
(2008) 12 RAJ CK 0029
In the Rajasthan High Court

Madan Lal Vijayvergiya

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 468
Prevention of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2009) 2 RLW 1334

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Petitioner Madan Lal Vijayvergia filed S.B. Cr. Revision Petition No. 56 of 2004 and Prabhudayal Kumawat filed S.B. Criminal Revision Petition No. 1287 of 2003 against the order dated August 23, 2003 of Special Judge Sessions Court (Anti Corruption Cases), Jaipur in Cr. Case No. 24 of 1997 for framing charge under Sections 420, 468, 471/120-B and Section 13(1)(d) (2) of the Prevention of Corruption Act read with Section 109 IPC against them and the State of Rajasthan filed S.B. Criminal Revision Petition No. 0963 of 2003 for framing charge for Sections 420,468, 471/120-B and Section 13(1)(d)(2) of the Prevention of Corruption Act, against the accused non-petitioners. Since in all these revision petitions common order dated August 23, 2003 of the trial court court has been challenged, all these revision petitions are disposed by this common order.

2. Brief facts of the case are that an FIR was lodged by Addl. S.P. (Anti-corruption Bureau), Jaipur, that Govt. Sr. Hr. Secondary School, Hasteda Jaipur is a Project Organiser of "Sikho Kamao Yojna" and registered as an "industry" for manufacturing of furniture and chalk. On January 23, 1989 Head Master of the School wrote a letter to the Chief Accounts Officer Primary and Secondary Education Bikaner that no tender is required for preparing furniture and they are in position to deliver furniture of Rs. 20-22 lacs so order be given. No details

were given that which type of furniture is ready for delivery. Babulal Modi, AAO of the Directorate on the basis of letter of Head Master Ganga Lahari submitted the proposal on Feb. 24, 1989 for purchasing furniture of Rs. 12,90,415/- before the Chief Accounts officer, V.S. Ranawat, who accepted this proposal and on Feb. 27, 1989 he submitted the file to the Director. Director sanctioned the proposal of the furniture on Feb. 27, 1989. AAO prepared the order for purchasing furniture of Rs. 12,90,415 on Feb. 24, 1989 and on that date issued sanction while the Director signed on the sanction on Feb. 27, 1989. On the basis of the letter dated Feb. 24, 1989, two orders were given on Feb. 28, 1989 for is. 17, 32,500 and 18,95,400. In the letter dated January 23, 1989 Head Master only mentioned that they are in position to supply the furniture of Rs. 20-22 lacs, while the Accounts officers of the directorate given the order for supply of furniture of Rs. 73,25,470/-. In the letter dated Feb. 28, 1989 condition was put that when the seller will submit the R.R. or transport receipt then 90% of the bill cost of the furniture will be paid. In the light of this condition Ganga Lahari prepared the bill of Transport Company on the printed school bill form and without verifying by any Transport Company submitted before the Directorate for payment. On the basis of this forged transport bill Accountant, Badri Das Kirad, passed the bill and Meghraj Acharya withdrawn this amount from the Bank. Mahesh Behari Lal and Indra Chand Mangal verified these forged bills and thus amount of Rs. 73,25,740 was paid to the Head Master Ganga Lahari and "financial loss was given to the Govt. After investigation the police filed challan against 8 accused persons. Accused Harinarain Gupta died. The trial court framed charge against the accused Gangalahari, Prabhudayal Kumawat, Mahesh Mathur and Madan Lal Vijayvergiya under Sections 420, 468, 471 read with Section 120-B and Section 13(1)(d)(2) Prevention of Corruption Act, 1988 read with Section 109 IPC. Charge was framed against accused persons Virendra Singh Ranawat and Meghraj Acharya under Sections 13(1) (d) (2) of Prevention of Corruption Act and they have been discharged for offences under Sections 420, 468, 471 read with Section 120-B IPC. No charge was framed against accused Kajod Mal Gurjar and Kailash Agarawal and they have been discharged for all offences. Against this order above three revision petitions have been preferred.

3. Learned Counsel for petitioner Madan Lal Vijayvergiya submitted that against him charge was framed with the aid of Section 120-B IPC. It seems that he trial court has not properly considered the ingredients of conspiracy. Counsel stated that whatever evidence has come on record, from those evidence it can not be said that there was any conspiracy on the part of the accused for committing any offence whatsoever. The trial court observed and mentioned about the statement of Pooran Singh. If statement of Pooran Singh be taken on its face value, even though no charge can be framed against the petitioner Madan Lal Vijayvergiya. He is not a witness in whose presence any amount was paid and he is not making any statement against the petitioner. If the accused petitioner was with the other persons, it cannot be said that there was a criminal conspiracy on the part of the accused petitioner for committing any offence whatsoever. The trial

court observed that the petitioner has committed offence u/s 109 IPC. i.e. abetment read with Section 13 (1)(d)(2) of Anti Corruption Act. The trial court has not properly considered that when abetment is committed prior to the offence and if the evidence has come on record that the petitioner was with any person afterwards, then only on the basis of this statement no charge can be framed against the petitioner.

4. The learned Counsel for the petitioner Prabhudayal Kumawat submitted that in the fir name of the petitioner Prabhudayal was not mentioned. He was working as Teacher in the School during the relevant time. He has now attained the age of superannuation and he is not in government service. There has been no finding against him in the detailed preliminary enquiry conducted by Shri Krishan Gopal Beejawat, Addl. Director, Primary and Secondary Education, Bikaner. The report was submitted on July 5, 1990 and those who were found guilty, report was lodged against them and the name of the petitioner was not included in the same. The learned Counsel submitted that the court below in mechanical manner has included the present petitioner. The entire conspiracy was brain child of the then Head Master Ganga Lahari Meena and he had constituted a committee of 5 persons to deal with the scheme. The petitioner was no where connected with the affairs of the committee and ye he has been made accused by framing charge against him.

5. The learned Counsel for the petitioners placed reliance on Madurai Coats Ltd. Vs. The Workmen of Madurai Coats Ltd. represented by the Secretary and Others, , AIR 1940 176 (Privy Council) State of Gujarat Vs. Mohammed Atik and others, , Nesar Ahmed and Another Vs. State of Bihar, Anjlus Dungdung v. State of Jharkhand AIR 2005 SC 1394 Sanjay v. State of Rajasthan 2006(2) RLW 1521) People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, , Cr. Appeal 68 of 20002 decided on December 12, 2003 Rakesh Kumar v. State (at Delhi High Court), Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, S. Gopal Reddy Vs. State of Andhra Pradesh, ; Alamgir Vs. State (NCT, Delhi), , Union of India (UOI) Vs. Prafulla Kumar Samal and Another, Dilawar Balu Kurane Vs. State of Maharashtra, , and Yogesh v. State of Maharashtra 2008 (2) Crimes 263 (SC).

6. On the other hand Mr. D.D. Sharma, Public Prosecutor contended that there is no doubt regarding evidence against the petitioners, which do not discharge the petitioners at the stage of charge. There is satisfactory evidence against the petitioners and the trial court after appreciating the evidence framed charge against the petitioners. The trial court after scrutiny of evidence formed the opinion. All these evidence can be considered in detail during trial and not at the stage of framing charge.

7. The State of Rajasthan filed S.B. Criminal Revision Petition No. 0963 of 2003 against all accused petitioners. It may be mentioned that the State has not seriously contested this petition. Even the defects pointed out by the Registry on

December 13, 2003 have not been removed. No notices were issued against the accused persons for appearance before this Court in the revision petition filed by the State. I have examined the grounds raised in the revision petition. I have also gone through the order of the trial court framing charge against the accused persons. The trial court framed charge against accused persons Gangalahari, Prabhudayal Kumawat, Mahesh Mathur and Madan Lal Vijayvergiya under Sections 420, 468, 471 read with Section 120-B IPC, Sections 13(1)(d)(2) Prevention of Corruption Act read with Section 109 IPC. Accused persons Virendra Singh Ranawat and Meghraj Acharaya were charged for offence u/s 13(1)(d)(2) of the Prevention of Corruption Act and they have been discharged for the offences Under Sections 420, 468, 471 read with Section 120-B IPC. Accused Kajod Mal Gurjar and Kailash Agrawal, who is transporter, the trial court discharged them for all offences and no charge has been framed against them. The trial court given reasonings in detail and the same do not call for any interference by this Court in revisional powers in the revision petition filed by the State particularly when it has not been seriously contested.

8. I have also gone through the cases relied upon by the learned Counsel and the arguments raised by the learned Counsel for the petitioners as well as learned Public Prosecutor. But the Apex Court in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, it was held as under:

...it would not be safe at this stage to deprive the prosecution in proving its case on the basis of direct evidence, the statement of the deceased claimed to be admissible u/s 32 of the Evidence Act and the other documents including the inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post more report for the cause of death of deceased being hepatic failure following viral hapatites cannot be accepted on its face value at this stage.

Therefore the order of the High Court would be illegal and liable to be set aside.

The Supreme Court reminded the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons. unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

9. For these reasons the revision petitions being devoid of merit stand dismissed. The trial court is directed to expedite the trial. Since main cases have been disposed, the stay applications also stand disposed of.