
(1993) 12 MP CK 0005
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 219 of 1986

State of Madhya Pradesh

APPELLANT

Vs

Ashwin Kumar Vishnudutta Jha and Others

RESPONDENT

Date of Decision : 13-12-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239, 240

Penal Code, 1860 (IPC) — Section 409

Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (1994) JLJ 285 : (1995) 40 MPLJ 135 : (1995) MPLJ 135

Hon'ble Judges : M.W. Deo, J

Bench : Single Bench

Advocate : K.V. Phadke, for the Appellant; J.P. Gupta and N.K. Dave, for the Respondent

Final Decision : Dismissed

Judgement

M.W. Deo, J.

This Criminal Revision is directed against the order dated 8-5-1986 passed by the Special Judge, Indore in Criminal Case No. 2 of 1985 by which the respondent No. 1 was discharged of offences u/s 409 of Indian Penal Code, Section 5(I)(c), 5(I)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 120B, Indian Penal Code. By the said order respondents 2 and 3 were also discharged of the offences u/s 496, Indian Penal Code, Section 5(I)(c), Section 5(I)(d) of the Prevention of Corruption Act and Section 120B, Indian Penal Code.

The facts are stated lucidly in full detail in the impugned order of discharge. The material facts out of them may be stated thus. In the year 1980-81 the annual examination of April 1981 was to be conducted of the premiddle standard by Director of Public Education, Bhopal according to rules. The respondent No. 1, under the rules, was incharge of the examinations of Indore Division in the capacity of the Divisional Education Superintendent. According to rules the

accused was responsible for secrecy of question papers and proper conduction of the examination.

For the aforesaid examination, looking to the number of examinees, it was assessed that 15 tonnes of paper would be required and accordingly allotment of that quantity was made to accused/respondent No. 1 from Amlai Paper Mills at Government rates. The question papers and the answer books were to be got printed from accused/respondents 2 and 3 under an order given by respondent No. 1 to them.

It was alleged that the entire paper was sent to respondents 2 and 3. It was also alleged that 6 tonnes of paper could have been utilised in preparation of question papers and the answer books. The main allegation was that the respondent No. 1 in conspiracy with respondents 2 and 3 gave out that all the question papers leaked and further gave out that they had to be re-printed and finally showed that the remaining quantity of 9 tonnes of paper was used in re-printing question papers and answer books. The value of the paper was assessed at Rs. 45,000/-. As a result of the inquiry made, it was found that in fact the second question paper and the answer books were never got printed and that the respondent/accused committed criminal breach of trust in respect of aforesaid 9 tonnes of paper worth rupees 45,000/-.

The learned Special Court has considered all the circumstances and the material produced by the prosecution as referred to u/s 173, Criminal Procedure Code. The learned Special Court after considering the entire material came to the conclusion that in fact the documents relied upon by the prosecution itself, as referred to u/s 173, do not make out a case for framing out a charge. The learned Special Judge considered the facts that a letter dated 1-3-1981 was written by Shri Sohanlal Gupta, the secretary of the Examinations saying that the paper had leaked, that the second paper was moderated, that the second paper was sent for re-printing and was re-printed by respondents 2 and 3 as per terms of the contract and that there are reports dated 14-4-1981 of Chartered Accountant Bhatia and of 15-1-1981 of Chartered Accountant Mahajan and Maheshwari and Company stating that the accounts actually showed that the papers were re-printed a second time.

The learned counsel appearing for the State firstly contended that it did not belong to the special court to consider this entire material by application of judicial mind like evaluating evidence as at the stage of trial because this was merely a stage of consideration of charge under Sections 239 and 240, Criminal Procedure Code. The learned counsel for, the State, therefore, contended that the learned special judge exceeded his jurisdiction in so applying his mind and discharging the accused persons on consideration of the material.

It was rightly opposed by the learned counsel for the respondents/accused by relying upon the case of Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, where the Supreme Court considered Section 251(a),

which is now equivalent to the analogous new provision, to rule as follows :

"The argument that the court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the court and it has to judicially consider the question of doing so. Without fully advertent to the material on record it must not blindly adopt the decision of the prosecution."

The aforesaid case was followed by the Supreme Court in the case of State of Karnataka Vs. L. Muniswamy and Others, to rule that:

"for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible."

As a result of the law laid down by the Supreme Court in the aforesaid two cases the following propositions clearly emerge : (i) the court while considering the question of charge under Sections 239 and 240 of the Criminal Procedure Code is in law and jurisdiction bound to consider the documents referred to by the prosecution u/s 173, Criminal Procedure Code by application of its judicial mind; (ii) on such application of mind the court has to consider whether the material on record, if unrebutted, is sufficient to reasonably carry a conviction; (iii) if the answer to the second question is in negative, the court would be justified in discharging the accused and if the answer is in affirmative the court would frame appropriate charge.

Applying the aforesaid tests, the first contention of the learned Panel Lawyer for the State stands rebutted that the learned Special Judge could not have and should not have applied judicial mind to all the documents and material referred to u/s 173, Criminal Procedure Code. That is the material on which the prosecution chooses or proposes to rely upon at the trial in support of its case. The special judge was, therefore, fully justified, nay duty bound to consider all the documents and material so referred u/s 173, *ibid*.

Coming to the application of the tests for framing charge as stated above, could the material on record be reasonably said to be sufficient to carry a conviction in the face of the document dated 1-3-1983 namely the letter written by Shri Sohanlal Gupta, Secretary of the Examinations informing that the paper had leaked out making the printing of second paper unavoidable ? The entire

correspondence between the three accused persons inter se regarding re-printing of the second paper (this correspondence is relied upon by the prosecution u/s 173, *ibid*) and the reports and statements of the Chartered Accountants, J. Bhatia and Co. and Mahajan and Maheshwari and Co. which have been filed by the prosecution in support of its case show that the second paper was actually printed as a result of the first having leaked out.

The contention of the learned counsel for the State was that the correspondence between the accused persons inter se was fabricated only to give a colour to the fact of leakage of the question paper and thus to falsely show reprinting of the second one which in fact was not done in order to swallow the remaining 9 tonnes of paper. For one, this correspondence between the accused inter se is relied upon by the prosecution u/s 173 and the accused are entitled to make use of it against prosecution.

Assuming for the sake of arguments that the aforesaid correspondence is even excluded yet the material on record clearly shows by documents coming from the office of the State Government (and not from the accused) that the assessment of requirement of 15 tonnes of paper in all was made by the Government office itself in view of the number of candidates for the examination, that the allotment was made by the Government without any part played by the accused No. 1, that the entire allotted paper was sent to respondents 2 and 3 by respondent No. 1, that the Secretary of Examinations himself wrote vide letter dated 1-3-1983 that the paper had leaked out, that the letter dated 31-3-1984 written by the Director of Public Education to Superintendent of Police also clearly stated that the assessment of requirement of 15 tonnes of paper was made by its office looking to the number of candidates at 45,000 requiring about 55,000 answer books and as such no disproportionate allotment was obtained by the accused No. 1, and that the utilisation of the entire allotted paper was found to be done by the two reports of the Chartered Accountants and their statements u/s 161. All this material indisputably is such which would have prevented conviction of the respondents in any event. All this material in fact militates against the allegation of offence made by the prosecution. Consequently the test laid down above that the entire material on record should be such as would reasonably lead to conviction if unrebutted by the accused to enable the court to frame a charge, is not made out by the prosecution and hence the court was justified by the impugned order to discharge the respondents.

It may also be mentioned that it was contended by the respondents that with the passage of almost 13 years in the aforesaid futile exercise (for which delay the accused were not responsible) material events have occurred like death of Shri Sohanlal Gupta whose evidence will not be available to the accused/respondents viz-a-vis his letter dated 1-3-1983 regarding leaking of the question paper and as such would cause serious prejudice to the accused.

It is not necessary to consider the aforesaid question of prejudice as stated earlier as this court is clearly of the view that the learned Special Judge was

absolutely correct in considering the material referred to u/s 173, Criminal Procedure Code and by application of his judicial mind arrived at a correct conclusion that the accused persons should have been discharged and as such discharged them.

The order of discharge is, therefore, upheld and the revision petition challenging it is dismissed.