
(2013) 07 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous M No. 3749 of 2011 (O and M)

Ram Mohan Wadhawan and Others

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 227, 482, 91
Penal Code, 1860 (IPC) — Section 120B, 201, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2013) 07 P&H CK 0045

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : R.S. Cheema, with Mr. K.S. Nalwa, for the Appellant; Sumeet Goel, Advocate for CBI and Mr. Sukhdev Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. RC CHG 2009A0002 dated 30.1.2009 u/s 120-B read with Sections 201, 420, 467, 468, 471 of the Indian Penal Code, 1860 ("IPC" for short) and Section 13(2) of the Prevention of Corruption Act, 1988 ("the Act" for short) (Annexure P3) registered at Police Station CBI/ACB, Chandigarh and report dated 30.4. 2010 (Annexure P6) and all consequential proceedings arising therefrom. Learned senior counsel for the petitioners, during the course of arguments, has restricted the relief sought by the petitioners to the extent that the trial Court be directed to consider the show cause notice dated 27.2.2009 issued by the Directorate of Revenue Intelligence, Delhi (Annexure P4) at the time of consideration of charge. Learned senior counsel in this regard has submitted that the said show cause notice had been prepared by the Directorate of Revenue Intelligence. The matter had been duly investigated by the said agency and, thereafter, Annexure P4 was issued. The said document could not be said to have been created by the petitioners. In support of his

arguments, learned senior counsel has placed reliance on State of Orissa Vs. Debendra Nath Padhi, wherein it has been held as under:--

Regarding the argument of the accused having to face the trial despite being in position to produce material of unimpeachable character of sterling quality, the width of powers of the High Court u/s 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court of otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case.

2. Learned senior counsel has next placed reliance on Rukmini Narvekar Vs. Vijaya Satardekar and Others, wherein it has been held as under:--

The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paras 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court u/s 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

3. Learned senior counsel has also placed reliance on Anita Malhotra Vs. Apparel Export Promotion Council and Another, wherein it has been held as under:--

As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/ documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction u/s 482 of the Code.

4. Learned counsel for the CBI, on the other hand, has opposed the petition and has submitted that any document led by the accused in his defence could not be looked into at the time of framing of the charge in this regard.

5. In the present case, prosecution story in brief is that an information was received during the period 2002-2004 that Kulbhushan Goyal @ Monte through his firms namely, M/s. Pooja International, Shop No. 7440/2, Durga Puri, Haibowal Kalan, Ludhiana, M/s. Joy International, Village Khakhat, GT Road, Ludhiana, M/s. Shakun International, 123 Gram Tibba Dehlon Road, Ludhiana, M/s. Monte International, Nirmal Market, Oswal Street, Miller Ganj, Ludhiana and M/

s. Happy Sales Corporation, Shop No. 3, Nirmal Market, Oswal Street, Miller Ganj, Ludhiana had claimed false duty drawback (DBK) of Rs. 1,47,98,806/- in criminal conspiracy with customs officials. Government of India had fixed norms for all items to be exported which were called Standard Input Output Norms (SION). Government of India had also fixed standard weight for any type of items to be exported/imported. The items exported in the instant matter were covered in the SION norms and had been mentioned in the shipping bill that items were as per specification of SION norms. However, no quantity had been mentioned in the packing list found in the possession of Warehouse. Information also disclosed that during the relevant period, duty drawback was claimed item-wise. Huge quantity of items in the packing lists/invoices/shipping bills had been mentioned just to claim duty draw back. Information revealed that the net weight of goods exported and weight required as per quantity mentioned for duty drawback claim did not match.

6. In the present case, Annexure P4 is the show cause notice prepared by the Directorate of Revenue Intelligence after enquiry/investigation. Learned senior counsel for the petitioner has submitted that the trial Court be directed to consider the said document at the time of framing of the charges. Learned senior counsel has submitted that the authenticity of Annexure P4 could not be doubted and hence, it was liable to be considered at the time of framing of charges. However, the said direction cannot be issued by this Court. It has been held by the Apex Court in *State of Orissa vs. Debendra Nath Padhi* (supra), that Section 91 does not confer any right on the accused to produce document in his possession to prove his defence at the time of framing of the charges.

7. The Apex Court in *Helios and Matheson Information Technology Ltd. and Others Vs. Rajeev Sawhney and Another*, has held as under:--

Reliance placed by learned counsel for the petitioners upon the decisions of this Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, and *State of Orissa Vs. Debendra Nath Padhi*, is of no avail. In the former case this Court simply recognized that taking of cognizance is a serious matter and that the Magistrate must apply his mind to the nature of the allegations in the complaint, and the material placed before him while issuing process. The complaint in the present case, as noticed earlier, does make specific allegations which would call for a proper inquiry and trial and the Magistrate had indeed recorded a prima facie conclusion to that effect. So also the decision in *Debendra Nath Padhi* (supra) does not help the petitioner. That was a case where the question was whether at the stage of framing of charge, the accused could seek production of documents to prove his innocence. Answering the question in the negative this Court held:

The law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. No provision in the Code of Criminal Procedure, 1973 (for short "the Code") grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted

only at the stage of trial. *Satish Mehra Vs. Delhi Administration and Another*, , holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of contention of the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence.

8. Thus, at the stage of framing of the charges, accused cannot produce a document in their defence to prove their innocence. Hence, a direction cannot be issued by this Court to direct the trial Court to consider, Annexure P4, at the time of framing of the charges. There is no doubt that this Court while exercising powers u/s 482 Cr.P.C. can look into the documents produced by the accused which are of unimpeachable character. However, no direction can be issued to the trial Court to consider the defence of the accused at the time of framing of the charges. Annexure P4 is a show cause notice prepared by the Directorate of Revenue Intelligence after enquiry. Said piece of enquiry can be relied upon by the petitioners in their defence. But it cannot be ordered to be considered at the time of framing of the charges. In these circumstances, the judgments relied upon by the learned senior counsel for the petitioners fail to advance the case of the petitioners.

9. No ground for interference is made out. Dismissed.