(2016) 05 GAU CK 0100

In the Gauhati High Court

Case No : Crl. Rev. P. No. 351 of 2005

Binod More APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482

Citation : (2016) 5 GauLJ 461 : (2016) 5 GauLR 634 : (2016) 4 GauLT 838

Hon'ble Judges : Mrs. Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. G.N. Sahewalla, Senior Advocate and Mr. R. Jain, Advocate, for the Petitioner; P.N. Choudhury, SC, CBI, for the Respondents

Final Decision : Disposed Off

Judgement

Mrs. Rumi Kumari Phukan, J.—This petition under Section 482 read with Sections 401 and 397 of the CrPC has been filed challenging the order dated 8.4.2005 passed by the learned Special Judge, CBI, Assam in special case 29/2004 whereby the court has formed the opinion as regards framing of charge against the accused petitioner and by the order dated 6.5.2005 the court has framed charge against the petitioner under Sections 120B and 420 of the IPC.

2. The facts leading to the launching of prosecution is that the accused petitioner who is one of the partners of M/s Joyti Flour Mills of Nagaon has received Rs 33,74,550/- as settlement of fire insurance claim against the policy from Oriental Insurance Company on the basis of concocted facts and manufactured documents as against the fire broke out in its premises on 17.6.1994. A survey was made in respect of the damage and loss of the mill and machinery by two insurance surveyors, Mr. S.P. Sarma and Mr. A.K. Pansari who assessed the loss of the mill and machinery at Rs. 48,48,069/-. However, the insurance company made the assessment at Rs. 33,74,550/-. On the basis of the said assessment the insurance company has made payment. An FIR was lodged alleging that the petitioner in conspiracy with the Executive Officer of Nagaon Municipal Board(A2)

and Gnanda Kr. Bora, Assistant Engineer of the said municipality have hugely inflated the claims and they have fabricated false damage certificate showing 6500 quintals of wheat being gutted in fire. It is also alleged that the wheat stock weighing 375.71 quintals was inflated to 3153.72 quintals by using false documents. Thereafter the petitioner in order to grab the entire insurance money had conspired with Tua Ram Bora, Sub-registrar (A3) and prepared false retirement deed bearing no.699/94 showing retirement of Mr. Pawan Kr More and other partners.

3. Charge sheet has been filed against four persons under Section 120B read with Section 420/511 of the IPC and Section 13(2) read with Section 13(I)(d) of the Prevention of Corruption Act against the petitioner and the accused A2, A3 and A4. The learned Special Judge framed charge against the petitioner along with other accused(A3 and A4) on 6.5.2005 under Sections 120B and 420 of the IPC, and discharged A2 with reasons therefor.

4. Challenging the aforesaid order the petitioner has come up with this revision petition with a prayer to set aside the aforesaid order and quashing the aforesaid proceeding against the petitioner basically on the grounds that the claim of the petitioner was investigated by duly appointed insurance surveyors, Mr. S.P. Sarma and Mr. A.K. Pansari and on the recommendation of the surveyors the amount was released by the insurance company and hence the petitioner cannot be contributed with any criminal liability as the aforesaid two surveyors were not chargesheeted. It is submitted that the aforesaid surveyors have verified all the necessary documents about the loss of wheat and the burnt wheat but their names have been dropped from the charge sheet.

5. It is also assailed that the deed of retirement which is stated to be fraudulently executed by the petitioner cannot be a matter to be looked into by the court as the same matter has been compromised between the parties. In the context that the court has discharged A2/PC Dey who sent representation for assessment of the loss in the fire to the premises of the petitioner and non sending of the names of two surveyors to stand trial has made the whole prosecution biased and defective and as such framing of charge only against the petitioner cannot be sustained and liable to be quashed and set aside, it is contended. Another contention raised is that the case has been investigated by a sub-inspector who is not empowered under Section 17 of the PC Act and on that score alone the prosecution cannot sustain.

6. Heard Mr. G.N. Sahewalla, learned senior counsel for the petitioner and Mr. P.N. Choudhury, learned senior standing counsel for the CBI.

7. Drawing attention to the FIR as well as the charge sheet filed against the petitioner it is pointed out by learned counsel for the CBI that the material on record along with the documents would show the complicity of the petitioner along with the offence alleged. As regards the investigation carried out by the sub-inspector it is submitted that the same aspect bears no substance as the

said witness has duly obtained formal permission for the investigation as required under Section 17 of the PC Act, 1988, which is part of the record. The aforesaid aspect is also not so much pressed by learned counsel for the petitioner in course of argument.

8. Referring to the affidavit in opposition filed by the respondent it is argued by learned counsel for respondent hat the material gathered during the investigation reveals about the conspiracy by the petitioner to grab the insurance amount immediately after the incident. Although the two surveyors were appointed to conduct the survey of the alleged incident, however, the data and documents relating to the fire were supplied by the petitioner. It is the petitioner who created false documents and placed before the surveyors and on the basis of which the surveyors have submitted their reports. The purported purchase of wheat from Deluxe Trading Company is totally false and fabricated since the said firm is not in existence so far as the investigation reveals. The said surveyors have made no any recommendation regarding the loss of stock in bins and simply made assessment as per the request of the petitioner and leave the matter to the Oriental Insurance Company/authority to decide as the loss was not covered by the insurance policy. The investigation further reveals that the perpetrator of the fraud was not the surveyors but the present petitioner only for which the names of the aforesaid two surveyors were not included in the list of accused or witnesses.

9. The further contention of the respondent in their affidavit is that the surveyors based on the application of the petitioner on documents D12 and D13 for arriving at their conclusions but other related documents proved that the application of the petitioner to the Executive Officer of Nagaon Municipal Board for inspection and removal of garbage showed that it was dated 26.9.1994 whereas the weighment sheet D3 as well as D10 and removal of garbage indicates that weighment and removal commenced from 5.9.1994 and completed on 8.9.1994 which are the dates prior to making application for inspection and removal of burnt wheat and garbage. It was found that the assessment of the surveyors on the basis of fabricated documents supplied by the petitioner is not based on facts.

10. As regards the settlement of the matter regarding execution of the retirement deed is immaterial in view of the fact that same was falsely executed by the petitioner only to grab the whole amount of insurance out of the incident of fire which is the main issue of allegation in the case. There is no substance in the case of petitioner to challenge the discharge of one of the accused Mr. P.C. Dey by the trial court as well as not sending of two surveyors in the charge sheet. Thus it is vehemently argued that the challenge of the petitioner is unfounded.

11. I have considered the submissions made by learned counsel for both sides and gone through the material on record as well as the case diary along with LCR. Also perused the impugned order under challenge.

12. The revision petition has basically assailed the aforesaid order mainly on the grounds that the learned trial court in the impugned order has only discussed the case of A2, PC Dey and discharged him but has failed to discuss the case of the petitioner placed on record.

13. It is contended that no offence u/s 120B/420 of the IPC can be made out against the petitioner inasmuch as the two surveyors of the insurance company have already investigated into the claim of the petitioner and as the above referred surveyors have not been chargesheeted petitioner cannot be singly charged with the alleged offence.

14. On the basis of the aforesaid contention the petitioner prayed quashing of the charge as well as the proceeding pending before the learned Special Judge, Guwahati.

15. In the context of the challenge of the petitioner as regards the framing of charge let us examine the matter.

16. The Hon''ble Supreme Court in Maharashtra and another v. Som Nath Thapa and another, (1996) 4 SCC 659, has discussed about what is necessary for the trial court at the time of framing charge, which is quoted below.

"Test of existence of prima facie can be made if there is ground of presuming that the accused has committed the offence. Even if the Court thinks that the accused might have committed the offence, it can frame the charges. Probative value of material on record cannot be gone into".

17. In P. Vijayan v. State of Kerala and another, 2007 (2) KLJ 644 it is held that unlike 227 of the Code of Criminal Procedure, 1973, section 228 does not oblige the Court to give reasons while framing charge. Obviously, the insistence on the duty to give reasons while discharging the accused under section 227 of the Code of Criminal Procedure, 1973, because of premature termination of the proceedings by the Court. But if the Court instead of discharging the accused under Section 227 of Cr.PC, proceed under 228 of the Code of Criminal Procedure, 1973, subsequent stage of framing charge, the Court is not prematurely granting the proceedings. That explains while no reasons need be given while framing charge. Where the materials placed before the Court displays grave suspicion and not some suspicion against the accused and which has not been properly explained, the Court will be fully justified in framing a charge and proceed with the trial. In the given case, it is to be noted that the learned Special Judge has fully evaluated the materials produced by the prosecution and after considering the broad probabilities of the case and various documents and the evidence of large Nos. of witnesses, was satisfied about the existence of a prima facie case against the petitioners and hence decided to frame charges and accordingly directed the accused petitioners to appear before the Court to answer the charge but they did not turn up before the Court and has moved the present petition which cannot be entertained as has been discussed above.

18. The Hon''ble Supreme Court in Homi Rajhans v. State of Maharashtra, (2014) 12 SCC 556, has held that there is no need to traverse all the factual details at the time of framing charge and the Court is not to scrutinise the allegations for the purpose of deciding whether such allegations are likely to upheld in the trial. In the present case, the learned Special Judge has given due consideration to all the materials produced before the Court and it cannot be expected to write each and every factual aspects in detail in such cases which is based on large Nos. of documents and he has recorded in prima facie satisfaction upon scrutiny of all the documents and thereby holding that there is prima facie case to frame the charge against the accused persons.

19. In Suman Sood v. State of Rajasthan, (2007) 5 SCC 634, the Hon''ble Supreme Court while dealing with the point of conspiracy has categorically held that while there is no direct evidence to prove the factum of conspiracy, but, it is well settled that an inference of conspiracy can be drawn from the surrounding circumstances inasmuch as normally no direct evidence of conspiracy is available. Generally, conspiracy is hatched in a secrecy and it may be difficult to adduce direct evidence of the same. The privacy and secrecy are more characteristic of the conspiracy than of a loud discussion in an elevated place open to public view.

20. Turning to the case at hand I found that the learned Special Judge has scrutinised the evidence on record as well as the case diary and the bunch of documents in support of the allegations in the charge sheet and has recorded his satisfaction only after going through all the documents. It appears that there is serious allegation against the accused petitioner that he has produced two false documents before the surveyors, one is relating to producing of wheat from a non-existent firm in the name and style of Deluxe Trading Company, Dimapur under Dimapur Trading Company and other is false registered deed of retirement. It is to be noted that the petitioner has not challenged the aforesaid aspect of the matter while filing this petition nor before the learned trial court. Similarly the allegation of the prosecution that by executing another false document i.e. the "deed of retirement" the petitioner has obtained all the money from the insurance company and there is sufficient evidence from the official witness which nullifies the existence of such "deed of retirement" made by the petitioner. In view of the findings in course of investigation clearly reveals that the said two surveyors relied upon the documents filed by the petitioner and filed the survey report. In view of such findings the said two surveyors were not chargesheeted by the investigating agency.

21. There is another aspect that with the conspiracy with other two accused persons(A3 and A4) the petitioner has procured another document so as to justify his false claims from the insurance company. Such a serious matter can only be refuted by the petitioner in course of trial but the material on record prima facie made out a case against the present petitioner for which the charge has been framed by the learned trial court. There appears to be no illegality in

framing the charge against the accused petitioner.

22. The law relating to invoking the power u/s 482 of the Code of Criminal Procedure, 1973 by the High Court is well settled. In the landmark judgment in State of Haryana v. Bhajan Lal and others, 1992 Supple. (1) SCC 335 the Hon''ble Apex Court has laid down certain parameters wherein the High Court can exercise the powers conferred upon it under Section 482 of the Code of Criminal Procedure, 1973. The guidelines are reproduced below:-

(1) Where the allegations made in the First Information Report(FIR), or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report(FIR) and other materials, if any, accompanying the F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers u/s 156(1) of the Code except under order of the Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the First Information Report(FIR) or ''complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognisable offence but constitute a non-cognisable offence and no investigation is permitted by a police officer without an order from a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint, are so absurd and inherently improbable on the basis of which no prudent person can reach such a conclusion is just conclusion that there is sufficient ground for offence;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act to the institution and continuance of the proceeding at or where there is specific provision, the Code or Act providing efficacious redress for the grievances for the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide or where the proceeding is maliciously instituted with an ulterior motive or wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

23. Further, in HMT Watches Ltd. v. M.A. Abida and another in Criminal Appeal 472/2015 the Hon''ble Supreme Court has held that the High Court while exercising power under section 482 of the Code of Criminal Procedure, 1973 should not express its view on disputed matters.

24. In Umesh Kumar v. Andhra Pradesh, 2013 (10) SCC 591 the Hon''ble Supreme Court has dealt with the scope of Section 482 of the Code of Criminal

Procedure, 1973 in the following manner.

"The scope of section 482 of the Code of Criminal Procedure, 1973 is well defined and the inherent power could be exercised to prevent abuse of process of Court and to otherwise, to secure the ends of justice. However, in exercise of such power, it is not permissible to appreciate the evidence as it can only evaluate material documents on record to the extent of prima facie satisfaction of existence of sufficient grounds for proceeding against the accused and the Court cannot look into the materials, the acceptability of which will essentially be a matter of trial. Any document filed along with the petition levelled as evidence, without being tested and proved, cannot be examined".

25. In view of the legal proposition discussed above and in view of the findings in respect of this case I don''t find it a fit case to invoke the provisions under Section 482 of the Code of Criminal Procedure, 1973 to set aside the charges against the accused petitioner or to quash the proceeding.

26. Accordingly the revision petition is dismissed with direction to the petitioner to appear before the trial court within one month from today to face trial and the learned trial court will make an endeavour to dispose of the case with utmost priority preferably within six months in view of old pendency of the matter and if necessary by taking day to day hearing. Return the LCR with a copy of this order to the trial court.

