

(2012) 12 AHC CK 0188
In the Allahabad High Court
Case No : Criminal Revision No. 466 of 2012

Subodh Kumar Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 227, 228, 397, 401
Prevention of Corruption Act, 1988 — Section 13(1)(D), 13(2)

Citation : (2013) 2 ALJ 375

Hon'ble Judges : Anurag Kumar, J

Bench : Single Bench

Advocate : Sunil Kumar Singh, for the Appellant; Bireshwar Nath, for the Respondent

Final Decision : Dismissed

Judgement

Anurag Kumar, J.—Heard learned counsel for the revisionist and Mr. Bireshwar Nath for the C.B.I. This is a revision u/s 397 read with section 401, Cr.P.C. against the impugned judgment and order dated 15.09.2012 passed by the learned Special Judge C.B.I. Court No. 4, District Lucknow in Criminal Case No. 09/2004.

2. Learned counsel for the revisionist submits that no offence under Sections 120B, 420, 467, 468, 471, I.P.C. & 13(2) r/w 13(1)(D) of P.C. Act, 1988 is made out against him because revisionist is an Assistant Administrative Officer and he has no concern with the alleged files. The files of seven insurance claims amounting Rs. 4,06,900/- lastly reaches to him after going through surveyor and other officers of the insurance. He has no direct involvement in the alleged forged payment. There is no allegation against him that from the above claim, he has any monetary gain. The impugned order of rejecting his application for discharge is illegal and perverse, hence it is liable to be quashed.

3. In support of his contention, learned counsel for the revisionist has relied on (2012) 3 SCC (Cri) 1183: (2012 AIR SCW 5139).Central Bureau of

Investigation, Hyderabad v. K. Narayana Rao, and P. Vijayan Vs. State of Kerala and Another, .

4. Learned counsel for the C.B.I. has submitted that at the stage of framing of charge, the Court concerned has to see that from the case diary, charge-sheet and other papers, prima facie, any case is made out against the accused persons or not and from the perusal of entire papers the learned Court below rightly came to conclusion of rejecting the application for discharge and the learned Court below even framed the charges against the revisionist and other co-accused. Revision has not got any force. The cases cited by the revisionist's counsel does not support his contention. Accordingly, revision is liable to be dismissed.

5. After giving my anxious thought to the submission made by the parties' counsel and from the perusal of the record and impugned order of discharge, it is clear that learned Court below rightly came to a conclusion that there is sufficient ground for proceeding against the revisionist. There is specific allegation against revisionist of his involvement for false and fictitious payment of seven insurance claims amounting to loss of Rs. 4,06,900/-. Hon'ble Apex Court in the case of P. Vijayan Vs. State of Kerala and Another, in para 25 laid down as under:

25. As discussed earlier. Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge u/s 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

6. In the case of K. Narayana Rao (2012 AIR SCW 5139) (supra), Hon'ble Apex Court has held in para 15 as under:

15. From the above decisions, it is clear that 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, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial Magistrate enquiring into a case u/s 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is

his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction u/s 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied along with it, the above principles have to be kept in mind.

7. It is clear from the above that at the time of discharge or framing of charge, the Court concerned has to come to conclusion after considering the record and documents that whether at this stage there is sufficient ground for proceeding against the accused or not and if there is sufficient ground he has to frame charge dismissing the discharge application.

8. In the present case, learned trial Judge after considering the material on record, came to a right conclusion that there is sufficient material for proceeding against the accused. From the above discussion, it is clear that the impugned order was passed rightly and there is no illegality or perversity. I do not find any force in revision and it is liable to be dismissed. Accordingly, it is dismissed.