
(2006) 03 GAU CK 0031
In the Gauhati High Court
Case No : Criminal Revision No. 92 of 2006

Debabrata Saikia

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 173, 223, 233, 482
Evidence Act, 1872 — Section 25, 30
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19

Citation : (2006) CriLJ 2877 : (2006) 2 GLT 247

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhattacharya, A.K. Das and I. Das, for the Appellant; D.K. Das and M. Devi, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This criminal revision is directed against the order passed by the learned Special Judge, CBI, framing charge against the petitioner.

2. I have heard Mr. A. K. Bhattacharya, learned Sr. Counsel, assisted by Mr. A. K. Das, learned Advocate for the petitioner. I have also heard Mr. D. K. Das, learned Sr. Counsel and standing counsel, CBI, assisted Mrs. M. K. Devi, learned Advocate.

3. The petitioner along with 37 others have been arraigned as accused persons in Special Case No. 81/2004 now pending in the Court of the learned Special Judge, CBI, Guwahati. The petitioner is the accused No. 32. The Deputy Superintendent of Police, CBI, Special ACU-II, New Delhi filed charge-sheet dated 15-7-1998 on the basis of the investigation of the case No. RC. 3(A)/94-ACU-II dated 17-5-1994.

4. The prosecution can as set up in the charge-sheet and the documents filed

along with the charge-sheet is that a case under Sections 120-B, 409, 468, 420, IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act was registered by the Anti-Corruption Bureau, Assam on the basis of the FIR No. 12 dated 3-7-1993. The case was subsequently transferred to the CBI vide Government of Assam notification dated 3-5-1994 and accordingly the case was registered as Case No. RC 3(A) 94, ACU-II on 17-5-1994 under the aforesaid provisions of IPC and PC Act.

5. The prosecution story in brief is that during the year 1986 to 1992, the accused officers of the Animal Husbandry & Veterinary Department, Government of Assam entered into a criminal company with several private individuals including the present petitioner with the object to sick the Government of Assam and in pursuance to such conspiracy, they dishonestly and fraudulently prepared and used as genuine, several fake and forged bills for supply and construction works and withdrew huge amounts from the Sibsagar treasury and thereby caused pecuniary lost to the tune of Rs. 48,81,50,932.40 to the Government of Assam and made corresponding wrongful gain to themselves and others.

6. The prosecution submitted a list of 539 documents and statements of as many as 481 witnesses, which constituted the documents u/s 173, Cr. PC. According to the petitioner, the case sought to be built up against him by the prosecution, only the statements of 3 witnesses namely P.Ws. 232, 233 and 453 have only bearing. In addition to the statements the 3 witnesses, the prosecution has also sought to rely upon the statement of P.W. 453 recorded u/s 164, Cr. PC, which according to the petitioner never formed part of the documents u/s 173, Cr. PC and a photocopy of the same with interpolations and corrections, for the first time, saw the light of the day in the proceedings relating to framing of charge when the public prosecutor produced the same.

7. The petitioner filed his objection against the charge-sheet. He also filed an application on 24-9-2002 contending that in the event of framing charge against all the accused persons including the petitioner the case of the petitioner be tried separately. The prosecution also filed written objection to the said objection. Thereafter, the matter relating to framing of charge was heard and the learned Special Judge by the impugned order dated 3-9-2005 framed charge against the petitioner under Sections 120-B and 420 IPC.

8. According to the petitioner in the entire charge-sheet there is no specific allegation or indication as to when the petitioner became a party to the alleged conspiracy and what was the precised role played by him in furtherance of the alleged conspiracy. The charge-sheet only contained absolutely vague allegation against the petitioner. That being the position, the petitioner contends that, the trial Court could not have framed charge against him.

9. Mr. Bhattacharyan, learned Sr. Counsel, appearing for the petitioner in his extensive argument, referred to the grounds urged in the revision application towards assailing the impugned order. Placing reliance on the decision of the

Apex Court reported in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, he submitted that the casual approach adopted by the learned Special Judge towards framing charge against the petitioner is unwarranted in law requiring interference of this Court. Mr. Bhattacharya also referred to Sections 25 and 30 of the Evidence Act to bring home his arguments,

10. As against the aforesaid submission of the learned Counsel for the petitioner, Mr. D. K. Das, learned Standing Counsel, CBI has referred to the provisions of Section 19 of the Prevention of Corruption Act and submits that the learned Special Judge having exercise his sound discretion on the basis of the materials on record towards passing the impugned order, this Court will be reluctant to interfere with the same. Reminding the well settled principle of law that a caution approach towards quashing of FIR, criminal proceeding and for that matter the charge itself, unless grave errors of facts as well as of law is apparent on the face of the records, be submitted that this is not the kind of case warranging interference with the very framing of charge against the petitioner. He also placed reliance on two decisions of the Apex Court as reported in *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, and *Satya Narayan Sharma Vs. State of Rajasthan*,

11. I have given anxious consideration to the contentions raised and the submissions made by the learned Counsel for the parties. The learned Special Judge, CBI in his well-written and exhaustive order has elaborately dealt with the materials on record. Specially dealing with the contentions raised on behalf of the petitioner, he has made the following observation.

I have found that above contentions of profoundly rival nature have thrown before us very many important and interesting questions of law. They are (1) whether statement of an accused person who gave confessional statement before the IO and before Magistrate during the course of investigation and who became an approver subsequently, breaks free from the shackle of Sections 25 and 30 of the Evidence Act, once he accepted pardon, being granted by Court (2) whether Special Judge, who tendered pardon to accused person during investigation needs to examine him as an witness immediately after his tendering pardon or 93 whether he can defer the recording of such evidence to be done during trial.

These legal questions, I find a thorough enquiry and these can suitably be done during the trial only. Being so, at the stage, refrain myself from expressing any opinion as to the admissibility or otherwise of above statements, tendered by Sh. Kartik Borthakur and others. In the face of above revelations, I also feel reluctant to make in depth enquiry into the other allegations, lev-elled against judicial confession, made by Sh. Borthakur Suffice to say that they contained information of incriminating nature against some of the accused persons, herein, including A-32 and in the event of above documents being found legal, they would certainly be shots in the aims of prosecution.

12. The learned Special Judge, recording the submissions advanced on behalf of

the petitioner and the decisions on which reliance was placed has made the following observation.

True that P.W. 232 and P. W. 233 contradict one another on certain points including description of vehicles involved. But by no stretch of imagination, such contradictory statements can be said to have occurred over the material aspect of the claims, tendered by those P.Ws. Rather, those contradictions, in my considered view, are far too insignificant, which also occurred only on peripheral aspects of the assertions, made by those P.Ws. Being so, attack, mounted on the count to demolish the credibility of P.W. 232 and P.W. 233 falls flat on its face.

Coming to the allegations that trunks, stated above, were under lock and key at all the relevant time and that those two P.Ws. did not have the opportunity to see for themselves the contents, contained in the trunks, I have found that such contentions are true. But then, we must not lose sight of the fact that the statements, tendered by P.W. 232 and P.W. 233 unmistakably evidence that A-32 and others took world of pains as well as enormous precautions to bring safely the trunks, referred to above, from Sibsagar to Dispur. The above, coupled with the fact that trunks were collected from the gateway of SBI, Sibsagar, only demonstrate that trunks must have something very precious which cannot be anything else but money.

On a deeper and closer look at the statements, tendered by these two P.Ws. I have also found that these two P.Ws. together show that Sh. Debabrata Saikia S/o Lt. Hiteswar Saikia, the then CM, Assam, went to Sibsagar on 30-9-91, he himself supervised the collection of trunks from SBI, Sibsagar after the office hours on 1-10-91 and he took charge of carrying those boxes from Sibsagar to the official residence of the then CM, Govt. of Assam at Dispur and from there to his own residence at Saru Motoria on the very next day. Their statements together further show that one S. Dilip Bora, an employee of Sh. R. P. Borah, also an accused herein, had rendered all possible help in bringing the money to Guwahati.

The above revelations, coupled with the fact that around the same time, huge amount of money had been plundered from Govt, Exchequer through ICDP, Demow and Treasury Office, Sibsagar and that a large numbers of officers and officials from Veterinary Department and Sibsagar Treasury are prima facie found involved in the aforesaid lootings, have raised a very strong suspicion about A-32 entering into a criminal conspiracy with the officers and officials from Veterinary Department and Sibsagar treasury. Such conspiracy, I find was to commit various offences including offence of cheating. Thus, those materials on record prima facie warrant framing of charge u/s 120-B, IPC against A-32.

Equally importantly, the above revelations, viz., that on 30-9-1991, Sh. Debabrata Sakia was of Sibsagar, that he supervised the collection of trunks in question...supposed to have contained astronomical amount of money.... From the gateway of SBI, Sibsagar to the official residence of the then CM, at

Guwahati and then to their private residence at Saru Matoria...together with the disclosers to the effect that around the same time, the office of ICDP, Demow and Treasury Office, Sibsagar became hot beds of gigantic corruption involving very many officers and officials from the said Department, along with some other circumstances of extremely suspicious nature...raise a very very strong suspicion about A, 32's cheating Government of Assam on dishonestly inducing ICDP, Demow and treasury office, Sibsagar, to deliver those money to him and his associates, Materials on record therefore, prima facie require the Court to frame charge u/s 420, IPC against A-32 as well.

13. Dealing with the submission made on behalf of the petitioner that the joint trial of the petitioner along with other accused persons would cause injustice to him and accordingly, the case of the petitioner needs to be segregated and the decisions in support of such submission, the learned special Judge noticed the similar pleas raised on behalf of some other accused persons. Referring to the provisions of Section 223(a)(c) and (d) Cr PC, the learned Special Judge has found that the facts and circumstances, involved in the case permit a joint trial. He has also referred to Section 223(e) Cr. P.C. For a ready reference same is quoted below:

223 : What persons may be charged jointly

(a) to (d)...

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which he is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence.

14. Thus, it will be seen that the persons committing offence as indicated in Section 223(e) Cr. P.C. can be tried together in one trial. The learned Special Judge referring to the aforesaid provisions of Cr. P.C. has also dealt with the question, when several offences committed in succession by several persons can be said to be offence done in course of same transaction, in reference to the decisions of the Apex Court and High Court. He has answered the question, observing thus:

So situated, let me revert to the materials on record, to see if all the offences, involved in our instant case, were committed in the course of same transaction, as claimed by Sh. Ojha, learned Special Counsel for CBI or whether offences, aforesaid, are different can distinct ones, having no relation with one another, as averred by learned defence counsel. Coming back to the facts and circumstances of the case in hand and on a careful marshaling of materials on record, I have found that offences, herein, were committed in phases - to be precised in three phases.

In the first phase, various Ministers, Govt. of Assam, officers and officials from Veterinary Department, including ICDP, Demow, Treasury Office, Sibsagar and A-10, A-11, A-15, A-20, A-21, A-23 and A-32 (all private individuals), entered into numerous conspiracies, over a period, close to six years. Those conspiracies were entered into with a view to loot Govt. of Assam through OCDP, Demow and Treasury Office, Sibsagar. More importantly, the modus operandi of all those conspirators was one and same...as...on way to looting public money, they prepared/caused to prepare false PCC bills, sanction orders etc. and processed them through various departments and ultimately, withdrew money through SBI, Sibsagar on the strength of those false documents.

The above revelations clearly show that though the offences allegedly committed by first set of offenders, spread over a period as whopping as six years, yet, a thread binds all those offences together. The thread, stated above, exists in the form of commonality of purposes and commonality of design in committing those offences as well. These apart, there are reasons to hold that all those offences were done in continuation of one another, as...per materials on record...some of accused persons, such as Sh. R.P. Borah remained present there in all the crimes, committed by first set of offenders.

Thus, the first set of offences, herein, clearly stands all the tests so laid down by Hon'ble Supreme Court and other Hon'ble High Courts, through the rulings referred to above, vis-a-vis, the term "same transaction". Above being the revelations all the offences, committed by first set of offenders, can be tried in one trial, as such offenders were found to have committed various offences in the course of same transaction, as stated in Section 223(a) & 233(d), Cr. P.C. The arguments, so advanced by learned defence advocates that none of accused persons including first set of offenders, including A-32 cannot be put on in one trail are, therefore, found untenable to the extent, stated above.

15. On a reference to the grounds, urged in the revision application and on perusal of the impugned order, there is 110 manner of doubt that the learned Special Judge has dealt with all the grounds and having found to be not tenable, has rejected the same. It cannot be said that the materials against the petitioner do not disclose a prima facie case requiring the petitioner to be saved from avoidable harassment and expenditure. The decision on which the learned Counsel for the petitioner has placed reliance i.e. Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, is of no help to the case of the petitioner, rather the principles laid down in the said case in respect of ambit, scope and jurisdiction in the matter of consideration of the records and documents towards framing of charge upon prima facie satisfaction, fully support the impugned order. It cannot be said to be a case of failure to exercise judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution.

16. In the decisions on which Mr. Das, Learned Standing Counsel, CBI placed reliance i.e. Smt. Om Wati and Another Vs. State, through Delhi Admn. and

Others, and Satya Narayan Sharma Vs. State of Rajasthan, are on the well settled principle that the High Court should not ordinarily interfere with trial Court's order for framing of charge unless there is glaring injustice. At the stage of framing charge, the Court has merely to peruse the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that a prima facie case is made out against the accused, it must proceed to frame charge. At this stage, the Court is not required to enter into meticulous consideration of evidence and materials placed before it. The instant case cannot be said to be a case of no evidence at all.

17. In the case of Satya Narayan Sharma Vs. State of Rajasthan, the Apex Court considered the object of and scope of Section 482, Cr. P.C. vis-a-vis Section 19 of the PC Act. It has been held that in cases under the PC Act, there can be no stay of trials. Although Mr. Bhattacharyya, learned Counsel for the petitioner submits that since the next date of the proceeding before the Special Court in some time in May, 2006, the revision application should be admitted for hearing without any stay of the proceeding before the Special Court, I find no reason to admit the petition for further hearing. Learned Counsel for the parties have argued sufficiently as is required of for the purpose of persuading the Court to admit the petition. Upon consideration of such arguments and the grounds urged in the revision application in reference to the impugned order, I am of the considered opinion that this is not a fit case for admission, requiring, any further hearing. Consequently, it is dismissed.

18. Criminal revision application is dismissed.