
(2019) 01 RAJ CK 0268

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 7654 Of 2018

Rahul Yadav

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 165A
Constitution Of India, 1950 — Article 21

Citation : (2019) 01 RAJ CK 0268

Hon'ble Judges : Pankaj Bhandari, J

Bench : Single Bench

Advocate : P.S. Prasad Rao, Kawal Singh Loha, Sudesh Saini

Final Decision : Disposed Off

Judgement

1. Petitioner has preferred this misc. petition seeking quashing of the Criminal Case No.44/2016, "State Vs. Mohinder Kumar and Ors." in the Prevention of Corruption Act No.2, Jaipur.

2. The factual matrix of the case are that petitioner joined the Rajasthan Flying School and completed his course in March, 2007. He was appointed in Air India in November, 2007, subsequently, F.I.R. was lodged by Dr. Bhupinder Singh Yadav on 22.09.2010 to the effect that the petitioner has not flown the aircraft for two hundred hours and in collusion with the Chief Flying Instructor submitted wrong proof regarding flying for two hundred hours. Flying fees of Rs.51,000/- was not deposited with the State, thereby, causing loss of the exchequer. Dr. Bhupinder Singh Yadav himself investigated the case and submitted charge-sheet.

3. It is contended by counsel for the petitioner that Dr. Bhupinder Singh Yadav lodged as many as twenty F.I.R. against twenty students who had taken certificate from the Rajasthan Flying School. Twelve of the cases were assigned to different Investigating Officer who submitted negative final report and the cases against twelve students were dropped. It is argued that an informant

cannot be Investigating Officer and the fact that in twelve cases negative final report has been submitted points out towards the investigation not being carried out properly by the Investigating Officer who himself was the informant.

4. Counsel for the petitioner has placed reliance on "Mohanlal vs. State of Punjab" AIR 2018 SC 3853.

5. It is also contended that the petitioner moved an application before the trial Court in light of the judgment of the Apex Court but the trial Court has mentioned that there was no illegality in the investigation done by Dr. Bhupinder Singh Yadav which goes to show that Court below has made up its mind and has not appreciated the verdict of the Apex Court.

6. Learned Public Prosecutor has opposed the criminal misc. petition. His contention is that the matter is at fag end. Petitioner had earlier also preferred misc. petition which was withdrawn by him to raise the arguments before the trial Court at appropriate stage. It is further contended that the trial Court would be free to consider the arguments raised by counsel for the petitioner at the time of final disposal of the case. It is contended that once petitioner has availed the remedy under Section 482 Cr.P.C., he cannot approach the Court again for similar relief.

7. It is also argued by learned Public Prosecutor that there is no objection raised by the petitioner that the investigation was not done properly or that the Investigating Officer was having any malice towards the petitioner. It is also contended that the F.I.R. is of the year, 2010. Petitioner could have challenged the chargesheet at the relevant time. Now when the matter is at the fag end, prayer cannot be made for quashing of the case.

8. I have considered the contentions.

9. Petitioner had earlier filed a misc. petition bearing S.B. Criminal Misc. Petition No.3646/2018 with a prayer of quashing the order dated 30.05.2018 passed in Criminal Case No.44/2016 seeking discharge of the petitioner and for quashing of criminal proceedings. In the earlier petition, the objection of informant being the Investigating Officer was not raised, that petition was withdrawn with liberty to raise the arguments before the trial Court at appropriate stage. Petitioner has now moved an application before the Court below in light of the judgment of the Apex Court and has prayed for quashing of proceedings, which application stands dismissed by the Court below vide order dated 03.11.2018.

10. The fact that Dr. Bhupinder Singh Yadav was the informant is established from the perusal of F.I.R. The fact that he was the Investigating Officer is established from his statement recorded before the Court below, wherein he admitted that after registration of the F.I.R., he investigated the case and recorded the statement of the witnesses. From perusal of the charge-sheet, it is revealed that the same has been filed by Dr. Bhupinder Singh Yadav. Thus, it is established that Dr. Bhupinder Singh Yadav is the informant. He is Investigating

Officer and he himself has submitted the charge-sheet.

11. The Apex Court in "Mohanlal vs state of Punjab" (supra) underlined the importance of fair investigation.

"14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

15. The discussion in the present case may not be understood as confined to the requirements of a fair investigation under the NDPS Act only carrying a reverse burden of proof. Baldev Singh (supra) related to a prosecution under Section 165A of the IPC. Nonetheless, it observed that if the informant were to be made the investigating officer, it was bound to reflect on the credibility of the prosecution case. Megha Singh (supra) concerned a prosecution under the Terrorist and Disruptive Activities (Prevention) Act, 1985. It was held that the Head Constable being the complainant himself could not have proceeded with the investigation and it was a practice, to say the least, which should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."

12. The petitioner herein, has been charged for offence under the Prevention of Corruption Act which also carries reverse burden of proof. Even otherwise, as

observed by the Apex Court, the investigation should have been conducted by a person who was not an informant.

13. Petitioner is a student who had joined the Rajasthan Flying School. After completion of his training, he was appointed by Air India and he has also taken further training of flying multi engine air crafts at Canada. He continued to serve Air India but due to filing of the present case, he was grounded. Out of other students against whom F.I.R. was lodged, twelve students were exonerated and no charge-sheet was filed against them. Case of present petitioner is similar to those against whom a closure report has been filed. It is true that the matter is at fag end and petitioner had earlier also moved the High Court by filing a misc. petition but the point still remains that an informant cannot investigate a case as held by the Apex Court in "Mohanlal vs state of Punjab" (supra).

14. Leaving the matter to the trial Court for deciding the case on merits would tantamount to abuse of process of Courts and would be an attempt to negate the judgment of the Apex Court. Taking into consideration the entire facts and circumstance and the role of a student who is not aware whether his fees has been deposited with the State Government, I deem it proper to allow the misc. petition.

15. The criminal misc. petition is, accordingly, allowed. The proceedings pending before the Court below qua the petitioner are quashed & set aside. Stay application also stands disposed.