

(2023) 05 J&K CK 0048
In the Jammu And Kashmir High Court
Case No : Criminal Revision No. 23 Of 2008

Central Bureau Of Investigation, Anti-Corruption Bureau	APPELLANT
Vs	
Hazra Khan	RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 161
Jammu And Kashmir Prevention Of Corruption Act, Samvat 2006 — Section 5(1)(d),
5(2), 7, 13(1)(d)(i), 13(1)(d)(ii), 20
Code Of Criminal Procedure, 1973 — Section 173, 227, 239, 244, 245, 482

Citation : (2023) 05 J&K CK 0048

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Tahir Majid Shamsi, Sahila Nisar, Showkat Ali Khan

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Impugned in this Revision Petition is the order dated 3rd of March, 2014 passed by the Court of learned Special Judge, Anti-Corruption (Central Bureau of Investigation Cases) Jammu and Kashmir, Jammu (herein after referred to as 'the trial court'), in case titled 'Central Bureau of Investigation v. Smt. Hajra Khan & Anr.', whereby the respondent has been discharged in respect of the allegations levelled against her for the commission of the offences under Sections 120-B, 161 RPC and Section 5 (2) read with Section 5 (1) (d) of the J&K Prevention of Corruption Act, Samvat, 2006.

2. The order impugned has been assailed by the petitioner, inter alia, on the grounds that the learned trial Court has passed the order impugned as if the court was passing the final judgment after appreciating the evidence and further that the statement of the complainant was clear that the accused No.1/ respondent herein was involved in demanding and accepting bribe through accused No.2.

3. Mr Tahir Majid Shamsi, the learned Deputy Solicitor General of India (DSGI), appearing on behalf of the petitioner, vehemently argued that the learned trial Court has appreciated the evidence while discharging the respondent, which is not permissible in law and further that the complainant has categorically stated in his statement during investigation that in the presence of the respondent, the bribe money was accepted by the other accused, who, after retaining half of the bribe money, which he put in his left pocket of the shirt, kept the remaining amount in the drawer of the table of the respondent in her presence.

4. Per Contra, Mr Showkat Ali Khan, the learned Counsel representing the respondent, submitted that there was no demand on part of the respondent and that no bribe money has been recovered from the respondent, as such, the learned trial Court has rightly come to the conclusion that there is no evidence against the respondent. He placed reliance on various judgment rendered by the Hon'ble Supreme Court, including '2014 (13) SCC 55'; and '2009 (3) SCC 799'.

5. Heard and perused the record.

6. The prosecution case, as it emanates from the charge sheet, is that on 21st of January, 2023, a written complaint was submitted by the complainant, namely, Shri Harjeet Singh, with the Central Bureau of Investigation (CBI), Anti-Corruption Bureau, Jammu, wherein it was stated that he retired as a Senior Engineering Assistant from Radio Kashmir, Jammu in June 2011 and had applied for grant of MACP from Grade Pay Rs. 4,600/- to Grade Pay Rs. 4,800/- which was allowed by the Chief Engineer concerned, but the same was not implemented and the file was pending with the office. The file regarding grant of one increment under 6th Pay Commission was also pending and the files were not being cleared, as the respondent, along with the other accused, namely, Shri Jagdish Kumar Raina, were demanding bribe to clear the files. He had visited the office number of times, but both the respondent and the other accused Jagdish Kumar Raina refused to clear the files till an amount of Rs.4,000/- was paid. When the complainant expressed his inability to pay the said amount, the other accused reduced the demand to Rs.3,000/- which he claimed to be meant for the respondent. He claims to have recorded the said conversation he had with the other accused on his mobile phone. He did not want to pay the bribe and approached the CBI, Jammu for taking appropriate action in the matter. After finding the complaint genuine, the Superintendent of CBI, Jammu, ordered for registration of an FIR and accordingly, FIR bearing No. RC0042013A0001 dated 21st of January, 2013 was registered for the commission of offences punishable under Sections 120-B and 161 RPC and Section 5 (2) read with Section 5 (1) (d) of the J&K Prevention of Corruption Act. The investigation of the case was entrusted to one Shri Radhe Shyam, Dy. SP, CBI, ACB, Jammu, who acted as a trap laying officer. After the pre-trap proceedings were conducted and concluded on 21st of January, 2013 at 02:10 PM, all the trap team members, including the independent witnesses and the complainant, left for Radio Kashmir, Jammu. The trap party, including the complainant and the independent witnesses, namely,

Shri Bhanu Bakshi, Officer Punjab National Bank, Jammu (shadow witness), Shri M. P. Singh, Dy. Manager, State Bank of India (recovery witness) and Smt. Manjit Kour, Senior Sectional Supervisor, BSNL, reached Radio Kashmir, Jammu building at Panjtirthi, Jammu at around 02:35 PM. The complainant and Shri Bhanu Bakshi, shadow witness, entered the All-India-Radio building, Jammu, while as the other trap team members took convenient positions outside the said building. Before entering the building, a Sony Digital Recorder on 'Switch On' mode was kept in the left front pocket of the pant of the complainant. The complainant gave a call at about 03:15 PM on the mobile phone of Shri Kamal Sangra, Inspector and gave pre-decided signal regarding acceptance of bribe using code language as instructed. On receiving the call from the complainant, the trap team members, led by TLO and accompanied by other two witnesses, rushed inside the building of Radio Kashmir, Jammu. Shri Bhanu Bakshi, shadow witness, was seen standing on the ground floor, said that the complainant accompanied by Jagdish Kumar Raina had gone upstairs to the room of respondent situated at the first floor of the building. While Jagdish Kumar Raina, thereafter, was seen coming downstairs by himself, the complainant was still upstairs. Accordingly, the team rushed to the first floor and saw the complainant standing outside the room of the respondent. The recorder of the complainant was taken out by SI Sidharth and switched off. The team, along with Shri M P Singh and Smt. Manjit Kour, entered the said room. The respondent was present in her room and was identified by the complainant as such, whereas the co-accused Jagdish Kumar Raina was not there. The complainant said that three notes of Rs.500/- each, out of the total bribe amount, were kept by Jagdish Kumar Raina in the right side top drawer of the table of the respondent and after opening the same on indication of the respondent, Shri Radhe Shyam, TLO, disclosed his identity and challenged the respondent for having demanded and accepted bribe at which she got confused and did not say anything. Upon being asked, Shri Bhanu Bakshi, the shadow witness, said that he, along with the complainant, went inside the building of Radio Kashmir, Jammu and went to the Administrative Hall situated at the ground floor, where the office of the accused Jagdish Kumar Raina was located. When the shadow witness tried to enter alongside the complainant, Shri Jagdish Kumar Raina signalled by hand to the shadow witness to remain outside. It further transpired that the complainant and Jagdish Kumar Raina went to the room of the respondent. Initially, she was found not present in the room. The file was left on her office table by Jagdish Kumar Raina and they went to the room of one Shakeel and on seeing them, she came back to her room. On entering the room of the respondent, Shri Jagdish Kumar Raina pointed out towards one of the files kept on the table of the respondent, pertaining to MACP case of the complainant, along with other cases. Shri Jagdish Kumar Raina signalled with his hand as if counting votes and asked him for the bribe money. On getting the signal from Jagdish Kumar Raina, the complainant took out Rs. 3,000/- from the left pocket of his shirt with his right hand and handed it over to the accused Jagdish Kumar Raina, who took the same with his right hand and after counting the same, kept Rs.1,500/- in the left pocket of his shirt and kept the remaining

Rs.1,500/-inside the right side drawer of the table of the respondent in her presence, as indicated by her. On receipt of the bribe money, the respondent put a note on the file and appended her signature, along with date, thereby clearing the file. As the complainant called up Inspector Kamal Sangra, the accused Jagdish Kumar Raina became suspicious and went out of the room with the file. The trap team members went to the room of Jagdish Kumar Raina, but he was not there. The team searched for Shri Jagdish Kumar Raina in the premises of Radio Kashmir, Jammu, but he could not be found, however, later, he, upon being called by Inspector Kamal Sangra, was found and was caught. Jagdish Kumar Raina was directed to dip his right hand fingers in the solution of Sodium Carbonate and when he did so, the colour of the solution turned pink. Jagdish Kumar Raina was also asked to take off his shirt in which he had kept the bribe money and a fresh solution of Sodium Carbonate was prepared and the wash of left side pocket of the shirt also turned pink. After the conclusion of the proceedings, the charge sheet was laid against the said Jagdish Kumar Raina and the respondent herein.

6. The learned trial Court, after hearing the arguments of the parties on the issue of framing of charge/discharge, discharged the respondent, thereby observing that the prosecution has not placed on record any evidence, direct or indirect, which could disclose the grave suspicion that the accused Jagdish Kumar Raina, at the instance of the respondent herein, had demanded and accepted bribe for himself as well as the respondent. It was also observed by the learned trial Court that on the date when the bribe money was allegedly paid in presence of the respondent by the complainant to the other accused, it was paid by the complainant only when the accused Jagdish Kumar Raina demanded bribe amount by gestures of his hand, as if counting notes. The learned trial Court further observed that even if it is presumed at this initial stage, that the amount of Rs.1,500/- was put in the drawer of the respondent by the accused Jagdish Kumar Raina with her knowledge, yet it cannot fall within the expression 'demand'.

7. A perusal of the charge sheet reveals that the complainant had laid a complaint with the petitioner in respect of demand made by the respondent as well as the other accused, namely, Jagdish Kumar Raina. The complainant has categorically stated in his statement that on reaching the first floor, Jagdish Kumar Raina took him to the room of the respondent and on entering the room of the respondent, the other accused pointed towards the file kept on the table of respondent pertaining to his MACP case, along with other cases. Jagdish Kumar Raina and the respondent discussed something in Kashmiri/ Hindi language, whereafter, the respondent perused the file, put one small note of the file and also put her signature, along with date, thereby giving her approval. Shri Jagdish Kumar Raina signalled to him with his hand as if counting notes and asked him for the bribe money. On getting the signal from Jagdish Kumar Raina, he took out Rs. 3,000/-from the left pocket of his shirt, with his right hand and handed it over to the accused Jagdish Kumar Raina, who received the same with his right

hand and after counting the same, kept Rs.1,500/- in the left pocket of his shirt and kept the remaining Rs.1,500/- inside the right drawer of the table of the respondent in her presence, with her consent. This statement of the complainant and the circumstances of acceptance of bribe by the other accused in presence of the respondent and subsequently putting Rs.1,500 in the drawer of the respondent in her presence clearly establishes the connivance of the respondent vis-à-vis demand and acceptance of bribe and raises a grave suspicion of the involvement of the respondent in the commission of above-mentioned offences.

8. It is settled law that while considering the issue of framing charge against the accused or his discharge, the Court can neither examine the material brought on record in detail nor examine the sufficiency of the material to establish the offence against the accused. The trial Court cannot conduct a mini trial to record its satisfaction that no offence against the accused is made out. In 'State v. Anup Kumar Srivastava, (2017) 15 SCC 560, the Hon'ble Apex Court has held that the court can discharge the accused if the court is of the opinion that no offence is made out, but the court cannot examine the material in detail brought on record. The relevant paras are reproduced as under:

"25. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

30. It was contended by the learned counsel for the appellant State that the High Court exceeded its jurisdiction while quashing the order of charge passed by the Special Court, CBI Cases. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence

alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court, a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. The court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case."

9. In 'State v. R. Soundirarasu, 2022 SCC Online SC 1150', the Hon'ble Supreme, court after taking note of the various provisions contained in the Criminal Procedure Code for discharge of the accused, observed as under:

"55. The afore-stated Sections indicate that the CrPC contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the accused. As per Section 227, the trial judge is required to discharge the accused if "the Judge considers that there is not sufficient ground for proceeding against the accused". The obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless". The power to discharge under Section 245(1) is exercisable when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction". Sections 227 and 239 resply provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

56. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary

one and the test of "prima facie" case has to be applied — if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

57. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in *Onkar Nath Mishra v. State (NCT of Delhi)*, (2008) 2 SCC 561, and referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659, and the *State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows: —

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

[Emphasis supplied]

10. The Hon'ble Supreme Court, after considering its various pronouncements, has further delineated the principles to be applied by the Court while considering issue of framing charge/discharge in '*Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*, (2022) 12 SCC 657' and the relevant para is reproduced as under:

"27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by

the prosecution.”

[Emphasis Supplied]

11. If the order of the trial Court is examined on the touchstone of the law laid down by Apex Court as stated above, this Court finds that the learned trial court has critically examined the material brought on record by the Investigating Agency and has returned a finding that there is no evidence against the respondent, as if the trial court was passing the final judgment after the conclusion of the evidence. The trial Court has, no doubt, conducted a mini trial and has erroneously discharged the respondent. It has come forth in the evidence that when the complainant and accused Jagdish Kumar Raina entered the office of the respondent, they talked in Kashmiri/Hindi and the complainant made the payment of Rs. 3,000/ as bribe to the other accused in the office of the respondent. The accused Jagdish Kumar Raina, after accepting the bribe money, kept the sum of Rs. 1,500/ in the left pocket of his shirt and the remaining amount of Rs. 1,500/ in the drawer of the table of the respondent, in her presence. Not only this, in the complaint submitted to CBI, on the basis of which FIR was registered, it was specifically mentioned that both the accused were demanding bribe for clearing the MACP case of the complainant. These circumstances were sufficient to frame the charge against the respondent.

12. In ‘Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731’, the Constitution Bench of the Hon’ble Apex Court has held as under:

“88. What emerges from the aforesaid discussion is summarized as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."

What can be discerned from the judgment (supra) is that the demand and acceptance, like any other fact, can be proved by direct or circumstantial evidence and in the absence of direct evidence, the demand and acceptance can be proved by circumstantial evidence. The judgments relied upon by the learned counsel for the respondent are not applicable at this state, in the present facts and circumstances of the case.

13. In view of above, the order dated 3rd of March, 2014 passed by the learned trial Court is set aside and the trial Court is directed to frame charge against the respondent for the commission of offences punishable under Sections 120-B, 161 RPC and Section 5 (2) read with Section 5 (1) (d) of the J&K Prevention of Corruption Act, Samvat, 2006 and thereafter, proceed in accordance with law.

14. Disposed of as above, along with the connected CrIM(s).

15. Copy of this Judgment be sent to the trial Court for compliance.