

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PENAL CODE

CRL. MISC. (C) No. 301/2007

Reserved on: 29.01.2007

Date of Decision: January 31, 2007

Gurdev Singh Kaler

.....Petitioner

Through Mr.Vineet Bhagat, Advocate.

versus

State of NCT of Delhi

..... Respondent

Through - Nemo

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT

1. The petitioner, who was declared a proclaimed offender in case of FIR Nos. 485 & 486 of 2002 P.S. IGI Airport, Delhi under Sections 420/468 & 471 of IPC and Section 12 of Passport Act has preferred this petition under Section 482 of Cr.P.C for quashing the aforesaid two FIRs and also made a prayer for stay on his arrest and stay on further proceedings. It is claimed by the Petitioner that he was a permanent resident of Bini Daraga Albay, in Philippines. He had been staying there since 1984 and he was an Indian citizen holding Indian Passport issued on 3rd October, 2002 by Indian Embassy Manila, Philippines valid upto 2nd October, 2012. He has been wrongly charge-sheeted in the above two FIRs.

2. Brief facts relevant for the purpose of deciding this petition are that one Boota Singh S/o Ram Singh and Sukhdeep Singh S/o Sohan Singh holding Indian Passports approached for immigration clearance for departure to Philippines by flight no. SQ 407. On scrutiny of their travel documents it was found that the Philippines Visa No. 4960/02 dated 02.9.2002 stamped at page no. 5 of the passport of Boota Singh and similar visa on passport of Sikhbir Singh were forged visas. The

application for non-immigration Visa of Embassy of Philippines held by them were also found to be forged. Both were questioned and they disclosed that their visas were arranged by an agent namely Pappa R/o Jagraon Mobile No. 9815076399 and Mr. Binder, a relative of Pappa working in Jagraon Court. The deal was finalized for Rs.3.5 Lac of which he had already paid Rs.3 Lac to Pappa in presence of Binder. Pappa told that his maternal uncle was working in Phillipines and he would arrange for his employment there. A case was registered under Section 420/468/471 IPC and Section 12 of Passport Act for use of forged documents and cheating and further investigation was done. After recording statement of witnesses and doing investigation it was found that Gurdev Singh, petitioner, who is maternal uncle of Binder. Binder and Pappa all the three had assured Boota Singh and Sukhdeep Singh about sending them to Phillipines and taken Rs.3 Lac each from both of them. Gurdev Singh had come to India and he had met victim Boota Singh in company of Pappa @ Parminder and Binder and assured of getting them employed in Phillipines and a deal was struck for Rs.3.5 Lac for each person in his presence. Sohan Singh made statement that it was Binder, who used to work in the Court and prepared forged documents and Gurdev Singh used to take care of the person in Phillipines and they had earlier also arranged for immigration of persons to Phillipines. Initially, Gurdev Singh, Pappa and Binder - all the three accused could not be arrested. They were not traceable at their village and addresses in Ludhiana. The proceedings were initiated against all the three persons under Section 82 and 83 of Cr.P.C. Later on Binder, one of the proclaimed offenders, was arrested and a supplementary challan was filed against him. The present petitioner being abroad could not be arrested.

3. The Petitioner in his petition has stated that the criminal proceedings against him were wrongly initiated without any of his fault or knowledge. He knew co-accused Binder Singh S/o Shri Bant Singh and Pappa @ Parminder Singh S/o Shri Jarnail Singh, both residents of Ludhiana since, they were his relatives but he denied being in conspiracy with them in the alleged offence. It is stated that except family relations he had no other relationship with these two. He had no idea why his name was dragged in the unlawful act. He stated that during police investigation and criminal proceedings in the Trial Court except the confessional statement of co-accused there was no other incriminating evidence. He had no knowledge about the two victims viz. Sukhbir Singh and Boota Singh.

4. It is not the case of the petitioner that he was not in India when the offence was committed and money was taken from the two victims, who were also accused in the case and who disclosed about the persons, who were involved. His two relatives who were involved in this case also absconded soon after committing of

offence and one of them could be arrested only after more than three years and a supplementary challan was filed against him.

5. Absconding and not appearing despite proclamation is itself an offence under Section 174 A of IPC, punishable with imprisonment upto three years and fine. The Petitioner, though declared proclaimed offender long back has not approached the Trial Court and nor sought bail from the Trial Court.

6. While exercising powers under Section 482 of the Cr. P.C. the Court has to keep in mind that it should not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. This is a function of the Trial Court. Though the judicial process should not be an instrument of oppression or needless harassment but the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances in consideration before issuing process under Section 482 lest the Section becomes an instrument in the hands of accused persons to claim differential treatment only because the accused persons can spend money to approach higher forums. This Section is not an instrument handed over to an accused to short circuit a prosecution and bring about its sudden death.

7. The scope of the exercise of power under Section 482 of the Court has been extensively considered by the Apex Court in several cases. Recently in 2006 Cr.L.J. 4050 CBI v. Ravi Shanker Srivastava, IAS and Anr., the Apex Court has surveyed the earlier legal position as laid down in State of Karnataka v. Bhajan Lal AIR 1992 SC 604 and has emphasized and issued a note of caution that the power should be exercised sparingly and that too in rarest of rare cases. The Court observed that it would not be proper for the High Court to analyze the case of complainant in light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that complaint cannot be proceeded with. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. However, in case of FIR the Court has to see that despite the entire evidence collected by the prosecution no case is made out against the petitioner.

8. In the present case, the petitioner absconded he did not help the prosecution in investigation of the case. Had he helped in investigation, it would have been revealed whether he was in India at that time or not. His bank account in India and bank accounts of his relatives would have revealed whether any deposits

were made in the bank accounts during those days or any transaction in property had taken place to invest the money received from the victims, but the accused and his relatives chose to become absconders and did not help the investigation of the case.

9. Since accused is a Proclaimed Offender, I consider he should have approached Trial Court for grant of bail and setting aside Section 82 Cr.P.C. proceedings. In 1988(2) Crimes 685 Vinod Kumar Khanna v. State this Court had occasion to consider a petition under Section 482 for quashing the order of the CMM issued under Section 82 of the Cr. P.C. This Court observed that if the petitioner being citizen of India and having warrants of arrest issued against him evading arrest by not coming to India at the earliest to face the Criminal Court he should be treated as an absconder for issuing of a proclamation under Section 82 and there was no ground to interfere. In 2002 (6) Scale 177 Jagtar Singh v. Satendra Kaur @ Bhavana Grover and Ors. Supreme Court observed normally, when the accused are absconding there was no question of granting anticipatory bail. In 2002 (2) JCC (SC) 785 Shri Mahavir Prashad Gupta and Anr. v. State of NCT of Delhi Supreme Court held that it would not be proper to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or complaint in proceedings under Section 482.

10. The Petitioner in this case had not made any application to the Trial Court for cancellation of his warrants and recalling the order under Section 82 of Cr. P.C. The Petitioner had this option before him the claim of the petitioner that there was no evidence against him is belied from the fact that the victim's father were the witnesses of handing over money. There is admission that the other two accused persons were related to the petitioner. The Petitioner was working in Philippines and forged Visa was of Philippines. He has not denied his presence in India when the deal was struck. It cannot be said that it is a case where trial cannot proceed or no offence prima facie is made out. This Court cannot analyze the entire evidence to come to conclusion whether a conviction is probable or not, that, in fact, would amount to by passing the Trial Court and not giving an opportunity to the prosecution to prove its case as per law and the procedure laid down.

11. I consider it is not a fit case where this Court should exercise power under Section 482 Cr.P.C. Accordingly, the petition is hereby dismissed.

Sd/-

SHIV NARAYAN DHINGRA,J.