

(2004) 12 AHC CK 0165

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 11061 of 2004

Jamwant Jaiswal and Angad Prasad Jaiswal

APPELLANT

Vs

State of U.P. and Retd. Lt. Col. Jagdish Singh

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 482

Penal Code, 1860 (IPC) — Section 120B, 464, 465, 468, 471

Prevention of Corruption Act, 1988 — Section 13, 19(3), 7

Citation : (2005) 1 ALT(Cri) 27

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : V.P. Srivastava, for the Appellant; S.B. Singh and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard Sri V.P. Srivastava, learned counsel for the applicants, Sri S.B. Singh, learned counsel for opposite party No. 2 and the learned A.G.A. appearing for the State of U.P. and perused the materials on record.

2. This application u/s 482 Cr. P. C. has been filed for quashing an order dated 5.10.2004 passed in Special Case No. 14 of 2002 by the Special Judge (Anti Corruption), district Varanasi, refusing to discharge the applicants in a case under the Prevention of Corruption Act and deciding to frame charges against the applicants.

3. The case set up by the prosecution on the basis of an application by opposite party No. 2 Retd. Lt. Col. Jagdish Singh to the Director General of Police, Lucknow (Anti Corruption) was that the applicant No. 1 Jamwant Jaiswal who was posted as I lead Constable at police station Naugarh had earned assets disproportionate to his income. After enquiry on the direction of the Director General of Police, an F.I.R. was registered against the applicants by Babu Chand, Inspector (Anti Corruption) Organisation, C.I.D., U.P. Lucknow under Sections

7/13 of Prevention of Corruption Act and Sections 464, 465, 468, 471 and 120B I.P.C., P.S. Chaubeypur, Varanasi, at case Crime No. 210/99. The allegations in the E.I.R. were that the enquiry showed that the applicant No. 11 lead Constable Jamwant Jaiswal in the period of his service from 20.11.1976 to 18th August, 1999 had spent Rs. 3,92,475.92 for purchasing land and other items in the names of his brothers and spent Rs. 2,88,633.12 for maintenance of his family, hence he had incurred a total expenditure of Rs. 6,81,109.04, whereas the applicants' total income from various sources including his ancestral land and shops was Rs. 5,90,966.24 and in this manner his earnings were Rs. 90,245.80 less than his expenditure. There was no adequate explanation for this additional amount of expenditure, hence the inference was drawn that the applicant Jamwant Jaiswal had some unaccounted income and hence he was liable to be prosecuted for an offence under Sections 7/13 of the Prevention of Corruption Act. I here was also allegation of preparing some forged records for showing the property of applicant No. 1 as the property of his brother co-accused applicant Angad Prasad Jaiswal in pursuance of the conspiracy entered into between them.

4. It may be mentioned that this is the third innings of the applicants before this Court. First the applicants had filed writ petition No. 7429 of 2001 challenging the first information report, in which the arrest of the applicants was stayed for some time by this Court. Thereafter, the charge sheet was submitted. The applicants then challenged the charge sheet by means of an application u/s 482 Cr. P. C., in which case initially proceedings were stayed. However, as the opposite party No. 2 Retd. Lt. Col. Jagdish Singh approached the Hon'ble Supreme Court by filing Criminal Appeal No. 1223 of 2003 against the stay order passed by the High Court, the Apex Court was pleased to vacate the stay order granted by the High Court taking in view of the provisions of Section 19(3) of the Prevention of Corruption Act by an order dated 24.9.2003. Ultimately the High Court was pleased to dispose of the application u/s 482 Cr. P. C. on 5.2.2004 holding that prima facie an offence was made out against the applicants and no ground for quashing the proceedings including the cognizance order dated 8.4.2002 in Special Case No. 40/2002 pending before the Special Judge, Anti Corruption, Varanasi, was made out. However, it was left open to the applicants to raise all the points at the appropriate stage before the court below, and in case they moved an application for bail, the same was to be decided expeditiously.

5. Now the applicants are challenging the order dated 5.10.2004, by which the Special Judge has refused to discharge the applicants in this case and has directed framing of charges against them.

6. The contention of the learned counsel for the applicants is that according to the actual pay slips of the applicant No. 1, his income was Rs. 6,66,726.28, which was marginally less than the total expenditure of Rs. 6,81,109.04 as assessed by the Anti Corruption Department of the C.I.D., which formed the basis of the F.I.R. and in this view of the matter, as the short fall was only Rs.

15,000/-, this was an appropriate case for discharging the applicants. For showing that the income of the applicant No. 1 was Rs. 6,66,726.28 the applicants had filed a photostat copy of the pay slips as Annexure No. 7 to the affidavit to this application.

7. The contention of the learned counsel for the applicants is that in view of the decision in the case of Satish Mehra Vs. Delhi Administration and Another, , it will be open for the applicants to furnish material in their defence, which will be required to be considered by the trial court while considering an application u/s 227 of the Code of Criminal Procedure. In this context paragraph No. 14 of the aforesaid law report has observed as follows:-

"The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code."

8. However, the correctness of the view in Satish Mehra's case has been doubted by a subsequent Division Bench decision of the Hon'ble Supreme Court in the case of State of Orissa Vs. Debendra Nath Padhi, and the said Bench had referred the matter to a larger Bench. Paragraphs No. 11 and 12 of the law report in the case of State of Orissa v. Debendra Nath Padhi may be usefully extracted below:-

"From the above judgments referred to by the learned counsel for the appellant, it is clear that all that the court has to do at the time of framing a charge is to consider the question of sufficiency of grounds for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the court at that stage should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage. (Para 11)

However, the judgments relied upon by the learned counsel for the respondent, namely. The Secretary, Hailkandi Bar Association Vs. State of Assam and Another, , G.L. Didwania and Another Vs. Income Tax Officer and Another, The Secretary, Hailkandi Bar Association Vs. State of Assam and Another, and Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, seem to support the stand of the learned counsel for the respondent. Though the judgment relied upon by the learned counsel for the appellant set out in the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, is a judgment of a three- Judge Bench and all other judgments are of a two-Judge Bench, still in view of the fact that in the case of Satish Mehra Vs. Delhi Administration and Another, the Bench had taken notice of

the three-Judge Bench judgment of this Court in the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, and despite the same, the latter Bench had taken a somewhat different view, we think it appropriate that this matter should be referred to a larger Bench. "(Para 12)

9. In another case, Om Wati (Smt.) v. State, Through Delhi Administration 2001 (2) UP CR. 85, the following observations in paragraph No. 8 of the decision which are also on the same lines as the "observations in State of Orissa v. Debendra Nath Padhi may be usefully quoted below:-

" At the stage of passing the order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a 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, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, , cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed. "

10. In this view of the matter, it cannot be said that at the stage there was no prima facie material before the trial court for framing the charge, as a meticulous consideration of the evidence produced by the prosecution and examination of documents relied upon by the defence were not required to be considered at this stage. Also what was the extent of the assets disproportionate to his income, and whether the discrepancy was significant or not, are all facts to be appreciated by the trial Court when it hears the trial. Prosecution can not be short-circuited in this manner at the stage of framing of charges in such circumstances.

11. It may also be noted that no useful purpose would be served in calling for a counter-affidavit in this case, as this Court has no power of staying trial in a case, under the Prevention of Corruption Act in view of the interdict contained in Section 19(3)(c), which reads as follows:-

" 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."

12. This was the precise reason why the stay granted in the earlier 482 Cr. P. C. application preferred by the applicants for quashing the charge sheet by this Court was vacated by the Hon"ble Supreme Court, vide its order dated 24.9.2003. This question has also been considered at length in the case of Satya Narayan Sharma Vs. State of Rajasthan, , wherein it has been clearly mentioned in paragraph 14 that "the legislature has, therefore, by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a court is exercising inherent jurisdiction u/s 482 of the Criminal Procedure Code."

13. In this view of the matter, there is no force in this application and it is dismissed.

14. Finally, the learned counsel for the applicants contended that a direction may be issued requiring the trial court to dispose of the bail application of the applicants on their surrender before the court expeditiously in accordance with the decision of the Full Bench in the case of Smt. Amarawati and Anr. v. State of U.P. (Criminal Misc. Application No. 2154 of 1995) decided on 15.10.2004. No such direction is needed, as this Court when it disposed of the earlier application u/s 482 Cr. P.C. on 5.2.2004 has already passed an order stating that if the applicants moved an application for bail before the Special Judge, the same shall be considered/decided expeditiously. So far as the Full Bench decision in the case of Smt. Amarawati and another is concerned, it is always expected that the court concerned will follow the directions given in the Full Bench decision of this Court and no specific directions in that regard are needed. The application is dismissed.