



UPMH010016692024

In The Court of Additional Sessions Judge, Court No.I, Maharajganj

Presiding Officer- (Pawan Kumar Srivastava), (HJS) - UP06222

Criminal Revision/41/2024

Dilbar Rakhimova, age 28years, daughter of Kurbanbaevn, resident of 37 DUM 13K XORAZM REGION VLO-, YATI URGENCH SHAKAR.

....Revisionist.

Versus

1. State of Uttar Pradesh
2. Apurva Tarafdar, Asst. Field Officer, Immigration Office, Sonauli, District- Maharajganj.

..Opposite Party.

Judgment

(1) The revisionist has filed instant revision against order dated 18.01.2024 passed by Id. CJM, Maharajganj in Cri. Case no. 14209 of 2023, State vs. Dilbar Rakhimova. Through impugned order, Ld. Court has dismissed the discharge application of revisionist under section 239Cr.P.C on the ground that the objections raised by the accused can't be seen at this stage and they should be looked into at the stage of trial.

(2) The necessary facts are that, as per prosecution story, the accused Dilbar Rakhimova, was intercepted at International Indo-Nepal Border on 14.08.2023 at 07.30am while she was trying to enter into India from Nepal. She presented an AADHAAR Card of one, Nilofar Khan to Immigration Officers. But when she was further interrogated, she told her real name as Dilbar Rakhimova, a resident of Uzbekistan. The immigration record revealed that she came to India on 06.08.2023 on valid visa but no record was found regarding her going to Nepal. It was found that after her arrival she went to various places in India. On

11.08.2023 she came to Gorakhpur and from there, she went to Nepal without completing immigration procedure. An FIR crime no. 117/2023 was lodged against her and she was sent to judicial custody. A charge-sheet under section 467 IPC & section 14 of Foreigners Act was filed against her in the Court of CJM, Maharajganj. She filed an application for discharge, which was rejected by the said Court vide impugned order, hence this revision.

(3) The grounds of revision are that the order passed is invalid in the eyes of law, Ld Magistrate has not paid attention to material on record and passed the impugned order in haste, without applying judicial mind thereby committing error. Ld. Counsel for revisionist submitted that the revisionist has not gone to Nepal, she was visiting Sonauli border and Immigration Officers tried to extort money from her. On her refusal she was framed in a false case. Ld. Counsel drew attention of this Court to provisions of AADHAAR Act and submitted that the case of fake AADHAAR Card will be governed by said Act and IPC will not apply. It was also argued that section 14 of Foreigners Act was not attracted because the accused was having valid visa.

(4) Ld. ADGC has vehemently opposed the revision on the ground that the impugned order was valid and this Court can't look into factual aspect of the case.

(5) I have heard both the sides and perused the record. The issue involved in present revision is, whether the Magistrate has acted illegally in passing the impugned order? Whether the Magistrate has failed to exercise properly the jurisdiction vested with him?

(6) Ld. Magistrate, in the impugned order has mentioned the judgment of Hon'ble Supreme Court in Dinesh Tiwari, Bhavna Bai, Suresh Ranjan, Dr. Anoop Kumar Srivastava, Asim Saraf & M.R. Heeremath to hold that charge can be framed on the basis of grave suspicion,

reasonable probability and the weight of prosecution evidence has not to be seen at the stage of framing charge. The legal position laid in above case-laws can't be doubted but it is also true that framing of charge is a judicial function and it has to be done carefully. In a recent judgement **State of Gujarat v Dilipsinh Kishorsinh Rao, 2023 INSC 89414**, Hon'ble Supreme Court held that, "It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed..... The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage.

(7) Hence the Magistrate can't hide behind the fact that a charge-sheet has been filed out and therefore the trial ought to be held. He has to examine the material on record and ascertain that- (1) whether any charges are being made out, and if yes then (2) under what sections of relevant law. Ld. Magistrate has simply reproduced prosecution version mentioned in the case diary without considering the fact that whether there was forgery of valuable security or not.

(8) In present case it is said that accused has forged AADHAAR Card which was punishable under section 467 IPC but perusal of case diary shows that it mentions only possession of AADHAAR Card of one Nilofar. THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016 is a central act governing issue, use etc of the AADHAAR Card. Chapter VII of the Act provides for Offences & penalties for misuse of AADHAAR Card and other concomitant criminal acts. Relevant sections are being mentioned here-

Section 34. Penalty for impersonation at time of enrolment.—
Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

Section 35. Penalty for impersonation of Aadhaar number holder by changing demographic information or biometric information.—
Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or

alive, real or imaginary, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

Section 36. Penalty for impersonation.—Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Section 37. Penalty for disclosing identity information.—

Section 38. Penalty for unauthorised access to the Central Identities Data Repository.

Section 39. Penalty for tampering with data in Central Identities Data Repository.

Section 40. Penalty for unauthorised use by requesting entity or offline verification-seeking entity.

Section 41. Penalty for non-compliance with intimation requirements.

Section 42. General penalty.—Whoever commits an offence under this Act or any rules or regulations made thereunder for which no specific penalty is provided elsewhere than this section, shall be punishable with imprisonment for a term which may extend to 4 [three year] or with a fine which may extend to twenty-five thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.

Section 45. Power to investigate offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of

1974), a police officer not below the rank of Inspector of Police shall investigate any offence under this Act.

Section 46. Penalties not to interfere with other punishments.—No penalty imposed under this Act shall prevent the imposition of any other penalty or punishment under any other law for the time being in force.

(9) The above provisions show that any offence related to AADHAAR Card shall be dealt with under the provisions of that Act. The said act is special act and section 5 of IPC says that the special law shall prevail over the provisions of IPC. Further the Court has not recorded its opinion on whether the record revealed that the accused has ‘forged any valuable security or not’. The alleged card was issued or not. It is also not clear that whether it was a genuine or fake card since IO has proceeded on the basis of assumption and has not contacted/ tried to investigate from concerned authorities who are tasked with maintaining AADHAAR Card. The IO is a Sub-Inspector while a police officer not below the rank of Inspector of Police shall investigate any offence regarding Aadhaar Card under the AADHAAR Act. This was perhaps, not brought to the notice of Ld. Court earlier otherwise the result might have been different. Hence the order of framing charge under IPC only can’t be sustained in the light of above discussion. As far as charge under section 14 of Foreigners Act is concerned, it may be noted that it involved adjudication of factual allegations which can’t be done by this Court in exercise of its revisional jurisdiction. Prima facie accused has crossed Indo-Nepal border without following immigration rules and hence she has violated essential condition of her VISA. Hence to the extent discussed above, the revision is bound to succeed partially.

(10) Hence the impugned order can’t be said to be passed in proper exercise of jurisdiction vested in the Ld. Magistrate. The impugned order is perverse in the eye of law and is liable to be set aside. The

points of determination mentioned in para (4) of this judgment is disposed off accordingly and following order is passed:

Order

Instant revision is partially allowed. Order dated 18.01.2024 passed by Id. CJM, Maharajganj in Cri. Case no. 14209 of 2023, State vs. Dilbar Rakhimova is hereby set aside. Matter is being sent back for framing charges according to law. A copy of this order and the records of concerned Court may be sent back and the revision be consigned.

Date: 21.03.2024

(Pawan Kumar Srivastava)
ASJ-I, Maharajganj.

Judgment signed, dated and pronounced by me in open court today.

Date: 21.03.2024

(Pawan Kumar Srivastava)
ASJ-I, Maharajganj.