

Smt. Manju Gupta

Vs

Lt. Col. M. S. Paintal

Criminal Appeal No. 284 of 1982

(V. D. Tulzapurkar, Baharul Islam JJ)

04.05.1982

JUDGMENT

TULZAPURKAR, J. -

1. In this appeal the question raised is whether the process issued by Shri Om Prakash, Metropolitan Magistrate, New Delhi, against the appellant (Smt. Manju Gupta) for an offence under Sections 467/471 read with Section 34, IPC on a complaint filed by the respondent (Lt.-Col. M.S. Paintal) should be quashed or not ? The appellant's attempt to get it quashed under Section 482, CrPc failed before the Delhi High Court and hence this appeal. After hearing counsel on either side at great length we are satisfied that the said process should be quashed and by our Order dated April 26, 1982 we directed accordingly and observed that the reasons would follow. We are now indicating our reasons for the Order.

2. The facts in brief are these. The complainant-respondent is the owner/landlord of premises bearing Municipal No. C-221, Sarvodaya Enclave, New Delhi; he had let out the ground floor of the said premises to South Delhi Public School through Surinder Nath (accused 1, being the husband of the appellant) at the monthly rent of Rs 1000; the school is run by a registered society known as Cosmopolitan Society of Education Research and Child Welfare, of which the appellant and her husband Surinder Nath were at all material times the Secretary and the Joint Secretary respectively. It appears that civil proceedings are pending between the parties; one is an eviction petition filed by the respondent against Surinder Nath and the Society and another is a suit filed by him for recovery of arrears of rents against them and the complaint has arisen from what transpired in these civil proceedings. In substance the allegation of the respondent has been that this Surinder Nath in furtherance of the common intention of three accused (himself, his wife and the society through its Chairman) had forged two rent receipts dated June 7, 1976 and October 18, 1977 and had filed them in the proceedings pending before the respective Rent Controllers with a view to show that no rent was due from the tenants and the case in the complaint is that these forged receipts had been fraudulently and dishonestly used by the accused as genuine. After registering the complaint, recording complainant's evidence and perusing the various documents filed by the respondent, the learned Magistrate issued process by summoning both the accused Surinder Nath and his wife (the appellant) for offences under Sections 467/471 read with Section 34, IPC. The question is whether on the entire material on record any case for the commission of the offences could be said to have been made out by the respondent against the appellant for issuing the process ?

3. Counsel for the appellant contended that even if all the allegations made in the complaint and the material produced by the respondent before the Magistrate are taken into account and accepted as true no case could be said to have been made out against the appellant. He urged that no specific

allegation or any overt act has been ascribed to the appellant in the matter of the commission of the offence of using forged documents as genuine in civil proceedings pending before the Rent Controllers and the respondent has dragged the appellant to criminal court with a view to use the criminal process as a lever for pressurising the settlement of the civil dispute to his satisfaction. We find considerable force in this submission, for, the criminal process has been resorted to even when the civil proceedings are pending and even before the issue whether the disputed receipts are forged or genuine is finally decided by the Rent Controller.

4. Coming to the case against the appellant it was not disputed before us that to none of the civil proceedings has the appellant been impleaded as a party-defendant and the proceedings are between the respondent as the plaintiff on the one hand and Surinder Nath, the School and the Society on the other. It was also not disputed that these civil proceedings have been and are being conducted by Surinder Nath on behalf of the School and the Society and the appellant has not participated in their conduct. Further in the entire complaint it has nowhere been stated that in the matter of bringing about the lease transaction the appellant had taken any part but it is stated that throughout the negotiations in that behalf it was Surinder Nath who was acting for and on behalf of the School and/or the Society. Even in the matter of production of the alleged forged receipts in the civil proceedings all that has been alleged is that these receipts were filed by accused 1 and 3 (Surinder Nath and the Society) acting for and on behalf of the School/Society and in fact, in paragraph 10 of the plaint in Suit No. 7 of 1981 which was filed by the respondent a categorical averment has been made that it was Surinder Nath (defendant 1 in that suit) who had produced the forged and false rent receipts in the court. In other words, in the matter of user of the forged documents as genuine the appellant was nowhere concerned and the only manner in which criminal liability is being foisted upon the appellant is by making the following averment in paragraph 20 of the complaint :

That accused 2 Smt. Manju Gupta, who is the Secretary of the said Society has been benefited from the said forgery and fraud.

Such an averment in our view, is clearly inadequate and insufficient to bring home criminality to the appellant in the matter of the alleged offences. On such basis even the other office-bearers of the Society such as the Chairman, Vice-Chairman, Treasurer or even the Members of the Managing Committee could be said to have been benefited by the alleged forgery and and fraud and even such office-bearers or Members would become criminally liable which would be manifestly incorrect. Simply because the appellant was the Secretary of the Society it does not mean process must be issued against her unless her connection or complicity with the offences is at least prima facie indicated.

5. It may be pointed out that even the allegations in the complaint pertaining to the forgery of the rent receipts are vague and indefinite. The respondent is not sure as to whether the signatures appearing on the two receipts are not his and are forged or whether the forgery consists in lifting revenue stamps bearing his own signatures from earlier rent receipts issued in favour of the said School/Society and pasting the same on the disputed receipts and the respondent cannot possibly know as to who actually indulged in either one or the other activity and naturally in this regard no averment ascribing any overt act to the appellant finds place in the complaint.

6. In the light of these aspects it is very clear to us that no case was made out by the respondent against the appellant for issuance of process in respect of the offences alleged and, therefore, the process issued by the Metropolitan Magistrate deserved to be quashed.

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