

(2010) 12 CAL CK 0053
In the Calcutta High Court
Case No : CRR No. 3114 of 2008

Uday Sankar Bhattacharyya @ Bhattacharjee	APPELLANT
Vs	
The Superintendent of Police, Central Bureau of Investigation and Another	RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13

Citation : (2010) 12 CAL CK 0053

Hon'ble Judges : Mrinal Kanti Sinha, J

Bench : Single Bench

Advocate : Milon Mukherjee, Saibal Mondal and Arindam Jana, for the Appellant; Himangsu De and Alok Roy Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

Mrinal Kanti Sinha, J.—Heard the learned Advocates appearing for the parties. This criminal revision has been directed against the order of the learned Special Judge, 3rd Court at Barasat, North 24 Parganas bearing No. 31 dated 27.06.2008 whereby the learned Special Judge has rejected the petition of the Petitioner/applicant Uday Shankar Bhattacharyya @ Bhattacharjee u/s 239 of Code of Criminal Procedure filed on 23.07.2007 and fixed 02.09.2008 for framing of charge with the finding that the prosecution has made out a prima facie case against the present applicant under Sections 120B/420/467/468/471 of the Indian Penal Code and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act 1988.

2. It is the case of the applicant that on the basis of an information furnished by Superintendent of Police, Central Bureau of Investigation, Anti-corruption branch, Kolkata, Crime No. RC/36/2002 dated 30.12.02 was registered for investigation. It was alleged in the said information that while the applicant was functioning as

Senior Accounts Officer (Cash) in the office of the General Manager, (Telecom), at 135A BRB Bose Road, Kolkata, then he entered into a criminal conspiracy with some others, and by dealing with others with false and fabricated bills with false measurement Books containing false signatures of BSNL Officers, cheated BSNL to the tune of Rs. 80 lakhs. It was also alleged therein that 29 bills accompanied by false and fabricated work orders were attested by the applicant, on the basis of which one Mr. Damodar Bera has wrongfully obtained Rs. 80 lakhs without performing any job.

3. After considering the submission of the Learned Advocate for the present applicant / accused and the learned prosecutor for the CBI and perusing the CD and materials on record learned Special Judge, 3rd Court, concerned found that there is sufficient ground for presuming that the accused person conspired with other accused persons and caused wrongful gain to accused Damodar Bera and loss to the BSNL by attesting work orders on the basis of forged documents and by using forged documents as genuine and as the prosecution made out prima facie case, so he fixed date for framing of charge rejecting the application of the applicant praying for discharge from the said case.

4. Being aggrieved by and dissatisfied with the aforesaid finding of the learned special judge 3rd court, Barasat, North 24 Parganas, the present applicant has filed the present revisional application praying for setting aside of the impugned order No. 31 dated 27.06.08 or quashing of the same as passed by learned Special Judge, 3rd court at Barasat, North 24 Parganas.

5. It has been submitted by Mr. Milon Mukherjee. learned advocate for the Petitioner that in the impugned order the learned Special Judge has found that there is sufficient ground for proceeding against the accused person or the present applicant and the prosecution has made out a prima facie case under Sections 120B/420/467/468/471 of Indian Penal Code and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, against the present applicant/accused and has observed that "Even slightest suspicion in the mind of the court regarding culpability of the accused person can be the ground for framing charge against the accused person", but this is not the correct interpretation of the proposition of law and charge can be framed against an accused only if "grave suspicion" is raised in the mind of the court regarding the culpability of the accused, and "even slightest suspicion in the mind of the court regarding culpability of the accused" cannot be a sufficient ground for proceeding against the accused and framing charge against the accused, and it is also the duty of the court at the time of framing of charge to evaluate materials and documents only to find out whether the facts emerging there from disclose all the ingredients of the alleged offence and for this limited purpose the court may sift the evidence as it cannot be expected even at that initial stage to accept all that prosecution states as gospel truth even if it is opposed to commonsense, or the broad probabilities case, and for that reason the matter should be sent back to the learned court concerned for proper consideration of the provisions of law.

In support of his submissions, learned advocate of the Petitioner has relied upon the decision reported in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, .

6. Mr. Himangsu De, learned Advocate for opposite party, Central Bureau of Investigation, has submitted that he has objection to the sending of the matter to the learned court below for consideration of the matter.

7. Mr. Alok Roy Chowdhury, Learned Advocate for the Opposite Party, the State of West Bengal has submitted that he has nothing to say in this regard and necessary order may be passed in this regard according to law.

8. The point to be considered in this matter is whether the learned Special Judge, 3rd Court at Barasat, North 24 Parganas, was legally correct and justified in passing the impugned order or not.

9. It appears that by the impugned order the learned Special Judge concerned has rejected the petition filed by the applicant/accused u/s 239 of the Code of Criminal Procedure on the ground that the prosecution has made out a prima facie case against the accused Uday Shankar Bhattacharyya under Sections 120B, 420, 467, 468, 479 of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and so charge under the said sections can be framed against the accused Applicant.

10. The provision of Section 239 of the Code of Criminal Procedure reads thus:

Section 239 - "If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

There is similar provision in Section 227 of the Code of Criminal Procedure, which reads thus:

"S. 227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

11. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down any rule of universal application in this regard. The standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion only, based on the materials on record, would be sufficient to frame the charge, otherwise not. It is an established principle of law that if two views are equally possible and evidence

gives rise to "grave suspicion", then charge may be framed, and on the other hand, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to "some suspicion" but not "grave suspicion" against the accused, then he will be fully within his right to discharge the accused, and the Judge can sift and weigh evidence for the purpose of finding out whether prima facie case against the accused has been made out or not.

12. It has also been held by the Hon^{ble} Supreme Court in the decision reported in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*,

1. That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused.

4. That in exercising his jurisdiction u/s 227 of the Code the Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouth-piece 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. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

13. In the instant case the learned Judge has observed that the "settled legal position is that at the time of framing charge the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused person. Even "slightest suspicion" in the mind of the Court regarding the culpability of the accused person can be the ground for framing charge against the accused person."

14. From that point of view it cannot be said that the learned Judge concerned was correct in his finding that "even slightest suspicion in the mind of the Court regarding culpability of the accused person can be ground for framing charge against the accused person."

15. It has also been observed by the decision reported in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, by which an observation of the Hon"ble Apex Court reported in *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, in the case of *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja*, has been noted that -

The standard of test, proof 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 Section 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 him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of commission of that offence.

It has also been observed therein that -

"From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of this case.

16. Apparently the standard of test, proof 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 Section 227 or 228 or 239 of the Code of Criminal Procedure, 1973, and charge can be framed where there exists very strong suspicion of the Magistrate founded upon materials before him which lead him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence. It also appears that charge can be framed only if "grave suspicion" exists, and not "some or slightest suspicion" exists.

17. It has nowhere been stated in the aforesaid decisions or in the law that charge should be framed "even slightest suspicion in the mind of the Court regarding culpability of the accused" arises, as observed by the learned Judge concerned. As such, it would not be unjust to hold that the impugned order No. 31 dated 27.6.2008 of the learned Special Judge, 3rd Court, Barasat, North 24 Parganas, suffers from a legal infirmity or misinterpretation of law, and the learned Judge concerned was not correct in his approach in this regard and was not justified in passing the impugned order of framing charge against the accused on the basis of his "slightest suspicion in the mind of the Court regarding the culpability of the accused...". and the learned Special Judge

concerned ought to have considered the entire situation and materials on record and submission of both sides and to proceed against the accused revisionist in accordance with law. For that reason the matter should be sent back to the learned Special Judge concerned for consideration of the matter and passing necessary order according to law and so no objection can be raised in this regard.

18. Having regard to all these circumstances, it appears that the impugned order which has been passed on the basis of some misconception of law and has caused failure of justice, cannot stand and so that should be set aside for the ends of justice. As such, same is set aside with a direction to the learned Special Judge, 3rd Court, Barasat, North 24 Parganas, to consider the entire situation, materials on record and submission of both sides and the law in its proper perspective and to proceed against the applicant/accused in accordance with law. In the event his opinion becomes affirmative then necessary charge may be framed as expeditiously as possible.

19. It is, however, made clear that this Court has not gone into the merits of the case and all the points in that regard are kept open, and the learned Special Judge concerned need not be influenced by any finding of this Court and the learned Special Judge concerned should form his own independent opinion in this regard on the basis of the materials on record and submission of both sides and should proceed according to law.

20. The Revisional Application is thus allowed on contest accordingly with the aforesaid observations.

21. The CRR No. 3114 of 2008 thus stands disposed of. Interim order passed earlier stands vacated.

22. A copy of this order be sent to the learned Court below immediately for information and compliance.

23. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.