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(1985) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2758-M of 1981

Lakhi Prashad Shah and Another — APPELLANT

Vs

The State of Punjab — RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:
Criminal Law (Amendment) Act, 1952 — Section 6, 7, 8
Criminal Procedure Code, 1973 (CrPC) — Section 173, 204, 204(1), 238, 239
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 165A
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1985) 2 ILR (P&H) 233 : (1985) 87 PLR 669

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : J.N. Kaushal and P.K. Palli, for the Appellant; D.S. Brar, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

J.M. Tandon, J.—This order will dispose of Criminal Misc. Nos. 2758-M of 1981 (Lakhi Prashad Shah and Anr. v. State of Punjab. 1598-M of 1981 (M.L. Nopani and Ors. v. The State of Punjab) 1731-M of 1981 (A.V. Birla v. State of Punjab) and 2211-M of 1981 (Bhagwati Prasad Khaitan v. State of Punjab) which are directed against the same order of the Special Judge, Patiala, dated February 10, 1981.

2. The police at the instance of Joginder Singh Inspector Vigilance registered F.I.R. No. 262, dated August 10, 1973, P.S. Kotwali, Patiala, u/s 5(1)(d) and 5(2) of Prevention of Corruption Act, 1947, (hereafter the Act) in relation to the supply of electric meters by the Andhra Pradesh Electrical Equipment Corporation (hereafter the Corporation) to the Punjab State Electricity Board (hereafter the Board). On May 11, 1971, it was reported to the police that the Board placed an order with the Corporation for the supply of 53000 Single Phase Meters at the rate of Rs. 52/- each. The Corporation supplied 30450 meters to the Board till April 16, 1971, when the further compliance of the order was suspended. In

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April, 1972, the Inspecting Officer of the Board reported to the higher authorities that 22550 meters still remain to be supplied by the Corporation which may either be taken from them or 25000 meters may be purchased at the prevailing rates. The Corporation and Messrs Universal Electronics Limited, Joka (Bengal) expressed their willingness to supply meters at Rs. 38/-per meter. Shri Harbans Singh, the then Technical Member of the Board suggested that half the quantity may be purchased at this rate. The Finance Member desired that fresh quotations should be invited as the price of the meter was crashing. The suggestion of the Finance Member was accepted and fresh quotations were invited. The Corporation quoted Rs. 31/- per meter. The Board purchased 25000 meters from the Corporation. The Board thereafter invited fresh quotations for the supply of 72000 meters. The quotations were opened on December 10, 1972, M/s. Universal Electronics quoted Rs. 27.75 per meter. The Board accepted the quotation of Universal Electronics and sanctioned the purchase of 72000 meters at this rate from them. Shri Harbans Singh who had in the meantime been appointed Chairman of the Board ordered that the balance 22550 meters be purchased from the Corporation at Rs. 52/- per meter against the order dated May 11, 1970, which had in fact been suspended on September 16, 1971. The meters supplied by the Corporation were defective and sub standard. Shri Harbans Singh caused a loss of about Rs. 5,50,000/- to the Board and undue profit to the same extent to the Corporation by ordering the purchase of 22550 meters at Rs. 52/-per meter in spite of the offer of M/s. Universal Electronics to supply the same at Rs. 27.75 per meter. Shri Harbans Singh Chairman of the Board abused his position by acting in a mala fids manner.

3. The Police investigated the complaint and having found substance therein submitted a challan to the Court. The last paragraph of the police report reads:

The investigation further revealed that the Management of M/s. Andhra Pradesh Electric Corporation Hyderabad tried to win over the concerned officers of the PSEB by all means through their Resident Executive Shri Rajpal Sharma stationed at Patiala to get a release regarding suspended supplies of remaining 22550 meters and consequently in pursuance of the conspiracy with the representatives of the firm and others shown in column 4 of the report. Shri Harbans Singh gave wrongful gain to the firm to the tune of Rs. 4,98,806/- by misusing his official position and thus from the statement of the witnesses, documentary evidence and investigation it is concluded that accused in column 4 committed offence u/s 5(2) read with Section 5(1)(d) of Prevention of Corruption Act and Section 120-B, I.P.C. The accused were not arrested. They should be summoned and tried.

4. On February 10, 1981, the Additional Sessions Judge, Patiala, who had been designated Special Judge u/s 6 of the Criminal Law Amendment Act, 1952, passed the following order on the police report:

Presented today. It be registered. Now the accused be summoned for February 27, 1981.

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The Petitioners in all the four petitions detailed above are the Directors of the Corporation. They have assailed the order of the Special Judge dated February 10, 1981.

5. The learned Counsel for the Petitioners has argued that the Special Judge has passed the order dated February 10, 1981 without application of mind. The Special Judge summoned the Petitioners u/s 204, Code of Criminal Procedure and before passing this order it was necessary for him to form an opinion that there was sufficient ground for proceeding against the Petitioners. The opinion on these lines could be formed after application of mind. The text and tenor of the impugned order of the Special Judge reflects that he passed the same mechanically and in routine. It is, therefore, liable to be quashed.

6. The learned Assistance Advocate General has contended that it was not obligatory for the Special Judge to apply his mind and formulate an opinion that there was sufficient ground for proceeding against the Petitioners in terms of Section 204, Code of Criminal Procedure before summoning the Petitioners. In the instant case, the Special Judge is bound to follow the procedure precribed by the Code of Criminal Procedure for the trial of warrant cases by Magistrates as provided u/s 8 of the Criminal Law Amendment Act, 1952. The procedure for trial of warrant cases by Magistrates is detailed in Chapter XIX of the Code of Criminal Procedure. The Special Judge summoned the Petitioners u/s 238, Code of Criminal Procedure and not u/s 204, Code of Criminal Procedure The Special Judge would apply his mind after the Petitioners have appeared before him and the provision contained in Section 238 has been complied with. The Special Judge shall then either discharge the Petitioners u/s 239 or frame a charge against them u/s 240. The Petitioners cannot justifiably assail the impugned order of the Special Judge dated February 10, 1981, summoning them on the ground that it was passed without application of mind.

7. The relevant parts of Sections 6 to 8 of the Criminal Law Amendment Act, 1952, read:

6. Power to appoint special Judge:

(1) The State Government may, by notification in the Official Gazette, appoint as many special judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely:

(a) an offence punishable u/s 161, Section 165 or Section 165-A of the Indian Penal Code (Act XLV of 1860) or Sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947, (11 or 1947);

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a).

(2) A person shall not be qualified for appointment as a special judge under this Act unless he is, or has been a Sessions Judge or an Additional Sessions Judge or an Assistance Sessions Judge under the Code of Criminal Procedure 1898 (Act V

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of 1898).

7. Cases triable by special Judges:

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1898, (Act V of 1898) or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by special judges only.

(2) * * * *

(3) * * * *

8. Procedure and powers of special judges:

(1) A special judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of warrant cases by magistrates.

(2) * * * *

(3) * * * *

8. The Additional Sessions Judge, Patiala had been appointed Special Judge u/s 6 of the Criminal Law Amendment Act, 1952, ad and was, therefore, competent to entertain the police report submitted u/s 173, Code of Criminal Procedure against the Petitioners and to take cognizance of the offence. It is incumbent for the Special Judge to follow the procedure prescribed for the trial of warrant cases by the Magistrates under the Code of Criminal Procedure.

9. The procedure for the trial of warrant cases is detailed in Chapter XIX of the Code which starts with Section 238. This section reads:

When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207.

The compliance of Section 238 can be made when the accused appears or is brought before the Magistrate. In other words, the provision contained therein cannot be complied within the absence of the accused, An accused shall be in police custody on arrest and even after release on bail by the police or Court. An accused arrested by the police and allowed bail is bound to appear before the Court when so directed. The police is, therefore, competent to bring, the accused before the Court irrespective of that he has been declined or allowed bail. An accused who has not been arrested by the Police during investigation may himself appear before the Court. There may still be a case where an accused has neither been arrested by the police during investigation nor does he appear before the Court voluntarily after the police presents a challan against him. In such a case the presence of the accused can be secured by issuing summons or warrant against him. The process against the accused can be issued by the Court u/s 204, Code of Criminal Procedure The relevant part of this section reads:

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204. (1) If in the opinion of a Magistrate taking cognizance of can offence there is sufficient ground for proceeding, and the case appears to be:

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. * * *

10. There is nothing in Section 238 to infer that an accused not arrested by the police during investigation nor appearing voluntarily before the Court after the presentation of the challan can be summoned thereunder and not u/s 204 Code of Criminal Procedure It is obvious that the Court would exercise the power conferred u/s 204 for issuing process against such an accused even for the purpose of Section 238.

11. Section 204 envisages that the Magistrate (or special Judge) taking cognizance of the offence shall issue process only after opining that there is sufficient ground for proceeding against him. The application of mind on the part of Magistrate in the context of forming opinion in terms of Section 204(1) is not necessarily limited to private complaints. The necessity of forming such opinion would arise in every case where the process u/s 204 Code of Criminal Procedure is proposed to be issued against the accused. It is hardly material that the process under this section is issued against the accused in a case initiated on a private complaint to the Court or in pursuance of a police challan. It is significant that Section 204 is included in Chapter XVI of the Code relating to commencement of proceedings before Magistrates and not in Chapter XV which deals with private complaints to Magistrates. It is thus clear that it is necessary for the Magistrate (Special Judge) to form an opinion in terms of Section 204(1) that there is sufficient ground for proceeding against the accused even in a warrant case where a summon or warrant is proposed to be issued against him thereunder.

12. The Special Judge ordered on February 10, 1981, that the Petitioners in all the petitions be summoned for February 27, 1981. This abrupt order was passed by the Special Judge without application of mind and without forming an opinion that there was sufficient ground for proceeding against the Petitioners in terms of Section 204(1) Code of Criminal Procedure The impugned order relating to the summoning of the Petitioners being violative of Section 204(1) Code of Criminal Procedure cannot be sustained.

13. In the result, all the four petitions are allowed and the impugned order or the Special Judge dated February 10, 1981, summoning the Petitioners for February 27, 1981, quashed. It will be open for the Special Judge to proceed in the matter afresh according to law.

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