(2021) 01 KL CK 0578

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 742 Of 2017

Krishnakumari C.R — APPELLANT

Vs

Central Bureau Of Investigation Cochin Unit — RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 12, 13(1)(d), 13(2)
Indian Penal Code, 1860 — Section 120(B), 167, 201, 204, 420, 468, 471, 511
Code Of Criminal Procedure, 1973 — Section 164, 239

Citation : (2021) 01 KL CK 0578

Hon'ble Judges : R. Narayana Pisharadi, J

Bench : Single Bench

Advocate : Babu S. Nair, P.A. Rajesh, Sasthamangalam S. Ajithkumar

Final Decision : Disposed Of

Judgement

1. The revision petitioner is the sixth accused in the case C.C.No.1/2015 pending in the Court of the Special Judge, (SPE/CBI) -III, Ernakulam.

2. There are altogether six accused in the case. The offences alleged against the accused in the case are punishable under Sections 7, 12 and 13(1)(d)

read with 13(2) of the Prevention of Corruption Act, 1988 and under Sections 167, 201, 204 and 420 and 120B of the Indian Penal Code.

3. The final report against the accused in the case was filed in the Special Court by the Deputy Superintendent of Police, CBI/SCB/Cochin Unit. In

the final report, brief facts of the case are stated. A summary of those facts are stated below.

4. Accused 1 and 2 are brothers. A.K.Nazar, the defacto complainant, was their neighbour. The furniture factory and workshop conducted by the first

accused had to be closed on account of complaint of pollution made by A.K.Nazar. The construction of a godown and office in the property of the first accused was also prevented by the defacto complainant by making complaint to the local authority. In order to wreck vengeance against

A.K.Nazar, the first and the second accused filed a number of complaints before various authorities alleging that the land owned by him and his family

had been obtained as lease from Elangalloor Swaroopam and that no purchase certificate had been obtained for that land and that the land tax

remitted by him was in a forged thandaper number. This resulted in cancellation of the thandaper numbers of the land held by A.K.Nazar and the

members of this family. Aggrieved by the cancellation of the thandaper numbers of the land, Smt. Shareefa, the mother of A.K.Nazar, filed a

complaint before the Inspector General of Police, Kochi Range alleging conspiracy among the first and the second accused and certain government

officials. On the basis of that complaint, an enquiry was conducted by the Deputy Commissioner of Police, Kochi and

a case was registered by the S.H.O, Kalamassery police station as Crime No.1646/2013 of that police station under Sections 468, 471, 511 and 420

IPC. The case was thereafter transferred to the Crime Branch and renumbered as Crime No. 349/CR/EOW-II/KTM/2013. Dissatisfied with the

investigation conducted by the local police and the Crime Branch, A.K.Nazar filed a writ petition before this Court. As per the judgment rendered by

this Court in that writ petition, a direction was issued to the State Government to entrust the investigation of the case to the Central Bureau of

Investigation (CBI). The investigation of the case was taken over by the CBI and the case was re-registered as Crime

No.RC3/E/2014/CBI/SCB/TVPM. After completing the investigation of the case, the CBI has filed final report against six persons.

5. In the final report filed by the CBI, the charges against the accused are narrated under 14 heads. Under the head 'Charge-I', the details of the

conspiracy hatched by the accused to cancel the thandaper numbers of the land held by A.K.Nazar and the members of his family and to deprive

them of the possession of land and also the various acts committed by those accused pursuant to such conspiracy are mentioned. Under Charge-I, it is

alleged that the first and the second accused made false complaints to the Land Revenue Commissioner regarding the remitting of tax in respect of

the lands held by A.K.Nazar and the members of his family and that the first and the second accused prevailed upon the officials in the Village Office and the Taluk Office to send favourable reports. It is stated that the Assistant Commissioner, Land Revenue directed the proceedings to be kept in

abeyance because suits were pending in the civil courts in relation to the matter. However, the first and the second accused made a review petition to

the Government and it was forwarded to the Land Revenue Commissioner to submit a report. On receipt of the direction from the Government, the

Land Revenue Commissioner directed the District Collector to submit a report, after verifying the records. The District Collector was also directed to

furnish information with respect to six questions. The District Collector directed the Additional Tahsildar to submit a report. The Additional Tahsildar

sent a report dated 11.07.2012 which contained the same details which were furnished by her predecessor-in-office. The District Collector sent the

report to the Land Revenue Commissioner. On receipt of the report, the Land Revenue Commissioner issued letter to the District Collector to cancel

the thandaper numbers of the lands held by A.K.Nazar and the members of his family and to report compliance of the same. The District Collector

forwarded the same to the Additional Tahsildar and the Additional Tahsildar directed the Village Officer to comply with the order and the thandapers

were cancelled by the Village Officer.

6. The petitioner herein, who is the sixth accused, was the Additional Tahsildar of Kanayannur Taluk Office. She was the person who sent the report

dated 11.07.2012 to the District Collector and also issued direction to the Village Officer to cancel the thandaper numbers in compliance with the

order of the Land Revenue Commissioner.

7. The role of the petitioner in the conspiracy to cancel the thandaper numbers of the lands is stated in the final report under the head 'Charge-I' as

follows:

â??That meanwhile, in furtherance of the criminal conspiracy in the second week of July-2012, Shri K.H.Abdul Majeed (A-1) accompanied by Shri

Dileep, went to the Taluk Office and met Shri. Kamalesh clerk and enquired about the letter received from Dist.Collector. Shri Kamalesh told him

that, the same was received and Shri K.H.Abdul Majeed (A-1) offered him Rs.500/- and requested to put up the file to Smt. Krishnakumari. C.R.(A-

6) without delay. However, Shri Kamalesh did not accept the money and told him that, he had to attend to some other urgent work and he will put up

the file as soon as the urgent work is over. Then, Shri Abdul Majeed (A-1) met Smt. Krishnakumari (A-6) and informed her about the review petition

filed by him before the Revenue Minister. He also informed her that, a report was called from Dist.Collector seeking clarifications in the matter and

the same is received by Taluk Office. He requested Smt. Krishnakumari (A-6) to give a favourable reply and Smt. Krishnakumari (A-6) immediately

directed Shri. Kamalesh to put up the file. Accordingly, Shri Kamalesh put up the file and thereby she joined the criminal conspiracy. In pursuance of

the criminal conspiracy Smt. Krishnakumari (A-6) kept the file with her.

Meanwhile, Smt. Krishnakumari (A-6) had conducted a hearing on 2.6.2012 on the complaint lodged by Smt. Sujatha. During the hearing, Shri Nazar

had opposed the complaint and had filed copies of documents to show that the land was in absolute ownership of their late father Khader Pillai. On

10/7/2012 Smt. Krishnakumari dictated the answers to the above six questions referring to the earlier false reports of Shri Murad. E (A-3) and Shri

Sabu K.S.(A-4) knowing that, the reports were false and was favouring Shri Abdul Majeed (A-2). Smt. Krishnakumari (A-6) at the time of preparing

the answers to the 6 questions was fully aware that, the land belonged to Late Khader Pillai, father of Shri Nazar. A letter dtd.11/7/2012 was

forwarded to the Dist.Collector, Ernakulam by Smt. Krishnakumari (A-6) wherein she gave reply to the 6 questions.â??

8. Further, under the head 'Charge-I' in the final report, it is stated as follows:

â??Accordingly letter dated 24/9/2012 was sent to the Adl.Tahsildar, Kanayannoor directing to cancel the TP Numbers 2127 and subsequent TP

Numbers 9365, 9366, 9367 and 21007 derived from it as per Rules. That on receipt of the Order of Taluk Office on 28.09.2012, Smt.Krishnakumari

(A-6), Addl.Tahsildar, Kanayannoor in furtherance of the criminal conspiracy, and without following the rule,

on 1/10/2012 directed the Village Officer, Thrikkakara North Village to cancel the TP Number 2127 and subsequent TP Numbers 9365, 9366, 9367

and 21007 derived from it as per rule. In furtherance of the criminal conspiracy in the direction given to the Village Officer she falsely mentioned that,

a report has been sent to Dist.Collector after conducting hearing of the connected parties.â??

9. Under the head 'Charge-V' in the final report, it is stated as follows:-

â??That A-6 Smt.Krishnakumari (A-6), during the year 2011-2012, while working as Adl.Tahasildar, Kanyanoor Taluk, charged with conducting

enquiry and preparation of reports on complaints received at Kanyannoor Taluk Office, in pursuance of the criminal conspiracy as narrated in Charge-

1, sent a false report dtd.11.7.12 addressed to District Collector, Ernakulam, in a manner which she knows to be incorrect, intending thereby to cause

injury to Shri. A.K.Nazar and others by cancellation of their TP Numbers on the strength of the false reports and thereby she committed offence

U/s.167 IPCâ??.

10. Under the head 'Charge-XIV' in the final report, it is stated as follows:-

â??That Smt. Krishnakumari C.R. (A-6), during 2012 while working as Public servant in the capacity of Addl.Tahsildar, Kanyannoor Taluk,

Ernakulam District, in furtherance of the criminal conspiracy as narrated in Charge-1, by corrupt or illegal means sent a false report addressed to

District Collector, Ernakulam stating that, the disputed land belonged to Elangalloor Swaroopam and the tax had been paid in the wrong Thandaper

Number 8826 in the name of late Khader Pillai to get a favourable order to A-1 & A-2 in the complaint filed by them about the land of the

complainant and others and she also gave direction to the Village Officer, Thrikkakara North Village to cancel the Thandaper Number of the disputed

land without following the rules and the proper procedure mentioned in the Land Revenue Manuel without public interest and thereby she committed

an offence punishable U/s 13(2) R/w 13(1)(d) of Prevention of Corruption Act, 1988.â??

11. The petitioner filed an application in the trial court for discharge under Section 239 of the Code of Criminal Procedure (for short 'the Code').

Learned Special Judge dismissed the aforesaid application. Aggrieved by that order, the petitioner has filed this revision petition.

12. Heard the learned counsel for the petitioner and also the learned Standing Counsel for the CBI.

13. Learned counsel for the petitioner contended that the only allegation against the petitioner is that she forwarded the report dated 11.07.2012 to the

District Collector and that subsequently she directed the Village Officer to comply with the order of the Land Revenue Commissioner to cancel the

thandaper number of the lands. Learned counsel would contend that the report dated 11.07.2012 sent by the petitioner to the District Collector

contained the same facts as contained in the earlier reports forwarded by her predecessors-in-office and that there is no material to show that she had

forwarded any false report. Regarding the cancellation of the thandaper numbers of the lands, learned counsel for the petitioner would submit that the

petitioner had only directed the Village Officer to comply with the order of her superior officer.

14. Learned Standing Counsel for the CBI submitted that the statement of the witness Kamalesh under Section 164 of the Code contains the details of

the acts committed by the petitioner in dealing with the file relating to the cancellation of the thandaper.

15. Learned Special Judge, after narrating the facts of the case and the rival contentions, referred to two decisions of the Apex Court with regard to

the power of the trial court at the time of framing of charges against the accused. Thereafter, the learned Special Judge has stated in the impugned

order as follows:

â??8. In the present case, the specific allegation is that the petitioner herein conspired with accused Nos.1 and 2 and other accused and filed false

reports to the Superiors and that lead to the cancellation of TP Nos, of the property belongs to the de facto complainant and his family. It is submitted

that she had knowledge regarding the ownership of the de facto complainant and his family over the disputed property and still discarding it she had

given false reports on the basis of the reports fabricated by A3 and A4.

9. Now, it is contended by the accused that she has no connection with the cancellation of thandaper numbers in the name of the de facto

complainant. She had executed the orders of her superiors. This is not a stage to assess the quality of the evidence or its probative value. The clerk

concerned who dealt with the relevant file had given statement under Section 164 of Cr.P.C claiming the involvement of petitioner herein. The

contention of the petitioner that the prosecution failed connect her with the offence cannot be admitted at this stage. The merit of the contentions

raised by the accused can be ascertained only at the time of the trial. As matters stand now, on perusal of the entire materials produced by the

prosecution, there is ground for presuming that the accused committed the offences under Sections 7,12,13(2) r/w 13(1) (d) of P.C Act, 1988 and under Section 120B r/w Section 167,201,204 and 420 of IPCâ??.

16. True, it is not the stage to assess the quality or the probative value of the materials produced by the prosecution. But, as held by the Apex Court in

the decision in Onkar Nath Misra v. State (2008) 2 SCC 561, which is referred to by the learned Special Judge in the impugned order, 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 if the facts emerging therefrom,

taken at their face value, disclose the existence of all the ingredients constituting the offences alleged against the accused. On such evaluation, at

least, a strong suspicion founded on material should arise which may lead the Court to form a presumptive opinion as to the existence of the factual

ingredients constituting the offences alleged against the accused. In State of Maharashtra v. Som Nath Thapa : AIR

1996 SC 1744, which is also referred to by the learned Special Judge in the impugned order, it has been held that, if on the basis of materials on

record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists.

17. In State v. Hiremath : AIR 2019 SC 2377, the Supreme Court has held as follows:

â??The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of

law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on

the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face

value, disclose the existence of the ingredients necessary to constitute the offenceâ??. (emphasis supplied).

18. No such evaluation of materials, as mandated above, has been made by the trial court. The trial court has only stated that the clerk concerned who

dealt with the relevant file has given statement under Section 164 of the Code claiming the involvement of the petitioner. The trial court has not

evaluated the aforesaid statement to find out, if it is accepted as true, it would disclose the ingredients of the specific offences alleged against the

petitioner. The trial court has not even stated that the aforesaid statement contains something which would connect the petitioner with the commission of the offences alleged against her. The trial court has proceeded to state, in the impugned order, that on perusing the entire materials produced by the prosecution there is ground for presuming that the accused has committed the offences alleged. The trial court has not pointed out what are those materials, other than the statement under Section 164 of the Code mentioned earlier, which would prima facie disclose the ingredients of the offences alleged against the petitioner. While dismissing an application for discharge filed under Section 239 of the Code, it is not sufficient for the trial court to make a general statement that the materials produced by the prosecution would prima facie disclose the offences alleged against the accused, without pointing out what are those materials.

19. True, at the time of framing charges, the probative value of the materials on record cannot be gone into. But, the Judge while considering the question of framing charges has the undoubted power to sift and weigh the materials produced by the prosecution for the limited purpose of finding out whether or not a prima facie case has been made out against the accused (See Union of India v.Prafulla Kumar Samal: AIR 1979 SC 366). In the instant case, before dismissing the application for discharge filed by the petitioner, the trial court has not undertaken such an exercise. The trial court has not, as mandated in the various decisions of the Apex Court referred to earlier, evaluated the materials produced by the prosecution in order to determine whether the facts emerging from the materials, taken on their face value, disclose the existence of the ingredients necessary to constitute the offences alleged against the petitioner.

20. In the aforesaid circumstances, it has become necessary to remand the matter to the trial court to reconsider the discharge application filed by the petitioner and to dispose of it afresh.

21. Consequently, the revision petition is allowed as follows: The impugned order passed by the trial court is set aside. The trial court shall reconsider the application for discharge filed by the petitioner and dispose of it afresh in accordance with law.

