
(1982) 05 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 89 of 1982

B.N. Ganjoo

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-05-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 482
Penal Code, 1860 (IPC) — Section 420, 467, 468, 511

Citation : (1982) ShimLC 296

Hon'ble Judges : Vyas Dev Misra, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vyas Dev Misra, C.J.—This is an application u/s 482 of the Code of Criminal Procedure praying that the proceedings pending against the Petitioner be quashed.

2. The Petitioner was working as a Senior Auditor in the office of Accountant General, Simla, in 1973. He was asked to conduct the audit of the office of Block Education Officer at Shillai in March, 1973. It is alleged that the Petitioner went to Paonta Sahib, called the record for audit from Shillai and completed the work. He submitted audit report in the month of April, 1973. It is further alleged that the Petitioner showed that the audit was conducted at Shillai. He is stated to have submitted a false T.A. bill in the month of April, 1973 for going to Shillai from Paonta Sahib and back to Paonta sahib. The claim was for Rs. 24/-. The bill was never verified nor any amount relating to this bill was paid to the Petitioner since the department came to the conclusion that this bill was false.

3. The Petitioner went to his parent office at Chandigarh in May, 1973. In February, 1974 the Petitioner was departmentally charge-sheeted in respect of the said false T.A. bill of Rs. 24/-. Various representations were made by the Petitioner. The result was that by an order dated 17th February, 1976 the charge-sheet was withdrawn by the department.

4. It was on 22nd July, 1977 that a report was lodged with the police and a case was registered against the Petitioner. It was in November, 1980 that the police filed a charge-sheet against the Petitioner under Sections 420 read with Section 511, 467, and 468 of the Indian Penal Code. The case is pending since then before the Chief Judicial Magistrate, Simla. It is stated that despite various dates of hearings, no worthwhile progress has been made. Charge has still to be framed. It is also stated that the number of the prosecution witnesses cited in the charge-sheet is 30. There are various documents also.

5. The Petitioner has argued the case in person. It is contended by him that he cannot be proceeded against unless sanction u/s 197 of the Code of Criminal Procedure has been obtained. Now, Section 197 prohibits a court from taking cognizance of an offence committed by, inter alia, a public servant except with the previous sanction of the Government. However, two conditions have to be satisfied before it can be said that sanction is necessary. The first is that the offence alleged to have been committed by an accused should have been committed while the accused was acting or purporting to act in the discharge of his official duties. Secondly, the accused should be one who cannot, be removed from his office except by or with the sanction of the Government. In the instant case the second condition is not satisfied. There are public servants who can be removed by their superiors but there are others who cannot be removed except by or with the sanction of the Government.

6. In *Nagraj Vs. State of Mysore*, a question arose whether any sanction u/s 197 was necessary for prosecuting a Sub-Inspector of the Stats of Mysore. It, was found that the Sub-Inspector could be dismissed by the Inspector General of Police. It was, therefore, ruled that no sanction was necessary because his dismissal did not vest in the State Government.

7. It is then contended that the trial court at Simla had no jurisdiction since the amount under the bill was payable at Chandigarh, the headquarters where the Petitioner was working. It is not disputed that the bill was submitted at Simla and unless the authorities at Simla verified the bill, no amount could be paid to the Petitioner. It cannot, therefore, be said that the offence was not committed at Simla. This contention has, therefore, to be rejected.

8. Lastly, it is contended that the proceedings are nothing but a harassment to the Petitioner who has already suffered a lot. The facts of the case make a very dismal reading indeed. The amount of Rs. 24/- involved in the bill was indeed a petty one. It is not to say that the Petitioner should not be prosecuted or could not have been prosecuted. But the fact remains that the alleged offence was committed about nine years ago in April, 1973. Four years were to roll by before someone finally decided that the matter should be reported to the police. Another three years were to go by before the investigation in such a petty case could be completed. In other words, more than 7-1/2 years had to lapse before the case saw the face of the court. Since then admittedly no worthwhile progress has been made in the last about 1-1/2 years. We are already in the middle of

1982. It is now more than 9 years when the offence was committed. Since the filing of the charge-sheet the Petitioner had been coming to Simla to attend to his case. Mr. Gularia, the learned. Assistant Advocate General, submits that one of the reasons for the delay in the case is that the Petitioner has been filing various applications before the trial court for the summoning of various documents. Now, no fault can be found with the Petitioner for filing applications. If the applications are frivolous, the court will dismiss them. However, if they have any substance, necessary action would follow. It is not the case that the applications filed by the Petitioner were frivolous. In fact Petitioner's applications for summoning various records were allowed. It appears that there was a great delay in the follow-up action. The Petitioner cannot be blamed for the same. It is not even known to day how long the court is likely to take before the question of framing a charge against the Petitioner can be decided. In my opinion the Petitioner has already suffered a lot in terms of not only money but also in mental agony and humiliation for the alleged petty offence. It was expected of the department to lodge the report expeditiously with the police if they were interested in the prosecution of the Petitioner. It does no credit to them that they had to sleep over the matter for more than four years before lodging a report. It does no credit to the police also that it took them more than three years for completing the investigation. The court is also taking its time. I know that the Chief Judicial Magistrate, Simla, is overburdened with work specially because of the paucity of the Judicial Officers. But then as far as the Petitioner is concerned, it is no solace to him. A sword of Democles has been hanging over his head for a long time in respect of the present alleged offence. It is in the interest of speedy justice that the offences are reported to the police expeditiously and the investigations are completed with utmost despatch. It is for that reason that Section 173 of the Code of Criminal Procedure enjoins upon the investigation agency to complete the investigation without unnecessary delay. It is also the duty of the courts to complete the trial at an early date.

9. In *Prithvi Raj and Another Vs. State of Haryana*, the case was registered against the accused in the year 1969, the charge-sheet was presented in the court on 4th September, 1979 and the charge was framed by the court in 1980. Date for further proceedings was fixed for 29th May, 1980. It was observed:

To allow the criminal proceeding to continue further, after a long lapse of time of about 11 years from the date of alleged commission of offence would, in my opinion, amount to permitting a Court proceeding to degenerate into a weapon of harassment and would not at this stage, achieve any salutary public purpose, on the facts and circumstances obtaining in the instant case, such continuance constitutes gross abuse of process of Court. It is thus imperative for securing the ends of justice that this Criminal proceeding should no longer be allowed to stand and must be quashed.

10. Keeping in view the peculiar facts and circumstances of this case, I would exercise my inherent powers to quash the proceedings. The petition is, therefore,

accepted and the proceeding are quashed.