
(2008) 05 RAJ CK 0067
In the Rajasthan High Court

H.P. Kuchchal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 227, 228, 397, 482
Prevention of Corruption Act, 1988 — Section 13, 19

Citation : (2008) 4 RLW 3043

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvendra S. Rathore, J.—This criminal misc. petition has been filed by the applicant u/s 482 Cr.P.C. for quashing of the first information report No. 16/90 dated 24.3.1990; the entire proceedings pending before the Special Judge Anti Corruption, Jaipur (4/1994) and for awarding compensation to the applicant.

2. The applicant came in service as an engineer in Public Works Department on 8.5.1954 and continued upto 30.4.1992. On having come to know through reliable sources that the applicant had earned properties dis-proportionate to his income during the period from 8.5.1955 to 1982, that the Director General Anti Corruption had lodged a report (16/90). The primary allegation in the report was that the petitioner had properties for excessive amount of Rs. 1892781/-. Thereafter, the investigation was handed over to Additional Superintendent of Police. On concluding of the investigation and after collecting the evidence, challan came to be filed on 5.4.1994 for the offence u/s 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988.

3. On submission of challan, the learned trial Court took cognizance for the said offence and fixed the case on 29.1.1994 for the purpose of arguments on framing of charge. But, the matter was as usual made to be dragged from time to time, on one pretext or the other, at the behest of the applicant. The accused-petitioner had filed an application demanding documents which were referred in

the challan filed u/s 173(2) Cr.P.C. Before the said application came to be considered and decided by the trial Court, the petitioner filed another application on 3.9.96 asking for the documents which were submitted by him and his wife during the course of investigation, in respect of the sources of income of the family. Ultimately, the aforesaid application came to be decided by the trial Court on 24.1.1998 whereby the learned trial Court directed the respondent-prosecution to produce some of the documents in the Court.

4. In the meanwhile, the accused-petitioner had filed an application also on 3.9.96 raising objections regarding the jurisdiction of the trial Court as well as the maintainability of the case, itself. The learned trial Court had ordered on 5.4.1997 that the aforesaid objections shall be taken up at the time of framing of charge.

The applicant again filed an application on 15.5.1997 with the prayer that the preliminary objection in respect of jurisdiction may be decided. The learned trial Court after hearing the lengthy arguments advanced by the parties, decided the application with the direction that, as ordered earlier, the decision in respect of aforesaid objections of the applicant are to be postponed till the time of hearing of arguments in respect of framing of charge. The said order was passed on 11.11.97.

5. The petitioner then rushed to this Court by filing the present petition in the year 1998 stating that "being aggrieved of the aforesaid situation the petitioner has no other equally efficacious and speedy remedy except to invoke the jurisdiction of this Court for quashing the entire proceedings in the aforesaid case." It would be worthwhile to note that the petitioner along with this Misc. petition filed, as many as, 60 documents. The petitioner has prayed for quashing of F.I.R. No. 16/90 dated 24.3.90, the charge sheet filed thereupon and all proceedings in consequential to special case No. 4/94 of the petitioner pending before the Special Judge Anti Corruption Jaipur. Further, it has been prayed to direct the respondents to pay to the petitioner compensation, as being just and proper in the fact and, circumstances of the case. A prayer has also been made to award exemplary costs in favour of the petitioner.

6. After filing the petition on 11.3.1998, the defects came to be removed only on 25.4.98. Then the case was listed before the Court on 29.4.98 and an order was passed to issue notices to the non-petitioners/respondents. The record of the trial Court was also called and the requisition was given dasti. The record of the trial Court was received on 20.5.1998. Consequently, the proceedings before the trial Court which was pending at the stage of framing of charge, came to be stayed automatically. Then the petitioner seems to have lost interest in arguing the matter and getting this misc. petition decided. Since the month of July, 1998 the matter did not have any effective hearing and it was either got adjourned on the request for the counsel for the petitioner or none appeared when the case was listed. An application was filed on behalf of the petitioner on 26.2.1999 to take additional affidavit and seven documents on record.

7. Even the learned Government Advocate had made a request in the month of April, 2001 that the matter may be heard early because record has been called since long and the trial is held up. Then, the matter was ordered to be listed on 24.4.2001, but could not be heard. Even the learned trial Court, vide its letter dated 17.9.2001, requested the Deputy Registrar (Judicial), High Court, Jaipur, by inviting his attention towards Section 19(3)(c) of the Prevention of Corruption Act, 1988 wherein the said provision has been made notwithstanding any contain in the Code of Criminal Procedure. The said provision reads as under:

no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

The learned trial Court also invited attention towards the provision of Section 22 of the Act of 1988 particularly Clause (d) which reads as under:

in Sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely:

Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings,--

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.

Therefore a request was made by the learned trial Court to place the letter before the Hon'ble High Court and after seeking directions, the record may be returned. The next date of this case, before the trial Court was 10.10.2001. A perusal of the record reveals that letter of the trial Court dated 17.9.2001 was dealt with by the office, though only on 1.3.2002, but it does seems to have been placed before the Court.

8. The matter remained pending thereafter as request for adjournments continued to be made on behalf of the petitioner. A number of times the case was not listed before the Court, despite of dates having been given by the Registry of the High Court. Again an application was filed on behalf of the petitioner on 5.12.2005 with the request that documents, though already on record of the lower court and before the investigation agency, but for convenience of the Court they are again submitted for considering at the time of arguments. The said application came before the High Court on 6.1.2006 and the application was allowed with the direction that the documents attached with it be taken on record for the purpose of deciding the petition. It is noteworthy that the Court observed that since the matter is of the year, 1998, it may be listed for final arguments on 24.1.2006. As usual, on 24.1.2006 when the case was listed, adjournment was sought for 30.1.2006. Again on 30.1.2006 and thereafter the adjournments were

sought on behalf of the petitioner. On 6.8.2007, petition was admitted, the counsel for the petitioner was directed to supply one set of petition along with the documents to the learned Public Prosecutor. It was also ordered that the matter may be listed in the category of hearing. Thus, the matter was finally heard by this Court.

9. The learned Counsel for the petitioner had, broadly, submitted that the learned trial Court does not have jurisdiction in the present case, the filing of the charge sheet and taking of cognizance is illegal because there is no sanction of the competent authority and the Special Judge is not competent for trial the case. He has also submitted that the action against the petitioner in this case is malafide, primarily on the ground that the complaint has been made by Director General, Anti Corruption and the investigation had been given to Additional Superintendent of Police. In support of his submission, the learned Counsel for the petitioner has referred to the judgments:

- (1) Jagan M. Seshadri Vs. State of Tamil Nadu,
- (2) T.S. Ramaswamy v. State of Tamilnadu 1994 CrL. L.J. 545.
- (3) State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, .
- (4) R. Balakrishna Pillai Vs. State of Kerala,
- (5) P. Sirajuddin, etc. Vs. State of Madras, etc.,

10. On the other hand, the learned Public Prosecutor has seriously opposed the submissions made by the learned Counsel for the petitioner and has submitted that this Criminal Misc. Petition deserves to be dismissed as has no merits. Moreover, he has submitted that a perusal of the contents of the petition and the prayer made therein, particularly when the case before the trial Court pending for framing of charge, is wholly frivolous and had been filed with the ulterior motive, only to delay the matter. He has submitted that despite of efforts have been made by the prosecution as well as the learned trial Court, neither the record of the Court below could be returned nor the arguments were advanced account of continuous adjournments sought on behalf of the petitioner, on one pretext or the other.

11. This Court has thoroughly considered the arguments advanced by both the parties. The instant case has a chequered history not only in respect of the commission of the offence but also in respect of the pendency of this misc. petition before this Court. There cannot be any better instance of misuse of the provision of Cr.P.C. by an accused person in filing a petition before this Court, purporting to be u/s 482 Cr.P.C. The contents of the petition reveals much more than a petition u/s 482 Cr.P.C. so much so, that para 23 states as under:

That being aggrieved with all the aforesaid situation the petitioner has no other equally efficacious and speedy remedy except to invoke the jurisdiction of this

Hon''ble Court for quashing the entire proceeding in the aforesaid case for preventing the abuse of process of court and for securing the ends of Justice.

Likewise, the prayers made in this petition are as follows:

1. to quash the F.I.R. No. 16/90 dated 24.3.1990, charge-sheet filed therein and all proceedings in consequential special case No. 4/1994 State v. H.P. Kuchchal pending before Special Judge, Anti Corruption, Jaipur with all legal consequence;
2. to direct the respondents to pay to the petitioner compensation as deemed just and proper in the facts and circumstances of the case by the Hon''ble Court;
3. to issue any other order which this Hon''ble Court deems just fit and proper in the facts and circumstances of the case in favour of the petitioner;
4. to award exemplary costs in favour of the petitioner.

One fails to understand as to how a request is made for quashing of F.I.R.; the charge sheet filed therein and all proceedings before during the trial Court when the case is pending at the stage of framing of charge. The fact is that after filing of the first information report, the investigation concluded and the charge sheet was filed u/s 173(2) Cr.P.C. and thereafter a cognizance was taken by the learned trial Court. Therefore there is no question of challenging the F.I.R. when challan has been filed. Likewise the filing of charge sheet can not be a subject matter of challenge after cognizance has been taken by the trial Court. It is to be noted that the order of cognizance had not been challenge before any court and it has become final. Even otherwise, the accused-petitioner would have all opportunities to raise the points of objections before the learned trial Court more appropriately at the time of framing of charge. Moreover, the petitioner in this case has prayed for compensation from this Court in a Criminal Misc. Petition filed u/s 482 Cr.P.C. which is something unique in itself. Similarly, the petitioner has prayed for exemplary costs in his favour.

12. As stated earlier, the petitioner has filed with this Misc. petition, as many as, 60 documents and many more alongwith applications dated 26.2.1999 and 6.1.2006. Suffices it to say that this Court, in exercise of inherent powers, would not go into the matter in the manner the petitioner wants it, because of the simple reason that it is not to hold the trial and many questions of facts cannot be decided, in this criminal Misc. petition u/s 482 Cr.P.C., without recording of evidence and therefore it can be more appropriately decided by the learned trial Court. Furthermore, the instant case is pending at the stage of framing charge since 29.6.1994. The accused-petitioner would have the opportunity to raise all his points before the trial Court when it would be exercising its powers u/s 227 & 228 Cr.P.C.

13. It is for this reason, that the matter is pending at the stage of charge before the trial Court that in my considered opinion this Court would refrain from adjudicating the points raised on behalf of the petitioner because that may affect the merits of the case before the trial Court.

14. Taking into consideration the overall facts and circumstances of the present case; the fact that the petitioner would be free to raise all his arguments/objections before the trial Court at the time of charge and it would be more appropriate for the learned trial Court to consider and decided of the question raised before it in exercise of its powers u/s 227/228 Cr.P.C.; that this Court do not consider it just and proper to venture on the detail discussions on the merits of the case. The petitioner shall be free to raise all his objections and the same would be considered by the learned trial Court at the time of framing of charge.

15. Consequently, this misc. petition is dismissed with the liberty to the petitioner to raise all his objections, before the trial Court at the time of framing of charge. Keeping in view the period which have already been lost in pendency of this Misc. Petition, I deem it just and proper to direct the learned trial Court to proceed with the case on priority. The Deputy Registrar (Judicial) of this Court is directed to send the record of the trial Court forthwith.