

(2006) 01 GAU CK 0047

In the Gauhati High Court

Case No : Criminal Revision No. 42 and 45(SH) of 2003

Santi Prasad Goenka

APPELLANT

Vs

Union of India(CBI)

RESPONDENT

Date of Decision : 01-01-2006

Acts Referred:

Criminal Procedure Code, 1973 — Section 227

Criminal Procedure Code, 1973 (CrPC) — Section 227

Citation : (2006) 4 GLT 448

Hon'ble Judges : T.Vaiphei, J

Bench : Single Bench

Advocate : S.P.Mahanta , K.Agarwal, H.Abraham, D.K.Das, Advocates appearing for Parties

Judgement

T. Vaiphei, J.—These two criminal revisions arising out of the common judgment dated 11.09.2003 passed by the learned Special Judge, Shillong, in Special (CBI) Case No. 1 of . 2002 are heard together and are being disposed of by a common judgment.

2. Criminal Revision No. 45 of 2003 is filed by the accused No. 1, namely, Mrs. LR Mithran, IRS, who is charged with the offence punishable under Section 11 of the Prevention of Corruption Act, 1988 ("the Act" for short) while Criminal Revision No. 42 of 2003 is filed by the accused No. 2, namely, Mr. SP Goenka, who is charged with the offence punishable under Section 12 of the Act. To simplify the narration of the case and also for better appreciation of the facts involved therein, I shall mainly deal with Criminal Revision No. 45 of 2003 and shall also refer to the petitioner in Criminal Revision No. 45 as the accused No. 1 and the petitioner in Criminal No. 42 of 2003 as the accused No. 2.

3. Shorn of details, the case of the prosecution is that while the accused No. 1 was adjudicating the Excise Evasion case of M/s Kitply Industry Ltd., Calcutta, of which the accused No. 2 is the Chairman, she slashed down the Central Excise Duty payable by the former from thirty crores rupees to nine crores rupees,

which caused financial loss to the Central Government to the order of rupees twentyseven crores and conversely caused pecuniary advantage to her sons and other family members. The prosecution charges that the accused No. 2 had donated Rs. 8,01,955/in favour of Zami Memorial Charitable Trust, which stood in the name of the mother of the accused No. 1. The charge specifically states that the accused No. 1 is one of the trustees of the Trust in question, in the name whereof a sum of Rs. 5,00,000/ and a Tata Mobile vehicle was donated by M/s Kitply Industry Ltd. The prosecution further alleges that during search of the house of the accused No. 1, the sale certificate dated 11.11.96 in respect of the vehicle was recovered while the letter dated 14.08.97 of Warren Tea Ltd., addressed to Zami Memorial Charitable Trust was also recovered from her possession which shows that Rs. 8,01,955/ was given as donation towards the cost of the said vehicle and the donation of Rs. 5,00,000/ to the trust, for which the trust was requested to issue a certificate u/s 80 G for claiming a relief of income tax. To put simply, the charge of the prosecution is that there was quid pro quo between the slashing down of the Central Excise Duty by the accused No. 1 in the said adjudication proceeding and the aforesaid donations made by the accused No. 2, who is also the Advisor of the Board of Directors of M/s Warren Tea Ltd., which in turn is controlled by his two sons. Thus, according to the prosecution, the accused No. 1 has committed the offence U/s 11 of the Act while the accused No. 2 abetted the commission of the said offence by the accused No. 1 and is punishable U/s 12 of the Act.

4. It would appear that the accused through their counsel objected the framing of the charge by the learned Special Judge on the ground that no prima facie case could be made out by the prosecution and, therefore, prayed that both the accused be discharged forthwith. After hearing the counsel appearing for both the parties, the learned Special Judge rejected the prayer of the accused and proceeded to frame the charge by the impugned order. Mr. K. Agarwal, the learned counsel appearing for the accused No. 2 contends that when the Apex Court in a catena of decisions has held that when mere suspicion in contradistinction to grave suspicion is discernible from the case of the prosecution, a charge cannot be framed against the accused, the Trial Court gravely erred in proceeding to frame the charge against them U/s 11 read with 12 of the Act when it could only find a "ripple of suspicion". He further submits that even if the allegations contained in the charge sheet are taken at their face value before it is challenged in cross-examination or rebutted by the defence, and are accepted in their entirety and they cannot, constitute the offence charged against the accused/ petitioners, it can be said that there are no sufficient grounds for proceeding against them. It is further contended by the learned counsel for the petitioners that the learned Special Judge completely overlooked the glaring facts that the quantum of the Excise Duty of rupees nine crores was imposed by the accused No. 1 upon the accused No. 2 was reduced to a mere Rs. 68.96 lakhs by the CEGAT on the appeal filed the Department, which was upheld by the Apex Court and of the fact that the cash donation as well as the

donation of the ambulance had been made in favour of a public charitable trust and not to a private individual. Assailing the interpretation of the words "for any other person" appearing in Section 11 of the Act, by the learned Special Judge, the learned counsel for the accused urges that those words cannot include a charitable trust like Zami Memorial Charitable Trust, but can only include a definite identifiable and ascertainable person; to uphold the interpretation of the learned Special Judge will be doing violence to the true object and intent of the Act. It is also contended by the learned counsel for the accused that the offence of abetment implies certain degree of activity on the part of the abettor, which is evidently absent in the instant case when there is no material even either remotely suggesting instigation or engagement by the accused No. 2 in the commission of the offence by the accused No. 1. He thus contends that no prima facie case having been made out against any of the accused, the impugned order is not sustainable in law and is liable to be quashed. Mr. SP Mahanta, the learned counsel appearing for the accused No. 1 also makes submission which broadly supports the contentions of the learned counsel of the accused No. 1.

5. On the other hand, Mr. DK Das, the learned counsel for the CBI supports the impugned order and submits that the evidence, which are mostly documentary evidence, collected by the CBI during the investigation are not only adequate to frame the charge against the accused but are also sufficient to return a verdict of guilt against them after the trial. He further contends that once the prosecution has shown the existence of quid pro quo between the donation and the reduction of the Excise Duty payable in the adjudicatory proceeding of the accused No. 1, which is the case here, in the absence of proper explanation by them in the course of trial, this is an open and shut case for the prosecution. He vehemently submits that the subsequent reduction of the quantum of the demand payable by the accused No. 2 in the appellate forum cannot be a ground to exonerate the accused from their criminal liabilities and the same can at the most be used as a mitigating factor for the quantum of punishment to be awarded after the conclusion of the trial. He, therefore, submits that the learned Special Judge did not commit any improper exercise of jurisdiction calling for the interference of this Court in a revision petition.

6. After carefully perusing the impugned order and after giving my anxious consideration to the rival submissions of the counsel for the parties, it is my considered view that elaborate discussion on the merits of the contentions of the rival parties will be illadvised and is most likely to cause prejudice to the accused. I refrain from doing so. Suffice it to say that this is not a case in which it can be said that the allegations against the accused, even taken at their face value and accepted in their entirety do not make out a case against them. The only acceptable test for discharging the accused at the stage of framing the charge is whether there was sufficient ground for proceeding against the accused or presuming that the accused has committed an offence. This what the Apex Court says in *State of Bihar V. Ramesh Singh*, (1977) 4 SCC 39:

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

.....(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provision together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. 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, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scale of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is

so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

While examining the scope of Section 227 of the Code of Criminal Procedure, the Apex Court in *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715, also held:

"14. These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused." The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonable connect the accused with the crime. No more need be enquired into."

7. The Trial Court has elaborately discussed the points in issue raised by the learned counsel for the accused and came to the conclusion that the prosecution has made out a prima facie case against the accused for further proceedings them. I say no more. All that I can say is that the nexus between the donation made by the accused No. 2 in Zami Memorial Charitable Trust and the adjudicatory process of the accused No. 1 resulting in the reduction of the duty payable to the former has been prima facie made out by the prosecution. The proceedings against the accused must be allowed to come to their logical conclusions/If, in the course of trial, the accused can establish their innocence, they will, no doubt, be acquitted. But they are not entitled to be discharged before trial.

8. Resultantly, these revision petitions have no merits and are liable to be dismissed, which I hereby do. The Trial Court shall now proceed with the two cases without further delay and shall dispose of the same in accordance with law, preferably within six months from today. The interim orders stand vacated. Transmit the L.C. records without any loss of time.