(2019) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1440 Of 2019

Dilip Raikwar And Ors. APPELLANT

Vs

State Of Madhya Pradesh RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 215, 216, 464, 482
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 477A
Prevention Of Corruption Act, 1988 — Section 13(2), 13(1)(d)
Krishi Upaj Mandi Adhiniyam, 1972 — Section 11, 17, 18, 32

Citation : (2019) 08 MP CK 0038

Hon'ble Judges : Virender Singh, J;S.C. Sharma, J

Bench : Division Bench

Advocate : A.K. Sethi, Govind Purohit, Arpit Oswal

Final Decision : Dismissed

Judgement

Virender Singh, J

1. After dismissal of their petition preferred under Section 482 Cr.P.C. for quashment of FIR bearing Crime No.1/2014 registered by Economic Offence Wing, Indore under Sections 120-B, 420, 477-A of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, now the petitioners are again before this Court, but this time against order framing charges against them dated 27 & 29/11/2018 passed in Special Case No.06/11 by learned Special Judge (Prevention of Corruption Act, 1988), Indore.

2. Except the discussion with regard to the prosecution sanction, as this point is not raised this time, earlier order passed in MCRC No.14622 & 7833/2018 reads thus:-

1. Regard being had to the similitude of the facts and controversy involved in both these petitions, they were heard analogously and are being decided by this common order.

2. All the petitioners have come before this Court for quashing of FIR No.1/14 dated 05/01/2004 registered by Economic Offence Wing, Indore Wing (hereinafter referred to as EOW) under Sections 120-B, 420, 477-A of IPC and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act 1988') and all subsequent proceedings of Special Case No.6/11 pending before Special Judge (Prevention of Corruption) Act, Indore taken pursuant thereto.

3. Sans unnecessary details, facts relevant to the present petitions are that after receiving some complaints regarding evasion of Mandi/Nirashrit fees by the firms/ traders, Mandi Board, Bhopal constituted a team of 10 members headed by Deputy Director to enquire into the matter. After inquiry, the team found several irregularities in issuance of licenses and evasion of Mandi fees for the period started from 01/04/2002 to 31/07/2002 against 23 firms and submitted its report. On receiving the report, the Market Committee issued show cause notices asking them to produce the account books and afforded opportunity of hearing. No information/documents were submitted by the responsible firms. The Marketing Committee then lodged F.I.R. No.117/2004 under Sections 420, 467, 468 of IPC at Police Station-Aerodrome on 14/02/2004 against those firms. Upon a summary forwarded by the agricultural department, EOW also registered FIR No. 1/04 on 05/01/2004. Later, FIR registered at Police Station-Aerodrome was merged with the FIR registered by EOW, who; after investigation held that these firms have caused loss to the tune of Rs.8,13,01,509/- by evading Mandi fees and filed charge-sheet against them on 22/12/2011. However, the investigation was kept pending against 6 public servants for want of prosecution sanction. A supplementary charge-sheet was filed against the petitioners on 20/02/2015 whereas charge-sheet against Mr. Dahima was kept on hold and later on 06/04/2017 supplementary charge-sheet was filed against him also.

4. It was found in the investigation that several irregularities were committed by the officials of the Marketing Committee in issuance of licenses. Licenses were issued in violation of the rules & regulations and even without submission of the account books, fees receipts etc. Firms/traders have submitted false document and declaration in format No.10. They were not submitting annual returns. Many of them were not found on given address. It was also found that in view of the procedure prescribed by law, all these irregularities were not possible without active add, involvement or intentional omissions or ignorance on the part of the public servant responsible for functioning of the Mandi Committee.

5. ..... (omitted as related to prosecution sanction)

6. ..... (omitted as related to prosecution sanction)

7. The petitioners have preferred this petition on the grounds that:

(i) ... (omitted as related to prosecution sanction)

(ii) ... (omitted as related to prosecution sanction)

(iii) In exercise of powers under Section 17 & 18 of the Krishi Upaj Mandi Adhiniyam, 1972, a subcommittee was constituted for verification of licenses and deposit of Market fees and the petitioners were not part of this committee.

(iv) The petitioners were posted as Inspector and Assistant Sub-Inspector in Mandi. They are only Class-III employees and as per Section 11 of the Adhiniyam, 1972 have no authority or power to issue or renew the license or no role to play in checking, verification, deposition or recovery of Market and other fees. As per resolution dated 03/04/2000 of Market Committee, such powers are vested in the President of the Market Committee, who is responsible for issuance or renewal of licenses.

(v) Market Committee, Indore has passed Resolution dated 23/06/2000 stating that information regarding stock is not required to be furnished at the time of issuance of license; therefore, the petitioners are not responsible for its verification.

(vi) The petitioners were related to mere execution/entry of documents as provided in the work distribution order. No specific overt act or any duty/function which the petitioners failed to perform was mentioned. Even if all the allegations are considered at its face value, As per Section 32 of the Act 1972, power to grant license vests in the Market Committee, the petitioners are merely Class-III employees.

(vii) The petitioners were junior employees and were under administrative control of the Secretary. They had discharged their duties on the direction of their supervisory officer and since he is discharged, therefore, they cannot be held responsible alone for the alleged act and they are also entitle for the same relief.

(viii) The basic ingredients for constituting the offences under Section 420 of the IPC are missing in the present case. No prima facie evidence is available to show existence of mens rea, misrepresentation, inducement, deception or delivery of property by the petitioners;

(ix) ... (omitted as related to charge u/S. 477A-Falsification of accounts and no such charge is framed)

(x) No offence under Section 120B of IPC is made out against the petitioners as there is not a single evidence is available on record to show that there is prior meeting of mind between all the accused persons for committing the offences alleged.

(xi) The alleged offences have been committed in the year 2002 while the charge-sheet is filed in the year 2015; which is after lapse of 13 years. On this ground also, the criminal case against them deserves to be quashed.

8. The prosecution has opposed the prayer of the petitioners.

9. We have heard rival contentions of the parties and have gone through the

record.

10. (omitted as related to prosecution sanction)

11. (omitted as related to prosecution sanction)

12. (omitted as related to prosecution sanction)

13. Report submitted by the EOW shows that vide order dated 18/09/2001, 29/09/2001 and 27/05/2002, the petitioners were allotted and handed over the work of issuance of license and gate passes etc. All these documents have been seized during investigation and are sufficient to prima facie show involvement of the petitioners in the crime. Evidence showing involvement (acts/omissions) of each petitioner in the alleged crime is categorically discussed in the report of the EOW annexed with the petition (page 96-99). On careful scrutiny of the same, we are satisfied that the EOW has prima-facie case to proceed further against the petitioners.

14. Corrected para (vide order dated 04/02/2019 passed in MCRC Nos.5237/2019 and 5239/2019.)

In such a situation, looking to the availability of sufficient prima facie evidence, we do not find any reason whatsoever to interfere on any of the ground raised by the petitioners to quash the proceedings initiated/pending against them. Both the petitions are devoid of merits, liable to be and are dismissed hereby.

3. We have heard the learned counsel for the petitioners at length. More or less the same grounds have been taken by the petitioners to challenge the order framing charges, which have already been considered by this Court while disposing their petition preferred under Section 482 Cr.P.C. We doubt that reiterating the same again would achieve some object.

4. Much emphasize is given by the learned Senior Counsel on the issue that articles of charges have not been drafted properly as they do not contain particulars of the offences alleged against the petitioners to inform and to enable them as to what allegations they have to defend. It is asserted that by using common language against all the accused persons, cyclostyled charges have been framed. But in view of provisions of Sections 215 & 464 of Cr.P.C., in our considered opinion, this is not sufficient ground to reject or dismiss the charges. Remedy is available to the petitioners in the form of Section 216 of the Cr.P.C. which they can avail before the trial Court.

5. Learned Senior Counsel has made adroit efforts to show that the petitioners were simply Mandi Sub-Inspectors and they were not responsible for the act alleged against them. Provisions of Section 11 - Constitution of Market Committee and Section 17 - Powers and Duties of Market Committee of Krishi Upaj Mandi Adhiniyam, 1972 have been pressed into service to show that it was the Market Committee, who was responsible for the alleged act of forgery and evasion of 'Mandi shulk' and not the petitioners, but this point was also raised

earlier and was discarded by this Court. This Court is not aware as to whether its earlier order is challenged before the Hon'ble Supreme Court or not and if it still exists, reappreciation of the same evidence for the same purpose and derive a different conclusion is neither proper nor permissible.

6. The learned Senior Counsel has placed reliance on Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja and others reported in AIR 1990 SC 1962, wherein Hon'ble Supreme Court has considered that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to find out that if the facts emerging from the record taken at their face value disclose the existence of all the ingredients constituting the alleged offence and for this limited purpose, the Court may 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.

7. Further reliance is placed upon a judgment of Single Bench of this Court passed in the case of Yusufkhan vs. State of MP reported in 2003(1) M.P.H.T. 42 stating that though it is a judgment of Single Bench but various judgments of Supreme Court on the field have been considered by the learned Single Judge in this case. In this case, learned Single Judge has quashed the charges observing that there is absolutely no material available in the charge-sheet and allegations of the prosecution were based on the presumption only.

8. Third judgment of Hon'ble Supreme Court which is pressed into service by the learned Senior Counsel is the case of C.S. & Mfg. Co. vs. State of Maharashtra reported in AIR 1972 SC 545, wherein the Apex Court has held that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges.

9. Though the principles of weighing and sifting the prosecution evidence are broadly discussed in the judgements cited by the petitioners themselves, but here we would also like to refer the case of Sajjan Kumar vs. Central Bureau of Investigation 2011 AIR SCW 3730 where the Hon'ble Supreme Court has summed up and has categorized the principles to be observed while exercising jurisdiction to frame or to quash the charges frame by the trial Court. Following guiding principles have been settled by the Court:

(i) The Judge while considering the question of framing the charges under S. 227 of the 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 Ss. 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 discloses 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.

10. The evidence collected during the investigation, which runs in several pages, is prima facie sufficient to show involvement of the petitioners in the offence composed and conspired by the accused persons together. Nothing specific is pointed out to show that the documents relied upon by the prosecution or the report submitted by the subcommittee after probing the allegations in depth are liable to be discarded on the face of it. We are purposely not discussing the same elaborately, as at this stage, appreciation of evidence in depth is neither desired nor expected as it may adversely affect the case of the prosecution or may prejudice the defence of the accused persons as well. After going through the evidence collected during investigation, we are satisfy that the prima facie case exists against the petitioners. In our considered opinion, the petition has no merits, deserves to be and is dismissed hereby.

