
(2019) 08 SHI CK 0037
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 368 Of 2017

State Of H.P.

APPELLANT

Vs

Sunil Kumar & Others

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 173(8)

Citation : (2019) 08 SHI CK 0037

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Hemant Vaid, Y.S. Thakur, Vikrant Chandel, Soma Thakur, Ravinder Singh Jaswal, Rakesh Thakur, Deepak Negi, Neelam Kaplas, Varun Chauhan, Dibender Ghosh, Sheetal Vyas, Lakshay Parihar, H.S. Rana, Vinod gupta, Arun Kumar

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The State of Himachal Pradesh, stands, aggrieved by the, order, pronounced on, 18.4.2017, by the learned Special Judge (Forests), Shimla, wherethrough, it barred the Investigating Officer concerned, to, make further investigations. The reasons cast therein, are borne, in paragraph-7 thereof, paragraph whereof, is, extracted hereinafter:-

"From the challan and other documents placed on record, it becomes clear that the investigating agency came to know in the very beginning that the accused namely S/Sh. S.S. Deshta, K.s. Pathania and Mahesh Gupta are Public Notaries. No fresh facts came to the knowledge of the police or the learned Public Prosecutor while addressing arguments on the point of charge. The police in its wisdom omitted to comply with the provisions of the Notaries Act, 1952. The applicant/State cannot be permitted to fill up the lacunae in its case particularly when no fresh facts have come to its notice and it took almost seven years to complete the investigation of the case. The accused cannot be made to suffer

because of the fault of the investigating agency."

2. For the reasons to be assigned hereinafter, the impugned order is not, anvilled, upon, any legally sound interpretation, being meted, vis-a-vis, the mandate, borne in Section 173, sub Section (8) of the Code of Criminal Procedure, 1973, (for short Cr.P.C.). However, before proceeding to make, an, interpretation, vis-a-vis, the hereinafter extracted mandate, embodied in sub Section (8) of Section 173, Cr.P.C., the, stark fact, for, resting, the, contentious factum, is, comprised, vis-a-vis, some amongst, the, accused namely Mahesh Kumar Gupta, and, Surender Singh Deshta, given theirs being Public Notaries, and, also theirs being public servants, thereupon, before assumption, of, a valid jurisdiction, or cognizance qua the the charges, hence by the learned Court, rather enjoins, the meteings qua them, of, the imperative prosecution sanction, rather, by the competent authority:-

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)"

However, omissions, of, the Investigating Officer, to, alongwith his report, initially submitted under, Section 173 Cr.P.C., before the learned trial Court, hence, append therewith, the, apposite prosecution sanction, qua, the afore co-accused, though, was curable even through, his submitting a supplementary challan hence thereafter. However, the subsequent, application, cast, under the provisions of sub-section (8) of Section 173 Cr.P.C. wherein, he strives to seek permission, to, obtain the apposite prosecution sanction qua the afore accused, from, the competent authority, was, also a permissible recouring, rather within domain thereof.

3. For the reasons assigned hereinafter, yet, the rejection of the prosecution endeavour, by the learned trial Court, hence to collect the apposite prosecution sanction, and, thereafter appended, it, with a supplementary challan, is untenable, (i) as, the connotation, of, the phrase "further investigations" as occurs, in, Section 173 Cr.P.C." does not require, qua the prosecution in contemporaneity, vis-a-vis, its availing the afore provisions, its thereat holding the requisite oral as well, as documentary evidence, (ii) rather the afores' is mandated, to, emerge or make appearances, only upon, such further investigations, being permitted by the learned Court concerned, (iii) and, when the prosecution, strives to after, the requisite permission being granted, qua it, by the learned Court concerned, hence obtain the requisite prosecution sanction, (iv) and, when the afore sanction, is, obviously, a, piece, of, documentary evidence, and, also hence necessary, for, ensuring the learned trial Judge

concerned, to, assume, a, valid cognizance, vis-a-vis, the offences, constituted in the FIR, and, qua the accused concerned, (v) thereupon, the afore reasons constituted, in the impugned order are flimsy, and, are not made, on a sound and proper appreciation, of, the mandate, of, the afore statutory provisions.

4. In view of the afore observations, the impugned order is quashed and set aside. Consequently, the espoused leave is granted, vis-a-vis, the prosecution, for making, the, further investigations in the matter. All pending applications, if any, also stand disposed of.

5. Any observation made herein above, shall not, be taken as an expression of opinion, on, the merits of the case, and, the learned trial Judge concerned, shall decide the matter uninfluenced, by any observation made hereinabove.