

(2013) 03 DEL CK 0250

Delhi High Court

Case No: Criminal M.C. 2628 of 2012

Rajiv Vaid and
Another

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision: March 21, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 34, 380

Citation: (2013) 4 AD 284 : (2013) 2 JCC 949

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: K.S. Pathania, for the Appellant; Naveen Sharma, APP for State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Kailash Gambhir, J.

By this petition, the petitioners seek to challenge the order dated 15.5.2012 passed by the learned ASJ, thereby setting aside the order passed by the learned trial court, discharging the petitioners for the offence punishable under Sections 380 /34 IPC. Assailing the order dated 15.5.2012, counsel for the petitioners submits that the petitioner no. 2 is the daughter-in-law while the petitioner no. 1 is the son of the complainant. Counsel also submits that five Kisan Vikas Patras each for Rs. 10,000/- for five and half years with total maturity value of Rs. 1 lac were purchased by the petitioner no. 2 and the complainant in their joint names. Counsel submits that these petitioners had never stolen the said Kisan Vikas Patras from the custody and possession of the complainant although the complainant had filed a complaint with the postal authorities with a request not to allow the petitioner no. 2 to encash the said Kisan Vikas Patras. Counsel also submits that in fact the petitioner no. 2 being a

joint holder of the said Kisan Vikas Patra had filed a civil suit before the learned civil judge for declaration and mandatory injunction impleading therein the complainant and the postal authorities to declare the petitioner no. 2 to be entitled for encashment of the said Kisan Vikas Patra bearing serial nos. 20CC303728, 20CC303729, 20CC303730, 20CC303731 and 20CC303732. Counsel further submits that during the pendency of the said civil suit the complainant had died on 9.10.2005 and after the death of the complainant, the petitioner no. 2 became entitled to seek encashment of the said Kisan Vikas Patras in her own right. Counsel also submits that the petitioner no. 2 had withdrawn the said suit on the assurance extended by the postal authorities that the said Kisan Vikas Patras shall be encashed on their presentation by the petitioner no. 2. Counsel also submits that the petitioner no. 2 had deposited the original Kisan Vikas Patras in the said civil suit and the same were returned to her on 30.11.2005.

2. Based on the above submissions, counsel for the petitioners submits that vide order dated 25.8.2011, the learned M.M. had discharged the petitioners after appreciating the order passed by the civil court. Counsel also submits that the order dated 15.5.2012 passed by the learned ASJ, thereby setting aside the order dated 25.8.2011 passed by the learned M.M. is a clear case of non application of mind on his part as without making any reference to the said facts on record he took a view that there is sufficient material to frame charges against the accused persons for the offences punishable under Sections 380 /34 IPC.

3. I have heard learned counsel for the parties.

4. Examining the scope of interference by the High Court in exercise of its powers u/s 482 Cr. P.C., particularly in relation to framing of charges by the lower court, the Apex Court in the case of [Amit Kapoor Vs. Ramesh Chander and Another](#), observed that

17. ... framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There, can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the

ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

5. Thus, the High Court would be fully justified in invoking its inherent powers u/s 482 Cr.P.C. in order to discharge the accused where it finds that the court below ignored the relevant facts of the case and exercised its discretion of framing the charges against the accused person in a perverse and arbitrary manner.

6. Considering the facts of the present case in the light of the aforesaid observations of the Apex court, it is an admitted position in the present case that the petitioner no. 2 was the joint holder of the said Kisan Vikas Patras along with her father-in-law who was the complainant of the said FIR and had equal right on the value of the said KVPs along with the joint holder. It is also not in dispute that the petitioner no. 2 had filed a civil suit seeking declaration and mandatory injunction and the complainant along with the postal authorities were impleaded as defendants. During the pendency of the said civil suit the complainant had died and thereafter the petitioner no. 2 had withdrawn the said civil suit on the assurance given by the postal authorities that she being the only survivor will be entitled to encash the said Kisan Vikas Patras on the presentation of the same and accordingly the petitioner no. 2 had applied for the return of the said original Kisan Vikas Patras and thereafter only presented the same before the postal authorities for their encashment.

7. It appears that these vital facts which were brought on record were ignored by the learned Sessions Judge although they were appreciated by the learned M.M. vide his order dated 25.8.2011. The relevant para from the order dated 25.8.2011 passed by the learned M.M. is reproduced as under-

The first contention of learned counsel is that a person who is joint owner of a property can never be treated as a thief. It is further submitted that a civil suit regarding the aforementioned KVP was filed but the complainant did not appear in that civil suit. The Postal Authorities stated in that Civil suit that they shall encash KVP being in joint name of accused Anuradha and that suit was withdrawn on this statement of Postal Authority. It is further submitted that in fact, the KVP has been encashed by the accused Anuradha being the joint owner thereof. Certified copies of civil suit are on record.

I have given my thoughtful consideration.

I agree with Ld. Counsel for accused that accused Anuradha cannot be termed as a thief because she was joint owner of the KVP in question. There is no material against any of the accused persons to prima facie show that they committed the alleged theft. Except the aforementioned KVP, no recovery of any other alleged stolen property could be effected. The prosecution case if proceeded for trial, is unlikely to result into the conviction of the accused persons even if provided in totality. No ground exists to presume that accused persons committed the alleged

theft hence, they are liable to be discharged. Both accused persons are accordingly discharged.

8. It is quite surprising to find that the learned ASJ in operative para 9 of the order dated 15.5.2012 has observed that the fact of joint ownership of accused/respondent was yet to be established.

9. Considering the fact that the petitioner no. 2 was the joint owner of the said five Kisan Vikas Patras along with her father-in-law and that she had encashed the said KVPs after filing a civil suit, no case under Sections 380 /34 IPC can be made out against the petitioner no. 2. It also cannot be lost sight of the fact that the petitioner no. 2, who was the joint holder along with her father-in-law, became legally entitled to encash the said Kisan Vikas Patras after his demise. The order dated 15.5.2012 passed by the learned ASJ appears to be illegal and perverse on the very face of it and the same is accordingly set aside while the order dated 25.8.2011 passed by the teamed M.M. is upheld.

10. The petitioners are accordingly discharged. The petition stands disposed of accordingly.