

(2006) 07 DEL CK 0149

Delhi High Court

Case No: Criminal Rev. P. 74 of 2003

Alpana Das

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision: July 7, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Citation: (2006) 132 DLT 85 : (2006) 90 DRJ 441

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: K.N. Bhargopal and A.P. Mukandan, for the Appellant; R.M. Tiwari, for the Respondent

Final Decision: Allowed

Judgement

Badar Durrez Ahmed, J.

This revision petition is directed against the order on charge dated 16.9.2002 passed by the Special Judge, Delhi as well as the formal charge drawn up on 16.9.2002 whereby the petitioner along with other co-accused have been firstly charged of committing an offence punishable u/s 120-B read with Section 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and, secondly, the petitioner Along with the other co-accused have been charged for committing offences punishable under Sections 420/511 IPC read with Section 120-B IPC. Additionally, insofar as the petitioner and co-accused J.B. Khosla, inasmuch as they were public servants, are concerned, the substantive charge u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was also drawn up. A further additional charge has been framed insofar as the accused A.K. Goenka, Ramesh Gupta, R. Roongta and Vishwanath Sen Gupta u/s 471 read with Sections 467, 468 IPC and lastly an additional charge against the co-accused G.N. Mathur u/s 467/468 IPC.

2. All these charges pertain to the insurance policies of the company known as Premier Vinyl Flooring Limited (PVFL). The said company had three insurance policies which also covered fire insurance. The policy Nos are 1/93, 2/93 and 3/93. The said policies were issued by the United India Insurance Company Limited (hereinafter referred to as the said Insurance Company). The said company PVFL had been renewing these policies for about 9 years from year to year. However, these policies which were last renewed in 1993 and they expired on 31.03.1994 . Apparently, 11 cheques were issued by the said company (PVFL) for the total premium amount for the renewal of the policies for the period 1.4.1994 to 31.3.1995. Unfortunately, out of these 11 cheques, 9 cheques were dishonoured. In the normal course of dealing, the insurance company ought to register and note these 9 cheques which were dishonoured in what is known as the cheque dishonour register. After such an entry is made, the policy is cancelled on account of inasmuch as the non-receipt of the premium amount. However, in the present case it is the allegation that these dishonoured cheques were not entered in the Cheque Dishonour Register.

3. Be that as it may, the learned Counsel appearing for the petitioner pointed out that it is not an issue that the policies had expired on 31.3.1994 inasmuch as they had not been renewed. It appears that on 27.5.1994 a draft for the amount of Rs. 8,84,626/- (representing the amount of the 9 dishonoured cheques) was prepared on behalf of the company (PVFL) on 27.5.1994. The draft was drawn on Bank of Rajasthan, South Extension, New Delhi. On examining the draft, it becomes apparent that the date on the top right hand corner is shown as 27.5.1994. However, under the digits 27 there is underlining and below that the digits 31 appear. Apart from this, below the signature of the bank Manager the date 31.5.1994 has been given. Furthermore, the insurance company has admittedly received the draft/pay order on 01.06.1994. This is apparent from the impugned order itself and, in particular, para 2 thereof wherein it is indicated that the draft/pay order came into hands of the present petitioner on 01.06.1994 and that she got the said pay order deposited in the account of the insurance company through loose pay in slip avoiding issuance of acceptance advice or money receipt their against. It is the contention of the learned Counsel for the petitioner that as the policy had not been renewed till that date, the amount forwarded to the insurance company and which came into hands of the petitioner who was the Divisional Manager could not be accepted on account of the policies of the said company (PVFL) and that is why the same had been deposited through a plain slip without indicating the policy numbers against such deposit slip and also without issuing any receipt against any particular insurance policy.

4. The learned Counsel for the petitioner pointed out that the crux of the matter is the date on which the pay order was received by the insurance company. The fire which broke out in the godowns of the company (PVFL) was on 30.5.1994. Whatever may be the date of the pay order - whether it was 27.05.1994 or 31.09.1994 - is not

the material. What is material is the date of receipt at the hands of the insurance company. Admittedly, it was received by the insurance company even as per the prosecution case on 01.06.1994. Therefore, it is his case that by no stretch of imagination could the petitioner have appropriated the said amount of the pay order towards the insurance policies of the company (PVFL) for the purposes of renewing the same. In any event, even if the policies had been renewed, they would have related to 1.6.1994 and not to any date prior to that. Therefore, no advantage whatsoever could have accrued to the company (PVFL). The further allegation against the petitioner is that surveyors were appointed in haste. The Explanation given by the learned Counsel for the petitioner is that when the fire broke out in the godown of the company (PVFL), an intimation was received from them of such incident and as is the normal practice, surveyors are appointed and in the present case the surveyors were appointed on instructions from superior officers. However, we need not to go into this aspect of the matter because no formal claim was ever made by the company (PVFL) at any point of time. The learned Counsel for the petitioner took me through the impugned order to show that even if the prosecution evidence is taken at face value, the charges as framed are not borne out.

5. Mr Tiwari, who appears on behalf of the CBI, submitted, and rightly so, that at the stage of framing of charges, the court is not required to marshal any evidence and it is only on the basis of grave suspicion alone that charges could be framed.

6. Keeping these well settled principles in mind, I find that insofar as the question of Section 420 IPC is concerned, the charge cannot be made out because there is no delivery of any valuable security or any property and none has been alleged in the prosecution case. As regards Sections 467, 468 and 471, it is not the case that the pay order was forged and fabricated and the entire dispute with regard to the pay order is whether it was issued on 27.5.1994 or 31.5.1995. Even it is assumed that it was issued on 27.5.1994 then also it could not be to the benefit of the company (PVFL) inasmuch as it is not the date of issuance of the cheque or pay order or draft that is material but the date of receipt of the same at the hands of the insurance company which is relevant. There is no dispute that the insurance company received the pay order on 1.6.1994 which was subsequent to the incident of fire which took place on 30.5.1994. Therefore, the debate with regard to the date of issuance of the pay order pales into insignificance and obviously the charge under Sections 467, 468 and 471 is not made out. Insofar as the question of Section 13(1)(d) of the Prevention of Corruption Act, 1988 is concerned, the same clearly contemplates the deriving of some valuable thing or pecuniary advantage by the public servant either for himself or for someone else. In the present case, no valuable thing or pecuniary advantage has been derived so as to bring the conduct of the petitioner u/s 13(1)(d) of the said Act. This is so even as per the facts of the prosecution case. Therefore, there is no question of framing any charge u/s 13(1)(d) and consequently, Section 13(2) would also not be applicable. As regards the charge of attempt to commit

cheating, the said allegation is based on the premise that the accused had falsely showed payment of premium to the insurance company before the date of the incident. In other words, what is alleged is that the accused had showed that premium had been paid and received by the insurance company prior to the date of the incident of fire. As noticed above, this is clearly not the case. The fire took place on 30.5.1994 whereas the premium was admittedly received by the insurance company on 01.06.1994. It is nobody's case that premium was received prior to 30.5.1994. Therefore, this charge is also not made out. It may also point out that the pay order bears two dates - 27.05.1994 and 31.05.1994. Apparently, the pay order was prepared on 27.05.1994 but it was issued on 31.05.1994 as indicated by the endorsement under the signature of the bank manager and that is why the digits 31 were written under the digits 27 on the top right hand corner of the draft. This goes to show that the pay order itself had been issued subsequent to the date of the incident and could, Therefore, not be towards an insurance policy covering an incident which had already taken place. In these circumstances, the impugned order is set aside. The accused is discharged.

7. This revision petition stands disposed of.