

Court No. - 15

Case :- APPLICATION U/S 482 No. - 3973 of 2021

Applicant :- Durga Dutt Shukla

Opposite Party :- State Of U.P. Thru. C.B.I./A.C.B. Lucknow And
Another

Counsel for Applicant :- Satya Prakash Mishra, Brijesh Kumar

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the applicant as well as Shri Dharmendra Pratap Singh, Advocate holding brief of Shri Anurag Kumar Singh, learned counsel representing C.B.I. and perused the record.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicant, namely, **Durga Dutt Shukla** with the prayer to quash the impugned judgment and order dated 20.09.2021 passed by the learned Court of Special Judge (P.C. Act) C.B.I. Court No.6, Lucknow, whereby his discharge application has been rejected, as well as the entire criminal proceedings of Criminal Case No. 222 of 2017 (C.B.I. vs. Durga Dutt Shukla and others), arising out from the charge sheet no. 6 of 2017 filed under Sections 120-B, 409, 420 I.P.C. r/w Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, Police Station C.B.I.A.C.B., Lucknow and to quash the summoning/cognizance order dated 10.04.2017.

3. Learned counsel for the applicant while pressing the application vehemently submits that the trial court has committed manifest illegality in rejecting the prayer of discharge of the applicant as even if the case of the prosecution, as is apparent on the face of record is believed the same may not attract any penal offence due to lack of ingredients.

4. It is further submitted that the discharge application of the applicant has been rejected by the trial court in an arbitrary and mechanical

manner without application of judicial mind and with paying due regard to the law laid down by the Hon'ble Apex Court in various cases.

5. Elaborating further, it is submitted that when an accused person has been exonerated in the departmental inquiry, the criminal trial against whom should not proceed further as the allegations before the inquiry officer and in the criminal trial are identical.

6. It is further submitted that F.I.R. of the instant case appears to have been lodged under the directions of this Court passed in Public Interest Litigation bearing No. 12802 of 2011 with regard to the alleged misappropriation of funds allocated to different districts of the State by the Central Government under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) Scheme and the direction was given to the Central Bureau of Investigation to investigate the alleged misappropriation of funds.

7. It is further submitted that the irregularity in managing/misappropriating the funds was made for the period from 2007-2010 and during this period the applicant had functioned as Block Development Officer for a very short span of one month and twenty days and during such period he was only entrusted with additional charge while he was holding regular charge of the post of B.D.O. Haiser Bazar, District Sant Kabir Nagar, which was situated about 100 kms. away from the Santha Block where the irregularities are alleged to have been committed with regard to the public fund of the above-mentioned Scheme (MGNREGA).

8. It is vehemently submitted that some discrepancy is shown to have been found in the construction works of the said block with regard to the above-mentioned scheme. However, majority of the work was performed while his predecessors Harvansh Yadav and Ramesh Chandra was holding the post of B.D.O. and the applicant may not be prosecuted for their misdeeds. Moreover, a departmental inquiry was held with regard to the same charges wherein the applicant has been exonerated.

9. It is also submitted that during his tenure very small amount was released/paid and the same was paid on the basis of M.B. prepared by the concerned Junior Engineer who was supervising the construction work and there was no occasion for the applicant to have doubted the said M.B. wherein the work done has been recorded by the concerned junior engineer.

10. Learned counsel for the applicant in order to show that the proceedings before the trial court are abuse of the process of law has relied on '*Ashoo Surendra Nath Tiwari vs. Deputy Superintendent of Police, EOW, CBI & other*' reported in 2020 (9) SCC 636.

11. Shri Dharmendra Pratap Singh, Advocate holding brief of Shri Anurag Kumar Singh, learned counsel representing C.B.I. vehemently opposes the prayer of applicant on the ground that at the stage of framing of charges, only sufficient grounds are required to be seen and the evidence/material, which has been collected during the course of investigation is not to be meticulously appreciated, as the same could only be appreciated during the course of trial.

12. It is also submitted that the case law relied on by the applicant is with regard to the adjudication proceedings usually held under relevant provisions of the Prevention of Money Laundering Act (PMLA) and, therefore, the adjudication proceedings may not be equated with the departmental enquiry.

13. It is further submitted that the standard of proof required in departmental proceedings that having regard to the material, which has been collected by the investigating agency against the applicant, there are sufficient grounds for framing of charge under appropriate penal sections, as he has been found in connivance with the other co-accused persons in order to misappropriate the government fund and has also cleared the bills on the basis of M.B. wrongly prepared by the concerned junior engineer without inspecting the actual work done on the spot. Therefore, there is no illegality or to say any irregularity in the order of the Trial Court.

14. Having heard learned counsel for the parties and having perused the record, it is evident that at first learned counsel for the applicant has submitted that as the accused applicant has been exonerated in the departmental proceedings, he must also be discharged in the criminal case pending before the trial court and reliance has been placed on '*Ashoo Surendra Nath Tiwari vs. Deputy Superintendent of Police, EOW, CBI & other*' (*supra*).

15. A co-ordinate Bench of this Court in '*Jai Ram Lal Verma vs. State of U.P. through C.B.I., A.C.B., Lko.*' an Application under Section 482 Cr.P.C. No. 3088 of 2022 dated 05.12.2022 while considering the law laid down by the Hon'ble Supreme Court in (2009) 10 SCC 674 (*Central Bureau of Investigation Vs. V.K. Bhutiani*), (2012) 9 SCC 685 (*State (NCT of Delhi) vs. Ajay Kumar Tyagi*, AIR OnLine 2020 All 2702 (*Om Narayan Tiwari vs. State of U.P.*) as well as *Radheshyam Kejriwal vs. State of West Bengal and another* reported in (2011) 3 SCC 581 has opined in para no. 25 and 26 as under:-

"25. Thus, it is important to mention here that Radheshyam Kejriwal was not a case of departmental proceedings and criminal proceedings, but it was the case of adjudication proceedings under the PMLA and criminal proceedings against the person. In adjudication proceedings under the PMLA, it is the specialized Court of competent jurisdiction which evaluates the evidence in respect of adjudication and then records its findings. However, in the departmental proceedings, it is a trained judicial mind which records the finding of guilt or exoneration. The findings of disciplinary authority or inquiry officer are based on preponderance of probability. I am of the view that the judgment in *Radheshyam Kejriwal Vs. State of West Bengal and another's* case (*supra*) cannot be of any application wherein the delinquent employee gets exonerated in departmental proceedings and he is facing departmental proceedings and criminal proceedings.

26. In view thereof, I am of the view that the whole premise of the learned counsel for the accused-applicant that since the accused-applicant has been acquitted in the departmental proceedings, the criminal proceedings are to be quashed, has no merit and substance and, thus, this application is hereby dismissed. "

16. I do not have any other view than expressed by the co-ordinate Bench of this Court in ***Jai Ram Lal Verma (supra)*** and, therefore, is of the considered view that the applicant is not entitled for any benefit of the law laid down by the Hon'ble Supreme Court in ***'Ashoo Surendra Nath Tiwari' (supra)***.

17. Coming to the merits of the instant case, it is evident that Jaglal, the then 'Gram Panchayat Adhikari' had submitted a demand letter addressed to the Block Development Officer, Santha Block for payment of Rs. 1,47,831/- for material purchase and labour wages and three bills of Rs. 98,061/-, 43,550/- and Rs. 6,220/- were enclosed with that demand letter. Shri Ganga Prasad Srivastava, the then Junior Engineer has verified that the work is in progress and recommended for payment of Rs. 1,47,831/- and the instant applicant, who at that point of time was also holding the post of B.D.O., Santha Block has issued three cheques of Rs. 6,220/- 43,550/- and Rs. 98,061/- and these cheques have been credited in the bank account of those who have supplied the material. Thus, it is the case of the Central Bureau of Investigation that without verifying the work done on the spot, the applicant has approved payment. In the charge sheet submitted by the C.B.I. a Government Order bearing No. 1554/38-7-2009-25NREGA/2007 dated 18.06.2009 has been mentioned, wherein the duty of making field inspection in order to verify all the projects executed under MGNREGA Scheme has been entrusted to the Block Development Officer. Thus, at this stage it could not be said that there is no evidence or material against the applicant.

18. Hon'ble Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568*** has held as under:

"6. At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. ...

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate, to consider 'the police report

and the documents sent with it under Section 173' and, if necessary, examine the accused and after giving accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is to the meaning of the expression 'the record of the case' as used in Section 227 of the Code. Though the word 'case' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit 'the case' to the Court of Session and send to that court 'the record of the case' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code, No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old code of 1898, makes the position more clear. In the old code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207(a) was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207(a). Under Section 207(a) in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under Sub-section (1), to take evidence as provided in Sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in Sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in Sub-section (6) and to commit the accused for trial after framing of charge as

provided in Sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in Sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in Sub-section (14). The aforesaid Sections 207 and 207(a) have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of committal Magistrate framing the charge, it is now to be framed by Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge."

19. Hon'ble Supreme Court in the case of ***Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 SCC 368*** has held as under:

"20. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The Court cannot act merely as a Post Office or a mouthpiece 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) *If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the 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 the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

20. In ***State of Rajasthan vs. Ashok Kumar Kashyap***, MANU/SC/0275/2021, Hon'ble Supreme Court observed as under:-

"9.1. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Code of Criminal Procedure. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the Accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the Accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge Under Section 228 Code of Criminal Procedure, if not, he will discharge the Accused. It is further observed that while

exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

9.2. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

*25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 Code of Criminal Procedure. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In **State of T.N. v. N. Suresh Rajan** [**State of T.N. v. N. Suresh Rajan**, MANU/SC/0011/2014 : (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCCpp. 721-22, para 29)*

29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the Accused has been made out. To put it differently, if the court thinks that the Accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the

Accused has committed the offence. The law does not permit a mini trial at this stage."

21. Thus, the ratio which may be culled out from the above-mentioned decisions of the Hon'ble Supreme Court is to the tune that at the time of considering the request of discharge or framing of charge, the Court is only required to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and the sufficiency of ground would also take within its fold the nature of the evidence and other documents produced before the Court. Certainly at this stage the probative value of the material may be gone into, however, the Court is not expected to go deep into the matter in order to hold that the material/evidence would not warrant a conviction and at this stage, as highlighted in *Ashok Kumar Kashyap's case (supra)*, it is only required to be considered as to whether there is ground for presuming that the offence has been committed and not where a ground for convicting the accused has been made out.

22. Thus, having regard to the above proposition of law coupled with the facts of the instant case and the material/evidence, which has been collected by the investigating officer/during the course of investigation and also having an eye that direct evidence of being a part of conspiracy is seldom available, I do not find any illegality in the impugned order whereby the discharge application of the applicant has been rejected.

23. Resultantly, the instant application moved on behalf of the applicant/accused is also **dismissed**.

24. A copy of this order be immediately sent to the trial Court for information.

Order Date: 16.01.2024

Praveen/Anupam S/-