

DELHI HIGH COURT

Amarjit Singh

Vs.

State of Nct of Delhi

CrI.No.1330 of 2007

(Indermeet KaurJ.)

3.11. 2009

JUDGMENT

Indermeet Kaur, J.

1. FIR No.13/2001 has been registered under Sections 394/34 of the Indian Penal Code (hereinafter referred to as the IPC) on 17.3.2001 at 8.15 PM on the statement of the complainant Radhey Shyam. As per the version of the complainant on 17.3.2001 at around 6.00 PM he was driving canter No.HR-26GA 1463, owned by Prem Singh Sharma and while on the Okhla Road, one maruti esteem car No. D:-2CG-6729 stopped in front of his canter; three- four well built persons between 25 to 35 years of age made him and his helper forcibly get down from the canter, the keys and the canter were forcibly taken away. Investigation was set into motion on this complaint.

2. In the course of the investigation, the name of present petitioner Amarjit Singh had figured; Amarjit Singh, the present petitioner being the financier of canter No.HR-26 GA 1463 and the owner of Inter State Finance Company has allegedly instigated four persons i.e. his employees to forcibly recover this canter from Radhey Shyam.

3. On 28.5.2005 orders had been passed against all five persons for framing of charge under Section 392 read with Section 120-B of the IPC by the Court of the ACMM. Framing of formal charge was kept in abeyance under the orders of the Additional Sessions Judge. Order of the ACMM was affirmed in revision by the Additional Sessions Judge on 02.2.2006; it was held that a prima facie offence under Sections 392 IPC read with Section 120-B IPC has been made out. On 18.8.2006 formal charges were framed against the accused persons including the present petitioner under Section 120-B IPC as also a charge under Section 392 IPC read with Section 120-B IPC.

4. Letter dated 26.4.2001 written by Amarjit Singh informing the SHO, Police Station Mahipalpur that he had authorized his recovery agent Pawan Kumar, co-accused, to repossess

the vehicle was considered by the court to uphold the view taken by the ACMM that a prima facie case had been made out.

5. These orders i.e. the order of the ACMM framing charges and reaffirmed by the order of Additional Sessions Judge are under challenge.

6. It is submitted that the perusal of the FIR does not disclose the ingredients of an offence under Section 392 of the IPC. Role of the petitioner Amarjit Singh has not been entailed therein; there is not a whisper about him. Attention has been drawn to the definition of „robbery“ as contained in Section 390 of the IPC; robbery is either theft or extortion; both theft and extortion speak of the offender (emphasis); the explanation contained in Section 390 has also been highlighted. It is submitted that in the absence of the presence of the person on the spot where the offence is committed, ingredients of Section 390 are not made out; charge framed under Section 392 which is the penal provision for robbery is thus not sustainable.

7. It is submitted that Section 390 is contained in Chapter XVII of the IPC. Chapter-XVII of the IPC relates to offences against property; each of these offences speak of the presence of the offender; in the absence of which an offence under this Chapter cannot be sustained. The only exception is dacoity which is contained in Section 391 of the IPC. Criminal conspiracy which is defined under Section 120A of the IPC cannot be clubbed with the offence under Section 392 of the IPC. It is not the case of the prosecution that the petitioner was present at the time when the offence was committed i.e. when the canter was forcibly taken away from Radhey Shyam; presence of the petitioner at the time of the commission of the offence is a necessary pre-requisite to establish the offence under Section 392 of the IPC. This not being the position, the impugned order of framing of charge under Section 392 read with Section 120-B IPC and Section 120-B of the IPC is liable to be set aside.

8. Counsel for the petitioner has placed reliance upon judgments of the Bombay High Court reported in 1997 (2) Crime 47 *S.D. Dutranga v. State of Maharashtra*¹, *W.A. Chauriappa v. State of Maharashtra*; it is submitted that the offence under Section 397 of the IPC pertains to the actual offender; it is an individual offence; applying the same analogy to the offence under Section 392 of the IPC which is contained in the same Chapter i.e. Chapter XVII relating to an offence against property, in the absence of the presence of the petitioner at the spot offence under Section 392 of the IPC is not made out.

9. Even otherwise the dispute, if any, between the parties arose out of a civil liability based on a hire-purchase agreement where admittedly certain amounts were due from the employer of Radhey Shyam i.e. Prem Narayan Sharma; this could not have become the subject matter of a criminal trial.

10. Arguments have been countered by the counsel for the State.

11. Attention has been drawn to Chapter XVI of the IPC i.e. the offences affecting the human body; Section 341 is the penal provision for wrongful restraint. It is submitted that physical presence of the obstructor is not necessary; *Madala Peraiah & Ors. V. Voruganti Chendriah*² relied upon. It is submitted that it is, thus, clear that there is no chapter-wise distinction in the IPC and the presence of a person at the time of the commission of the offence may or may not be material depending upon the facts of each case. The provisions of Section 120-B of the IPC would otherwise become redundant. Reliance has been placed upon *Ashfaq v. State*³ to support the submission under Section 397 of the IPC. The emphasis is on the word "uses" and it is the user of the deadly weapon by the offender which makes this offence an individual offence. The same analogy cannot be applied to the provisions of Section 392 of the IPC. It is further submitted that the guidelines set up by the Supreme Court in *Amitabh Verma v. Commissioner of Police*⁴ have to be followed by financial companies in the strict sense before they exercise their powers to repossess the vehicle. A writ petition seeking quashing of this FIR has also been dismissed vide order of the Division Bench of this Court dated 05.4.2002.

12. Arguments have been heard and appreciated.

13. The FIR in this case was initially registered under Sections 392/34 of the IPC against four persons; thereafter in the course of investigation the role of the present petitioner i.e. Amarjit Singh was unravelled. It is settled law that an FIR is not an encyclopedia expected to contain all the details of the prosecution case. Role of the present petitioner having figured out in the course of the investigation, it is obvious that for this reason his name did not find mention in the FIR. Additional Sessions Judge in his order dated 02.2.2006 had made specific reference to a letter dated 26.4.2001 written by the petitioner to the SHO, P.S. Mahipalpur, in which it was written that it was under his authorization that his recovery agent i.e. co-accused Pawan Kumar has repossessed this vehicle.

14. Charge sheet was filed under Sections 392/34 of the IPC; on the prima facie material before the Court, charge had thereafter been framed under Section 392/120-B of the IPC. Section 120-A, which defines a criminal conspiracy includes doing of an illegal act or doing a legal act by illegal means. Evidence on record has prima facie established that it was at the behest of Amarjit Singh that this canter was forcibly repossessed. It was a robbery committed on a highway. Ingredients of Section 392 of the IPC are clearly attracted. Offence was also committed at the asking and at the instigation of Amarjit Singh; the criminal conspiracy had been hatched on his initiation; Section 120-B of the IPC is rightly attracted.

15. This court does not agree with the submission of the learned counsel for the petitioner that an offence under Section 392 of the IPC cannot be clubbed with an offence of conspiracy under Section of the IPC; Section 120-B of the IPC is also a substantive offence. If these arguments of the petitioner are accepted, the petitioner would be allowed to go scot free; further the provisions of Section 120-B of the IPC could never be made applicable to Section 392 of the IPC; this is not the intention of the legislature which can be gathered from a

co-joint reading of Section and 120-B of the IPC. Participation of an accused without being present at the spot is clearly covered by Section 120-B of the IPC.

16. Offence under Section 392 of the IPC is not individual in the sense as it is under Section 397 of the IPC; Section 397 of the IPC fastens liability on the person who uses the deadly weapon and no other.

17. In 140, 2007 DLT 672 Keshav Tyagi v. State a Division Bench of this Court had upheld a conviction under Section 392 read with Section 120-B of the IPC; so also in AIR 2003 SC 3805 Munna v. State, the Supreme Court had upheld the conviction under Section 392/120-B of the IPC; appeal of the appellant against conviction under Sections 392/120-B of the IPC had been dismissed. These judgments also makes it clear that offences under Sections 392 & 120-B IPC can go side by side; in fact in both these cases the convictions were maintained under Section 392/120B of the IPC.

18. Arguments of the petitioner are without merit.

19. Before parting with this case, it is observed that the FIR of this case relates to the year 2001. This FIR had become the subject matter of a quashing petition which had been dismissed on 5.4.2002. The revision petition challenging the order of framing of charge dated 28.5.2005 of the ACMM was dismissed by the order of the Additional Sessions Judge on 02.2.2006. Formal charges had been framed by the ACMM on 18.8.2006. Present petition has been filed on 4.4.2007; on 4.5.2007 proceedings before the Trial Court had been stayed. This is the fate of the FIR which has been registered way back in the year 2001.

20. Petition is dismissed with direction to the Trial Court to take up the matter expeditiously. (Indermeet Kaur) Judge 3rd November, 2009 nandan.

Cases Referred.

¹1995 Cr.L.J. 4042

²AIR 1954 Mad 247

³AIR 2004 SC 1253

⁴2002(3) JCC 2118