
(2003) 07 GAU CK 0019
In the Gauhati High Court
Case No : Criminal Revision No. 31 of 1995

State C.B.I.

APPELLANT

Vs

Md. Fazal Ali and Another

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2003) 3 GLR 687 : (2003) 3 GLT 416

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : D.K. Das, for the Appellant; A.C. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—This revision petition is directed against the order dated 29.9.1994 passed by the learned Special Judge, Assam in Special Case No. 8(c) of 1993, discharging the opposite party of the offences u/s 120B/420 IPC and u/s 13(2) R/W Section 13(i)(d) of the P.C. Act, 1988.

2. I have heard Mr. D.K. Das, learned senior counsel for the petitioner and Mr. A.C. Sarma, learned counsel for the opposite party.

3. The facts in short are that a case being R.C. 23(A)/92 SHG was registered against the opposite party and one Sri H.K. Nath, Section Supervisor (O), O/O SDOP, Dispur dated 31.7.92 on the allegation that while the accused officials were posted and functioning in their respective capacities in the office of the S.D.O.P. Dispur during 1990-91 had entered into a criminal conspiracy with the O.P. No. 2 and others in pursuance whereof they facilitated unauthorised use of some other telephone connections causing huge loss to the department and undue pecuniary benefit to the PCO subscribers etc. The investigation was conducted by the CBI and a charge sheet was laid on 28.12.1992 against the opposite party under the aforementioned sections of law. It was mentioned therein that a STD PCO No. 60099 was provided by the Telephone Department at N.H. 37, Beltola in the name of O.P. No. 2 in March, 1990. The O.P. No. 1 was at

the relevant time functioning in the said area as the regular Mazdoor of the department. The opposite party entered into a criminal conspiracy in pursuance of which the O.P. No. 1 had looped the Telephone No. 60099 with another Telephone No. 61149 belonging to the Commissioner of Border, Khanapara with effect from 15.9.1991 to 31.10.1991 without any authority. As a result, the meter of the Telephone No. 61149 registered a total additional 60695 calls/units and after deducting the total meter reading of 9927 calls from the meter of STD PCO No. 60099, the total revenue to be realised from the PCO Telephone No. 60099 was Rs. 45,691.20. The charge sheet further disclosed that enquiries were also made about the said anomalies by Sri K.K. Das, the A E (Vig) and Sri MN Sonowal, the then SDOP, Dispur before whom the O.P. accused confessed their guilt in writing. The O.P. No. 2 also paid up the amount of Rs. 45,691.20 on 25.4.1992. Case No. 8(c)93 was registered on the said charge sheet.

4. After the appearance of the O.P. accused before the learned court below and on furnishing of the necessary documents and papers in connection with the case, hearing was taken up on the question of framing of charge. The learned trial court by the impugned order discharged the O.P. accused.

5. Mr. Das, learned counsel for the petitioner has argued that the learned trial court was in clear error in discharging the O.P. accused in the face of sufficient materials on record in support of the allegations levelled against them. He contended that the learned court below in passing the impugned order had proceeded as if the trial had concluded and it was to decide whether the O.P. accused were to be convicted or acquitted. He maintained that the learned court below embarked on an exercise of weighing the materials on record in a golden scale which is not warranted at the stage of framing of charge. According to the learned counsel, in view of the consisting judicial opinion that a court at the time of framing of charge is not required to marshal the evidence on record and that a prima facie satisfaction of commission of the alleged offence is sufficient, the learned court had acted illegally in maliculously scanning the materials on record and discharging the O.P. accused without affording any opportunity to the prosecution to substantiate the allegations. In support of the submission, Mr. Das has placed reliance on a decision of the Apex Court in State of M.P. Vs. S.B. Johari and Others, In reply Mr. Das has argued that considering the evidence on record the charge against the O.P. accused was groundless and therefore the learned court below was justified in discharging them. According to him, the materials produced by the prosecution till the framing of charge did not indicate any nexus between the O.P. accused and the alleged offence and the learned court below was well within its authority in recording its satisfaction that no charge against the O.P. accused could be framed on the basis thereof. According to him, the learned trial court having duly considered all the materials furnished by the prosecution in support of the allegations, this court sitting in revision would not interfere with the impugned order.

6. The reasonings which impelled the learned court below to discharge the O.P.

accused may be examined. It noticed that the Investigating Agency had recorded only the statement of Mr. M.N. Sonowal, A.E. (Vigilance). The said witness referred to a confessional statement of the O.P. No. 1, Fazal Ali to the effect that he in an unauthorised manner had tapped the line of Telephone No. 61149 and had connected it with Telephone No. 60099. The learned court below noticed the admission of the said witness that the locking system of the relevant equipments had gone rusted and out of service. It was of the view that on account of the omission on the part of the Investigating Officer to record the statements of the other cited witness it was not possible to ascertain the value of their evidence in support of the allegations. It observed that the statement of Mr. K.K. Das, A.E. (Vig.) who claimed to have detected the illegal looping of Telephone No. 60099 with the Telephone No. 61149 was important but as it was not recorded, the same was not available for consideration. With regard to the confessional statements said to have been made by the O.P. accused, the learned court below was of the view, on a consideration thereof, that it did not amount to admission of looping of Telephone No. 60099 with Telephone No. 61149. With regard to the aspect of payment of Rs. 45,691 for the Telephone No. 60099 for 9927 calls as per the vigilance report, the learned trial court concluded that the concerned officer had not been examined to establish that the payment was made for illegal looping of Telephone No. 60099 to Telephone No. 61149.

7. I have examined the records available before the learned trial court. It appears therefrom that the allegations against the O.P. accused is one of criminal conspiracy to defraud the department in pursuance whereof the O.P. No. 1 had looped the O.P. No. 2's Telephone No. 60099 to the Telephone No. 61149 for the period 15.9.1991 to 31.10.1991 for which the O.P. No. 2 was liable to pay Rs. 45,691.20. The sanction for the prosecution of the O.P. No. 1 is also for the said offence. On a perusal of the statements of Mr. Sonowal and the confessional statements of the O.P. accused made in writing, it is not possible to conclude that the findings arrived at by the learned court below can be said to be absurd and/or perverse. In exercise of my revisional jurisdiction, in view of the state of the evidence on record which has been dealt with in details by the learned court below, I do not consider it to be a fit case of interfere with the impugned order.

8. The Apex Court in *State of M.P. v. S.B. Johri and Ors.* (supra) had reiterated the settled proposition of law that at the stage of framing the charge, the court has to prima facie consider whether there are sufficient grounds for proceeding against the O.P. accused and it is not required to appreciate the evidence to arrive at the conclusion that the materials produced are sufficient or not for convicting the O.P. accused.

9. I fully subscribe to the said view. This, however, does not debar a court at the stage of framing of charge to make an exercise to ascertain as to whether the materials made available by the prosecution are sufficient to generate the prima facie satisfaction required to frame the charge against the accused. If on the basis of the evidence placed by the prosecution it cannot be reasonably

concluded that a live nexus between the accused and the offence alleged can be contemplated, a court would be within its authority to discharge the accused. Some amount of appreciation of evidence would thus be called for and if on the basis thereof a finding is reached in favour of the accused discharging him from the offence a finding which cannot be dubbed as perverse or preposterous, a revisional court would not interfere with the same on the ground that the learned court below had exceeded the limit of appreciation of the materials in discharging the O.P. accused. Some amount of flexibility in the matter of recording its satisfaction in the matter of framing of charge has to be conceded to the Court and it is only when it acts in a manner which is on the face of the record in gross contravention of the fundamental principles of law and procedure that a revisional court would step in to remedy the error. No such infirmity can be deciphered in the facts of the present case. In the light of the above discussion, I am unable to uphold the contentions raised on behalf of the petitioner.

10. The revision petition, therefore, fails and accordingly is dismissed. No costs.