

(2015) 02 AHC CK 0169

In the Allahabad High Court

Case No : Criminal M. Application No. 3899 of 2013

Ramanuj Upadhaya

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19(3), 5(1)(d), 5(2)
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28

Citation : (2015) 1 ACR 1020 : (2015) 4 ALJ 188

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : Ashok Kumar Rai and Ravindra Nath Rai, for the Appellant

Final Decision : Dismissed

Judgement

Ranjana Pandya, J.—This application under Section 482, Cr.P.C. has been filed for quashing of the charge-sheet submitted in S.T. No. 14 of 2010 arising out of Case Crime No. 173 of 2004, under Sections 420, 467, 468, 120B, I.P.C. read with Section 5(2), 5(1)(d), 13(2), 13(1)(d) of Prevention of Corruption Act, pending in the court of Special Judge, (Anti-Corruption), Varanasi. Heard Shri Ravindra Nath Rai, learned counsel for the applicant and learned Additional Government Advocate for the State.

2. The contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with mala fide intention for the purpose of harassment. He pointed out certain documents in support of his contentions.

3. It has been contended on behalf of the applicant that on 2.9.1980 land was acquired. The farmers, who were owners of the land till date have no objection as regards the proceedings are concerned. The F.I.R. is said to have been lodged on 12.4.2009 when the applicant was not Secretary of Varanasi Up Nivesh

Sahkari Awas Samiti. He has further submitted that a private society is not covered under the provisions of Prevention of Corruption Act. Civil litigation is pending in the matter. The society entered into the contract prior to the notification issued. The tenure holders have no objection. The Avas Vikas Parishad has not paid the compensation till date. The scheme was introduced in the name of Tulsipur Yojna on 17.7.1992, whereas the proposal was sent under Section 28 of the U.P. Avas Vikas Parishad Adhiniyam, 1965. The incident is said to have taken place from 1980 onwards. The acquisition has been withdrawn in the year 1994, whereas the F.I.R. has been lodged in the year 2004. The applicant was not a member of the Society after June, 1983. If at all the Society is in illegal possession, the course open is to get them dispossessed in due process of law. The applicant entered into an agreement and deficiency of Stamp Act cannot be the basis of criminal prosecution.

4. It has further been submitted that notification was issued in the official Gazette dated 20th September, 1980 in which the numbers mentioned in the notification dated 8.4.1979 for Abadi was not included in the present acquisition. It has further been submitted that as per order dated 9.4.1989 passed by the Executive Engineer, symbolic possession was taken. Deed was executed by Laxmi Kant Mishra for which the applicant cannot be held responsible, hence the proceedings are liable to be quashed.

5. Learned counsel for the applicant has placed reliance upon the decision in the case of *Algoo Ram and Others Vs. State of U.P. and Another*, (2012) 1 ACR 582 : (2012) 1 ADJ 114 . However, the facts of the aforesaid case do not apply to the facts of the present case. Learned counsel for the applicant has also placed reliance upon the decision in *Anupama Singh Vs. Central Bureau of Investigation and Others*, (2012) 10 ADJ 663 and *Anil Kumar and Others Vs. M.K. Aiyappa and Another*, (2013) 6 ABR 895 : (2013) 10 AD 386 : (2014) CriLJ 1 : (2013) 13 JT 127 : (2013) 4 RCR(Criminal) 586 : (2013) 12 SCALE 283 : (2013) 10 SCC 705 , in which it has been held as to what would be the effect of the absence of sanction in some circumstances under Section 19(3) of Prevention of Corruption Act.

6. Learned Additional Government Advocate has opposed the application and has submitted that according to the notification No. S.R. 490/Ten-500-(36)/80 dated 31.3.1981, the documents executed upto the extent of Rs. 5,000 for grant of exemption of stamp, but if the valuation was above Rs. 5,000 there was exemption of 50%, stamp duty and the registration fee was exempted. The present applicant benefited himself from this exemption of stamp duty and is guilty of offence. As far as the agreement is concerned, it has been submitted that the agreement was oral, which cannot be said to be an agreement in the eyes of law. As far as refusal to grant sanction was concerned, it was refused on the ground that since at the relevant time, the societies were non-functional, hence there was no necessity for sanction.

7. It has been stated in the counter-affidavit that the present applicant and other

co-accused were very well aware regarding expansion of the scheme of village Tulsipur, Ranipur, Bajardeeha, Kakarmatta West and Newada measuring plot area 409.81 Acre and as per the provisions embodied under Section 32(1) of U.P. Urban Planning and Development Act, 1965 as well as Government Gazette dated 20.9.1980 which was notified and from 25.11.1983 up to March, 1984 the total area 227.7085 Acre were taken into possession and was got entered in the revenue records, the lands were legally transferred in favour of the proposed schemes as per U.P. Urban Planning and Development Act, 1965, under Section 8 the Society of the applicant was got registered on 26.7.1979. The said society on the basis of verbal agreement had illegally merged the aforesaid lands in the Banshidhar Scheme with intent to illegally occupy the land for their undue advantage, i.e., in favour of registered society, for which, the applicant was the Secretary and during the enquiry contemplated by the Vigilance Department it has been found that the society of the applicant had fraudulently taken into possession the nine (9) plots measuring area 3.244 Acre in the scheme of Village Tulsipur and about five (5) plots measuring area 1.004 Acre of village Kakarmatta. In between the period 18.1.1985 to 16.10.1991 the society of applicant has taken into possession ten (10) plots of village Bajardeeha measuring area 2.3375 Acre and on 5.7.1991, 16.10.1991 and 24.2.1992 the society had got other three (3) plots measuring area 0.47 Acre in village Ranipur, for which, registered sale deed was also transferred in favour of society and the society, which was a registered society, had taken the benefit of 10% relaxation of stamp duty and further during enquiry it has also been found that the brother-in-law of the President of the society, Sri Ram Chandra Pandey had also got registered Shree Ram Housing Finance and Investment Company which was having the same address of the society of applicant and the said Shree Ram Housing Finance and Investment Company had also got a registered sale deed of the land in village Kakarmatta of eight (8) plots area 7.125 Acre, thirteen (13) plots in village Bajardeeha measuring area 4.13 Acre, total area 11.425 Acre by means of registered sale deed, the aforesaid plots were transferred in favour of aforesaid society.

8. As far as the order during proceedings is concerned, it has been submitted by the learned A.G.A. that law on this point has laid down by the Hon'ble Apex Court in the case of Chandan Kumar Basu v. State of Bihar, decided on 7.7.2004 where in paragraph 9, the Apex Court has observed as under:

"9. The above discussion will now require the court to consider the question as to whether the acts giving rise to the alleged offences had been committed by the accused in the actual or purported discharge of his official duties. In a series of pronouncements commencing with Satwant Singh v. State of Punjab; Harihar Prasad v. State of Bihar and Prakash Singh Badal and another v. State of Punjab and others, it has been consistently held that it can be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences covered by Sections 406, 409, 420 etc. and the official status of the public servant can, at best, only provide an opportunity for commission of the

offences. Therefore, no sanction for prosecution of the public servant for such offences would be required under Section 197 of the Code. Notwithstanding the above, the High Court had granted liberty to the appellant to raise the issue of sanction, if so required, depending on the evidence that may come on record in the course of the trial. Despite the view taken by this Court in the series of pronouncements referred to above, the opportunity that has been provided by the High Court to the benefit of the appellant need not be foreclosed by us inasmuch as in *Matajog Dobey v. H.C. Bhari*, *P.K. Pradhan v. State of Sikkim* and *Prakash Singh Badal (supra)* this Court had consistently held that the question of sanction under Section 197 of the Code can be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceeding/trial. The observations of this Court in this regard may be usefully extracted below.

Matajog Dobey v. H.C. Bhari (para 21)

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

P.K. Pradhan v. State of Sikkim (para 15):

"It is well-settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance : may be immediately after cognizance of framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

Prakash Singh Badal and another v. State of Punjab and others (para 27)

"The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage....."

9. Perusal of the record shows that inspection was carried out by the T.A.C.

Further from the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that the charge-sheet is liable to be quashed.

10. From the perusal of the material on record and looking into the facts and circumstances of the case, at this stage, there is no ground to quash the charge-sheet and all the submissions made at the bar relate to disputed question of facts, which cannot be adjudicated by this Court exercising jurisdiction under Section 482, Cr.P.C. The disputed defence of the accused also cannot be considered at this stage.

11. Accordingly, the prayer of quashing the charge-sheet is hereby refused. The application under Section 482, Cr.P.C. is rejected.