
(1990) 03 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 68-M of 1989

K.N. Seth and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-03-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, 482

Citation : (1990) 97 PLR 642 : (1990) 1 RCR(Criminal) 700

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : J.N. Kaushal and O.P. Hoshiarpuri, for the Appellant; H.S. Brar and P.S. Teji, for the Respondent

Judgement

S.S. Grewal, J.—This petition u/s 482 of the Code of Criminal Procedure. 1973, relates to quashment of impugned order dated 27.8.1988 passed by Special Judge, Patiala charge sheet framed by the said Court on 7.9 1987 and other consequent proceedings taken thereunder.

2. In brief, the facts relevant for the disposal of this petition are that the accused petitioners while working with Panipat Woollen Mills, Kharar, during the year 1983-84 entered into criminal conspiracy and misappropriated stocks of woollen rags coating raw material of 53162 Kgs. valued at Rs. 2,74,847.50 by misuse of their official position. During physical verification of the stocks of woollen rags coating raw material as on 31.3.1984, the accused petitioners in conspiracy with each other gave false remarks on the physical verification report that the raw material of woollen rags coating was found short by 53162 Kgs. namely it was lying in the old godown. Besides shortage to the tune of these stocks of woollen rags coating raw material was misappropriated by the accused petitioners by abusing their official positions as public servants. As such they were prosecuted and challaned u/s 120B read with Sections 409 I.P C. and 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947, Section 409 I. P. C. and 5 (2) read with Section 5 (1) (C) of the Prevention of Corruption Act, 1947.

3. According to the defence, the Board of Directors in its meeting held on 27.12.1985 came to the conclusion that there had been no misappropriation and the woollen waste had in fact been used by the Mills during the erection as the woollen mills had not purchased any Dhories for cleaning the machines. On behalf of the petitioners, an application was moved u/s 294 of the Code of Criminal Procedure with a view to summon certain documents as detailed on page 5 of the impugned order of the Special Judge, Patiala, dated 27.8.1988 and to call upon the defence to admit or deny those documents. According to the prosecution, it was Astir etc separated from the woollen part weighing 53162 Kgs. which was misappropriated. According to the defence, "Astir" etc. was used in cleaning the mills because due to the modernisation programme, the machines were cleaned. Aggrieved against the said order, the accused petitioners have filed this petition.

4. Learned counsel for the parties were heard at length and record of the case was carefully perused.

5. The learned counsel for the accused petitioners submitted that even before the consideration of the question of framing of charge, the accused could be permitted to summon or produce the documents and ask the prosecution to admit or deny the genuineness thereof, and, those documents could also be considered at the time of consideration of the charge. Reliance in this respect has been placed on the Single Bench authority of this Court in Vinod Kumar v. State of Haryana (1986) 13 Cri. L.T. 254, wherein it was held that undeniably the trial of a warrant case on a police report commences when the accused appears or is brought before a Magistrate. The first step to be taken by the Magistrate in this regard is to satisfy himself that the provisions of Section 107 i.e. with regard to the supply of the documents mentioned therein, have been complied with. The next step is to apply mind on the police report and the documents sent along therewith. Simultaneously, he has been given the power to examine the accused at that stage as thought necessary and then the prosecution and the accused have also the right to an opportunity of being heard. Now when an opportunity of being heard is conferred as of right on the accused, it has to be seen whether there are any regulating factors in the Code by which such opportunity is to be availed of. One such pointer is Section 294 of the Code, which is applicable to all trials inclusive of warrant case trials. It is ex-facie patent that the prosecution while presenting the police report can support, the same with documents and they are required to be considered at the time of the framing of charge. It does not hold any reason that the accused cannot at that stage produce his documents. This seems to be a reason for such a provision u/s 294 of the Code subject of course to the accused' documents being genuine. And at that stage the documents sought to be introduced by the accused are required to be included in a list and the prosecutor can be called upon to admit or deny the genuineness of each such document. This right is not merely conferred on the accused, but a corresponding right is also vested in the prosecution. Even the documents submitted along with the report u/s 173 of the Code relied upon by

the prosecution can be put to the accused and he can be asked to admit ordinary the genuineness of each such document. This does away with the formal necessity of providing the genuineness of the document and such document can thereafter be real in evidence without proving of the signature of the person to whom it purports to be signed. The joint effect of the aforesaid two provisions is to put at par the prosecution and the accused so far as the documentary evidence is concerned. One cannot be allowed to score over another by taking shelter in procedural wrangles and tactical gimmicks.

6. Assuming that the learned lower Court had erred in not summoning the relevant record referred to above at pre charge stage, the fact remains that at that stage, the trial Court was merely to see whether a prima facie case was made out against the accused. At that stage, the trial Court could not weigh the evidence on the file, so as to hold that the prosecution case was entirely falsified by the documentary evidence referred to above to decide the case set up by the parties on merits. The defence plea set up by the accused is still to be | considered by the trial Court and as such it would not be appropriate to refer to the documentary evidence which the accused petitioners want to produce at pre-charge stage. Suffice to say that even at this stage the trial Court would give ample opportunity to the defence to summon the relevant record both for the purpose of cross-examination of the prosecution witnesses as well as to establish their defence without further going into the technicalities. After summoning the relevant record, the prosecution can also be called upon to admit, or deny the genuineness of the documents so produced in the trial Court.

7. With these observations, this petition stands disposed of copy of this order be sent to the Special Judge, Patiala, for strict compliance. The accused petitioners are directed to appear in the trial Court on April 4, 1990 and the trial Court would proceed and dispose of this case expeditiously according to law.