

(2019) 08 DEL CK 0001

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2594, 2595, 2596, 2597 Of 2012,
Criminal Miscellaneous Application No. 13258, 13259, 13261, 13263
Of 2012, 17557 Of 2017

Shankar Adawa

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 19, 21
Indian Penal Code, 1860 — Section 120B
Official Secrets Act, 1923 — Section 3, 5, 5(2), 5(4), 15
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 177 DRJ 130 : (2019) 3 JCC 3266 : (2019) 262 DLT 761

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N. Hariharan, Siddharth Singh Yadav, Punya Rekha, Prateek Bhalla,
Sharang Dhulia, Govind Venugopal, Prasanta Varma, Prativa Varma, Chetna

Final Decision : Disposed Off

Judgement

Sunil Gaur, J

The challenge in the above captioned petitions is to trial court's order of 31st March, 2012 vide which first three petitioners have been put on trial on the charge under Section 120(B) of IPC read with Section 5(2) punishable under Section 5(4) of The Official Secrets Act, 1923. The fourth petitioner M/s Reliance Industries Limited has been also charged with the offence under Section 5(2) punishable under Section 5(4) read with Section 15 of The Official Secrets Act, 1923. In the alternative, first three petitioners have been also charged for the offence under Section 5(2) punishable under Section 5(4) read with Section 15 of The Official Secrets Act, 1923.

The first petitioner-Shankar Adawal was the General Manager (Corporate Affairs) of Reliance Telecom Pvt. Ltd. and he has been arrayed as accused No. 3 in the

charge-sheet. Petitioner-V. Balasubramanian, was the Group President of M/s Reliance Industries Public Limited and he has been arrayed as accused No. 1, whereas the abovesaid M/s Reliance Industries Limited has been arrayed as accused No. 4. Petitioner-A.N. Sethuraman was the Vice-President of M/s Reliance Industries Limited and he has been arrayed as accused No. 2 in the charge-sheet filed.

The crux of the prosecution case as noticed in the impugned order is as under:-

"Case of prosecution is that on 28.10.1998, search of the office premises of Sh. V. Balasubramanian, Group President, Reliance Industries Limited (RIL) at 5th Floor, Meridien Commercial Tower, Janpath, New Delhi was conducted by Inspector Gir Raj Singh, Addl. SHO, PS Chittaranjan Park, New Delhi in connection with investigation of case FIR No. 799/98, PS Hauz Khas, New Delhi. In the course of search, photocopies of the four "Secret" documents of Government of India (comprising of 37 pages) were recovered from office- table drawer of Sh. V. Balasubramanian. The table was lying locked. It had to be broken open in presence of witnesses. As a result, photocopies of four documents comprising of 37 pages were recovered from the drawer of the table. Prosecution alleges that these documents were "secret documents".

The particulars of the documents recovered have been already spelt out in the impugned order. The document D-7 is on the subject "Core Group on Economic Matters-Challenge of Economic Sanctions against India" (5th Meeting). The document D-8 is part of document D-7. On 14th September, 1998, this document has been labeled separately to highlight being No. 17 in the aforesaid document D-7. The next document is D-9 is on the subject-"Minutes of the 37th meeting of the Core Group of Secretaries on Disinvestment" relating to meeting convened by Cabinet Secretary on 21st September, 2008.

The reference to document D-10, relied upon by the prosecution has not been adverted to, for the reason that trial court in the impugned order has concluded in respect of this document as under:-

"In view of the above, as rightly submitted by learned defence counsel, it cannot be said that documents D-10 was a secret document or a document containing information, communication of which would have been in contravention of the provisions of Official Secrets Act".

Upon considering the charge-sheet and the material on record, trial court vide impugned order has concluded as under:-

"From the material available on record, prima facie it can be said that accused No. 4 Reliance Industries Ltd. had vested interest in having the information contained in the three documents (D-7, D-8 & D-9) so as to know as to what was going on at the level of the government on the subjects to which they pertain, and to take appropriate steps for the benefits of the company which is an association of persons and having a juristic personality in the eye of law.

Herein, on the material available on record, prima facie case for an offence under Section 5(2) punishable under Section 5(4) read with Section 15 of The Official Secret Act is made out against Company-accused No. 4.

Prima facie there is material on record to infer agreement & criminal conspiracy between accused No. 1, 2 and 3 from the manner in which the information has been received and communicated. Since prima facie case is made out against them, they have to face trial for an offence punishable under Section 120 B IPC read with Section 5(2) punishable under Section 5(4) of Official Secrets Act.

Having regard to all the facts and circumstances, this Court also deems it to be a fit case to frame charge against accused no. 1, 2 & 3, also in the alternative, for an offence under Section 5(2) punishable under Section 5(4) of Official Secrets Act read with Sec. 15 Official Secrets Act; and I order accordingly".

Since the above captioned four petitions are directed against common impugned order, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common order.

The challenge to the impugned order by learned Senior Counsel for petitioners is on the ground that in the reply (D-34/2) the concerned Department has stated that the document D-9 does not appear to be such, so as to require a classification as "Secret" or disclosure of which to any unauthorized persons will be violation of provisions of Sections 3 & 5 of The Official Secrets Act, 1923, read with instructions contained in the Security Manual issued by Ministry of Home Affairs.

It was submitted by learned Senior Counsel for petitioners that the documents in question (D-7 to D-9) are not prejudicial to the security of the State and by merely marking them to be secret, does not bring the documents in question within the ambit of The Official Secrets Act, 1923. It was pointed out that the word "secret" used in The Official Secrets Act, 1923 has been used only with respect to or in relation to "official code or password". Reliance was placed upon Supreme Court's decisions in *Sama Alana Abdulla Vs. State of Gujarat* (1996) 1 SCC 427 and *Govt. of NCT of Delhi Vs. Jaspal Singh* (2003) 10 SCC 586 to submit that the information was already in public domain, which has been supplied through Government channels and it is so apparent from the copies of newspaper reports on record.

It was emphasized by learned senior counsel for petitioners that at no stage the prosecution has denied the contents of the newspaper reports on record. Learned senior counsel for petitioners had referred to various newspaper reports on record to point out that the information contained therein does not in any manner whatsoever infringe the provisions of The Official Secrets Act, 1923. It was submitted that it is not the prosecution case that petitioners had leaked the information in respect of the documents in question to the media. Attention of this Court was drawn to the material on record to show that petitioners had not

acted in contravention of provisions of The Official Secrets Act, 1923 and that there is no presumption in law that mere labelling of a document (contents of which are already in public domain for months prior thereto through Government or other sources) as "secret" contravenes any provision of The Official Secrets Act, 1923. To submit so, reliance was placed upon Supreme Court's decisions in Suraj Mal Vs. State (Delhi Administration) (1979) 4 SCC 725; C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779.

It was highlighted by learned senior counsel for petitioners that with the advent of Right to Information Act, 2005, there is implicit repeal of Section 5(2) of The Official Secrets Act, 1923 as Right to Information Act, 2005 is a beneficial legislation and seeks to protect fundamental rights under Articles 19 & 21 of the Constitution of India. To submit so, reliance was placed on Supreme Court's decision in T.Barai Vs. Henry AH HOE & Anr. (1983) 1 SCC 177 and Ratan Lal Adukia Vs. Union of India (1989) 3 SCC 537. It was urged on behalf of the petitioners that Second Administrative Reform Commission Report had recommended amendment to Section 5 of The Official Secrets Act, 1923 to avoid the confusion and ambiguity arising from the unnecessary wide interpretation being given to The Official Secrets Act, 1923, which deals with disclosure affecting the sovereignty and integrity of India and security of the State, and the relations with foreign States are matters relating to national security.

Reliance was placed upon Supreme Court's decisions in Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135 and Union of India Vs. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4 to submit that at the charge stage, the courts are required to sift through the material on record to see if prima facie case is made out and if two views are possible, then the benefit accrues to the accused. Reliance was also placed upon Supreme Court's decision in Satish Mehra Vs. State (NCT of Delhi) and Anr. (2012) 13 SCC 614 to submit that if prima facie case is not made out, then the charges framed can be quashed at any stage.

Attention of this Court was drawn to the pertinent observations made by Supreme Court in Satish Mehra (Supra), which is as under:-

"14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is

disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

Attention of this Court was particularly drawn by learned Senior Counsel for petitioners to the statement of Mr. Anil Kumar, Secretary, Department of Telecommunication recorded under Section 161 of Cr.P.C. to point out that this witness has clearly stated that the documents D-7 & D-8 do not involve any sensitivity and are not of any advantage to Reliance Industries Limited as the information contained in these documents relate to Telecommunication. It was highlighted by learned Senior Counsel for petitioners that the Secretary, Department of Telecommunication, has clearly stated in his aforesaid statement that he is not in a position to say as to whether the leakage of documents D-7 & D-8 caused any prejudice to the security of the nation.

It was vehemently argued by learned Senior Counsel for petitioners that the documents D-7 to D-9 were very much in public domain and the information contained in these documents were promptly published by newspaper, "Business Standard Logistics Times" on 16th September, 22nd September, 28th September, & 29th September, 1998. It was pointed out that in the reply filed by respondent-CBI, the aspect of publication of the contents of these documents by the concerned newspaper is not disputed and the trial court has erred in not considering this vital aspect on the technical plea of these newspaper reports having not been formally proved on record. Thus, it is submitted that since the documents D-7 to D-9 were in public domain, therefore, the trial of petitioners for the aforesaid offences is unwarranted and so, the impugned order deserves to be set aside.

On the contrary, learned Special Public Prosecutor for respondent-CBI supported the impugned order and submitted that on the basis of oral and documentary evidence, the prosecution case is required to be proved at trial. It was further submitted by learned Special Public Prosecutor for respondent-CBI that the documents in question were marked "secret" as per the applicable rules and since petitioners were found in possession of these incriminating documents, therefore, they are required to be put on trial. It was submitted that the pleas urged on behalf of petitioners are required to be considered at trial and not to be pre-judged at this initial stage. Dismissal of these petitions is sought on the ground that at this initial stage, only prima facie case has to be seen and merits of the case are not required to be considered prematurely.

After indepth consideration of the submissions advanced by both the sides and upon careful scrutiny of the material on record and the decisions cited, I find that the final test is not to be applied at the stage of framing of charge, as at this stage accused is to be put on trial only if there is a strong suspicion of involvement of the accused. All that is required to be seen at this stage is as to whether prima facie case is made out or not. The need for an independent application of mind by trial court has been stressed by Supreme Court in Prafulla Kumar Samal (supra) and Sajjan Kumar vs. Central Bureau of Investigation (2010) 9 SCC 368. The legal position highlighted is that the trial court is empowered to discharge the accused in a case where grave suspicion about the involvement of accused does not exist. In light of the afore-referred legal position culled out from the decisions cited, impugned order putting petitioners on trial for the offence in question has been scrutinized and thereupon, it emerges that the trial court in relation to one document i.e. D-10 has concluded that the subject matter of this document was in public domain and so, petitioners have not been put on trial in respect of the said document.

Supreme Court in Sama Alana (Supra), has made it amply clear that mere marking of a document as "secret" is not sufficient. The pertinent observations made by the Supreme Court in Sama Alana (Supra) are as under:-

"8. From the way the said sub-section is worded it becomes apparent that the qualifying word "secret" has been used only with respect to or in relation to official code or password and the legislature did not intend that the sketch, plan, model, article, note, document or information should also be secret."

The aforesaid view has been reiterated by Supreme Court in Jaspal Singh (supra). Thus, it becomes amply clear that a person cannot be put on trial merely because a document has been marked as "secret", as it is necessary to see the nature of information contained in it, to find out if any offence under The Official Secrets Act, 1923 is made out or not. This Court is of the considered view that trial court has gravely erred in ignoring the newspaper reports on record on technical plea of want of proof, as it is a settled legal position that on technicalities, substantial justice cannot be sacrificed. Neither the rules of procedure nor the technicalities of law can stand in the way of substantial justice. Even the law bends before justice. It is a cardinal principle of law that technicalities cannot be allowed to result in failure of justice. Hyper technical approach adopted by the trial court certainly defeats the ends of justice. When substantial justice is pitted against technicalities, then substantial justice has to prevail. It needs no reiteration that procedural process cannot be allowed to defeat substantial justice on mere technicalities. Such a view is being taken in the light of settled legal position highlighted by Supreme Court in its decisions in Union of India Vs. Ajeet Singh (2013) 4 SCC 186; Hemareddi (D) through LRs. Vs. Ramachandra Yallappa Hosmani & Ors. 2019 SCC OnLine SC 665 and Kamil Vs. State of Uttar Pradesh 2018 (14) SCALE 517.

Since the contents of newspaper reports on record pertaining to the documents

in question have not been denied by the prosecution, therefore, to secure ends of justice, the contents of newspaper reports on record deserve to be looked into, to consider the classification of these documents as "secret". Such an exercise is required to be undertaken, in the face of the statement of Secretary of Department of Telecommunications on record while dealing with the classification aspect.

A bare perusal of the statement of Mr. Anil Kumar, Secretary, Department of Telecommunication, Government of India reveals that he is not categorical about documents in question being prejudicial to the security of the nation. Sensitivity of the documents in question can be seen from the fact that it relates to disinvestment. Since the documents in question have been already made public, therefore, they lose their confidentiality. Trial court has not put petitioners on trial in respect of document D-10, therefore, there remains no justification whatsoever to put petitioners on trial in respect of remaining three documents i.e. D-7 to D-9, as these documents were also in public domain. Since the impugned order suffers from utter non application of mind, therefore, it cannot be sustained. There is no hesitation whatsoever in concluding that continuance of proceedings before the trial court is travesty of justice, as the ingredients of the offence alleged are apparently lacking. Thus, to secure the ends of justice, the instant proceedings are hereby halted forthwith. Consequently, impugned order as well as the proceedings emanating therefrom, are hereby quashed.

The above captioned petitions and applications are accordingly disposed of.