
(2013) 07 AHC CK 0254
In the Allahabad High Court
Case No : Criminal Revision No. 2019 of 2013

Saurabh Jain

APPELLANT

Vs

Central Bureau of Investigation, S.C.-II

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 3 ACR 3057 : (2013) 8 ADJ 409

Hon'ble Judges : Anil Kumar Sharma, J

Bench : Single Bench

Advocate : Viresh Mishra and Ram Milan Mishra, for the Appellant; Anurag Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—Heard Sri Viresh Sharma, learned senior advocate for the revisionist and Sri Anurag Khanna, learned counsel for the opposite party and perused the memo of revision as also the papers filed by the revisionist.

Challenge in this revision is to the order dated 23.4.2013 passed by Sri S. Lal, Special Judge, Anti-Corruption (CBI), Ghaziabad in Special Case No. 3 of 2012 [C.B.I. v. Dr. S.P. Ram and others) u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act and u/s 120B read with Sections 409, 420, 468 and 471 IPC whereby the application of the revisionist for his discharge u/s 239 Cr.P.C. had been rejected.

Learned counsel for the revisionist assailing the impugned order has vehemently argued that the order has been passed in a mechanical manner without application of mind and even the grounds for discharge and the arguments advanced in support thereof have not been mentioned by the learned trial Court, so the order is bad in the eye of law and the accused-revisionist is liable to be discharged as no offence against him is made out. It has been also argued that the revisionist is the only accused in the case who has been granted bail by this Court after considering the allegations made against him. Sri Mishra has placed

reliance on the case of Smt. Shiv Kumari Vs. State of U.P. and Another, .

2. Per contra learned counsel for the opposite party has contended that the learned Judge has mentioned the case-law on the point to conclude that at the stage of framing charge against the accused in a criminal trial the Court is required only to see whether on the material/documents available in/with the case diary, sufficient grounds for framing charges exist or not? He further submitted that at this stage the Court is not required to meticulously weigh, analyse and appreciate the evidence; that the charges can be framed even on strong suspicion.

3. On perusal of the impugned order it is found that in support of its findings the learned Judge has referred to dozens of case-laws of the Apex Court and specifically held that from the charge-sheets, documents and statements of witnesses recorded u/s 161 Cr.P.C. prima facie case is made out to frame charges for the offences punishable u/s 120B read with 409, 420, 468 and 471 IPC and u/s 13(2) read with 13(1)(d) of the Prevention of Corruption Act against the revisionist and other co-accused. Application 236Kha/1 to 236Kha/16 was filed on behalf of the revisionist for his discharge u/s 239 Cr.P.C.

4. The revisionist has annexed the FIR and the charge-sheet submitted by the opposite party with the revision. A bare perusal of these documents show that pursuant to the judicial order of this Court (Lucknow Bench) preliminary enquiry was conducted by the opposite party which established that the revisionist and other co-accused (charge-sheeted) have caused wrongful loss to the Government of U.P. and Government of India to the tune of Rs. 1.5 Crores and corresponding wrongful gain to themselves in pursuance of a criminal conspiracy hatched amongst themselves, which constituted offences u/s 120B read with 409 and 420, IPC and u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act and substantive offences thereof. On the basis of the enquiry report, case against five named and unknown officials of U.P. Small Scale Industries Corporation (UPSIC), Kanpur and Director General (Family Welfare), Lucknow and others was registered with the opposite party and the investigation culminated into charge-sheets against the revisionist and other co-accused. The case is commonly known as infamous "NRHM Scam". The charge-sheet itself contains the brief facts of the case and the allegations against the revisionist and other co-accused. I need not burden this judgment by detailing all those details, which are found in paras-16 of the charge-sheet (Annexure-2) running in 66-sub-paragraphs.

5. u/s 238 Cr.P.C. when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like police report, FIR, statements recorded under sub-Section (3) of Section 161 Cr.P.C. of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements recorded u/s 164 and any other documents, which have been forwarded by the prosecuting agency to the Court. After that, comes the stage of discharge, for which it is provided in Section 239 Cr.P.C. that the

Magistrate has to consider the police report and the documents sent with it u/s 173 Cr.P.C. and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of aforementioned documents, he comes to the prima facie conclusion that there are grounds for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is thereafter that the charge is framed u/s 240 Cr.P.C. and the trial proceeds for recording the evidence. Thus, in such trial prosecution has only one opportunity to lead evidence and that too comes only after the charge is framed.

6. The learned trial Court has rightly placed reliance on the case of State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , where a three-Judge Bench of the Apex Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relatable to trial of warrant cases; and (iii) Sections 245(1) and (2) qua trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus:

if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

In view of the provisions of Section 239 Cr.P.C. and the above principles, the Court has to see whether prima facie case is made out from the materials of prosecution side and there is no need for the Court to go deep into the probative value of the material on record and that it is to be ascertained whether existence of the factual ingredients constituting the offence are found and a strong suspicion raises on the conduct of the accused and the Court has to find out whether there is sufficient grounds for proceeding against the accused and it is not required to appreciate evidence to conclude whether there are adequate materials for convicting the accused.

7. The complaint and also the charge-sheet set out the relevant facts in great detail and made specific allegations to the effect that revisionist alongwith other co-accused had entered into a conspiracy to defraud the State and the Central Government and caused wrongful loss for his wrongful gain. The facts stated in the discharge application are mainly the defence of the accused, which is not to be considered at this stage. The prosecution is yet to lead evidence in the case in support of the allegations/charges. The case of Shiv Kumari (supra) referred on

behalf of the revisionist does not help him because of peculiar facts and circumstances of that case. The order of the learned Magistrate was also cryptic and non-speaking. Further, the application u/s 239 Cr.P.C. was filed in compliance of the order of this Court on application u/s 482 Cr.P.C. and the learned Magistrate could not understand the real import of Section 239 Cr.P.C. In the instant case, the material contained in the charge-sheet itself is sufficient to frame charges against the accused-revisionist.

Considering the composite nature of the offences, this Court does not see any cogent reason to interfere with the impugned order, which does not suffer from any material irregularity, illegality or jurisdictional error. The revision lacks merit and is accordingly dismissed.