

Court No. - 11

Case :- CRIMINAL REVISION No. - 1070 of 2024

Revisionist :- Shyam Chandra Pathak

Opposite Party :- State Of U.P. Thru. S.I.T. Lucknow

Counsel for Revisionist :- Himanshu Hemant Gupta, Avadhesh Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin, J.

1. Supplementary affidavit filed by learned counsel for the revisionist is taken on record.
2. Heard learned counsel for the revisionist as well as learned A.G.A. for the State-opposite party.
3. Under challenge is the order dated 31.07.2024 passed in Criminal Case No.1946 of 2019 in Re: S.I.T. Vs. Brijendra Nath Gupta and Others by the learned trial court whereby the discharge application filed by the revisionist along with several others has been rejected.
4. The contention of learned counsel for the revisionist is that in the year 2004-05, the revisionist was posted as Godown In-charge of the U.P. State Food and Essential Commodities Corporation at Hardoi. There was a shortage both of the food grains and the cash. As per the relevant circulars of the Corporation which were applicable at that stretch of time namely the circular dated 10.04.1992, a copy of which is annexure 3 to the revision, any shortage could be made good immediately by the person concerned and accordingly, the revisionist claims to have made good the said alleged shortage at that time.
5. It is contended that in the State of U.P., the food grains meant

for B.P.L. card holders, Antyodaya Scheme, Jawahar Rozgar Yojana, Mid-day Meal Scheme etc. and for poor and downtrodden had been smuggled not only outside the State but also exported to outside country which led to a public interest litigation being filed and being registered as **Writ Petition No.10503(M/B) of 2009 in Re: Vishwanath Chaturvedi Vs. Union of India and Others.**

6. Initially, the writ court, vide order dated 10.03.2010, a copy of which is annexure SA-1 to the supplementary affidavit dated 17.09.2024, had formed a Coordinating Committee to look into the matter. Subsequently, the said PIL was decided vide judgment & order dated 03.12.2010 reported in **2010 SCC OnLine All 2339**, wherein a slew of directions were issued by the writ court of which one of the directions was that the C.B.I. was required to proceed with further inquiry with regard to the said scam. For the sake of convenience, the directions as issued by the writ court are reproduced below:

"155. In view of above, we allow the writ petition subject to observation made and finding recorded hereinabove and issue the following directions for compliance not only in the interest of present controversy but to safeguard the future public interest till Act is appropriately amended (supra) by the Parliament:-

I) The C.B.I. shall proceed with further enquiry not only with regard to Ballia, Lakhimpur and Sitapur but also with regard to Varanasi, Gonda and Lucknow District.

II) All those cases where the State agencies found that the foodgrains have been smuggled outside the State of U.P. or to other countries, immediately, they shall refer such cases to the C.B.I for further Investigation.

III) It shall not be necessary for the C.B.I or State agencies to obtain sanction under the statutory provisions with regard to present controversy where from initial stage, prima facie intentionally, deliberately and in a planned manner, the foodgrains were lifted from godown for sale either in open market or to smuggle outside the State of U.P or to other countries.

iv) Subject to exception above (supra), the Chief Secretary of the State of U.P is directed to ensure that not only in the present controversy but in all cases where State agencies or the C.B.I or other investigating agency moves an application for sanction under the Code of Criminal Procedure

or Prevention of Corruption Act, 1988 or any other law for the time being in force, a decision should be taken within a period of three months. In absence of any decision with due communication, it shall be deemed that the sanction has been accorded, charge-sheet shall be filed and the trial Court shall proceed with trial to logical end in accordance to law.

v) Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of such person shall be conducted and completed expeditiously. It is imperative to retain public confidence in the impartial working of the State agencies.

A message must be given by the investigating agencies keeping in view the concept of equality enshrined in the Constitution that, "Be you ever so high, the law is above you." Law must take its course to punish the guilty.

vi) Directorate of Enforcement, Ministry of Finance, Government of India shall also proceed with search and seizure of assets, property, cash or kind earned under food scam under the Prevention of Money Laundering Act and Foreign Exchange Management Act or any other law time being in force expeditiously.

vii) The State and the central agencies shall proceed with the investigation expeditiously and conclude the same within a period of six months. At the interval of every two months, they shall submit a status report to this Court henceforth till filing of the charge-sheet/report to Court concerned.

It shall be open to the C.B.I. and State agencies to proceed with investigation with regard to food scam not only up to the year 2007 but even beyond the said year in case some link evidence/material is found with regard to continuance of diversion of food under various schemes of the State and Central Government.

viii) As and when a charge-sheet is filed, the trial Court shall proceed with the trial and conclude the same expeditiously and preferably within a period of one year."

7. Learned counsel for the revisionist contends that the name of the revisionist figured in the report of the SIT, which has been considered as per the letter dated 07.04.2016, a copy of which is annexure SA-2 to the supplementary affidavit, wherein the revisionist along with several others had been named for an offence under the provisions of Section 409/420/467/471/120B of the IPC and Section 13(2) of the Prevention of Corruption Act. Subsequent thereto, a charge sheet has been submitted in which the offence was made out against the revisionist only with respect to an offence under the provision of Section 409 of the IPC.

8. Being aggrieved, the revisionist filed a discharge application before the learned court, a copy of which is annexure 11 to the revision.

9. Learned court, vide order impugned dated 31.07.2024, a copy of which is annexure 1 to the revision, has rejected the said discharge application and hence the instant revision.

10. The argument of learned counsel for the revisionist is that the ingredients of Section 409 of the IPC the offence for which the learned court is proceeding, is not made out inasmuch as, neither there has been any *mens rea* on the part of the revisionist nor there has been any criminal misappropriation of the food grains and the cash.

11. Elaborating the same, again reliance has been placed by the learned counsel for the revisionist on the circular dated 10.04.1992, as issued by the corporation, which permitted any shortage to be made good by the concerned employee to argue that the said shortage cannot be construed to be an embezzlement.

12. The further argument is that once the said shortage has already been made good, as such, none of the provisions of Section 409 of the IPC would be attracted which fact of the matter has not been considered by the learned trial court while rejecting the discharge application. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Narendra Pratap Narayan Singh and Another Vs. State of U.P. 1991 (2) SCC 623** to contend that in the said case also the shortage had been made good much prior to the investigation and hence, the charge under Section 409 of the IPC was clearly not been made out as held by the Hon'ble Supreme Court.

13. Having heard the learned counsel for the revisionist and perused the record, it emerges that the revisionist while working as Godown In-charge of the Corporation had made good the alleged shortage of the food grains and cash in terms of the circular dated 10.04.1992 issued by the Corporation which permitted doing so.

14. On account of a huge scam that had taken place in the State which also engaged the attention of this Court in the case of **Vishwanath Chaturvedi (supra)**, this Court had issued various directions including an inquiry by the CBI.

15. Admittedly, in the report submitted by the SIT, the name of the revisionist along with several others figures in which the revisionist has been found to be guilty of the offences under Section 409/420/467/471/120B of the IPC and Section 13(2) of the Prevention of Corruption Act.

16. In the charge sheet also, the charge under Section 409 of the IPC has clearly been made out against the revisionist.

17. The discharge application filed by the revisionist along with several others has been rejected by the learned trial court on various grounds including the ground that the revisionist, along with the other accused, in the year 2004-05 and 2005-06 were working as public servants as Godown In-charge at Hardoi and they were to ensure the disbursement of the food grains that had been sent for distribution but in an audit, both the cash and the stock were found to be less.

18. Considering the aforesaid, the learned court found the revisionist to be a public servant entrusted with public property and was of the view that prima facie an offence under Section 409 of the IPC appears to have been committed and thus, the

discharge application has been rejected.

19. The argument of learned counsel for the revisionist is that once the shortage of both the cash and the food grains have been made good by the revisionist in terms of the circular issued by the Corporation which permitted doing so, consequently, the offence under Section 409 of the IPC is not made out.

20. The aforesaid argument though attractive on the face of record, merits outright rejection. The reason is that prima facie, making good the shortage of cash and stock in terms of the departmental circular may be permissible yet any shortage subsequently made good may also attract a criminal breach of trust in respect of that property. Further, there is also the detailed judgment passed by this Court in the case of **Vishwanath Chaturvedi (supra)** wherein a slew of directions have been issued by the writ Court including an inquiry by the CBI.

21. Admittedly, in the report submitted by the SIT, the revisionist has been found involved in various offences including the offence under Section 409 of the IPC. The learned court while rejecting the discharge application has also been of the view that once the shortage of both cash and the food grains have been detected, thus prima facie an offence under Section 409 of the IPC is attracted inasmuch as, it is only the prima facie attraction of an offence which would result in the starting of the trial against an accused person and the learned trial court at the stage of discharge is not expected to hold a mini trial for the purpose of consideration of the said discharge application.

22. So far as the judgment of the Hon'ble Supreme Court in the case of **Narendra Pratap Narain Singh (supra)** is concerned,

it would be suffice to state that it was a case in which the person had been convicted of an offence under the provision of Section 409 of the IPC, while in the instant case, the trial is yet to start.

23. Further, in the instant case, the trial is still to commence and the revisionist has only been found to be prima facie responsible for an offence under Section 409 of the IPC. There is a possibility, that when the trial culminates, the revisionist could be exonerated of the charges but at this stage, preempting the trial on the said ground would be clearly an act not countenanced in the eyes of law.

24. Keeping in view of the aforesaid discussion, no case for interference is made out.

25. Accordingly, the revision is **dismissed**.

Order Date :- 18.9.2024

S. Shivhare