
(2007) 07 GAU CK 0025
In the Gauhati High Court

Superintendent of Police, CBI

APPELLANT

Vs

S.P. Singh and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 209, 227, 228
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13

Citation : (2007) 4 GLT 39

Hon'ble Judges : M.B.K. Singh, J

Bench : Single Bench

Judgement

M.B.K. Singh, J.—This revision petition has been filed challenging the legality of the order dated 4.8.06 passed by Shri L.K. Achumi, Special Judge, Dimapur, Nagaland in Case No. R.C. 2/99. The learned Special Judge vide impugned order discharged the present respondents 1 to 4 u/s 227 of the Criminal Procedure Code, 1973 at the stage of charge consideration in respect of the above said case, wherein there are allegations of the commission of offences punishable under Sections 120B/420/468/471 IPC and Section 13 read with Section 13 of the PC Act, 1988 as against the present respondents 1 to 4 and others.

2. I have heard Mr. T.B. Jamir, learned Counsel appearing on behalf of the revisionist and Mr. Kumar Parimal, learned Counsel appearing on behalf of the respondents 1 to 4.

3. This is the third time that the question of legality of discharging the above said respondents in respect of the above said case at the stage of charge consideration is brought before this Court by the prosecution/revisionist,

4. Basing on findings made in the course of investigation of the case, the prosecution's case in brief, in so far as against as the respondents 1 to 4 are concerned, is as follows:

That the above said four respondents entered into a criminal conspiracy with other accused in the case and in pursuance thereof, work of repairing 40 MT Cole Crane having registration No. ASN 8376 of NEEPCO was awarded to M/s Oswal Associates under the work order being No. DHEP/U & WD/T-6(III)/98-99/364-368, dated 2.6.98 ignoring the interest of the corporation and falsely representing about the need for repairing the crane. The four respondents facilitated in issuing the work order even though there was not any technical analysis to assess the actual areas in respect of which repairing was required and also regarding the requirement of new spares to be used. They also facilitated the accused Manoj Kumar Dugar (M/s Oswal Associates) to receive advance payment of Rs. 14 lakhs against contract value of Rs. 18,53,590/- by raising false bills. False bank guarantee and false sale tax registration number were allowed to be furnished on behalf of the firm. Material inspection report and load testing report were not genuine documents and they were prepared to facilitate the contractor to avoid penal liabilities and also to show falsely that the contractor had supplied new spares. Though the crane was repaired, in fact, there was no replacement of any parts of the crane.

5. 50 documents are mentioned in the list of documents and more than 30 witnesses are cited as witnesses sought to be produced and examined during the trial in support of the case as against the accused persons including the said respondents 1 to 4.

6. At the time of consideration of the question of framing charges, in respect of the alleged offences, what the Court has to see is whether the materials gathered during the investigation and brought on record would reasonably connect the accused persons with the alleged offences or not. No more is required to be enquired into.

7. In *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, , while examining the scope of Section 227 of the Cr.P.C, the Supreme Court held at paragraph 14 as thus:

...Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused. The "ground" in the context is not a ground for conviction but the ground for putting the accused on trial. It is in the trial, the guilt or innocence of the accused will be determined and not at the time of framing charge. The Court, therefore, need not undertake an elaborate enquiry in shifting and weighing the material nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.

8. In *State of Bihar Vs. Ramesh Singh*, , the Supreme Court held at paragraph 4, page 41-42 as thus:

...Reading (Sections 227 and 228) 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 guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 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 material remains in the region of suspicion, cannot take the place of proof of 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....If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

9. In *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, after referring to the case of *State of Bihar Vs. Ramesh Singh*, held as follows:

...The standard of test proved and judgment, which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Sections 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

In the above case of *Anil Kumar Bhunja (supra)*, the Supreme Court reminded the Courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The Court has, therefore, to consider the question of framing the charges on general consideration of the materials placed before it by the investigating agency. At this stage, the truth veracity and effect of evidence which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment, which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the

commission of the offences alleged to have been committed by them.

10. The meaning of the word, "presume" in Blak's Law Dictionary is, "to believe or accept upon probable evidence". In shorter Oxford English Dictionary it has been mentioned that in law "presume" means, "to take as proved until evidence to the contrary is forthcoming." Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "a presumption is a probable consequence drawn from facts (either certain or proved by direct testimony) as to the truth of a fact alleged". In Law Lexicon by Ramanath Aiyer, the same quotation finds place at page 1007 of 1987 Edition. The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot go into; the materials brought on record by the prosecution has to be accepted as true at that stage.

11. In *State of Orissa Vs. Debendra Nath Padhi*, , after referring to *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, , *State of Bihar Vs. Ramesh Singh*, , *State Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, , *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, , *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, , the Supreme Court held at paragraph 11:

...From the above judgment referred to by the learned Counsel for the appellant, it is clear that all that the Court has to do at the time of framing of charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the Court at that stage should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage.

12. In *Debendra Nath Padhi* (supra) however, the Supreme Court after noting that it had taken a somewhat different view in *Satish Mehra Vs. Delhi Administration and Another*, , despite taking notice of three-Judge Bench's decision in *Anil Kumar Bhunja's* case (supra) referred the matter to a larger bench. A larger bench of the Supreme Court in *State of Orissa Vs. Debendra Nath Padhi*, , considered the question if the trial Court at the time of framing of charge can consider the materials filed by the accused. The Supreme Court held at paragraphs 8 and 9 of the judgment of the above said case as thus:

8. What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provided that when it appears

to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the public prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207-A. u/s 207-A in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under Sub-section (1). to take evidence as provided in Sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in Sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in Sub-section (6) and to commit the accused for trial after framing of charge as provided in Sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in Sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in Sub-section (14). The aforesaid Sections 207 and 207-A have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session u/s 228 in case the accused is not discharged u/s 227. This change brought out in the Code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge.

13. After referring to *State of Bihar v. Ramesh Singh* (1972) 4 SCC 39 ,

Superintendent and Remembrancer of Legal Affairs, Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, , State of Delhi Vs. Gyan Devi and Others, , State of M.P. Vs. S.B. Johari and Others, and State of Maharashtra Vs. Priya Sharan Maharaj and Others, , the Supreme Court in State of Orissa Vs. Debendra Nath Padhi, held at paragraph 16:

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau v. P. Suryaprakasam 1999 SCC 373 where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to u/s 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that....

14. In the above said case State of Orissa Vs. Debendra Nath Padhi, the learned Counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the Court. It was also submitted that the provisions of Sections 227 and 339 of the Code should be interpreted so as to save them from being declared ultra vires for violation of Articles 14 and 21 of the Constitution.

15. Rejecting the contention, the Supreme Court held at paragraph 18 as follows:

18. We are unable to concept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned Counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may

be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

16. Keeping in view the above stated well settled position of law, I have perused the impugned order dated 4.8.06 passed by the learned Special Judge, Dimapur in Case No. RC 2/99, I find that instead of considering the record of the case consisting of the statements of the witnesses and the documents sought to be produced during the trial and the findings of the IO during the investigation of the case, in the light of submission of the prosecution and the defence, for the purpose of finding out if there was sufficient ground for proceeding against the accused/respondents 1 to 4, the learned Special Judge meticulously judged facts and circumstances of the case by giving much weight to the probable defence of the accused/respondents 1 to 4 and relying on documents, which were apparently not in the list of documents submitted along with the chargesheet. At that stage of charge consideration, the learned Special Judge was not supposed 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/respondents 1 to 4 or not. In fact, the learned Special Judge should not have attached any weight to the probable defence of the accused/respondents 1 to 4. The learned Special Judge while considering the submission of the defence Counsel, took into account many documents such as WT Message dated 29.01.98, post copy confirmation vide Memo No. GM/GP/RG-28/97-98/2330, the official communications, letter being No. DGM (E) KHEP/W-13/3426 dated 12.2.98, letter dated 16.2.98, D-16, D-20 and a report prepared by Assistant Manager (E) Central Work Shop Division, KHEP dated 1.12.99 etc. In Paragraph 30 of the impugned order, the learned Special Judge observed, "However, the CBI had seized some replaced parts of the Crane from the Store of DHEP, NEEPCQ but the seizure list has not been mentioned in the chargesheet submitted by the CBI before this Court. If the said Crane was not repaired then how CBI had seized the replaced parts of the Crane from the store of DHEP, NEEPCO." It does not disclosed on what basis the learned Special Judge concluded about the seizure of replaced parts of the Crane from the store of DHEP, NEEPCO. The learned Special

Judge also referred to joint verification report, which is not apparently in the list of documents of the prosecution. The above said documents mentioned in the impugned order are not apparently in the list of documents sought to be produced by the prosecution. Apart from the list of documents sought to be produced by the prosecution, the said documents mentioned in the list are not produced before this Court and it is not possible to verify if the said documents taken into account by the learned Special Judge are in fact amongst the documents mentioned in the list.

17. It is no doubt true that at the stage of charge consideration, the Judge is not to act as a post office to frame charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. At the same time, it has already seen that at the said stage, it is impermissible to make a roving and fishing enquiry and to rely on the documents not amongst the documents sought to be produced by the prosecution. At that stage, the learned Special Judge ought to have confined hearing of the submissions of the accused/respondents 1 to 4 to the materials sought to be produced by the prosecution i.e. statements of witnesses examined during the investigation and documents sought to be relied by the prosecution. It is well settled that even on the basis of a strong suspicion founded on materials sought to be relied by the prosecution, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of commission of the offences said to have been committed by them.

18. In my opinion, the learned Special Judge proceeded illegally and improperly at the stage of charge consideration by giving unwarranted weight to the probable defence of the accused/respondents 1 to 4 and relying on documents, which are not apparently amongst the documents sought to be produced by the prosecution. The said approach made by the learned Special Judge is, in my opinion, illegal and erroneous. Instead of considering the prima facie case, the learned Special Judge appreciated and weighed the materials which were not apparently amongst the documents sought to be relied by the prosecution and concluded that no charge could be framed against the accused/respondents 1 to 4. It is already seen that at that stage of charge consideration, the learned Special Judge ought to have considered only the prima facie and ought to have decided, if there was sufficient ground for proceeding against the accused/respondents 1 to 4. The learned Special Judge was not required to judge the facts and circumstances of the case meticulously by giving any weight to the probable defence of the accused/respondents 1 to 4.

19. Learned Counsel for the revisionist submits that as per information received by him, the whole case record of RC 2/99 were sent to the High Court by the trial Court. It is, however, to be noted that none of the documents mentioned in the list of documents of the prosecution has been produced before this Court. In the

trial Court's record before me, apart from the list of documents of the prosecution, I do not find any of the documents mentioned in the said list. In this situation, it appears that learned Special Judge did not consider or examine any of the said documents mentioned in the list of documents of the prosecution at the time of charge consideration and before passing the impugned order.

20. In the above circumstances and for the reasons given above, I consider that the impugned order dated 4.8.06, passed by the learned Special Judge, Dimapur, is not sustainable in the eye of law and it is hereby set aside. This revision petition is allowed. The learned Special Judge, Dimapur, is to proceed with the case afresh from the stage of charge consideration in respect of respondents 1 to 4 by keeping in view the well settled principles of law discussed above as expeditiously as possible. The learned Special Judge is to ensure that the said documents mentioned in the list of documents of the prosecution are in fact produced before him that only the said documents mentioned in the list of documents of the prosecution are taken into account at the time of charge consideration. The respondents 1 to 4 are to appear before the learned Special Judge on 30th July 2007 in connection with the proceeding of RC 2/99 afresh from the stage of charge consideration. The revisionist is also to take necessary steps so that its Counsel appears before the learned Special Judge, Dimapur without fail on the above said date in connection with the proceeding of the above said case. The learned Special Judge is reminded that there is a need to proceed with the case as expeditiously as possible.

21. Send a copy of this order to the learned Special Judge, Dimapur for information and necessary action. The records of the trial Court be sent back so as to reach there before the date fixed above.