

(1998) 02 GUJ CK 0002

In the Gujarat High Court

Case No : Criminal Revision Application No. 592 of 1997

Ratuji Varvaji Vaghela and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (1998) CriLJ 4474 : (1998) 2 GLR 224

Hon'ble Judges : Arunkumar Kantilal Trivedi, J

Bench : Single Bench

Advocate : K.B. Anandjiwala, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.K. Trivedi, J.—Rule. Ms. B.R. Gajjar, Ld. APP waives service of rule on behalf of respondents. Heard learned Advocate Mr. K.B. Anandjiwala for petitioners and Ms B.R. Gajjar, Ld. APP for respondents. With the consent of learned Advocates matter is finally heard.

2. Being aggrieved and dissatisfied by the order dated 17-11-1997 passed by the Ld. Additional Sessions Judge & Special Judge, Ahmedabad (Rural) at Mirzapur, in the Special Case No. 16/96 the petitioners have filed the present revision application.

3. Petitioner Nos. 1 and 2 are the original accused Nos. 2 and 3 respectively in the Special Case No. 16/96. That vide impugned order, dated 17-11-1997 in the matter of Special Case No. 16/96, the trial Court has rejected the application the application-Exh. 4 of the petitioners claiming discharge from the offences alleged against them.

4. The petitioner No. 1 is Head Constable while the petitioner No. 2 is a Constable, both were attached to Gandhinagar police Station at the relevant time

and they are chargesheeted for having committed offences made punishable under Sections 7, 13(1), (i), (ii) and (iii) read with 13(2) of Prevention of Corruption Act, 1988. According to prosecution case, on 9-6-1996 an information was received that some police personnel near Sector No. 30 circle as well as Pethapur cross road were stopping the vehicles and under the threat of filing false case were demanding Rs. 50/- to Rs. 300/- as bribe under the guise of entry fees. That one Govindbhai Haribhai Vaghari of Badpura village, Taluka Vijapur, District Mehsana gave complaint to that effect to the Police Inspector, ACB, Ahmedabad and thereby a running trap was arranged with the help of decoy witness said Govindbhai Vaghari. That Police Inspector, ACB has drawn a preliminary panchnama after seeking service as a panch of one Rajkumar Virsingh Rathod, residing at SRP Quarters, Saijpur, Ahmedabad and Bhupendra P. Patel, residing at Rakhial village. That currency notes of Rs. 300/- smeared with anthracene powder were given to decoy witness after noting the numbers. That a demonstration was also carried out in the presence of panchas and the complainant by using ultraviolet lamp and fluorescent effect on the said currency notes were seen. That the panchas were given necessary instructions with regard to negotiation with the culprit and to pass on the said currency notes and to give a proposed signal to the raiding party. That thereafter, the PI along with the complainant and panchas proceeded towards Gandhinagar.

5. It is the further case of the prosecution that the decoy/complainant and the Panch No. 1 took their seats with a driver-Takhaji of one truck and the PI along with Panch No. 2 and other policemen took their seats in the Government jeep and thereafter came to Pethapur cross roads. That as no police jeep or police personnel were found at the, said spot of Pethapur cross-road they proceeded to Sector 30 circle and found that one jeep car bearing Reg. No. GJ-18G 237 was stationed and on the corner of the road one policeman was standing. That at some distance away from that place on the other side on the road near the circle two other policemen were also standing. That the policemen standing near the jeep stopped the truck and told to the driver that the truck is overloaded and illegal wood is being carried away. That after some conversation said policeman claimed Rs. 200/- from the driver by way of entry fee and told him that if the said amount is not paid a case would be filed. According to prosecution case thereafter the policeman agreed to accept Rs. 100/-. That the complainant took out the currency notes from his right side pocket of his shirt and gave the same to the accused. The said policeman accepted the said currency notes and put the same in the right side pocket of his pant. That on account of signal being given by the complainant the raiding party came on the spot and caught the policeman who has accepted the amount. His name was found to be Amritbhai Ramabhai Chaudhary (accused No. 1). That at that time present petitioners were standing at some distance away from the place and the raiding party gathered their names also and mentioned in the panchnama. Thus the petitioners are also implicated as accused Nos. 2 and 3 and chargesheet is submitted to the Special Court, Ahmedabad (Rural) at Mirzapur. That before framing the charge the

present petitioners had moved an application-Exh. 4 as stated hereinabove which is rejected vide impugned order.

6. Mr. K. B. Anandjiwala, Ld. Advocate appearing for petitioners had contended that the Ld. Spl. Judge has failed to apply the settled proposition of law to the facts and circumstances apparent from the material produced with the chargesheet and has also failed to apply the provisions of law and thereby has committed gross error of law which has resulted into miscarriage of justice. It is also submitted that during the submissions it was brought to the notice of the Ld. Special Judge that in the matter of State of Gujarat v. Vasant B. Nagda in Criminal Revision Application No. 189/90 decided on 20-3-90 and the State of Gujarat v. Thakhatsinh Shivaji Chauhan in Criminal Revision Application No. 131/91 decided on 13-11-1992 this Court has taken a view that "if upon consideration of record of the case and submissions made on behalf of the accused the Judge finds that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." That the xerox copies of Judgments of the said revision applications were also tendered. However, the Court has failed to apply the same to the facts of the case and thereby also the order deserves to be set aside and quashed and the present petitioners as accused Nos. 2 and 3 in Special Criminal Case No. 16/96 are required to be discharged from the offences alleged against them. Mr. Anandjiwala has referred to and relied upon the following authorities to support his submissions :

- (i) State of Bihar Vs. Ramesh Singh,
- (ii) Union of India (UOI) Vs. Prafulla Kumar Samal and Another, .
- (iii) Criminal Revision Application No. 189/ 90, The State of Gujarat v. Vasant B. Nagda.
- (iv) Criminal Revision Application No. 131/91, The State of Gujarat.
- (v)Thakhatsinh Shivaji Chauhan.

7. As against that Ms. B.R. Gajjar, Id. App. has contended that as per the panchnama and the statement of witnesses recorded by the PI, the present petitioners were found near the place of offence. Not only that the Investigation Officer has also found that as per the official record the present petitioners were not on duty at the place where they were found in uniform. Further more, as the concerned Head Constable was on leave, the petitioner No. 1 was given charge of the said jeep and accused No. 1 who has claimed and accepted the illegal gratification was the driver of the said jeep. In the said circumstances, the accused No. 1 has claimed and accepted the amount also on behalf of accused Nos. 2 and 3 who are present petitioners and as such the material produced on records provides sufficient ground to frame charge against present petitioners for abetting the offence u/s 7 and Sections 13(1)(i)(ii)(iii) of Prevention of Corruption Act. That the Court while considering the application for discharge is not

supposed to appreciate the evidence so as to ascertain whether the same would lead to conviction of the accused or not. That the Ld. Special Judge having considered the said material on record has rightly rejected the application.

8. Miss Gajjar, Ld. APP has referred to and relied upon the following authorities in support of the said submission:

(i) State of Maharashtra Vs. Priya Sharan Maharaj and Others, .

(ii) Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, .

9. Ld. APP has shown to me the police papers produced with the chargesheet before the trial Court and has taken me to the impugned order. On scrutiny of police papers it appears that except the fact that the petitioners were found near the place of offence and the fact that at the relevant time the vehicle which is used by the original accused No. 1 to commit the alleged offence was under the charge of the petitioner No. 1 as per record as the concerned Head Constable being on leave; there is no other fact emerging from the said papers to connect the petitioners with the accused No. 1 or the offence alleged against them. The question is whether the said fact could be said to be providing sufficient ground for proceeding against the accused within the meaning of Section 227 of Cr.P.C. or not.

10. That the expression "sufficient ground for proceeding against the accused" as occurring in Section 227 of Cr.P.C. is elaborately explained by the Supreme Court in the matter of State of Bihar Vs. Ramesh Singh, vide para 4 as under (at Page 1607 (of Cri LJ) :

If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, can not show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

11. That in the matter of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the Supreme Court followed the above-stated observation and further elaborated the rule by settling the following test to determine the prima facie cases (at Page 158 (of Cri LJ):

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

12. In the matter of Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, vide para 7, following the above-stated observations, the Supreme Court has observed as under (at Page 1874 (of Cri LJ) :

It seems well settled that at the Sections 227-228 stage i.e. stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it can not be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

13. In the instant case, the Ld. Special Judge appears to have taken a casual approach to the material produced by the investigation agency and has rejected the application of the petitioners by holding that under what circumstances the accused were found near the place of offence can not be decided without recording evidence and as such accused are not entitled to claim discharge.

14. On application of test settled by the Supreme Court in the matters referred to hereinabove to the facts and circumstances apparent from the material produced with the chargesheet, in my opinion, mere presence of petitioners near the scene of offence at the relevant time and the fact that the petitioner No. 1 by virtue of his official duty was in charge of vehicle which is used by the original accused No. 1 in commission of offences alleged are only suspicious circumstances and the same can not be said to form a sufficient ground for proceeding against the accused as required u/s 227, Cr.P.C. Hence, I hold that the Ld. Special Judge has committed error by not considering the said fact in proper perspective and applying the relevant rule of law to the facts involved in the matter and said impugned order deserves to be set aside and quashed.

15. On the basis of of the abovesaid discussion Criminal Revision Application No. 592/97 is allowed. The impugned order, dated 17-11-1997 passed by the Ld. Additional Judge and Special Judge, Ahmedabad (Rural) at Mirzapur below Exh. 4 in the matter of Special Case No. 16/96 is hereby set aside and quashed. The petitioners as accused Nos. 2 and 3 of the said Special Case No. 16/96 are discharged from the offences alleged against them in the said matter. Rule is made absolute. Interim relief granted earlier stands vacated. No order as to costs.