

FIR No. 392/2009
PS Patel Nagar
State vs Vikesh Narain & Ajitesh

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

05.06.2020

Present: Sh. Piyush Bhaddu, Learned APP for the State through video conferencing.

Sh. Bimlesh Kumar (enrol. no. D640/2003), Learned Counsel for the accused persons through video conferencing.

The matter is fixed for order on charge.

Arguments already heard.

In the police complaint, complainant Mohit Jain, legal officer of TCS E Serve Ltd., has stated that his company is authorised recovery agency of Citi Bank. A person namely Sh. Harish Kohli had taken Credit Card from Citi Bank and the money spent on the said Credit Card is recovered by his Company. There are several small agencies hired by his Company for recovery of money and amongst them, one is Cell Page Communication at 252A, Shahpur Jat. They received information that a person namely Vikesh Narain, claiming himself to be employee of Cell Page Communication, went to Harish Kohli to collect Rs. 5000/- due against the credit card. Vikesh Narain was also having blank Receipt Book of the Company. Thereafter, the complainant and Sh. Harish Kohli went to PS Patel Nagar. The

Supervisor of Cell Page Communication Sh Sanjay Kumar also came to PS and he had seen Vikesh Narain. The Receipt Books recovered from Vikesh Narain were found fake and he was neither an employee of Cell Page Communication nor Citi Bank.

On the basis of the complaint, the present FIR was registered. It is stated in the charge-sheet that during investigation, accused Vikesh Narain was arrested. Forged receipt book was seized. One day police remand was taken and search for co-accused Ajitesh Kumar was made. During investigation, efforts were made to trace Ajitesh Kumar and NBW were obtained against Ajitesh Kumar. On 01.06.2010, Ajitesh Kumar surrendered before the Court and after formal arrest, he was sent to judicial custody. It is further stated in the charge-sheet that specimen signatures of accused Vikesh Narain and Ajitesh were taken and the same were sent for Expert Opinion to FSL, Rohini. Statement of witnesses were recorded by the IO.

The charge-sheet has been filed for offences punishable u/s. 419/420/468/471/511/120-B IPC against both accused.

The IO has recorded statement of customer Harish Kohli with whom the alleged incident took place. Sh Harish Kohli has stated that on 06.09.2009 one boy whose name was later on revealed as Vikesh Narain came to his flat and demanded amount of Rs. 5,000/- and on suspicion, he verified about that boy from Cell Page Agency. On being caught, quarrel took place and he called the police. The police arrested Vikesh Narain u/s. 107/151 Cr.P.C. After being released from SEM Court, Vikesh Narain had come to the PS to take his jamatalashi. He identified Vikesh Narain and informed Mohit Jain that he was same Vikesh Narain who had come to collect money. In

his personal search articles, fake receipt book was also found. Accused had come to take money of Citi Bank Credit card and he got printed fake receipt book.

The IO has recorded statement of landlord in whose premises Vikesh Narain and Ajitesh were living on rent. Landlord Nem Singh has stated that about 1 & 1/2 years ago, Ajitesh Kumar and Vikesh Narain came and he had given room on rent to them. Both started living together. Ajitesh Kumar had introduced himself as employee of Citi Bank and Vikesh told that he had taken room to study. After Vikesh was arrested, Ajitesh never came back.

The IO has also recorded statement of Sanjay Kumar, supervisor of Cellpage Agency, who has stated that on 07.09.2009, he went to the police station after receiving the message that a person using fake receipt book was apprehended. He found that Vikesh Narain was apprehended by the police. The recovered receipt book of Citi Bank was shown to him and he found it to be fake. He also verified about employment of Vikesh in his company and came to know that Vikesh was not an employee of his Company. He came to know that Vikesh got printed fake receipt book and used to take money from the customers of Citi Bank by impersonating himself as employee of his company.

IO has also recorded statement of employee of Cell Page Communication. Employee Bhupender Thakur has stated that Ajitesh was employed in the Company from 16.09.2008 till 5th September 2009. His Company was given the customers data by Citi Bank from whom they had to collect money. The telecallers of his Company used to call those customers on their number and used to ask the customers

whether they were interested in making the payment. The details of those customers who were interested in making the payment were forwarded to the Collection team. Ajitesh was also working as telecaller and he had misused the data available with him and he had given the customer's data to Vikesh Narain who was not an authorized agent.

It is stated in the charge-sheet that both accused had committed offences punishable under section 419/420/468/471/511/120-B IPC.

Written arguments were filed on behalf of the accused persons. Learned Counsel for the accused persons has argued that the complainant was not present at the spot at the time of alleged incident and he had heard about the incident from Harish Kohli. Prior to registration of FIR, Kalandra U/s. 107/151 Cr.PC was prepared by the police and all these circumstances create doubt over the veracity of the incident. The IO did not recover any receipt book either from Citi Bank or from TCS E-Services in order to authenticate the veracity of receipt book allegedly recovered from the accused. It is also argued that the IO had taken specimen of accused Vikesh Narain who is alleged to be the writer of the receipt book. As per the FSL report, the writings on the blanks in the receipt book and the specimen of Vikesh Narain did not match.

Learned counsel for the accused has further argued that the IO has nowhere stated in the charge sheet that any person was cheated by the accused persons and for what amount. The charge sheet only reveals that Harish Kohli was attempted to be cheated by the accused who allegedly demanded Rs. 5000/- from him. The FSL

report and the version of the prosecution are contradictory to each other. As per the prosecution story, accused Vikesh Narain was the writer of the blanks in the alleged receipt but as per the FSL, the writing in the alleged receipt and the specimen writing of accused Vikesh Narain are distinct. Once the recovery of receipt is doubtful, usage of the same for cheating is also in doubt. Hence, the accused persons may be discharged.

On the other hand, Learned APP for the State has argued that there are specific allegations against both accused persons in the charge-sheet and therefore, the material is sufficient to frame charge against both accused.

This Court has considered the submissions of Learned counsels and perused the record.

The prosecution has alleged offences punishable under section 420/419/471/468/511/120-B IPC.

There is specific statement of Harish Kohli on record that Vikesh Narain, claiming himself to be authorized recovery agent, came to collect money from him and on suspicion, he was apprehended. The material on record prima facie shows that accused Vikesh Narain had impersonated as employee of Cell Page Communication, recovery agency of Citi Bank and attempted to cheat Harish Kohli.

One employee of Cell Page has stated that Ajitesh, a telecaller, had misused the customer's data available with him and he had given the Data to Vikesh Narain. There is also a separate complaint by AR of Cellpage Communication that Ajitesh was working as telecaller in his company. Ajitesh and his friends printed

fake receipt book and Ajitesh used to convince the customers to pay the amount and his friends used to collect payment from customers using fake receipt book.

The circumstances *prima facie* show that accused Ajitesh, being employee of Cell Page Communication, gave the details of the customers (from whom recovery of money was to be made) to Vikesh Narain. The material on record prima facie that Ajitesh and Vikesh both had planned to cheat customers of Citi Bank and in furtherance of that plan, accused Vikesh Narain went to the house of Harish Kohli alongwith fake receipt book, impersonating himself as employee of Cell Page recovery agency and attempted to cheat Harish Kohli but on suspicion, he was apprehended. The circumstances show that both accused had conspired to cheat customers of Citi Bank and therefore, **the material is sufficient to frame charge for offence punishable under section 120-B IPC against both accused namely Vikesh Narain and Ajitesh.**

Learned Counsel has relied upon judgment passed in the matter of **Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572** in support of the argument that there was no cheating. In the matter of Dr. Vimla, Hon'ble Supreme Court has explained the meaning of expression 'defraud'.

In the case in hand, no doubt there was no delivery of property by Harish Kohli but the record is prima facie clear that accused Vikesh Narain had asked for money from Harish Kohli claiming himself to be employee of recovery agency and as a part of conspiracy and in furtherance of common intention, he attempted to cheat Harish Kohli. Though the offence of cheating was not complete

because there was no delivery of property, however there is sufficient material on record to frame charge for attempt to commit cheating.

One of the argument of Learned counsel for the accused is that because of quarrel, false complaint has been filed and DD no. 40-B is clear that there was only quarrel and no attempt of cheating was made.

This Court does not find any substance in the arguments of Learned defence counsel. Perusal of record shows that DD no.40B was received at the police station regarding quarrel at Q-32, West Patel Nagar. The call was not regarding cheating. However Harish Kohli in his statement u/s. 161 Cr.P.C has specifically stated that Vikesh Narain demanded money as recovery agent. On suspicion, he started making inquiry and Vikesh started quarrelling with him. On the day of PCR call, only Kalandra was prepared and on next day, on complaint of AR, FIR was registered. Merely because only Kalandra was prepared on the day of alleged incident, it does not do away with the allegations of Harish Kohli that Vikesh attempted to cheat him by impersonating as employee of recovery agency. Further, in written arguments in para no. 6 itself, Learned counsel for the accused has stated that Harish Kohli was attempted to be cheated by the accused for an amount of Rs. 5,000/-.

The material is prima facie sufficient to show that cheating was attempted as a part of conspiracy and Vikesh Narain impersonated as employee of recovery agency to take money from Harish Kohli in pre-planned manner also as a part of conspiracy and in furtherance of common intention of the accused persons. **Therefore, the material is sufficient to frame charge for offence**

punishable under section 419/420/511/120-B/34 IPC against both accused.

The prosecution has alleged that the accused persons had forged the receipts and fake receipt was prepared and issued by Vikesh Narain to customers. Learned counsel for the accused has relied upon judgment passed by Hon'ble Supreme Court in the matter of **S.P.S. Rathore Vs. CBI (2017) 5SCC 817**. In the said case, Hon'ble Supreme Court has held that the opinion of handwriting expert is relevant but it is not conclusive.

In the present case, the receipts alleged to be written by accused Vikesh were sent for expert opinion to FSL and specimen handwriting of accused Vikesh and Ajitesh were sent for comparison. The expert opinion has been received. The report of FSL reads, *“It has not been possible to fix the authorship of Q1 to Q3 in comparison with S1 to S15, A1/1 as well as S16 to S30 & A2 to A29.”*

There is nothing to show that any of the accused prepared fake receipt or printed fake receipt book. There is no material to show making of false document by any of the accused. **Hence, both accused are discharged for offence punishable under section 468 IPC.**

The prosecution has also alleged offence punishable under section 471 IPC. The fake receipt book was allegedly recovered from the possession of accused Vikesh Narain. He also allegedly attempted to issue fake receipt to Harish Kohli on payment against his credit card dues. The personal search memo dated 06.09.2009 shows that one receipt book of Citi Bank has been seized during personal search of accused Vikesh. Sh. Sanjay Kumar, supervisor of Cell Page

has stated that receipt book recovered from the accused was fake. Accused Ajitesh is allegedly one of the conspirator. The allegations prima facie show that accused Vikesh attempted to use fake receipt book as genuine one in order to cheat Harish Kohli, as a part of conspiracy and in furtherance of common intention of the accused persons, **The allegations are therefore sufficient to frame charge for offence punishable 471/511/120-B/34 IPC against both accused namely Vikesh Narain and Ajitesh Kumar.**

It is settled that at the stage of charge, only prima facie case is to be seen. In the case, the statements under section 161 Cr.P.C of Harish Kohli, Sanjay Kumar, Nem Singh and Bhupender Thakur coupled with recovery of alleged fake receipt book are sufficient to frame charge for the aforesaid offences against both accused.

Be put for framing of charge on **24.06.2020**.

NEHA
ACMM(W):DELHI:05.06.2020