
(2005) 08 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : 561-A Cr.P.C. No. 52 of 2004

Mohd. Rashid-ud-Din

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Prevention of Corruption Act, 1988 — Section 5(1)(d)

Citation : (2010) 4 JKJ 259

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Judge

1. The petitioner has invoked the jurisdiction of this Court in terms of Section 561-A of Cr.P.C., for quashing of the, charge framed against the

petitioner by learned Anti-Corruption Judge vide order dated 03-08-2004 and, drawing cognizance in terms of Section 5(1)(d) of Prevention of

Corruption Act by the learned Anti-Corruption Judge.

Heard.

2. Mr. Haqani argued that petitioner is not involved in any way in the case. He is non-technical. He cannot issue a certificate to the effect that

whether the equipments i.e., Dweeding Dredger Beetle 100 were in order and whether they had the ability of the Harvesters to cut down the

various weed species at desired depths. He was ordered to witness its trial by higher-ups and accordingly, he visited Chennai and witnessed the

said test. The petitioner also addressed a letter to Vice Chairman J&K Lakes and Waterways Development Authority vide communication dated

22nd January, 2001. It is profitable to reproduce the said communication herein;-
As desired by your goodself the undersigned witnessed the testing of two newly manufactured Weed Harvesters by Tobma on 12.01.2001 at

Chennai. The various unit viz; engine, Armed grab, Propellers, Cutters, conveyers etc were tested by the two expert one from Shipping

Corporation of India and the other from Ocean Egg. Centre IIT Chennai. However, the actual performance and the ability of the harvesters to cut

down the various weed species at desired depths could only be adjudged when put for trial in Dal Lake. The two harvesters were ready for

dispatch to Srinagar.

3. Learned counsel for the petitioner further argued that 90% payment was already made. The petitioner is not directly or indirectly involved in the commission of offence.

4. Mr. Rathore, while rebutting the arguments argued that if the petitioner was non-technical then he should not have visited the Chennai in order to

witness the said test. The positive case of the prosecution is that conspiracy was hatched and in terms of that conspiracy the offence was

committed. The petitioner is also involved in the said conspiracy. He should not have gone to Chennai, and agreed for onward transportation of the

said equipment to Srinagar. The learned Anti-Corruption Judge has rightly framed the charge against the petitioner in terms of order dated

03.08.2004.

5. Considered.

It is profitable to reproduce Section 251 -A of Cr.P.c. herein; -

251 -A. Procedure to be adopted in cases instituted on police report.-(i) When, in any case instituted on a police report, the accused appears or is

brought before a Magistrate at the commencement of a trial, such Magistrate shall satisfy himself that the documents referred to in section 173 have

been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to

be so furnished.

(2) If, upon consideration of all the documents referred to in section 173 and making such examination, if any of the accused as the Magistrate

thinks necessary and after giving the prosecution and the accused an opportunity

of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused

6. While going through this provision of law, the court has not to record satisfaction while perusing the material that if the material available will remain unrebutted that would warrant conviction but what is required is that Magistrate has to frame opinion that there are ground for presuming that accused has committed offence.

7. The Apex Court in case M. Krishnan Vs. Vijay Singh and Another, has observed as under:-

9. Right from the case of R.P. Kapur Vs. The State of Punjab, , this Court has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. The positive case of the prosecution is that conspiracy has been hatched by the accused in order to defraud the Government Exchequer by mis-using the official position and in order to cause wrongful loss to the Government.

It is alleged that the authority has failed to observe the requisite tests and a non-technical person i.e. petitioner herein, who is a Botanist was sent to Chennai to witness the final test check of the machinery and the petitioner has also signed the final test certificate and thereby paved way and facilitated the commission of crime.

9. Thus the argument of Mr. Haqani that the petitioner is not involved in the commission of offence cannot be thrashed at this stage because the prosecution has alleged that accused has hatched a conspiracy.

The Apex Court in case State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, has observed as under: -

8. As noted above the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issue involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material, of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage....

10. In the given circumstances, it cannot be held that the presentation of challan and taking of cognizance and framing of charge sheet against the petitioner is abuse of the process of law and accordingly, the petition merits dismissed and is dismissed along with connected Cr.MP (s). Interim direction, if any, shall stand vacated.