
(2002) 11 BOM CK 0051

In the Bombay High Court

Case No : Criminal Rev. Application No's. 136 and 186 of 1998

Premdayal Gupta and others

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182, 227, 239, 397, 397(1)

Penal Code, 1860 (IPC) — Section 11, 120B, 420, 477A

Prevention of Corruption Act, 1988 — Section 13(2), 13(1)(d), 5(1)

Citation : (2002) 11 BOM CK 0051

Hon'ble Judges : J.A. Patil, J

Bench : Single Bench

Advocate : M.H. Rizwy with A.M. Rizwy, In Cri. Rev. application No. 136 of 1998, P.N. Chandurkar, In Cri. Rev. application No. 186 of 1998, for the Appellant; E.S. Khan, Special Public Prosecutor, In Cri. Rev. Application No. 136 of 1998, E.S. Khan, Special Public Prosecutor, In Cri. Rev. Application No. 186 of 1998, for the Respondent

Final Decision : Dismissed

Judgement

J.A. Patil, J.—Heard the learned advocates for the respective parties.

2. This common order will dispose of both the Criminal Revision Applications which arise out of the same order dated 21-9-1998 passed by the learned Special Judge in Special Case No. 14 of 1997. Both the revision applications involve common questions of fact and law and, therefore, it is desirable that they should be disposed of simultaneously by a common order.

3. The applicants in Criminal Revision Application No. 136 of 1998 are the original accused No. 1, 3 and 4 whereas the applicant in Criminal Revision Application No. 186 of 1998 is original accused No. 2 in Special Case No. 14 of 1997, which is filed by the Central Bureau of Investigation on the charge that all the applicants - accused have committed offences punishable under sections 120B, 420, 477A of Indian Penal Code and u/s 13(2) read with section 13(1)(d) of

the Prevention of Corruption Act, 1988 (for short "the Act"). The applicants had moved two separate applications purporting to be applications u/s 227 of the Criminal Procedure Code for discharge. The learned Special Judge, however, rejected both the applications by passing a common order holding that the material collected by the Investigating Officer is sufficient to make out a prima facie case against all the applicants - accused. Feeling aggrieved thereby, the applicants in Criminal Revision Application No. 136 of 1998 have filed the present application u/s 397(1) of the Criminal Procedure Code. The applicant in Criminal revision application No. 186 of 1998 has filed the application u/s 397 read with section 182 of the Criminal Procedure Code. The relevant facts which are necessary to be taken into consideration for deciding both the Revision applications are, in brief, as follows.

4. The prosecution against the four accused arises out of a transaction regarding purchase of 26 conventional drills and 3 hydrostatic drills made during the year 1990 for and on behalf of the Mineral Exploration Corporation Limited (MECL), which is a Government of India undertaking. During the relevant period, accused No. 1 P.D. Gupta was the Chairman-cum-Managing Director of MECL. Accused No. 2 M.S. Shenoy Nagar was the Director (Technical), accused No. 3 R.M. Sharma was working as a General Manager (Material Management) and accused No. 4 - B.P. Sinha was working as the Chief Drilling Engineer in MECL at Nagpur. The allegation against these four accused in brief is to the effect that during the year from 1989 to 1991, they had made a conspiracy to cause a wrongful loss to the MECL and wrongful gain to them or any other person in the matter of purchase of drills. It is further alleged that pursuant to the said conspiracy, 26 conventional drills and 3 hydrostatic drills of the total value of Rs. 3.27 crores came to be purchased though they were not required by the MECL. Moreover, the accused disregarded the financial constraints and also violated the due procedure. It is alleged that due to such act of the accused, a huge amount of the MECL was unnecessarily blocked and the same has resulted in a recurring loss of interest of Rs. 1.17 crores.

5. I have heard Shri M.H. Rizwy and Shri P.N. Chandurkar, learned advocates for the applicants accused and also Shri E.S. Khan, learned Special Public Prosecutor for the respondent C.B.I. The learned advocates have taken me through the relevant documents and statements to point out the truth and correctness of their respective submissions. I shall refer to their submissions a little later. As already indicated, the applicants - accused filed their application u/s 227 of the Criminal Procedure Code probably under an impression that a special case under the Act is triable by the procedure prescribed for a Sessions case under Chapter XVIII of the Criminal Procedure Code. It is true that a Special Judge appointed for the trial of the cases under Prevention of Corruption Act is normally an Additional Sessions Judge or a Sessions Judge. However, so far as the trial of cases under the said Act is concerned, it is not as per the provisions of Chapter XVIII of the Criminal Procedure Code. This is clear from section 5(1) of the Act, which reads as under :

"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, 1973 (2 of 1974), for the trial of warrant cases by Magistrates."

6. The procedure for trial of warrant cases is laid down in Chapter XIX of the Criminal Procedure Code. My object in stating this fact is only to point out that so far as the question of discharge of an accused is concerned, there is a difference in the two types of cases. For framing of charge, in a Sessions case or a warrant case, what is required to be seen is whether there is ground for presuming that the accused has committed the alleged offence or offences. However, for considering the discharge of the accused in a Sessions case, section 227 requires the Judge to consider whether there is no sufficient ground for proceeding against the accused. Whereas in a warrant case, a Magistrate can discharge the accused if he considers the charge against the accused to be groundless. Needless to say that in both cases, the Judge or the Magistrate as the case may be, has to take into consideration the material on record and hear both the parties. The words "sufficient ground" occurring in section 227 of the Criminal Procedure Code indicates existence of strong suspicion about the involvement of the accused in the alleged crime. Consequently, absence of sufficient ground to entitle an accused to discharge u/s 227 indicates absence of material to raise a strong suspicion that the accused has committed the alleged offence or offences. The word "groundless" connotes a different meaning and it means that no reasonable person can come to a conclusion that there is any ground whatsoever to sustain charge against the accused. It will thus be seen that the standard required for discharge of an accused in a warrant case is higher than that required for the discharge of an accused in a Sessions case. Since the special case filed against the applicants is triable by the procedure prescribed for warrant cases, the question of their discharge has to be decided with reference to the provisions of section 239 and not 227 of the Criminal Procedure Code.

7. The circumstances appearing against the accused, which Shri Khan highlighted are that the initial indent was only for the purpose of five conventional drills as 275 drills were already in stock and there was no necessity to make a purchase of 33 drills including 5 hydrostatic drills. Shri Khan submitted that the accused in conspiracy with each other prepared a false data to justify the requirement of 33 drills. He further pointed out that accused No. 1 prepared a note in his own handwriting though normally such notes are dictated to a stenographer or got typed from a typist. He further pointed out that so far as the supply of hydrostatic drills is concerned, there was only one tender of Kores India Limited and this was done with a view to favour the said company. Shri Khan also laid emphasis on the fact that the routine requirement of predispatch inspection was waived by the accused and the drills were directly installed on the site.

8. As against these submissions, it was pointed out both by Shri Rizwy and Shri Chandurkar that financial irregularity and breach of procedure does not

necessarily indicate dishonest intention to cause wrongful gain to one person or wrongful loss to other person. Shri Chandurkar submitted that the proper course in such a case would have been to initiate departmental enquiry against the accused. Both Shri Rizwy and Chandurkar laid emphasis on the fact that the proposal regarding purchase of drills was approved by three different committees viz., Purchase Advisory Committee, Technical Committee and Purchase Committee. They pointed out that none of the accused was a member of the Technical Committee. Shri Rizwy pointed out that the audit objection for the purchase of said drills has been later on waived by the Auditor. He further submitted that installation of drills on the site was done to save the expenses of transport and installation charges and that the payment was made only after satisfying that the drills were giving satisfactory output. Both Shri Rizwy and Shri Chandurkar submitted that there is absolutely no evidence regarding the alleged conspiracy. Shri Chandurkar submitted that the element of conspiracy does not survive as different meetings of the above mentioned committees were held for considering the question regarding purchase of drills.

9. So far as the charge of conspiracy u/s 120B is concerned, reliance was placed by Shri Rizwy on the decision in K.S. Narayanan and Others Vs. S. Gopinathan, , wherein a question regarding criminal conspiracy of the Directors of a company, who had approved a contract was considered. In that context the Madras High Court observed that merely levelling a charge of conspiracy without mentioning how, where, when and which of the conspirators hatched the conspiracy and for what purpose or circumstances warranting an inference of existence of conspiracy is not enough to bring the accused to face a trial in a criminal court and therefore the criminal proceedings are liable to be quashed. According to Shri Rizwy, in the instant case, there is absolutely no evidence regarding the alleged conspiracy hatched by the accused.

10. Shri Rizwy also referred to the decision in Sumativijay Jain Vs. The State of M.P. and Others, , wherein the Madhya Pradesh High Court held that in the absence of evidence as to with whom the accused conspired and to do what, no charge can be framed against the accused for the offence u/s 120B.

11. Shri Khan, learned Special Public Prosecutor for the C.B.I, on the other hand contended that the conduct of the accused in the entire affair gives clear indication of existence of conspiracy and that in most of the cases it is a matter of inference to be drawn. The law regarding conspiracy has been summarized by the Supreme Court in State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, . The Supreme Court has indicated some broad principles and one of such principles is that conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

12. So far as the offence of cheating u/s 420 of Indian Penal Code is concerned, it inter alia consists in cheating a person and thereby dishonestly inducing that

person to deliver any property to any person. The accused are alleged to have deceived MECL by inducing it to purchase 29 drills which were not required. MECL is a person within the meaning of the term as given in section 11 of Indian Penal Code. Due to the purchase of drilling machines, the MECL was required to make a payment of an amount of more than Rs. 3.27 crores even though there were financial constraints. The fact is the initial indent was only for five conventional drills but at the instance of the accused, same was raised to 33 drills including 5 hydrostatic drills. It appears that a huge amount of MECL was, therefore, blocked causing it a recurring loss of interest thereon. It was contended on behalf of the accused that the decision to purchase 33 drills was not the individual decision of the accused and that the same was taken by three different committees. Therefore, it was submitted, the accused cannot be said to have dishonestly induced the MECL to go for 33 drills.

13. Shri Khan, however, countered this argument by submitting that the accused prepared a false data regarding the requirement of drills and on that basis the concerned committees took decision for purchasing 33 drills. The question whether the data prepared by the accused is false or otherwise is a matter which necessarily requires appreciation of evidence. The same cannot be decided at the stage of deciding an application for discharge. However, prima facie, there is evidence to show that the MECL did not require 33 drills as it had already in its stock 275 drills. Moreover, there was a financial constraint on making the purchase. These are some of the circumstances which can be considered in the trial alone. In this respect, Shri Khan, relied upon the decision in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, , wherein 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 farfetched 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 and unjustified litigation under the cloak of technicalities of law.

14. In Chaturi Yadav and Others Vs. State of Bihar, , the Supreme Court held that the standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charge or discharging the accused. It was further held that even strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence.

15. As regards third count of charge, which is u/s 477A of Indian Penal Code, it relates to falsification of accounts. In the instant case, the accused are not alleged to have maintained or written any false accounts regarding the purchase of drills. It is also not the prosecution case that payments were made without actually purchasing the drills or that the drills were purchased at undue high

price. The charge u/s 477A of Indian Penal Code relates to the data prepared by the accused to justify the purchase of 33 drills though as a matter of fact there was no justification nor any requirement for the same. As already indicated, the question about falsity or otherwise of the data requires appreciation of evidence which can be done only during the trial. However, the existence of aforementioned facts, prima facie, indicate that the data was false and fabricated.

16. The accused are also being prosecuted of the charge of having committed misconduct within the meaning of section 13(l)(d) read with section 13(2) of the Act.

17. Shri Chandurkar submitted that assuming that the act of the accused has caused loss to the MECL, still it does not fall within the ambit of section 13(l)(d) of the Act. Shri Rizwy pointed out that there is no evidence to indicate that the accused made any pecuniary advantage in the transaction of purchase of drills. He further submitted that Kores India Limited also cannot be said to have gained pecuniary advantage because in consideration of the price received, they have parted with the hydrostatic drills. It is not possible to accept the submission of Shri Rizwy for the simple reason that Kores India Limited sold the drills on no profit no loss basis. It is pointed out to me that one hydrostatic drill costs about Rs. 59 lakhs. The transaction in question involves a huge expenditure and, therefore, prima facie, there is substance in the contention that the accused has caused pecuniary advantage to Kores India Limited. Section 13(l)(d) of the Act does not require that the pecuniary advantage should be to the public servant who abuses his position as such. It may even be to "any other person".

18. Thus, taking into consideration the above mentioned facts and circumstances appearing on record, it cannot certainly be said that the accusation made against the accused is groundless so as to entitle them to discharge. The material on record, prima facie, indicates the involvement of the accused in the alleged crimes. Taking into consideration all these facts. I am of the opinion that this is not a fit case wherein interference by this Court is called for. There is no illegality or impropriety nor any error committed by the learned Special Judge in rejecting the applications of the accused for discharge.

19. In the result, both Criminal Revision Applications are rejected. Rule is discharged.