

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 262/2010 & CrI.M.A. No. 7028/2010**

Decided on 04.03.2011

IN THE MATTER OF :

RAHUL VERMA & ANR Petitioners

Through: Mr. Satish Tamta with
Ms. Ruchi Kapur, Advs.

versus

STATE Respondent

Through: Mr. Navin Sharma, APP for State.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioners under Section 397 read with Section 401 Cr.P.C. praying *inter alia* for setting aside the order on charge dated 24.2.2010, passed by the learned ACMM in Complaint Case No.220/2003 entitled 'Food Inspector vs. Rahul Verma & Ors.'

2. Briefly stated, as per the allegations contained in the complaint, on 13.3.2002, a Food Inspector, Mr. Bal Mukand, went to M/s Bharat Hotels Ltd., at Bara Khambha Avenue, Barakhamba Road, Connaught Place, New Delhi, where he found petitioner No.1 conducting business of petitioner No.2/hotel as Executive Manager, Food & Beverages and as the nominee of the said hotel. The Food Inspector purchased a food item 'Khoya' from

petitioner No.1 for the purpose of analysis. The sample was taken in an open tray and after cutting the same into 2-3 equal pieces, it was placed in clean and dry bottles. The sample was preserved and sealed in this manner and part of the same was sent to the Public Analyst for its report.

3. As per the report of the Public Analyst dated 2.4.2002, the sample was found to be adulterated because "it contained added vegetable fat". Based on the aforesaid report, a complaint was filed by the Food Inspector on 1.5.2003 for violation of the provisions under Section 2(ia)(a)(m) of the Food & Adulteration Act, 1954 (in short '**the PFA Act**') against petitioner No.2/ hotel and its nominee and summons were issued.

4. It is the case of the petitioners that notice was served on them on 18.7.2005 and subsequent to that, they put their appearance through counsel. In the pre-charge evidence, the statement of the Food Inspector, Mr. Bal Mukand, was recorded on 22.7.2009. Pertinently, the petitioners were given an opportunity to cross-examine the said witness. After recording of the pre-charge evidence, the learned ACMM heard the arguments advanced by the parties and passed the impugned order framing charges against the petitioners under sub-section (a)(c) and (m) of Section 2(a) punishable under Section 16(1) read with Section 7 of the PFA Act. Aggrieved by the aforesaid order, the present petition is filed.

5. Counsel for the petitioners argues that the petitioners were never served the intimation letter along with the PA report, which was sent by the SDM/Local Health Authority by Regd. AD post at the wrong address, as a result of which, they were deprived of the right conferred on them under the Section 13(2) of the PFA Act whereunder, after receiving the report of the PA, either party could make an application to the court to get

the sample analyzed by the Central Food Laboratory. He further states that the aforesaid provision is mandatory in nature and a great prejudice has been caused to the petitioners on account of such an omission. It is urged that the aforesaid omission was pointed out to the court below at the time of framing of charge, but refusal on the part of the court to decide the issue at that stage has adversely affected rights of the petitioners. He therefore states that the order on charge ought to be set aside only on the ground that the trial court ought to have considered the stand of the petitioners that the intimation letter and PA report was sent to them at the wrong address, due to which they were greatly prejudiced.

6. Learned APP for the State, however, opposes the present petition and submits that at the stage of passing of order on charge, the court is not required to go into the evidence in detail and only a *prima facie* view is to be taken, which the learned ACMM did take while passing the order on charge and as there is no illegality or perversity committed by the court below, the present petition ought to be dismissed.

7. This Court has heard the counsels for the parties and perused the documents placed on record. The limited controversy in the present matter is as to whether at the stage of framing of charge, the trial court ought to have considered the submission of the petitioners that the address at which the registered envelope carrying the intimation letter along with PA report was sent, as reflected in the postal receipt marked as Ex.PW1/N, was incorrect or not and whether it should have given a finding in this regard at that stage.

8. A perusal of the impugned order shows that the trial court did consider the submissions of the counsel for the petitioners that the address

of petitioner No.2, M/s. Bharat Hotels Ltd., as mentioned in the complaint and as deposed by petitioner No.1, was Bara Khamba Avenue, Connaught Place, New Delhi, whereas the intimation letter along with PA report was sent to M/s Bharat Hotels Ltd., Baba Kharak Singh Marg, Connaught Place, New Delhi, which is the wrong address. After considering the aforesaid submission, the trial court opined that a presumption could be drawn that a correctly addressed letter by registered post would be delivered to the addressee and the issue as to whether address to which intimation letter and the PA report was sent was correct or not or the question of whether Baba Kharak Singh Marg, Connaught Place, New Delhi, also falls in Baraha Khamba Avenue Connaught Place, New Delhi, are matters to be decided at the stage of trial.

9. It is settled law that at the time of framing of charge, only a *prima facie* view of whether an offence is made out has to be taken and a detailed in-depth analysis of the evidence is not warranted. In the case of State of M.P. v. S.B. Johari reported as **(2000) 2 SCC 57**, the degree of scrutiny to be exercised at the stage of framing of charge was elaborated on, as under : -

"4. ... It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the

particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* after considering the provisions of Sections 227 and 228 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. **The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof.** (emphasis added)

In the case of Mathura Dass and Ors. v. State reported as **104 (2003) DLT**

147, a coordinate bench of this court has held as: -

"7. ... this Court is of the considered view that a Judge, at the time of framing of charge, is not to act merely as a post-office or mouth-piece of the prosecution, but has powers to sift and weigh the evidence but for a limited purpose only. This exercise has to be undertaken by him only with a view to find out as to whether a prima facie case is made out or not. The existence of a prima facie case may be found even on the basis of strong suspicion against an accused. The assessment, evaluation and weighing of the prosecution evidence in a criminal case at the final stage is on entirely different footing than it is at the stage of framing a charge. At the final stage if two views are possible, one of which suggests that the accused may be innocent, then the view favorable to the accused has to be accepted whereas at the stage of framing of the charge, the view which is favorable to the prosecution, has to be accepted for the purpose of framing charge so that in the course of the trial, the prosecution may come out with its Explanations in regard to the draw-backs and weaknesses, if any, being pointed but by an accused." (emphasis added)

10. This Court finds merit in the submission of the learned APP for

the State that the issue as to whether the address of petitioner No.2 is correct or incorrect, is a matter to be decided in the course of the trial and cannot be gone into at the stage of framing of charge. Further, it is also not as if the petitioners were denied an opportunity to cross-examine the Food Inspector (PW-1) on this aspect. A perusal of the records shows that after the examination-in-chief of PW1, his cross-examination was conducted on 22.7.2009. It is only after such examination and cross-examination was conducted that the charge was framed by the trial court against the petitioners.

11. At the stage of framing of charge, the trial court could not have conducted an in-depth enquiry into the veracity of the petitioners' claim that the address was incorrect. Such disputed questions of fact have to be decided at the time of trial, after more evidence is led by both sides to support their respective contentions.

12. In view of the aforesaid position, this Court does not find any merit in the present petition. The same is accordingly dismissed along with the pending application, as being devoid of merits.

Registry is directed to release the trial court record forthwith.

MARCH 04, 2011
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(HIMA KOHLI)
JUDGE