
(2016) 09 CAL CK 0085
In the Calcutta High Court
Case No : C.R.R. 2160 of 2014

Ramesh Sharma

APPELLANT

Vs

Superintendent of Police, CBI, ACB Kolkata

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 240, Section 464
Penal Code, 1860 (IPC) — Section 120B, Section 420, Section 477A, Section 511
Prevention of Corruption Act, 1988 — Section 13(1)(d), Section 13(2)

Citation : (2017) CriLJ 1197

Hon'ble Judges : Indrajit Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Uday Chandra Jha, Mrs. Maheswari Sharma, Ms. Tulika Banerjee, Advocates, for the Petitioner; Md. Asraf Ali, Mr. Sankar Banerjee, Advocates, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Indrajit Chatterjee, J.—This is an application under Section 482 of the Code of Criminal Procedure (hereinafter called as the said Code) wherein this petitioner has prayed for an order to set aside the order no. 60 dated May 15, 2014 passed by the learned Judge, 3rd Special Court (C.B.I.) designated Calcutta in Special (C.B.I) Case No. 13 of 2006.

2. The fact relevant for the purpose of adjudication of this revisional application can be stated in brief thus: -

That one R.C. Case No. 5 of 2003 (A) under Sections 120B, 420 read with Sections 511, 477A and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter called as the said Act of 1988) was registered against this petitioner and three others including one company in which this petitioner is the Director. It was alleged in the F.I.R. that public servant Sadanand Kaushik (Accused no.1) when he was posted and functioning as Development Officer of United India Insurance Company Ltd., Div.-V entered

into a criminal conspiracy with others and in furtherance of the said conspiracy and in wilful misuse of his official position, the said accused no. 1 allegedly accepted ante-dated cheque of Rs. 5,11,875/- towards premium of fire policy covering loss by fire and allied perils including earthquake and made false entries in the scroll by falsifying the accounts to facilitate M/s. Antai Balaji Ltd. to make claim and thereby attempted to cheat and to cause wrongful loss to the United India Insurance Company Ltd., Div.-VI.

The matter was investigated by the Central Bureau of Investigation (hereinafter called as the C.B.I.) and charge sheet was submitted against four accused persons including the company of that public servant. The case was registered with the trial court being the Special Court No. III (C.B.I), Calcutta.

It is the argument of Mr. Jha, learned Advocate, appearing on behalf of the petitioner being the accused no. 3 that actually no written charge was framed against this accused person even though the order dated 31st May, 2010 will reflect that the charge was framed and read over and explained to the accused person. Learned Advocate took me to the copy of that order and also prayed before this court to consider the fact by taking me to the order dated 23rd May, 2013 that on that date, learned Special Court got the report as to the death of the accused no. 1, the public servant involved. He also took me to the impugned order dated 15-05-2014 wherein learned court relied on the order dated 31-05-2010 that the charge was explained to the accused and admitted that no written charge could be found. This is the main portion of the argument of Mr. Jha, learned Advocate, appearing on behalf of the petitioner. He contends by taking me to Section 228 of the Code that the written charge is a must in view of Sub-Section (2) of that Section. He also relied upon the Constitution Bench decision of the Apex Court as reported in AIR 1956 SC 116 [Willie (William) Slaney v. State of M.P.] wherein the Apex Court in paragraph no. 85 held "The Code requires that there should a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors of jurors, and there was no possible or probable prejudice".

3. He also referred to another judgment of the Apex Court as reported in (2014) 11 SC 724 [STATE through Central Bureau of Investigation, New Delhi v. Jitendra Kumar Singh] wherein on the fact before the floor of the Apex Court, it was held when the charge could not be framed against the public servant because of his death, the co-accused person cannot be tried by the Special Judge by invoking his jurisdiction under Section 4(3) of the Act of 1988. He also took me to the written charge framed on 15th May, 2014 to say that this written charge was framed when the accused no. 1 was not there in the world and that unfortunately learned trial court framed charge against that person also. He further supplemented his argument by saying that in the written charge just referred to above, there is no mention of criminal conspiracy in the said charge against this petitioner (Accused no. 3). He entered into the criminal conspiracy

with that public servant. Thus, he contended that considering the factual aspect of the case, this case is to be sent back to the learned Chief Metropolitan Magistrate, Calcutta for trial either by himself or by any other Metropolitan Magistrate subordinate to him.

4. On behalf of the C.B.I. Mr. Ali, learned Advocate, contended that there is no irregularity in the impugned order. He took me to Sections 225, 226 and 227 of the Code to say that as per Section 226, the prosecution will explain its case to the Judge by opening the prosecution case and as such, he submitted that Special Court being a Court of Sessions, this court can say that when the matter was taken up, the entire details of the case were brought to the notice of the learned court in presence of the lawyers of the defence. He took me to the order dated 31-05-2010 vide which the charge was framed against all the accused persons including the public servant but he submitted that no form was filled in. He further submitted by taking me to the said order that charge was read over and explained to the accused persons including the charge under Section 120B of the Indian Penal Code. It is his contention that non-filling up of the form is one irregularity and no illegality and for that reason, the prosecution case cannot suffer. He submitted that vide the impugned order, learned court tried to cure the irregularity by framing a written charge to cure the defect.

5. He also contended that after the charge was framed on 31-05-2010, P.W.1 was examined on 24th August, 2010 by the same Judge and the order dated 31-05-2010 has not been challenged in this revisional application. He further contended that intimation of death of the accused no. 1 was received on 23-05-2013 and as such, the case against him was filed. In the same breath, he submitted that when the charge was framed on 31-05-2010, this accused no. 1 was very much alive and that actually the trial started with effect from 31-05-2010. He also relied upon the judgment of the Apex Court in Jitendra Kumar Singh (Supra) wherein in a similarly placed situation, the Apex Court directed continuance of trial by the Special Court when charge was framed before the death of the public servant.

6. He further submitted that after the framing of such charge in the year 2010, this revisional application was filed after 4 years. He further contended that this accused was very much made aware by the court as per the order dated 31.05.2010 that what offence he committed. Thus, the main contention of Mr. Ali was that mere fact that no form as prescribed was filled in by the court, the accused cannot be said to have been prejudiced by the said order and if no prejudice has been caused, there is no question of setting aside of the impugned order. Mr. Ali also submitted by taking me to Section 227 of the Code to say that as the learned trial court did not discharge the accused by invoking that provision, the court was prima facie satisfied regarding the charge against this accused. He also faintly submitted that the accused no. 2/company was very much represented under Section 305 of the Code by the Advocate. He ended his argument by saying that this matter was not agitated before any higher forum

for four years.

7. It is submitted by Mr. Jha, learned Advocate, for the petitioner that it is the settled law that when a particular act is to be performed in a particular manner, then it must be done in that manner or not done at all. He submitted that if one action of the court is illegal it cannot be legalized. As regard the non-filing of any case for four years. It was the submission of the learned Advocate that no period of limitation has been prescribed under Section 482 of the Code of Criminal Procedure and as such, this revisional application is very much applicable.

8. Thus, the only point involved in this criminal revisional application is that whether this accused was prejudiced as no written charge was framed against him when the order dated 31st of May, 2010, was passed vide which charge was read over and explained. It may be noted that the said order has not been assailed before this court and as such it stands and cannot be interfered with. On scrutiny of the said order it appears that charge was framed against this accused along with other accused persons and this accused was charged in respect of the offence punishable under Section 420/511 of the IPC read with Section 120B of the Code. It is further clear from the said order that the learned trial court fixed the case for recording the evidence of CSW 1 on 24.08.2010, for recording the evidence of CSW 2 on 25.08.2010 and for recording the evidence of CSWs 3 and 4 on 26.08.2010. It is needless to say that it is a settled position of law that as soon as the charge is framed the trial starts. On scrutiny of the said order it appears that the charge was read over and explained to this accused also and all the accused persons pleaded not guilty in respect of the charge as framed. This court is not unmindful of the fact that the company was represented by one advocate under Section 305 Cr.P.C and as such the charge was read over and explained naturally to the advocate who was defending in the said company.

9. Nobody claimed regarding the non-filling up of the prescribed form of charge, till the defence pointed out to the learned trial court that no formal charge was framed against the accused persons and as such prayer was made before the trial court orally not to examine CSW 2, P. K. Mitra who was on attendance on the date of the impugned order. This shows that already CSW 1, S. K. Satpati was examined as PW 1. The trial court in the impugned order held that as per direction of this court vide order dated 16.04.2010, the said court was directed to frame charge and accordingly the said court framed charge as against all the accused persons separately by speaking order dated 31.05.2010, but the trial court did not find the prescribed form in the record. The learned trial court tried to cure the defect by framing a formal charge in that case even though the principal accused, the public servant that is the accused No.1 already died in the meantime. It was contended by the petitioner that the charge was framed against a dead person and as such framing of charge cannot be said to be good in the eye of law.

10. This court is not unmindful of the fact that as per Section 228 (1) (b) of the Code which runs thus:

"(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

This court is also not unmindful of the Constitutional Bench Decision of this Hon"ble Court passed in connection with Willie (William) Slaney (supra) wherein the larger bench of the court on the fact as it was before the court held in paragraph 85 (a) "?????????.and it is not impossible to conceive of an extreme case whether the Sessions trial also proceeds without any formal charge which has to be in writing and read over and explained to the accused?????????."

This court is not unmindful of the observations of Hon"ble Justice Chandrashara Aiyar and Hon"ble Justice Jagannadhadas in that very case that when there is no charge it is for the court to determine whether there is any failure of justice. The Hon"ble Judges further held while considering Sections 225, 232, 535, 537 (a) of the old Code of Criminal Procedure that in the generality of cases omission to frame charge is not per se fatal.

In that case before the floor of the Apex Court the defence agitated that no charge was framed under Section 302 read with Section 149 of the IPC and the court held that omission to frame a charge under Section 302 must be regarded as a deliberate act of the court by way of notice to the accused that he was not being tried for that offence.

The decision referred to above is not matching with the present case before the floor of this Court. However, the court should not forget that in that case it was decided that the charge must be framed in writing. I have already said that in the instant case as per the order referred to above the charge was framed against the accused and that was read over the explained to this accused/petitioner also but unfortunately at a later stage of proceeding it was found that the form of charge was not there in the record. The learned trial court did not take up the matter to decide whether any such form was duly filled in by the court while passing the order dated 31st of May, 2010. The court took it for granted that no such form was filled in. The court ought to have made administrative inquiry why that form of charge was not there in the record. This court is not unmindful of the presumption of Section 114 illustration (e) of the Indian Evidence Act wherein the legislature in its wisdom enacted "that judicial and official act have been regularly performed".

This court can very much say with that presumption that actually when the charge was framed on 31st of May 2010 the charge was also filled in the prescribed format. The matter was agitated by the defence only on 15.05.2014 that is after a gap of four years from the framing of charge. On scrutiny of the order dated 31st May, 2010, which has not been challenged this court, I find that charge was framed and read over and explained to the accused. I have already said that trial started on the said framing of charge. When PW 1 was examined the defence did not take any plea that the defence was prejudiced as because no charge was framed in the prescribed format.

It is a clear case where this court will have to decide whether any prejudice was caused to the accused for not filling of that prescribed form. Section 464 of the Code may be taken into consideration in this regard Section 464 of the Code runs thus: Effect of omission to frame, or absence of, or error in, charge.-(1) "No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision a failure of justice has in fact been occasioned thereby."

(2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may ?

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommenced from that point immediately after the framing of charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

11. Section 464 naturally comes after Section 228 (1)(b) of the Code and naturally this Court can say that Section 464 of the Code is a curative section and the defect that the learned trial court even did not frame in writing a charge against the accused can safely be cured. The circumstances of this case as I have pointed out above cannot show that any prejudice was caused to this accused. There was no need to frame fresh charge in the format in the present case as charge for all purposes was already framed as per the impugned order. The court must consider here that when the charge was framed in the year 2010 the public servant was very much alive and unfortunately he died when the format of charge was filled in by the trial court as per the impugned order. This filling up of the form may be considered to be a part of the order dated 31st May, 2010.

Much was argued by the petitioner that the charge was framed as per the impugned order against a dead person but one must take into consideration the peculiar facts and circumstances of this case. It may be noted that only format of charge was filled in vide the impugned order which may practically be treated as continuation of order dated 31.05.2010.

12. This being the observation of this court I find no reason to set aside the impugned order and to remit back the case to the Metropolitan Magistrate having jurisdiction for disposal as the offence allegedly committed by this accused was under Section 420/511 read with Section 120B of the IPC as he entered into criminal conspiracy with the public servant (accused no.1) being alive on the

date of framing of charge on 31.05.2010. There is no question of issuing such a direction in view of the decision of the Apex Court as relied upon both by the prosecution and the defence that is Jitendra Kumar Singh (supra).

13. Thus, this revisional application is dismissed on contest. There will be no order as to costs.

14. The impugned order is hereby affirmed.

15. The interim order if any, stands vacated.

16. Office is directed to communicate this order to the learned trial court forthwith so that the learned trial court may proceed with the trial from that stage as left on 16.05.2014. 17.

17. Certified copy of this order, if applied for, be given to the parties as per rules.