
(2012) 02 AHC CK 0065
In the Allahabad High Court
Case No : Criminal Revision No. 3516 of 2011

Devendra Kumar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 397, 401, 561
Prevention of Corruption Act, 1988 — Section 12, 13, 7

Citation : (2012) ACR 1577 : (2012) 4 ADJ 492

Hon'ble Judges : Sudhir Kumar Saxena, J

Bench : Single Bench

Advocate : Alok Ranjan Mishra and G.S. Chaturvedi, for the Appellant; D.R. Chaudhary and A.G.A., for the Respondent

Judgement

Hon"ble Sudhir Kumar Saxena, J.—This revision filed u/s 397/401 of the Code of Criminal Procedure ("Code" in short) is directed against the order dated 2.7.2011 passed by Sessions Judge, Muzaffarnagar whereby cognizance has been taken upon. Charge-sheet has been filed and revisionist has been summoned. I have heard Sri G.S. Chaturvedi, learned Senior Advocate for the revisionist and Sri D.R. Chaudhari, learned Government Advocate for the State of U.P. Brief facts necessary for the disposal of the revision are that First Information Report was lodged on 5.1.2011 by CO. (City), Muzaffarnagar, registered as Case Crime No. 16 of 2011 u/s 7/13 of the Prevention of Corruption Act, Police Station Civil Lines, District Muzaffarnagar.

2. Allegations contained in the F.I.R. briefly stated that on getting a tip of corruption in Muzaffarnagar Development Authority, District Magistrate sent ADM (F), City Magistrate, C.O. (City) for taking necessary action. These three officers reached at the office of Development Authority, Muzaffarnagar at about 22:30 hrs. They found Assistant Engineer, R.P. Singh, Junior Engineer, Yogesh Chandra Gupta alongwith builders present in the office. Officers saw that some money was given to J.E., Yogesh Chandra Gupta and A.E., R.P. Singh by the builders.

3. J.E., Yogesh Chandra Prevention of Corruption Act, 1988 ("Act" in short). Learned Sessions Judge took cognizance Gupta kept all the money in his file, however all the persons except J.E., Gupta fled away from the scene after seeing the Police party. Yogesh Chandra Gupta (J.E.) was arrested from the spot with a sum of Rs. 66,000/-. He confessed before the City Magistrate that he has taken Rs. 66,000/- as bribe from Tewatia, owner of A to Z builder for helping him in the construction of his Colony. Upon investigation, charge-sheet was submitted on 1.6.2011 against Revisionist (Devendra Kumar) u/s 7/12 of the and summoned the revisionist vide order dated 2.7.2011. This very order has been impugned in the revision.

4. Sri G.S. Chaturvedi, learned Senior Advocate for the revisionist vehemently argued that there is no evidence against the revisionist, as such summoning order is absolutely illegal. Revisionist is not named in the F.I.R. and absolutely there is no evidence which may show that revisionist had given bribe to any officer of Development Authority. Alongwith affidavit he has filed charge-sheet, F.I.R. as well as the statements recorded under Sections 161 Cr.P.C.

Contention of Sri G.S. Chaturvedi, Senior Advocate is that in the absence of any evidence trial of revisionist would be abuse of the process of Court, as such summoning order is liable to be annulled.

5. Sri D.R. Chaudhari, learned Government Advocate has, apart from making oral submission, filed written arguments and urged that Devendra Kumar (revisionist) is director of A to Z builders and developers Pvt. Ltd. Files recovered from the possession of Junior Engineer, Yogesh Chandra Gupta, belonged to A to Z builders i.e. file No. 646 of 2010 and file No. 642 of 2010. On these files there is endorsement of Sri Yogesh Chandra Gupta recommending sanction of the map as well as recommendation of Assistant Engineer, R.P. Singh. The endorsement was done on 3.1.2011 whereas money is said to have been given on 4.1.2011.

Sri Chaudhari has referred the statement of O.P. Verma, Assistant Engineer showing that Devendra Kumar (revisionist) was present at the scene of occurrence and had run away after seeing the police force. Mohd. Mohsin, Chowkidar also supported the prosecution.

On the strength of these statements Sri Chaudhari would submit that there was enough evidence to show that bribe was given to J.E., Yogesh Chandra Gupta for getting the recommendation of J.E. and A.E. for sanctioning the map, revisionist was present at the scene of occurrence, had fled away from the scene after seeing the raid party. Files as well as cash was recovered from J.E., Yogesh Chandra Gupta. This evidence is sufficient to indicate that revisionist had committed the crime u/s 12 of the Act. At this stage, no more enquiry was contemplated and probative value will be assessed during the course of trial. Learned Magistrate on the ground of material collected by Investigating Officer has taken cognizance and issued process. There is no error in the impugned order calling for any interference in the revisional jurisdiction.

6. The careful scrutiny of statements of Sanjay Bajpayee, Station Officer, Shashi Shekhar Singh, Deputy S.P., Chadra Bhushan Singh, City Magistrate and Ravindra Godbole, ADM (F), Muzaffarnagar would show that they have specifically given the eye-witness account and have said that money was paid to J.E. and A.E. Money was kept by J.E. in his file. Files contain the recommendation of J.E. and A.E. dated 3.1.2011 for final approval by Vice-Chairman of the Development Authority. Money was recovered from the spot and there is statement of J.E., Yogesh Chandra Gupta where he has admitted having received money from A to Z builders.

7. O.P. Verma, Assistant Engineer and Adesh Kumar, clerk, and Mohd. Mohsin, Chowkidar further supported the prosecution case, as such it cannot be said that there was absolutely no evidence against the revisionist. Material against the revisionist is liable to be believed or not will be seen during the course of trial. At the stage of taking cognizance detailed examination of evidence cannot be done.

8. Sri Chaudhari in support of his argument cited the case of State of Bihar Vs. Ramesh Singh, , wherein it is stated that trial has just been initiated and the veracity of the evidences proposed to be adduced are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.

9. Similar view has been taken in the case of Hareram Satpathy Vs. Tikaram Agarwala and Others, , wherein para 9 it is stated that once the Magistrate has exercised his discretion it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

In the case of Hare Ram Satpathy v. Teeka Ram Agrawal (supra), in Para 10 it is held :

10. Now as the Magistrate was restricted to finding out whether there was a prima facie case or not for proceeding against the accused and could not enter into detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction was very limited the High Court could not in our opinion launch on a detailed and meticulous examination of the case on merits.

10. Sri D.R. Chaudhari has brought to the notice of the Court a decision of Apex Court in the case of Satya Narain Sharma v. State of Rajasthan, JT 2001 (8) SC 57, to the effect that no Court should stay proceedings under the provision of Prevention of Corruption Act on any ground whatsoever.

11. Sri G.S. Chaturvedi, learned Senior Advocate for the revisionist cited the decision of Hon'ble Apex Court in the case of R.P. Kapur v. State of Punjab, AIR SC 866. Learned counsel relied upon Para 6 to show that there was no legal evidence adduced in support of the case. But in the same paragraph it is held that the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. Court was discussing the scope of Section

561A of Cr.P.C. (old code).

12. Sri Chaturvedi also cited a judgement of Apex Court in the case of A.K. Subbaiah and Others Vs. State of Karnataka and Others, , Paragraph 15 of the judgement is reproduced below for reference :

15. It is therefore clear that when the issue of process is challenged in the revision petition before the High Court what the High Court is expected to see is as to whether the complaint and the papers accompanying the complaint prima facie indicate that an offence is made out. If so, the Court below was right in issuing process against the accused persons and such proceedings cannot be quashed; if the complainant and the papers accompanying the complaint, in the opinion of the High Court are such which do not prima facie disclose an offence then it will be open to the High Court to entertain the revision and quash the proceedings.

Again it has been left to the Court to ensure whether complaint and papers accompany, the complaint prima facie, indicate that an offence is made out. In this case evidence collected during the investigation has been found prima facie sufficient to show the complicity of the revisionist, by the Court. Since material on record shows a prima facie case against the revisionist, the Sessions Judge was justified in taking cognizance against the revisionist. Discretion has been exercised on relevant material in accordance with law and no exception can be taken to the said exercise of discretion. Revision has no force and is liable to be dismissed.