
(1983) 04 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2638-M of 1982

State of Punjab

APPELLANT

Vs

Sudhir Mittal alias Shadi Lal and anr.

RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Citation : (1983) AICLR 279

Hon'ble Judges : M.M.Punchhi, J

Advocate : M.S. Rakkar, D.S. Bali, Bachittar Singh, Advocates for appearing Parties

Judgement

Madan Mohan Punchhi,J.

1. This is a petition under section 482 of the Code of criminal procedure preferred by the State of Punjab. It is aggrieved against the discharge orders passed by Shri R.L. Anand, Judicial Magistrate Ist class, Patiala, as left uninterfered with by Shri Hira Lal Garg, Additional Sessions Judge, Patiala. The discharged accused, respondents herein are Sudhir Mittal, an examinee for the Punjab Civil Service (Executive Branch) examination held by the Punjab Public Service Commission in November 1979, and Som Chand Vashisht, an invigilator in a relevant examination.

The prosecution case, as culled out from the resume of facts noticed by both the Courts below is US Under :

3. Sudhir Mittal bearing Roll No. 3915 was in the examination hall to appear in Civil Law paper being conducted by the Punjab Public Service Commission on 7111979 between 2.15 p.m. and 515 p.m. As an examinee, he had been allotted the 11th seat in Row No. 28. The invigilator for that row was Saravjit Singh. The invigilator for the 8th row was Som Chand Vashisht respondent. The examination was being supervised by R.L. Kapur Devinder Kumar, a Clerk of the Commission, was present in the hall to assist the invigilators. The Secretary of the Commission, Shri S.R. Dass too, was present.

4. When the time of examination was approaching towards close, Davinder Kumar approached Sudhir Mittal to collect his answer book. Shri Mittal was sitting in the last seat in the 28th row. He told Devinder Kumar that he shall hand over the answer book only to the invigilator who had supplied him the answer book. The allegation is that, before band, Shri Mittal had occupied his seat in the 8th row on the pretext that it was lying vacant, the examinee having not come, and that row, as said before, was under the vigilance of Som Chand Vashisht. On that a course, he claimed to have received the answer book from Som Chand Vashisht and gave out that he would give it to him. The exchange of arguments attracted Shri S. R Dass, Secretary of the Commission. He intervened and assured Sudhir Mittal that his answer book would go to the proper quarters. It is than that Sudhir Mittal made over his answer book to Saravjit Singh invigilator. However, immediately thereafter he followed the invigilator and asked for the return of his answer book. They did not agree. Then he and Som Chand Vashisht again went to them. Som Chand Vashisht avowedly gave out that, since he had issued the answer book to the candidate, he alone was accountable and rather advised him that the candidate would feel satisfied by adopting such a course. Accordingly, the answer book was handed over to Som Chand Vashisht. Meanwhile, Sudhir Mittal was trying to tag his answer book and proceeded towards the seat of the supervisor along with Som Chand Vashisht. A short while there after, he handed over his answer book bearing his Roll No. 3915 and that answer book was marked as Exhibit W. The said answer book was suggested to be a forged one and smuggled in the examination hall from outside, since that was not in the bands of Sudhir Mittal. Besides that, the said copy did not bear the genuine signatures of the Secretary of the Commission or Smt. Santosh Chaudhari, a member thereof. Accordingly, the answer book was taken to the Secretary of the Commission. The said copy was not even tagged as it did not have any hole in it. The Secretary made an enquiry in that regard and, on the following day on 8/11/1999, sent his report Exhibit "PC" to the police for registration of the case. There upon, the police investigated the case and sent its report to the Court under sections 465/468/471 read with sections 120/B, 10.9 and 114, Indian Penal Code.

5. Shri R. L. Anand, the learned trial Magistrate, on a full discussion running in nine pages, came to observe as follows :

"It was the duty of the functionaries of the Commission to find out as to how the genuine answer book of the candidate Sudhir Mittal was taken out of the Examination Hall and was replaced by the other answer book which is definitely not written by him. It appears from the facts and circumstances of the case that the accused have been rapped in simply with a view to saving the others responsible for the replacement of answer book of the candidate Sudhir Mittal with the answer book Exhibit "A" which is not in his hand. The possibility of replacing the answer book with a view to get him declared unsuccessful cannot be ruled out as no attempt was made by the Commission to get the alleged forged answer book evaluated from the examiner.

For the reasons recorded above. I held that the charge against the accused is groundless and as such they are discharged."

6. The State's revision against the order of the learned Magistrate attracted from the learned Additional Sessions Judge the following observations :

"The prosecution version suffers from various infirmities and improbabilities. Thus, it sounds highly improbable that Saravjit Singh and Devinder Kumar would hand over the answer book of Sudhir Mittal to Som Chand Vashisht after they had collected the same from Sudhir Mittal, with great efforts and with the intervention of the Secretary of the Commission. The prosecution does not appear to have made any attempt to recover the original and genuine answer book of Sudhir Mittal. The said answer book had thread tags indicating that Sudhir Mittal had used more sheets in answering the question. There is no reason to think that the answer book Exhibit A has more content as would entitle Sudhir Mittal to secure more marks in that paper. The original is not forthcoming and the forged one was never got evaluated by the Commission. Had Sudhir Mittal any dishonest intention, then I do not think if he would tag more sheets in his answer book and then try to substitute that answer book with another one with no extra sheets. It also appears highly improbable that Som Chand would be able to substitute Exhibit "A" for the original answer book of Sudhir Mittal throwing dust in the eyes of Saravjit Singh, Devinder Kumar, R.L. Kapur and the Secretary of the Commission who were all present there and already a lot of fuss had been created in the Examination Hall. It is further to think that Devinder Kumar or Saravjit Singh would return the answer book of Sudhir Mittal to Som Chand in such circumstances. The observations of the learned Magistrate that some hanky panky has taken place, cannot be said to be without foundation altogether."

7. Now, as is plain from the bare perusal of the observation of the Courts below, they had dealt with the matter as if they were recording an order of acquittal. At the stage of sections 227 and 229 of the Code of Criminal procedure, the test to be applied by the Court is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Where there is prima facie evidence, the matter has to be put to trial even though the person charged of an offence might have a plausible defence. In *State of Bihar v. Ramesh Singh*, A.I.R. 1977 Supreme Court 2018, their lordships of the Supreme Court observed as follows

"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a

finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof or his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

8. To my mind, the learned trial Magistrate as also the learned Additional Sessions Judge were totally oblivious of the aforesaid principles settled by the Supreme Court, and have passed the orders as if the entire matter was doubtful before them and that the without only evidence adduced, The learned counsel for the respondent, has cited *Union of India v. Prafulla Kumar Samel* and another, A.I.R. 1979 Supreme Court 366, to contend that the Court would only be entitled to frame a charge if there is grave suspicion had not merely a suspicion. These observations of the Supreme Court were made in the context of a prosecution before the Special Judge under the Prevention of Corruption Act and it was held that such a senior and experienced Court cannot merely act as a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any, basic infirmities appearing in the case and so on. I can find no different view having been taken in the latter case by the Supreme Court. All said and done, suspicion is the basis for framing of a charge and not proof at that juncture, millified by other considerations.

9. As the view taken by the Courts below is contrary to the law settled. Accordingly, both the orders of the Courts below are quashed as these are contrary to the principles of justice and would tend to abuse the process of the Court. Thus, this petition is allowed. The matter is remitted back to the trial Magistrate to proceed in accordance with law. The parties, through their learned counsel, are directed to put in appearance before the trial Magistrate on 2nd May, 1993.