(2017) 09 MAN CK 0006

In the Manipur High Court

Case No : 3 of 2009

Central Bureau of Investigation APPELLANT

Vs

Shri Raj Kumar Modhusana Singh S/o Late R.K. Sanahal Singh, & Ors. RESPONDENT

Date of Decision : 16-09-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 227, Section 228 - Discharge - Framing of charge
Indian Penal Code, 1860, Section 120B, Section 407 - Punishment of criminal conspiracy - Criminal breach of trust by carrier, etc
Prevention of Corruption Act, 1988, Section 13(2), Section 13(1)(a), Section 13(1)(c) - Criminal misconduct by a public servant - Criminal misconduct by a public servant - Criminal misconduct by a public servant

Citation : (2017) 09 MAN CK 0006

Hon'ble Judges : N. Kotiswar Singh

Bench : Single Bench

Advocate : K. Pradeep, GP Rongmei

Final Decision : Allowed

Judgement

1. Heard Mr. K. Pradeep, Learned counsel for the petitioner CBI; heard also Mr. GP. Rongmei, Learned counsel for respondent No. 3. None appears for the remaining respondents.

2. The present criminal revision petition has been preferred against the order passed in Special Trial No. 2 of 2003 by the Learned Special Judge, Manipur East by which the present respondents who were accused in the aforesaid trial were discharged.

3. The main ground raised in this criminal revision petition is against the said discharge order in favour of the present respondents. The Learned Special Judge, however, directed the trial against the only one of the accused namely, L.

Nabachandra Singh for committing offence of criminal breach of trust as a transport contractor, and proceeded to frame the charge under Section 407 IPC.

4. It has been submitted on behalf of the CBI that the Learned Special Judge committed an error by not properly applying the principle of law governing Sections 227 and 228 of the CrPC by discharging the accused, respondents herein, without properly appreciating the evidences gathered by the CBI but by summarily coming to a conclusion that there is no sufficient ground for presuming that the respondents accused had committed the offence of criminal conspiracy punishable under Section 120-B of the IPC and also of the offence under Section 13 (2) read with Section 13 (1) (a) and (c) of the Prevention of Corruption Act, 1988.

5. Heard the Learned counsel for the parties and also perused the relevant records and the impugned judgment and order dated 28.01.2009.

6. Perusal of the impugned judgment and order shows that though the Learned Special Judge has narrated the case as put forth by the prosecution, the Learned Special Judge, however, without appreciating and evaluating the evidences produced by the CBI for the limited purpose of satisfying as to whether a prima facie case has been made out against the accused of the offences charged or not arrived at the conclusion abruptly and discharging the respondents. This is evident from paras 11, 12, 13, 14 & 15 of the impugned judgment dated 28.01.2009, which are reproduced herein below:-

"11. From the plain reading of S.227 Cr.P.C., it is clear that an accused may be discharged under section 227 Cr.P.C when the Judge considers that there is not sufficient grounds for proceedings against the accused. On the other hand, when there is ground for presuming that the accused has committed an offence, charge should be framed against the accused under section 228 Cr.P.C.

12. In a series of cases, the Supreme Court had observed that when charge is to be framed against an accused and when an accused is to be discharged. In a case reported in (2002) 2 Supreme Court Cases 135, "Dilawar Balu Kurane Vs State of Maharastra" the Hon''ble Supreme Court observed that, "In exercising power under section 227 of the Code Criminal Procedure, the settled position of law is that the Judge while considering the question of framing charges under the section has the undoubted powers the sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under section 227 of the Code of criminal Procedure, the Judge cannot act merely as a post office or a mouth piece of the

prosecution, but has to consider the broad probabilities of the case, to total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he laws conducting a trial".

13. In the present case, after considering the materials and evidence on record, I find that there is not sufficient grounds for presuming that (1) R.K Ranbir Singh, (2) R.K. Modhusana Singh, (3) L. Gangte, and (4) S.A Halim had committed offence of criminal conspiracy punishable under section 120-B of the Indian Penal Code, and offences under section 13(2) read with section 13(1) (a) and (c) of the prevention of Corruption Act, 1988. Thus, these accused persons are discharged accordingly. Their bail bonds and surety bonds are also discharged.

14. About accused Mohendra Paddar, there is not sufficient material to show that he was an agent of accused L.Nabachandra Singh, but he was working on the payroll of accused L. Nabachandra Singh. Considering the materials on record, I am of the opinion that there is not sufficient ground for proceeding against accused Mohendra Poddar. As such, he is also discharged from case. His bail bond and surety bond are also discharge.

15. As against accused L.Nabachandra Singh. I find that there is ground for presuming that he has committed criminal breach of trust by a transport contractor. Thus, charge under section 407 of the Indian Penal Code is framed and trial proceeded according to law. "

7. The scope of examination of the evidences at the stage of framing of charge under Section 228 CrPC and law relating to discharge of accused under Section 227 CrPC are well settled now. The Hon''ble Supreme Court in Sajjan Kumar v. CBI, (2010) 9 SCC 368, held in Para 21 as follows:-

"Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

8. What the above decision shows is that while the Court has undoubted power to sift and weigh the evidence while considering framing of charge under section 228 CrPC, such exercise is only for the limited purpose of finding out whether or not prima facie case has been made against the accused and not really to scrutinize the evidences as if the trial is going on and to fasten criminal liability on the accused. Thus, it has been held that at the time of framing of charge, the probative value of materials on record cannot be gone into. It has been also held that the Court cannot act merely as a post office or the mouth piece of the prosecution. The Court has to consider the broad probabilities of the case, to the total effect of the evidences and documents produced before the Court, any basic infirmities etc. However, the Court cannot undertake a roving enquiry into the pros and cons of the matter and weigh and appreciate the evidence as if the Court is conducting a trial. From the above, it is clear that though the Court is entitled to weigh the evidences, and must it be, it is only for the limited purpose to determine whether such evidences would enable the Court to come to the conclusion that there is a prima facie case against the accused for prosecution. Thus, to that limited extent, the Court ought to apply its mind and weigh the evidences without really scrutinizing their probative value or credibility which has to be ultimately undertaken by the Court at the time of trial.

9. In the light of above, this Court will examine whether in the present case, the Learned Special Judge had proceeded in the manner as contemplated under law.

Though the Learned Judge had referred to the prosecution case and some of the relevant evidences relied on by the CBI, nothing is evident from the impugned judgment as to how and in what manner, the aforesaid evidences were considered by the Learned Special Judge to arrive at the conclusion that there is no sufficient ground for presuming that the respondents accused had committed the offence. The Learned Special Judge has not examined by considering the evidences collected by the CBI, whether it would be plausible for the prosecution to prove the charges against the accused. However, the Special Court has come to the conclusion with a cryptic observation as reflected in para 13 reproduced above that there is no sufficient ground for presuming that the respondents accused had committed the offence charged against them, without specifying anything about the evidences already collected by the Investigating Authority. No reason has been assigned for ignoring the various evidences gathered against the accused respondents. The Learned Special Judge only after considering the materials, if comes to the conclusion that there is no sufficient ground for proceeding against the respondents, could have discharged the respondents. But, in the present case, there is no reference to such evidences or materials on the basis of which the Learned Special Judge came to the conclusion that these are not sufficient to proceed with the trial against the respondents. The Learned Special Judge ought to have recorded the reasons why the said materials and evidences are not sufficient for proceeding with the trial against the respondents as required under Section 227 of the CrPC before discharging the respondents. In other words, this Court finds that there is non-application of mind by the Learned Special Court while declining to frame charge under section 228 CrPC and discharging the accused respondents under Section 227 of the CrPC.

10. Accordingly, this Court has no other option but to interfere with the impugned judgment and order dated 28.01.2009 by setting it aside as far as the present respondents are concerned and remand the matter to the Court of Special Judge for reconsideration.

11. It has been submitted at the Bar that after reorganization of the Subordinate Courts, there have been changes also in the jurisdiction of the Special Courts set up to deal with cases arising out of Prevention of Corruption Act, 1988. It has however, been also submitted that at present, the Special judge, Imphal East is conducting a trial of a related case.

12. Accordingly, let all the respondents appear before the Special Judge, Imphal East on 24.10.2017 who will proceed with the matter as directed above. In the event, it is found that the Special Judge, Imphal East, does not have jurisdiction to deal with this case, it may get it transferred to the Court of competent jurisdiction after duly apprising the High Court and getting approval for the same. With the above observations and directions, this petition stands allowed and disposed of.

Lower Court Records be immediately transmitted back to the Court of Special Judge, Imphal East.

