

Hira Lal Jain

Vs

Delhi Administration

Criminal Appeal No. 5 of 1972

(CJI J. M. Shelat, D. G. Palekar, S. N. Dwivedi JJ)

01.09.1972

JUDGMENT

DWIVEDI, J. -

1. The appellant, Hira Lal Jain, is an advocate, Along with Jhumman Singh, Mst. Shanti, Dina Nath, Mst. Ram Wati and Mst. Chameli, he has been committed to the Court of Session for trial for the offences under Section 120-B, read with Sections 419, 420, 511 and Section 467, read with Section 471, I.P.C. He applied to the High Court of Delhi for quashing the commitment order against him. The High Court dismissed his revision. Hence this appeal by special leave.

2. The prosecution case is this : A certain piece of land situate in village Tehkhand (Delhi) was acquired under the Land Acquisition Act, The Land Acquisition Collector made a reference under Section 30 and 31 of the said Act. The reference was numbered 96 of 1964, in the Court of the Additional District and Sessions Judge. Delhi, Shri D. R. Dhameja. Along with the reference the Land Acquisition Collector also sent a cheque for the amount of compensation settled by him to the Court of the Additional District and Sessions Judge. The said Court directed payment of Rs. 4,726.70 to each of the following persons : (1) Rattan Singh s/o Gopal, (2) Nand Lal s/o Gopal, (3) Singh Raj s/o Gopal, (4) Mst. Kalawati d/o Gopal, (5) Mst. Chameli d/o Gopal and (6) Smt. Kadmi, widow of Gopal. The total amount to be distributed among them was Rs. 28,360.20 P. In July, 1964, the aforesaid accused entered into a criminal conspiracy to obtain payment of the aforesaid amount by fraud, forgery and impersonation. To that end applications were filed on their behalf by the appellant. The applications were accompanied by vakalatnamas filed by the appellant. It was alleged in the applications that the accused other than the appellant were the rightful claimants of the amount and that the amount should be paid to them. The application purporting to be on behalf of Rattan Singh (a real claimant) was signed by the appellant as his counsel. On the application purporting to be on behalf of Nand Lal (another real claimant) the appellant verified "I personally know Nand Lal s/o Gopal. He signed in my presence. In case of wrong payment, I shall be responsible to refund the amount". The verification was signed by him.

3. On October 24, 1964, Shri D. R. Dhameja directed that payment should be made to the applicants (who were the accused). Thereafter vouchers were prepared. One of the vouchers was prepared in the name of the appellant, for, earlier he had made an application on behalf of Rattan Singh praying that the vouchers should be drawn in his name. The treasury vouchers were prepared in the names of the accused on November 7, 1964.

4. On November 17, 1964, the real Rattan appeared before Shri D. R. Dhameja and claimed payment of the amount due to him. His application brought to light the alleged criminal conspiracy

of the accused. Thereupon payment was stopped and four of the vouchers could not be cashed. Jhumman Singh, however, was able to cash the voucher drawn in the name of Singh Raj. The appellant also cashed the voucher for the amount payable to Rattan Singh. It appears from the First Information Report that out of the voucher amount he has appropriated a sum of Rs. 1,400/- to himself as his fee. It appears that this amount was deposited in his account in the Punjab National Bank Ltd., Kashmiri Gate. The balance of the voucher amount was deposited in the account of Rattan Singh in the State Bank of India.

5. In the commitment proceedings the prosecution produced only documentary evidence. No oral evidence was given. The documentary evidence consists of the vakalatnamas and the applications filed on behalf of the accused, other than the appellant, by the appellant, the vouchers and the documents of encashment of vouchers and the opinion of the hand-writing expert to the effect that the signatures and thumb-impressions of the accused on the applications and vakalatnamas tally with their specimen signatures and thumb-impressions.

6. This is the entire documentary evidence. While committing the accused to the Court of Session on December 20, 1968, the committing magistrate said in his order :

"This whole case is based on documentary evidence. Upon the consideration of which I am of the considered opinion that there exists a prima facie case against the accused persons under Sections 120-B/420 read with Section 419, 511 and 467, I.P.C. read with Section 471, I.P.C. The accused are accordingly charged under the aforesaid sections. As the offence under Section 467, I.P.C. is exclusively triable by the court of session, all the accused persons are committed to the court of session."

7. In his revision before the High Court the appellant advanced several arguments. But his main argument was that there was no evidence what-so-ever in support of the charges against him. In support of his argument he appears to have relied on *Raji Pal v. Jai Singh* ([1970] 2 SCC 20). After referring to that decision, the High Court remarked that the appellant could derive no support from the law laid down in that case. Although the High Court does not expressly say in its order that there is prima facie evidence for the charges against the appellant, it seems to have entertained that view.

8. Counsel for the appellant has canvassed a single point before us. He has urged that there is no evidence to justify the framing of the charges against the appellant. In *Rai Pal Singh* (supra), this Court has held that a magistrate should not commit an accused to the Court of Session if there is no prima facie evidence or if the evidence is entirely unworthy of credit. It is now to be seen whether there is any prima facie evidence against the appellant.

9. Admittedly, the appellant has neither impersonated nor committed any forgery.

The real charge against him is that of conspiracy under Section 120-B, I.P.C. But there is no prima facie evidence in respect of this charge. The documentary evidence only shows that the appellant made applications on behalf of the other accused, that he filed his vakalatnamas and that he identified them as the real claimants.

It is well known that the main income of many lawyers in the District Courts is derived from the work of identifying persons and sureties in the Courts.

The other accused must have told the appellant that they were the real claimants. He believed them and agreed to act for them. It seems to us that he did nothing beyond what a lawyer is authorised to

do in a Court of law. There is no evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants. Again, there is no evidence whatsoever that there was any concert between him and the other accused antecedent to the filing of the applications and vakalatnamas in court by him. In the absence of such evidence, it cannot be said that there is prima facie evidence for the offence of conspiracy against him.

10. Counsel for the respondent could not dispute before us that there was no direct evidence in respect of the offence of conspiracy against him. But he has submitted that there is circumstantial evidence. According to him there are two incriminating circumstances against the appellant. Firstly, there is the circumstance that he was engaged only for the purpose of identifying the other accused, secondly, he has appropriated a sum of Rs. 1,400/- towards his fees and it is a heavy fee.

In our view the circumstance of the appellant being engaged by the accused for their identification is no incriminating evidence for the offence of conspiracy.

Fee is an individual matter. Fees vary from lawyer to lawyer. It does not also seem that the sum of Rs. 1,400/- is a heavy fee for the work which the appellant did for the other accused. He had made applications on their behalf. He identified them. He also made himself responsible for refund of the amount in case of wrong payment. He deposited a part of the amount payable to Rattan Singh in a bank. For this work the fee that he charged is 5% of the total amount involved in the case.

11. Counsel for the appellant has urged that the appellant's act of taking the responsibility to refund the amount in case of wrong payment and the depositing of a part of the above amount in the bank suggest his bona fide. There appears to be some force in the argument. If there were a conspiracy between the appellant and the other accused, he would have taken care not to make himself responsible for refunding the amount in case of wrong payment. He would also have taken care not to apply to the court that the voucher for the amount payable to Rattan Singh should be drawn in his name. Lastly, he would not have deposited the amount in the bank.

12. Having regard to the foregoing discussion, we are of opinion that there is no prima facie evidence in support of the charges framed against the appellant. Accordingly his commitment cannot stand.

13. The appeal is allowed. The order of commitment against the appellant is quashed. The trial may proceed against the other accused.

</html