

(1978) 02 AHC CK 0022

In the Allahabad High Court

Case No : Criminal Revisions No's. 234 and 286 of 1976

Jadunath Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-02-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 218, 466
Prevention of Corruption Act, 1988 — Section 5(2), 5A

Citation : (1978) ACR 137

Hon'ble Judges : V.N. Varma, J

Bench : Single Bench

Advocate : P.N. Lal and S.N. Srivastava, for the Appellant;

Judgement

V.N. Varma, J.—These are two revisions--(Jadunath Singh v. State Criminal Revision No. 234 of 1976) and (Gur Prakash v. State Criminal Revision No. 286 of 1976) which I propose to dispose of together as they have arisen out of one and the same order dated 10--1--76.

2. It appears that initially a case under Sections 218 and 466 IPC was registered against applicants Jadunath Singh and Gur Prakash. The case against them was investigated by S.I. Ram Babu Sharma. During the course of the investigation, SI Ram Babu Sharma felt that offences u/s 161 IPC and 5(2) of the Prevention of Corruption Act were also made out against applicant Jadunath Singh. u/s 5A of the Prevention of Corruption Act an officer below the rank: of a Deputy Superintendent of Police could not have investigated such an offence without the order of a competent Magistrate and, therefore. Superintendent of Police Fatehgarh made an application in the Court of A.D.M. (J) Fatehgarh on 25--6--70 requesting him to authorize S.I. Ram Babu Sharma to investigate it also, because no Deputy Superintendent of Police was available for the investigation of the offence u/s 161 IPC and 5(2) of the Prevention of Corruption Act. The learned Magistrate premittted S.I. Ram Babu Sharma to do the investigation as desired. Accordingly, S.I. Ram Babu Sharma did the investigation and submitted

a charge sheet against applicant's Jadunath Singh and Gur Prakash and one person more, namely, Nand Kishore. After the charge-sheet had been filed, Jadunath Singh and Nand Kishore filed an objection (58-Kha) challenging the validity of the charge-sheet filed in Court. Likewise applicant Gur Prakash also filed an objection (59-B) to the same effect. The learned Judge dismissed their objections and hence the present revisions.

3. I have heard the learned Counsel for the applicants at sufficient length and have also perused the record of the case. In my opinion, Criminal Revision No. 234 of 1976 filed by applicant Jadunath Singh has no merit behind it and must, therefore, fail. It is not in dispute that previously a case under Sections 218 and 466 IPC had been registered against Jadunath Singh and the investigation of that case was being done by S.I. Kam Babu Sharma. While investigating this case S.I. Ram Babu Sharma discovered evidence which went to show that offences under Sections 161 IPC and 5(2) of the Prevention of Corruption Act also were made out against him. He stopped investigation of this case as, indeed, he could not have done it because u/s 5-A of the Prevention of Corruption Act no police officer below the rank of a Deputy Superintendent of police could investigate such a case without the permission of a competent Magistrate. It appears that he conveyed this position to Superintendent of Police Fatehgarh, whereupon S.P. Fatehgarh made an application before A.D.M.(J) and requested him to permit S.I. Ram Babu Sharma to investigate the case of corruption also as no Deputy Superintendent of Police was available for investigation. The learned A.D.M.(J) went through that application and passed an order on it permitting S.I. Ram Babu Sharma to investigate the case. It is true that in his order he did not give the reasons why he had permitted S.I. Ram Babu Sharma to investigate the case, but obviously he did so because it had been brought to his notice that no Deputy Superintendent of Police was available for doing the investigation of the case. In my opinion, the order passed by A.D.M. (J) permitting S.I. Ram Babu Sharma to investigate the case is not open to exception. It was in his discretion to permit S.I. Ram Babu Sharma to investigate the case and it cannot be said that he exercised his discretion arbitrarily when he gave that permission. S.I. Ram Babu Sharma had been investigating the case against applicant Jadunath Singh from the very beginning and, therefore, after he had been permitted to investigate the case, he did not take much time to complete the investigation and submit a charge-sheet against him. The charge-sheet submitted against applicant Jadunath Singh is a valid charge-sheet and I see no reason to interfere with it.

4. Now I come to Criminal Revision No. 286 of 1976 filed by Gur Prakash. In the beginning, against him also a case under Sections 218 and 466 IPC had been registered and S.I. Ram Babu Sharma had been doing the investigation of that case. Subsequently, it appeared that he too had committed offences under Sections 161 IPC and 5(2) of the Prevention of Corruption Act. Therefore, in his case also it was necessary that Superintendent of Police Fatehgarh should have moved A.D.M.(J) Fatehgarh to permit S.I. Ram Babu Sharma to do the

investigation of the case. Through application dated 25--6 --1970 Superintendent of Police Fatehgarh had asked for permission in regard to applicant Jadunath Singh only. In that application he had made no prayer that SI Ram Babu Sharma should be permitted to investigate the corruption case against Gur Prakash also. Therefore, the order of A.D.M.(J) passed on application dated 25--6--1970 cannot be construed to mean that he had permitted S.I. Ram Babu Sharma to investigate the case against Gur Prakash also. The learned Sessions Judge has mentioned in his order that as Gur Prakash had committed offences under Sections 161 IPC and 5(2) of the Prevention of Corruption Act in the same transaction in which offences under the aforesaid sections had been committed by Jadunath Singh and, therefore, it should be taken that A.D.M. (J) had permitted S.I. Ram Babu Sharma to investigate the case against Gur Prakash also. I am afraid I cannot persuade myself to agree with the reasoning adopted by the learned Sessions Judge. Section 5A of the Prevention of Corruption Act has put a bar on investigation in corruption cases by a police officer below the rank of a Deputy Superintendent of Police without the permission of a Magistrate. Unless that bar is removed, no police officer below the rank of a Deputy Superintendent of Police can investigate such cases. Here, the bar in so far as applicant Gur Prakash was concerned, had not been removed. It was, therefore, not open to S.I. Ram Babu Sharma to investigate the corruption case against applicant Gur Prakash. The charge sheet against him, is, therefore, not in accordance with law and accordingly it must be quashed.

5. In the result, I find no force in Criminal Revision No. 234 of 1976 and dismiss it accordingly. Stay order dated 27--2--1976 is vacated.

6. Criminal Revision No. 286 of 1976 is allowed and the charge sheet filed against applicant Gur Prakash is quashed. The case against him should be re-investigated by an officer of the rank of a Deputy Superintendent of Police or by an officer below his rank after the necessary permission from a competent Magistrate has been taken. As this investigation will take some time" it will be open to the Special Judge to separate the case of Gur Prakash and proceed with the case against Jadunath Singh and Nand Kishore.