwani

Chopra but also it was used which adversely affected the reputation of complainant and his wife. This prima-facie shows the hatching of conspiracy

by Vijay Arora and Ashwani Chopra. Thus, this evidence creates strong suspicion not only against Ashwani Chopra but also against Sh. Vijay

Arora. Ld. M.M. did not appreciate this evidence. I do not concur with the findings of Ld. M.M. on this aspect. In my view there is sufficient

material on record to raise strong suspicion not only against Mangat Ram Sohatra but also against Ashwani Chopra and Vijay Kumar Arora for

commission of offence punishable u/s 469/500 IPC.

14. In view of the above reasons and discussion, it is held that impugned order is not beyond any inaccuracy, impropriety, incorrectness or

illegality. Therefore, impugned order is set aside and Ld. MM is directed to frame the charge for said offences also against Ashwani Chopra and

Vijay Kumar Arora and proceed the case further in accordance with law.

2. Mr. Vineet Malhotra, Learned Counsel for petitioner submits that Additional Sessions Judge failed to appreciate that the statement of Mr. Anil

Lamba, who was the sole material witness against the petitioner, was an extra judicial confession made by a person who admitted that he had

himself participated in the alleged crime and since he was not paid his dues he was making the aforesaid statement against the petitioner.

3. According to Learned Counsel for petitioner, even the statement u/s 164 Cr.P.C. could only be read against Mr. Anil Lamba, but the same

cannot be read against the petitioner being a disclosure statement made by the co-accused.

4. Mr. Vineet Malhotra, Learned Counsel for petitioner also drew attention of this Court to the finding given by the Metropolitan Magistrate while

discharging the petitioner-accused. The relevant portion of the Metropolitan Magistrate's order relied upon by Learned Counsel for petitioner is

reproduced hereinbelow:-

....Prosecution strongly relies upon extra judicial confession of Ashwani Chopra in order to proceed against the said accused for trial of offence u/s

469/500 IPC, however, in the opinion of the court the extra judiciary confession is not sufficient to proceed against the accused Ashwani Chopra

especially in the light of the fact that the said witness Anil Lamba disclosed about the said confessional statement after he was admittedly not in

good relation with accused Ashwani Chopra. Thus, statement u/s 164 Cr.P.C. containing extra judiciary confession of accused Ashwani Chopra is

not made by this witness when his specimen signature were obtained in the year 2001, rather, it has been made in the year 2003 i.e., after

registration of the present case and after employment of this witness was terminated by Ashwani Chopra from Newspaper, Punjab Kesari.

Thus, the said witness initially suspicious in the mind of the Investigating Agency and who seem to be an accused before the FSL report dated

17.01.02 was received, has been made a witness to an extra judiciary confession allegedly made by accused Ashwani Chopra.

In view of the time when the extra judicial confessional statement was made, the person to whom the said extra judicial confession had been made

and in view of no specific reason as to why the Extra Judicial Confessional Statement was made, the court finds that extra judicial confession in

itself is not sufficient so as to proceed against the accused Ashwani Chopra for the offence u/s 469/500 IPC.

As far as offence u/s 469 IPC is concerned, even witness Anil Lamba has clearly stated initially that he was personally not aware as to who forged

this document/affidavit. The Investigating Agency failed to bring on record any evidence to show that the affidavit dated 26.04.00 purportedly

signed by Natasha Kwatra was forged by any of the three accused persons.

As far as section 500 IPC is concerned, there is nothing on record except unreliable extra judicial confession from the mouth of a person to

whom the confession purportedly was made their registration of present FIR and after his relationship got strained with Ashwani Chopra and after

he accepted the challenge of accused Ashwani Chopra to expose him. Hence, there is not sufficient material on record to show prima facie that

section 500 IPC is made out against the accused Ashwani Chopra.

5. Having heard the Learned Counsel for petitioner and having perused the papers, this Court is of the opinion that petitioner would have to face

trial in the present case as the admitted position is that a forged affidavit with a forged notarization had been circulated against the complainant and

his wife.

6. It is the complainant's case that it was the petitioner who had initially approached him to make the false allegation which finds mention in the

alleged forged affidavit. In the opinion of this Court, Additional Sessions Judge has rightly observed that the statement of Mr. Anil Lamba recorded

u/s 164 Cr.P.C. raises a strong suspicion against the accused. Also, the credibility and evidentiary value of extra judicial confession is to be seen at

the stage of trial. Further, in view of observations made in Soma Chakravarty Vs. State through CBI, , the present is a case of grave suspicion.

Hence the trial must proceed.

7. It is pertinent to mention that in the present case, the police had been asked by the Metropolitan Magistrate to conduct investigation and in the

charge sheet filed by the police, it is stated as under:-

....It is further ascertained that some packets posters bearing defamatory material was seized by Punjab Police at Jalandhar. The concerned police

officer as well as public persons have been examined. From the investigation made so far, it appears that all the drama seems to be fall out of

family property dispute of Hind Samachar Group (The Punjab Keshari Newspaper).
Ashwini Chopra, the Chief Editor Punjab Keshri, Delhi

branch is engaged in civil suits for the division of family property with cousins Avinash Chopra and Anil Chopra. He seems to have erected whole

drama with intent to malign the image of his rivals - Avinash Chopra, the Chief Editor Punjab keshri, Jalandhar Branch by misusing the name of the

complainant's family from the evidence on record and statements of the witnesses, prima facie the case U/s. 469/500 IPC is made out against the

accused persons mentioned in Col. No. 4. Hence the chargesheet has been prepared against them. As the offences are bailable and there is no

chance of absconding by them or avoiding service of court process their arrest is not effected. It is, therefore, requested that the accused persons

(Col. No. 4) may be tried for the offences U/s. 469/500 IPC. Witnesses (mentioned in Col. No. 6) may be summoned and examined please.

(Emphasis supplied)

8. this Court is of the view that the Metropolitan Magistrate's finding that Mr. Anil Lamba's statement u/s 164 Cr.P.C. was an extra judicial

confession made by a disgruntled person is a finding which could only have been made after a full trial and not at the stage of framing of

charge/notice. Since in the opinion of this Court, the Metropolitan Magistrate has already pre-judged the issue, the Additional Chief Metropolitan

Magistrate, Delhi, is directed to mark the present case to another Metropolitan Magistrate. Learned Counsel for the petitioner is directed to

intimate in writing the next date of hearing to other co-accused. With the aforesaid observations and direction, present petition and pending

application are dismissed.