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(2015) 10 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision Nos. 1524, 1513, 1965 and 1907 of 2010

Phool Kumar and Others — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:
Constitution of India, 1950 — Article 21, 317(1)
Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 240, 245(1)
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 10 P&H CK 0034

Hon'ble Judges : Anita Chaudhry, J

Bench : Single Bench

Advocate : A.P.S. Deol, Senior Advocate and Vishal Rattan Lamba, for the Appellant; Deepak Sabharwal, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anita Chaudhry, J—This order shall dispose of Crl. Revision Nos. 1524, 1513, 1965 and 1907 of 2010 titled Phool Kumar v. State of Haryana, Krishan Kumar v. State of Haryana, Shisya Pal Sethi v. State of Haryana and Avtar Singh Pawar v. State of Haryana.

2. Four separate revision petitions have been filed against the charge framed in FIR No. 12 dated 05.09.2007 registered by the Vigilance Bureau Panchkula under Sections 420, 467, 468, 471, 120-B and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act.

3. Since all the revision petitions are connected, therefore, they are being taken up together. Three petitions have been filed by the beneficiaries (candidates) who were selected by Haryana Public Service Commission (for short ''HPSC''). Petitioner Avtar Singh Pawar was the employee of the Commission.

4. It would be necessary to advert to the facts which are relevant.

5. The Haryana State Pollution Control Board (for short ''HSPCB'') sent a

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requisition to the Haryana Public Service Commission (for short ''HPSC'') for filling four posts of Environment Engineers and the age limit was stated to be 20-40 years. HSPCB wrote a letter to HPSC to send a requisition through Secretary Environment. On 14.09.2009, the Secretary of Department of Environment, Haryana Government sent a letter to HPSC and requested it to proceed with the process. On receipt of the requisition, Haryana Public Service Commission issued an advertisement on 16.09.2004. The last date for submission of applications was 16.10.2004. The Commission advertised the posts in various newspapers on 16.9.2004. The last date for submission of forms was 16.10.2004, the age limit was stated to be 20-40 years and five years relaxation was given to SC/ST candidates. The application of Phool Kumar was submitted on 29.10.2004. Shisya Pal Sethi had submitted his application on 29.09.2004. Krishan Kumar submitted his application on 29.09.2004. These persons were not eligible being overage. The allegations are that they still applied as there was some understanding between the said accused and accused Krishan Chander, Mahender Singh, Avtar Singh, Yudhbir Singh, Chhattar Singh and Krishan Kumar. Phool Kumar, Shisya Pal Sethi and Krishan Kumar were selected. There existed no instructions/rules where five years relaxation in the age was to be given to Government employees. The Ex. Chairman HPSC prepared a Corrigendum on 26.10.2004 which was published in the newspaper on 29.10.2004 and the last date for submission of application was stated to be 2.11.2004. Vide this corrigendum, opportunity was given to only those candidates who had already applied for these posts but not to other candidates. There were three gazetted holidays and only one day was left giving not enough time to the candidates to submit the applications through their department and forwarding it to the Commission on the same day. The allegations were that the corrigendum has been issued only to benefit some accused, who were later selected.

6. The police investigated the matter and challan was presented and charge has been framed. The petitioners have approached this Court assailing the charge primarily on the ground that petitioners Krishan Kumar, Shisya Pal Sethi and Phool Kumar were eligible and it is therefore that their applications had been forwarded by their parent department and the Corrigendum issued by the Commission giving relaxation in age to the employees of the Government/Board/ Corporation was in line with the instructions issued by the Government. It is also their plea that the sanction accorded by the Government was without application of mind and a simple draft was sent which was approved without their being any material and lastly that the Court had no territorial jurisdiction to take cognizance of an offence and the occurrence did not arise within the jurisdiction of Panchkula.

7. Petitioner - Avtar Singh was the dealing Assistant in the office of Haryana Public Service Commission. He had issued the Corrigendum. His plea is that he had merely signed the Corrigendum because the dealing assistant was not available and he was told by the higher authorities that the Corrigendum was to be issued immediately and the police had not challaned Chanderkanta Gupta or

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Lal Chand who were the officials who had put up the matter before the higher authorities. His plea is that he had acted in a bonafide manner and there was no material to frame charge against him.

8. I have heard the submission of both the sides at length.

9. The counsel representing the candidates who were selected have urged that there was no basis for framing the charge and there is no evidence of conspiracy or passing of any monetary consideration and their selection was not challenged and there is an imaginary complainant who is not traceable now and at the most it can be said to be an irregularity but all departments had been giving relaxation of 5 years to the employees already in service and that is why the Corrigendum was issued. It was urged that it was at the behest of the Haryana Pollution Control Board that the Haryana Public Service Commission had issued the Corrigendum and which is in line with the instructions issued by the Government of Haryana. The counsel had referred to Notification dated 24.10.1966, Punjab Services of Engineers Class-II, P.W.D.(Public Health Branch), Rules 1966 (Annexure P-13 in Criminal Revision No. 1524 of 2010). It was submitted that the Government had raised the upper age limit to 40 years and there was a further relaxation of 5 years to the Scheduled Caste, Scheduled Tribe as well as Gazetted and Non-gazetted candidates who were already in Government service. It was urged that vide judgment passed in Criminal Revision No. 1520 of 2010 decided on 24.08.2015 the order framing charge against the Members of the Public Service Commission had been set aside and the State of Haryana was given liberty to approach the Competent Authority i.e. President of India for sanction and there could be no splitting of trials. Support was sought from State of Karnataka Vs. Narsa Reddy, AIR 1987 SC 2104 : (1987) CriLJ 1929 : (1987) 3 Crimes 215 : (1987) 3 JT 382 : (1987) 2 SCALE 337 : (1987) 4 SCC 170 : (1987) 3 SCR 968 . It was urged that A.E. Pinto Vs. C.B.I., (2002) 98 DLT 438 : (2002) 63 DRJ 697 . It was contended that law in regard to joint trials is settled by several authoritative pronouncements right from 1960s and the trial against the petitioners could not go on even otherwise. It was also submitted that sanction was not proper as the sanction had been given by the Board whereas sanction should be accorded by the Governor. It was urged that if separate trials were held then the evidence will have to be recorded all over again and there would be conflict in judgments.

10. The submission also was that the application of Phool Kumar and Krishan Kumar had been forwarded before the Corrigendum while one application was forwarded after the issuance of the Corrigendum.

11. The submission on behalf of Avtar Singh was that he was the Superintendent and had retired in 2006 as Controller of Examination after putting 30 years of service and there was no complaint against him and he was not named in the FIR and his only fault was that he had signed the Corrigendum which was by way of partial modification. It was urged that the work had been done in the official capacity and the police had failed to challan Lal Cand and Chanderkanta Gupta.

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It was urged that was no malafide intention or mens rea on his part and he had signed the Corrigendum because Lal Chand had suddenly gone on leave.

12. The submission on behalf of respondent was that the sanction was not accorded by the Board but it was the Governor. The counsel had referred to copy of the sanction accorded by the Governor during the course of arguments. Copy of the same had also been placed on record. The counsel submitted that a reference was made and the Governor of Haryana had forwarded it to the President of India and the President after examining the record had referred the matters of the members of Public Service Commission to the Hon''ble Apex Court under Article 317(1) of the Constitution of India for enquiry. The counsel had referred to Reference No. 2 of 2008 reported in In Re: Mehar Singh Saini, Chairman, HPSC and Others, (2010) 12 JT 374 : (2010) 12 SCALE 5 : (2010) 13 SCC 586 : (2011) 1 SCC(L&S) 423 : (2010) 6 SLR 717 : (2010) 10 UJ 5000 and had urged that after an enquiry a finding was recorded against members of Public Service Commission. He referred to para 133 where there is a reference to the affidavit filed by P. Raghvendra Rao PW-6 and to Chanderkanta Gupta PW-29, the dealing assistant in the Commission. It was urged that the reference was allowed and charges were proved against members of the Public Service Commission and they were removed from their respective offices. It was urged that even if sanction is found to be wanting then the law is that trial can not be interdicted at the stage of framing of charge and if there is failure of justice it can only be determined after the trial has commenced and evidence is led. It was urged that irregularity in sanction is never considered fatal unless it results in failure of justice and in the present case the sanction was accorded by the competent authority that is the Governor. It was urged that charge was framed on the basis of material available and there is no provision which prevents the Court to split the case. It was urged that liberty was given to State Government to approach the President for grant of sanction against the members of Haryana Public Service Commission and there is no stay in the proceedings and charge can be altered and amended at any time and that prayer can only be made only before the trial Court. It was urged that the allegations are that persons who were over age had sent their applications as they knew that they would be selected and there was one person who had submitted the application after the Corrigendum was issued and the Corrigendum was published in the newspaper only on 29.10.2004 and the last date for submission of application was 02.11.2004 and practically there was only one working day for submission of application and the Corrigendum was issued only to benefit some of the accused. It was urged that 29th October 2004 was a Friday and the next two days were holidays being Saturday and Sunday and 02.11.2004 was the only date on which a person could submit his application. It was contended that the relaxation of 5 years was only to be given to the SC and ST category and not to the general category candidates. It was urged that no prejudice would be caused to the petitioner if the trial continues and when later the sanction is received the trial against the others would proceed. It was urged that there is no provision which

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prevents the Court to try the case against the present petitioners separately as the circumstances warrant it and the trial can not be stayed. Reliance was placed upon State of Bihar and Others Vs. Rajmangal Ram, AIR 2014 SC 1674 : (2014) AIRSCW 2101 : (2014) CriLJ 2300 : (2014) 4 SCALE 338 and Pandiyan and Others Vs. The Inspector of Police, (2005) 1 CTC 90 .

13. The point for consideration is whether there was a prima facie case made out against the petitioners from the material that was made available by the prosecution to frame the charge. The gist of allegations are contained above. The petitioners have approached the Court for quashing the charges and have also raised the issues that since the charge qua the members of Public Service Commission has been set aside the trial had been split and splitting of trial was not permissible, it would lead to overlapping of evidence and contradictory findings and the same set of witnesses will have to be called again.

14. In Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, (2008) 2 CLT 718 : (2008) CriLJ 1391 : (2008) 1 DMC 265 : (2008) 1 JT 20 : (2007) 14 SCALE 403 : (2008) 2 SCC 561 : (2008) 1 UJ 107 their Lordships have formulated guidelines in the matter of framing charge. The following are the principles laid down therein:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

12.....

13. Then again in State of Maharashtra v. Som Nath Thapa, a three-Judge Bench of this Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relatable to trial of warrant cases; and (iii) Sections 245(1) and (2) qua trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: 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. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the

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prosecution has to be accepted as true at that stage.

(emphasis in original)

14. In a later decision in State of Madhya Pradesh Vs. Mohanlal Soni, AIR 2000 SC 2583 : (2000) CriLJ 3504 : (2000) 8 JT 333 : (2000) 5 SCALE 197 : (2000) 6 SCC 338 : (2000) 2 UJ 1182 : (2000) AIRSCW 2674 : (2000) 5 Supreme 139 this Court, referring to several previous decisions held that: The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

15. The Hon''ble Supreme Court in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, (2009) ACJ 690 : AIR 2009 SC 1219 : (2009) CLT 554 : (2009) 1 JT 296 : (2009) 1 SCALE 222 : (2009) 2 SCC 225 : (2009) 2 SCR 14 : (2009) 1 UJ 275 : (2009) AIRSCW 3462 : (2009) AIRSCW 3525 : (2009) AIRSCW 493 : (2009) 3 Supreme 83 : (2009) 1 Supreme 266 has held that a strong suspicion about commission of offence and accused''s involvement was sufficient for framing of charges and at that stage there was no necessity of formulating opinion about prospects of conviction. The relevant passages in the decision are as follows:

"11. Shri Mukul Rohatgi, learned Senior Counsel for the appellant has submitted that in the impugned judgment the learned Single Judge of the High Court largely relied on the evidence proceedings in the civil suit (No. 97 of 2004, New No. 101 of 2004). The complainant was Plaintiff 1 in the said civil suit which has been decreed on 30-12-2006. Shri Rohatgi has submitted that the High Court should not have relied on the evidence in the aforesaid civil suit for the purpose of quashing the criminal case. On the other hand Shri U.U. Lalit, learned Senior Counsel for the respondent has submitted that the said evidence could have been relied upon on the facts of this case for quashing the criminal proceedings."

16. In a subsequent decision i.e. Union of India v. Prafulla Kumar Samal, the Apex Court after adverting to the conditions enumerated in Section 227 of the Code and other decisions of this Court, enunciated the following principles:

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied

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that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Supreme Court is of the firm view that a strong suspicion may not take place of the proof at the trial stage and yet it may be sufficient for the satisfaction of the trial judge in order to frame a charge against the accused."

17. In a recent decision of the Apex Court reported in Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another, AIR 2013 SC 52 : (2013) CriLJ 331 : (2013) 1 RCR(Criminal) 153 : (2012) 11 SCALE 107 Their Lordships have dealt with the import of Section 239 of the Code and reiterated the earlier views of the Supreme Court which are as follows:

"11..... This Court explained the legal position and the approach to be adopted by the Court at the stage of framing charges or directing discharge in the following words:

"11. It is trite that at the stage of framing the charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of a factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

(Emphasis supplied)"

18. The following guidelines emerge for a trial judge as per the ratio laid down by the Hon''ble Supreme Court:

"1. The Court would find prima facie case against the accused that there is sufficient ground for proceeding against him.

2. The Court need not take up a roving enquiry or fishing enquiry at the stage of framing of charges.

3. The Court ought to discern a strong suspicion over the existence of facts

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constituting offence as against the accused.

4. There is no necessity for the Court to evaluate the probative and evidentiary value of the materials nor oral evidence placed by the prosecution and see whether they would be adequate to convict the accused.

5. The Court is not at a duty at the intermediate stage to speculate whether allegations are true or false to direct discharge."

19. From the above, the Court is only to see whether a case for framing of charge is made out. The Court is not required to look into the probability of the material produced by the prosecution. The evidentiary value has to be ascertained at the time of final hearing of the case.

20. The Hon''ble Apex Court in Kanti Bhadra Shah and Another Vs. The State of West Bengal, AIR 2000 SC 522 : (2000) CriLJ 746 : (2000) 1 JT 13 : (2000) 1 SCALE 19 : (2000) 1 SCC 722 : (2000) 1 SCR 27 : (2000) AIRSCW 52 : (2000) 1 Supreme 6 has expressed the view that if the trial Court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence.

21. Following the principles laid down by the Hon''ble Supreme Court, it has to be necessarily held that on a scrutiny of materials on record and after hearing the rival submissions of both sides, the Court is of the view that there is prima facie material available as against the petitioners to frame charge and a strong suspicion about the existence of facts constituting offence against the petitioners exists. The defence will have to lead their evidence at the trial. No roving and fishing inquiry is permissible and a mini trial cannot be conducted. So far as the notifications referred to by the petitioners are concerned it is for the trial Court to see when the evidence in that regard is led before the Court.

22. The submissions made on behalf of the petitioners, thus, can not be accepted and are rejected. The Court had found prima facie case against the accused and that was sufficient to proceed against them.

23. So far as the sanction order is concerned the argument has to be rejected as well as the sanction was accorded by the Governor. The counsel representing the respondent had referred to the sanction order by the Governor and had placed its copies on record and this issue was not seriously disputed thereafter.

24. Learned counsel for the petitioner(s) had vehemently urged and had relied upon the judgment passed by the Apex Court in Narasa Reddy''s case (supra) but there are stream of judgments subsequently where splitting of trial had been allowed. A reference needs to be made to Keshub Mahindra v. State of M.P (Criminal Appeal No. 1672 of 1996) decided on 13.9.1996 which was Bhopal tragedy case. Therein the Court had initially quashed all the criminal proceedings

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arising out of Bhopal gas disaster as a result the proceedings in the FIR case stood terminated, however, the Apex Court reviewed its order in October 1991 and all the proceedings were restored and after restoration of the case and committal to the Court of Sessions, the trial had commenced. Meanwhile accused No. 1 Warren Andeson had fled the country. The trial was split up as the accused had absconded.

25. In Babubhai Bhimabhai Bokhiria''s case (supra), Hon''ble Apex Court examined the issue regarding splitting of trials. There an argument had been made that the additional accused who had been summoned under Section 319 Cr.P.C. must be tried alongwith the accused already sent up for trial. Reference was made to Shashikant Singh Vs. Tarkeshwar Singh and Another, AIR 2002 SC 2031 : (2002) CriLJ 2806 : (2002) 2 Crimes 350 : (2002) 4 JT 386 : (2002) 4 SCALE 89 : (2002) 5 SCC 738 : (2002) 3 SCR 400 : (2002) AIRSCW 2079 : (2002) 3 Supreme 566 and the contention raised before the Apex Court was rejected. The issue was examined from another angle and following observations were made in para 14 of the judgment which reads as under:--

"14. There is another angle from which the matter can and must be examined. The prosecution has already examined as many as 134 witnesses at the trial. In terms of the ratio of the direction of this Court in Shashikant Singh''s case (supra) with the addition of the petitioner as accused all those witnesses shall have to be recalled for a fresh examination. If that be so, the trial would go on for a few more years having regard to the number of witnesses that have to be examined. This would in turn mean that the right of the accused to a speedy trial, that they have laboured to complete within six years or so, will be in serious jeopardy on account of the entire process being resumed de novo. Such a result is manifestly unjust and unfair and would be perilously close to being in violation of the fundamental rights guaranteed to the accused persons who cannot be subjected to the tyranny of a legal process, that goes on endlessly for no fault of theirs."

26. The concluding paragraph 18 reads as under:--

"It is in the light of the settled legal position no longer possible to question the legitimacy of the right to speedy trial as a part of the right to life under Article 21 of the Constitution. The essence of Article 21 of the Constitution lies not only in ensuring that no citizen is deprived of his life or personal liberty except according to procedure established by law, but also that such procedure ensures both fairness and an expeditious conclusion of the trial. It is in that backdrop not possible to countenance a situation where addition of Babubhai Bhimabhai Bokhiria as an accused to the case at hand would lead to an indefinite suspension of trial and eventual recall of 134 witnesses already examined against the applicant who has been in jail for over six years now. There is, therefore, no reason for a blanket stay against the progress of the trial before the courts below qua other accused persons."

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27. From the above, it can be noticed that the trials have to be split up if the case so warrants. There is no provision which prevents the Court to try the case as against other accused separately. In the similar vein is the judgment of the Madras High Court i.e. Pandiyan''s case (supra).

28. The charge qua the members of Public Service Commission had been set aside in Criminal Revision No. 1520 of 2010 vide order dated 24.08.2015, as a prayer was made by the State of Haryana and liberty was sought to approach the Appropriate Authority for sanction against them i.e. from the President of India. So far as the petitioners are concerned there is no bar for the trial to proceed against them. I find no merit in the petitions and all the petitions are dismissed.

29. However, in view of the development, the trial Court is directed to re-modulate/alter the charge since members of the Public Service Commission are presently not before it and thereafter proceed with the trial without any further delay. Petitioners are directed to appear before the trial Court on 08.10.2015.

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