

(2015) 05 AHC CK 0210

In the Allahabad High Court

Case No : Criminal Revision Defective No. 273 of 2015

Vinod Kumar Agarwal and Others

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 200, 216, 265-A, 265-A(1)(a)
Penal Code, 1860 (IPC) — Section 120-B, 409, 420, 468, 471

Citation : (2015) 3 ACR 2469 : (2015) 90 ALLCC 360

Hon'ble Judges : Om Prakash-VII, J

Bench : Single Bench

Advocate : Pankaj Kumar Shukla and Chandra Shekhar, for the Appellant;
Anurag Khanna, Advocates for the Respondent

Judgement

Om Prakash-VII, J—This Criminal Revision Defective No. 273 of 2015 under section 397/401 Cr.P.C. has been preferred by the revisionist Vinod Kumar Agarwal, Suresh Chand Agarwal and O.P. Agarwal against the orders dated 27.4.2015 and 6.4.2015 passed by the learned Special Judge, Anti Corruption, C.B.I., Ghaziabad in Special Case No. 28 of 2005, under section 420, 468, 471, I.P.C. and section 5(2) read with section 5(1)(d) of Prevention of Corruption Act, 1947 (C.B.I. v. O.P. Agarwal and others), Police Station CBI/SPE/Dehradun, vide order dated 27.4.2015, the plea bargaining application moved by the revisionist has been rejected by the Court below and vide order dated 6.4.2015, the Court below has proceeded to frame the additional charge against the revisionist. Brief facts of the case are as follows:

2. Special case No. 28 of 2005, mentioned above, was pending in the Court of Special Judge, Anti Corruption, C.B.I., Ghaziabad against the revisionists. Initially after framing the charges prosecution evidence was being recorded. Few witnesses have been examined by the prosecution/C.B.I. During the trial an application under section 319 Cr.P.C. was moved. Learned Court below after hearing the parties summoned the two accused namely H.S. Vyas and K.S. Bhatti

to face the trial Vide order 6.4.2015 learned Court below proceeded to frame charge not only against the newly summoned accused but also decided to add some more offences in the charges framed against the revisionists also. In compliance of the order of this Court dated 20.4.2015 passed in the Criminal Misc. Application (under section 482 Cr.P.C.) No. 10017 of 2015, Vinod Kumar Agarwal and others v. C.B.I., the Trial Court disposed of the application for plea bargaining on dated 27.4.2015.

3. Feeling aggrieved by the said order the present revision has been preferred.

4. Heard learned Counsel for the revisionist and Sri Anurag Khanna, learned Advocate who appears for the C.B.I. and gone through the record including the case law cited by the learned Counsel for the revisionist.

5. Learned Counsel for the revisionist submits that order dated 6.4.2015 was passed without affording opportunity to the revisionist. It was further argued that vide order dated 27.4.2015 learned Trial Court rejected the application of plea bargaining on the ground that revisionists' case comes under the purview of exception clause and application for plea bargaining is not maintainable in the matter. Learned Counsel has referred the provision of section 265-A, Cr.P.C. and argued that the Court dealing with the matter has to see only the paper forwarded under section 173 Cr.P.C. for disposal of the application for plea bargaining. Newly added section in the charge will not be taken into consideration while disposing of the plea bargaining application. Learned Counsel for the revisionists has placed reliance on the following judgments:

1. Criminal Appeal No. 1302 of 2008 Nikhil Merchant v. C.B.I. and another, decided by the Hon'ble Apex Court on 20.8.2008. Since Reported in Nikhil Merchant Vs. Central Bureau of Investigation and Another, AIR 2009 SC 428 : (2008) CLT 1226 : (2008) 9 JT 192 : (2008) 11 SCALE 379 : (2008) 9 SCC 677 .

2. Shiv Nandan and Others (In Jail) Vs. State of U.P., (2005) CriLJ 3047 .

3. State of Gujarat Vs. Natwar Harchandji Thakor, (2005) CriLJ 2957 : (2005) 1 GLR 709 .

6. Sri Khanna appearing for the C.B.I. has submitted that the revision against the order dated 6.4.2015 is not maintainable as the same was challenged in the Criminal Misc. Application (under section 482) No. 10017 of 2015. The revisionists cannot be permitted to agitate again the order dated 6.4.2015 taking recourse to section 397/401 Cr.P.C. It was further stated that while passing order on the application for plea bargaining, learned Court below has given opportunity of hearing to the parties. Thus finding the case of the revisionists covered under the exceptional clause rejected the same, therefore, no illegality or impropriety has been caused by the learned Court below.

7. Sri Chandra Shekhar and Sri Pankaj Shukla, learned Counsel appearing for the revisionists also submitted that present case does not come within the purview of exceptional clause as is clear from the notification issued by the Central

Government. Cases pertaining to Prevention of Corruption Act is not covered in the list i.e. Notification No. S.O. 1042(E) dated 11th July, 2006 therefore, argument advanced by the learned Counsel for the opposite party is meaningless. Court dealing with the matter will not legislate in its wisdom making an exceptional clause.

8. Before proceeding to deal with the submissions raised by the learned Counsel for the parties, it is made clear that the order dated 6.4.2015 was challenged by means of Criminal Misc. Application (Under section 482 Cr.P.C.) No. 10017 of 2015 (Vinod Kumar Agarwal and two others v. C.B.I.) wherein another Bench of this Court on 20.4.2015 disposing of the application directed the Court below to decide the application for plea bargaining. The order passed by this Court dated 20.4.2015 is quoted hereunder:

"A supplementary affidavit has been filed on behalf of the applicants, let it be taken on record.

Heard learned Counsel for the applicants, learned Counsel for the CBI and perused the record.

The present application under section 482 Cr.P.C. has been filed for quashing the order dated 6.4.2015 passed by learned Special Judge, Anti Corruption, Ghaziabad in Special Case No. 28 of 2005, CBI v. O.P. Agarwal and others, arising out of case crime No. 5(A)/89-DAD under section 120-B, I.P.C. r/w sections 420, 468 and 471 I.P.C. and 5(2) r/w 5(1)(d) of Prevention of Corruption Act 1947, Police Station CBI/SPE/Dehradun.

Learned Counsel for the applicants submits that in this case the applicants were on bail and they have moved an application for Plea Bargaining under section 265-A Cr.P.C. on 25.5.2010 which was rejected on 1.10.2011 by the Court below against which a Cr. Revision No. 4678 of 2011 was filed by the applicants which was decided on 18.4.2013 with a direction that Court below should decide the application for Plea Bargaining afresh filed on behalf of the applicants. But in compliance of the said order dated 18.4.2013 passed by this Court, learned Court below has not decided the application for Plea Bargaining till date. Learned Counsel for the applicants further submits that the Plea Bargaining Application be decided first before proceeding with the trial.

Learned Counsel for the CBI also accepts that the application for Plea Bargaining of the applicants has not been decided till date.

A perusal of the record shows that in Cr. Revision No. 4678 of 2011 lower Court was directed to decide the application for Plea Bargaining of the applicants but the same has not been decided till date.

Considering the submissions of the learned Counsel for the parties, this application is disposed of with a direction that learned Court below shall decide the application for Plea Bargaining first before proceeding with the trial.

Till the decision of the application for Plea Bargaining, the process issued against the applicants shall be kept in abeyance."

9. It is to be noted here that order dated 6.4.2015 challenged in the Criminal Misc. Application (under section 482) No. 10017 of 2015 has attained finality, hence present revision against the order dated 6.4.2015 is not maintainable.

10. Thus on the basis of the foregoing situation, I am of the view that only question in respect to order dated 27.4.2015 is to be considered, whether plea bargaining application moved by the revisionist could be considered only in respect of the offences described in the charge-sheet or could be decided taking into consideration the newly added offences in the charge.

11. Before proceeding to discuss the plea raised by the learned Counsel for the revisionist, this Court find it necessary to quote provisions of section 265-A Cr.P.C.

"265-A. Application of the Chapter--(1) This Chapter shall apply in respect of an accused against whom--

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, for the time being in force; or

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of Sub-Section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country."

12. Admittedly present prosecution is started on the basis of charge sheet submitted by the C.B.I. Initially after framing the charge against the present revisionist prosecution has examined some of the witnesses. Thereafter on the application under section 319 Cr.P.C. two other accused were also summoned to face the trial. It is also evident from the record that at the time of framing the charge against the newly summoned accused the Court below taking recourse of provisions of section 216 Cr.P.C. added new charges also in the already framed charges against the revisionist vide order dated 6.4.2015. Order dated 6.4.2015, as has been discussed above, has attained finality. The Court below on the basis of newly added section rejected the plea bargaining application holding that

offence charged against the revisionist are punishable of imprisonment for a term exceeding seven years or more.

13. Submissions of the learned Counsel for the revisionist is that the Trial Court cannot take into consideration the newly added section in the charge. The plea bargaining application will be decided only on the basis of offences mentioned in the charge sheet filed under section 173 Cr.P.C.

14. Plea taken by the learned Counsel for the revisionist is not acceptable. Provision of section 265-A(1)(a), Cr.P.C. is made applicable only when the report has been forwarded by the officer incharge of the police station under section 173 Cr.P.C. alleging therein that an offence appears to have been committed by the accused. The plea bargaining application cannot be entertained before the submission of the police report under section 173 Cr.P.C. The language used in the section 265-A(1)(a) Cr.P.C. is clear and unambiguous. Trial Court view on this point is not illegal or improper. Addition or modification in the charge is the part of trial. The Court dealing with trial has to consider the plea bargaining application in the light of added offences also.

15. Admittedly in the present matter plea bargaining application (which simply mean plead guilty and bargain for lessor punishment) has been disposed of after adding new charges in the already framed charges. It is also evident from the record that the plea bargaining application was pending before the learned Court below prior to making alteration in the charge. Initially the plea bargaining application was rejected on 1.10.2011 Criminal Revision No. 4678 of 2011 Vinod Kumar Agarwal and others v. Director, C.B.I., New Delhi and Criminal Revision No. 8442 of 2011, Hari Singh Vyas v. State of U.P. and others, were filed before this Court. Vide order dated 18.4.2013, order rejecting the plea bargaining application was set aside and the Trial Court was directed to decide the application afresh. It is the submission of the learned Counsel for the revisionist that plea bargaining application was not decided in terms of order dated 18.4.2013 passed in Criminal Revision No. 4678 of 2011. A Contempt Petition (Civil) No. 2378 of 2015 was filed before this Court and the same is pending for consideration. On the date of passing of the impugned order new offences had been included modifying the charges and the order modifying or altering the charges has attained finality, therefore, this Court is of the view that Trial Court has rightly taken into consideration all the offences described in the charges framed against the revisionist. One of the offence under the newly added offences is the offence under section 409 I.P.C. which is punishable with imprisonment for life or imprisonment for 10 years and fine. In this backdrop, this Court is of the view that Trial Court finding on the plea bargaining application cannot be termed to be illegal or improper specially when the order dated 6.4.2015 has attained finality. Whether the Trial Court has committed contempt of the Court, the same has to be decided in a separate proceeding pending before this Court.

16. A Division Bench of Gujrat High Court in Natwar Harchandji Thakor (supra)

has held that innovative judicial directions and prescription of new format for recording plea of guilty of an accused when statutory prescription of such a process or procedure has been prescribed in the Act would not be competent and legal and not binding to Courts.

17. Hon''ble Supreme Court in Nikhil Merchant (supra) has allowed the discharge application moved by the appellant on the basis of compromise entered into between the parties irrespective of the fact that offences were non compoundable.

18. In the matter of Shiv Nandan (supra) a Division Bench of this Court has held that the charge could be amended as at any stage during trial or an alternative charge can also be framed if the evidence so permits by affording proper opportunity to the accused.

19. Trial Court while passing the impugned order has made observation that central government should amend the notification No. S.O. 1042(E) dated 11th July, 2006 adding the offence under Prevention of Corruption Act, 1947 also. The observation recorded by the Trial Court is not binding to the Central Government, therefore, need no further discussion on this point. As far as the non disposal of plea bargaining application at an earlier stage by the Court below is concerned, certainly it should have been decided at the earliest point of time. Apart from this under the provisions of section 216 Cr.P.C. the charges can be altered or added at any time before judgment is pronounced. Such alteration or addition shall be read and explained to the accused. Considering the language of section 216 Cr.P.C. this Court is of the view that revisionist can raise this point before the Trial Court to amend or add the charge. The Trial Court if find that added charges are not substantiated with the evidence the same may be modified.

20. Thus in view of the foregoing discussion, this Court is of the view that point raised by the learned Counsel for the revisionist have no substance. There is no any illegality or impropriety in the impugned order.

21. Revision having no force is not liable to be admitted.

22. The Revision (Defective) is, therefore, dismissed at the stage of admission itself. Since the revision has been dismissed, therefore, there is no need for filing the certified copy of the impugned order.