

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : April 16, 2009
Judgment delivered on: April 20, 2009

+ **Crl. Revision Petition No. 333 of 2006**
&
Crl. M.A. No.4601 of 2006

% Ashok Kumar ... Petitioner
Through: Petitioner in person.

versus

State ... Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for State.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. In or about April, 1988 to May, 1989, petitioner was working as an Accountant with Perfect Spray Pack Pvt. Ltd. (hereinafter referred to as the 'complainant-company') at Asaf Ali Road, Delhi and vide order of 10th February, 2006, he has been asked to face trial for the offences under Section 408/468/477-A of Indian Penal Code for dishonestly misappropriating amount of Rupees six lacs belonging to the complainant-company and for forging accounts books, cheques, etc. belonging to the above-said company, with

intention to cheat the complainant-company. Petitioner is also accused of falsifying the accounts of the complainant company.

2. Impugned order of 10th February, 2006, directing framing of charges under Section 408/468/477-A of IPC and the charges framed by the trial court on the same day, under the aforesaid provisions of law, are under challenge in this petition. It is matter of record that order of 10th February, 2006, impugned in this petition, is a formal order and has been passed by the trial court in pursuance to the main order of 20th August, 2005, which is infact the main order, wherein, petitioner's contentions have been dealt with and order for framing the charges against the petitioner has been passed.

3. Petitioner has preferred to argue this petition by himself and has submitted his submissions in writing giving the details of this case and has pointed out the mistakes in the impugned order. Along with the written submissions, copies of the order sheets of the trial court have been appended and also the copies of some citations.

4. Petitioner in person as well as learned Additional Public Prosecutor for the State, have been heard at length and the record of this case, has been perused with their assistance.

5. Petitioner asserts that he is facing the proceedings in this case for the last about two decades, for no fault of his and there is nothing in the FIR or the Charge-sheet filed, to put the

petitioner to the trial. Petitioner submits that the documents on record are the photocopies and the original documents are missing and despite the directions from the learned District and Sessions Judge, the original documents, which were found missing, have not been reconstructed and without doing so, putting the petitioner on trial is illegal. Lastly, it is submitted that even the CFSL Report does not incriminate the petitioner and in the absence of the original documents, holding of trial, would be a futility as there are no chances of such a trial resulting in conviction. Nothing else is urged on behalf of the petitioner.

6. It would be pertinent to reproduce the grounds taken in this revision petition, to assail the impugned order and they are as under:-

That aggrieved by the impugned order dated 10/02/06, the petitioner is assailing it on the following amongst other ground:-

- a. That the impugned order is contrary to facts and bad in law.
- b. That the impugned order has no foundation and is not supported by the provision of law.
- c. That the impugned order is otherwise is 'preserved' (perverse?) and without consideration of the law.
- d. That the Ld. Court below has failed to apply its judicial mind in interpreting the substance of Section 238/239 Cr.P.C. its true spirit while passing the order dated 10/02/06 which ought to be set aside.

e. That the petitioner has not filed any other or similar petition before this Hon'ble' Court, except the present one

f. That nothing on record any documents of the prosecution against which charges can be framed against the petitioner can be framed even otherwise the complainant who appears to be Pvt. Ltd. under the Indian Company Act had already closed its business in the year 1990 and no one can be claimed to be the authorized entity.

g. That on the basis of the complaint lodged by the aggrieved persons against which FIR was lodged, the Charges cannot be framed.

7. Learned Additional Public Prosecutor for the State points out that it is evident from the order sheet of 25th October, 1999, that the original documents were sent to CFSL and the process of reconstruction of the missing original documents, is in progress. However, it is pointed out that the CFSL Report regarding entries in the Cash- Book and pertaining to the fourteen cheques, is sufficient to make out a *prima facie* case against the petitioner and there is statement of the complainant (which is the basis of the FIR) which justifies the prosecution of the petitioner in this case. Thus, it is submitted that the impugned order is legally justified and there is no merit in this petition.

8. In the case of "*State of Orissa vs. Debendra Nath Padhi*" **(2005) 1 SCC 568**, the Apex Court has reiterated that at the stage of framing of charge, trial court is required to consider whether there are sufficient grounds to proceed against the accused. The evaluation of the materials/documents on record

has to be limited one with a view to find out if sufficient ground exists for the purpose of proceeding with the trial.

9. In the case of *“State of Bihar v. Ramesh Singh”, (1977) 4 SCC 39*, considering the scope of Sections 227 and 228 of the Code, it was held by the Apex Court that at the stage of framing of charge it is not obligatory for the Judge 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. 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, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

10. This aspect, has also been adverted to in *State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam [1999 SCC (CrI.) 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 under Section 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.

11. Upon perusal of the Charge-sheet of this case and the material on record, I am of the *prima facie* opinion that the

petitioner is not entitled to discharge merely on the ground that the original documents are missing as the process for reconstruction of the missing documents, is in progress. Once loss of original documents is established, secondary evidence can always be led. The evidentiary value of the CFSL Report on record, cannot be prejudged at this stage.

12. Upon close scrutiny of the main order of 20th August, 2005, which is the basis of the impugned order, as well as the order of 10th February, 2006, impugned in this petition and the material available on record, I find that there is no illegality or infirmity in the impugned order. This petition is without merit and is hereby dismissed with the observation that nothing stated herein shall have any reflection on the merits of the case, at trial.

13. Before parting with this order, I would like to impress upon the trial court that earnest efforts are required to be made to expedite the trial of this case as this matter is already two decades old.

14. With aforesaid observations, this petition and pending application are disposed of.

Sunil Gaur, J.

April 20, 2009
Pkb/rs