
(2015) 02 AHC CK 0068
In the Allahabad High Court
Case No : Criminal Revision No. 620 of 2015

Vinod Kumar Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Prevention of Corruption Act, 1988 — Section 7/13

Citation : (2015) 1 ACR 1018 : (2015) 2 ADJ 652 : (2015) 89 ALLCC 419

Hon'ble Judges : Ranjana Pandya, J.

Bench : Single Bench

Advocate : D.B. Yadav and Manoj Kumar, for the Appellant

Judgement

Ranjana Pandya, J.—This criminal revision has been preferred against the order dated 6.12.2014 passed by Special Judge Prevention of Corruption Act, Varanasi in Special Trial Case No. 16 of 2013, under Sections 7/13 Prevention of Corruption Act arising out of Case Crime No. 124 of 2012, P.S. Manduadih, District Varanasi by which the discharge application of the applicant was rejected. Brief facts are that the revisionist was a Seasonal Amin who demanded Rs. 5000/- from the complainant for delaying the recovery certificate issued against the complainant. The revisionist was trapped red handed taking Rs. 2000/- as bribe on 17.5.2013 and was arrested by the trap team. The R.C. dated 17.10.2011 was given to the revisionist for collecting the dues. After investigation, charge-sheet was submitted against the accused who moved a discharge application before the trial Court which was rejected.

2. Feeling aggrieved the present revisionist has filed.

3. Heard learned counsel for the revisionist and learned A.G.A.

4. It has been contended on behalf of the applicant that at the relevant time, he was not holding the post of Collection Amin. The Tehsildar, Sadar, Varanasi has issued a certificate that the applicant was not holding the aforesaid post after

14.1.2012. He had handed over his charge as is evidence from Annexure 4 and since he was not holding the charge, there was no question of demanding any bribe. Hence, the accused needs to be discharged as prayed for.

5. Learned A.G.A. has opposed the prayer and has argued that there is sufficient evidence on record to frame charges against the accused and learned trial Court has rightly rejected the application for discharge moved by the accused.

6. Hon"ble Apex Court in *Om Wati v. State (Delhi Administration)*, 2001 AAR 394 (SC), has laid down the considerations on which the Court may discharge the accused which is as follows:

"Court may discharge the accused on following considerations: (i) If upon consideration that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for doing so. No reasons are required to be recorded when the charges are framed against the accused persons, (ii) Where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court is no required to enter into meticulous consideration of evidence and material placed before it at this stage." 7. The provisions of framing charges have been given under Section 228 Cr.P.C. runs as follows:

"228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

8. But it is mandatory on the Court to give reasons for discharging the accused as has been mentioned under Section 227 Cr.P.C., which runs as follows:

"227. Discharge--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." 9. As a broad proposition, the interference of revisional Court may be justified in cases (i) where the decision is grossly erroneous (ii) where there is no compliance with the provision of law (iii) where the finding of fact affecting the decision is not based on evidence on record (iv) where the material evidence of parties has not been considered (v) where the Court below has misread or mis-appreciated the evidence on record (vi) where the judicial discretion has been exercised arbitrarily or perversely.

10. The trial Court has specifically said that the R.C. was with the applicant since his appointment and he received the bribe in anticipation of his assuming office of a public servant while exercising the revisional jurisdiction, the High Court is required to exercise its powers where there is material irregularity or manifest error of law or procedure, or there is misconception by the Court.

11. The order under revision does not suffer from any illegality, irregularity or impropriety, hence the revision is liable to be dismissed. Accordingly the revision is dismissed.