

Union of India

Vs

Lt. Col. G. K. Apte

and

The State of Assam

Vs

Maj. B. S. Talwar.

Criminal Appeals Nos. 164 and 211 of 1968

(A. N. Grover, I. D. Dua JJ)

23.03.1971

JUDGMENT

GROVER, J. -

1. These appeals by special leave are from a common judgment of the Assam and Nagaland High Court and are directed against the orders made by that Court quashing the charges for alleged offences under certain provisions of the Indian Penal Code and the Prevention of Corruption Act, 1947.
2. The fact may be stated, Lt. Col. G. K. Apte, the respondent in Cr.A.No. 164/68, was posted to Tejpur as Staff Officer No. 1 in the summer of the year, 1960. It appears that a project known as the "Tusker Project" had to be carried out in the NEFA area. The main duty of the units employed in the Project was the making of roads in NEFA area to enable the movements of troops, etc., in the event of any Chinese aggression. Brigadier Mani was in-charge of the Project as Military Chief Engineer. Apte was posted as Staff Officer No. 1. This post corresponded to that of a Superintending Engineer on the Civil Side. The Chief Engineer had various powers which he could delegate to the senior officers working under him. Such powers included the authority to make local purchases of such items or articles as were required by the various units which were not readily available either from the Military Ordnance Stores or from the Military Supply Department. On May 20, 1960, the Chief Engineer delegated his power to Apte to make such purchases up to a maximum of Rs. 10,000/- for each order. He could also place orders with regard to printing, stationary and office equipment up to a certain limit. The respondent in the other appeal Maj. B. S. Talwar served as Staff Officer No. 2 in the same establishment under Brig. Mani and Apte. His powers and duties will be presently adverted to. The charges which were laid against Apte and Talwar relate to the purchase of stores and various items and articles mainly from certain local merchants.
3. On January 16, 1963, an information was lodged under Section 153, Criminal Procedure Code, by the Superintendent of Police S.P.E./CIA that cooking utensils like chaklas, balana, degchis and other articles like shovels etc., had been purchased from Messrs. K.B. Stores, Tejpur at exorbitant

rates. It was said that Talwar was responsible for those deals. It appeared that he had colluded with K.B. Stores and some others on various occasions and by abusing his position as a public servant he had obtained pecuniary benefit for them and for himself by showing favour in the matter of inviting quotations and placing orders. Between June, 1960, and October, 1960, he had placed a large number of orders with K.B. Stores. Invariably enquiries about quotations were addressed to K.B. Stores, Kedar Mal Badri Narain Agarwal & Co., Steelworth Ltd. and Trade and Industry (Assam) Private Ltd., Tezpur. Preliminary enquiries showed that these firms were either under a single ownership or were allied. There was thus a conspiracy amongst all of them to collude with Talwar and others for the purpose mentioned before. These offences had been committed under Section 120-B, read with Section 5(2) and Section 5(1) (d) of the Prevention of Corruption Act. After investigation a charge-sheet, dated June 10, 1963 was filed. The two officers Apte and Talwar and the employees and representatives of K.B. Stores, Tezpur, were accused of the offences mentioned before. A list of 47 supply orders was given and it was alleged that Talwar has issued quotation inquiries of bogus firms like Agarwal & Co., Bagaria Stores which either did not exist or did not transact any local business with a view to avoiding competition. Quotations in the name of such firms were forged or caused to be forged by the employees of K.S. Stores. The normal procedure for issuing quotation inquiries and receiving of quotations was not followed by Apte and Talwar. In some cases blank quotation forms were obtained by Talwar from the office for handing them over to the firms of their own choice. Certificates were endorsed on the supply orders without calling any quotations. A number of supply orders were mentioned which had been issued under the signature of Apte. It was also stated that higher rates quoted by K.B. Stores than the lower rates quoted by other firms were accepted.

4. The special Judge framed the following charges against Apte and Talwar :

"That during the period from June, 1960 to November, 1960 at Tezpur, you along with others agreed to commit or cause to be committed the offences of criminal misconduct in the discharge of official duty by the public servants, viz., Lt. Col. G. K. Apte and Maj. B. S. Talwar punishable under Section 5(2) of the Prevention of Corruption Act, 1947, and a cheating punishable under Section 420, I.P.C., by fraudulently and dishonestly placing or causing to be placed supply orders on Messrs. K.B. Stores, Tezpur or Messrs. Trade and Industry (Assam) Private Ltd., Tezpur, for the supply of various Stores. And thereby you committed an offence punishable under Section 120-B of the Indian Penal Code, read with Section 5(2) and 5(1) of the Prevention of Corruption Act, 1947 and Section 420, I.P.C. and within my cognizance.

And I hereby direct that you be tried (5) by the said Court on the said charge."

5. He also framed separate charges against these two officers. Reference may be made to the charge against Apte :

"That you in pursuance of the said criminal conspiracy at Tezpur, during the period from June, 1960 to November, 1960 being a public servant functioning as Staff Officer I, and Quarter Office, Chief Engineer, Project Tusker, Tezpur, committed the offences of criminal misconduct in the discharge of official duty, by corrupt or illegal means or by otherwise abusing your position as a public servant obtaining for Messrs. K.B. Stores, Tezpur or Messrs. Trade and Industry (Assam) Private Ltd., Tezpur, its partner or beneficiaries pecuniary advantage by fraudulently or

dishonestly placing or causing to be placed the 41 supply orders as noted overleaf, on the said Messrs. K.B. Stores or Messrs. Trade and Industry (Assam) Private Ltd., Tezpur, for the supply of various store and thereby committed an offence punishable under Section 5(2), read with Section 5(1) (d) of the Prevention of Corruption Act, 1947 and within my cognizance.

And I hereby direct that you be tried (5) by the said Court on the said charge."

6. It was stated in the order of the Special Judge, dated December 3, 1964, that from the material before him there was a prima facie case for preferring these charges.

7. Apte and Talwar moved the High Court under Section 561-A and Sections 435 and 439 of the Criminal Procedure Code. According to the High Court the first information report, the charge-sheet and the other papers on the record did not disclose that any pecuniary advantage was obtained at all either for Apte himself or Talwar or for any other person not was there anything to show that any corrupt or illegal means were adopted by them or that either of them had abused his position as a public servant. There was no allegation anywhere that any bogus order was placed or that the supply order contained false items or that the supply was not made under those orders. The ingredients of the offences had not been established under the Prevention of Corruption Act. Similarly with regard to the offence of cheating there was not even any allegation which disclosed that offence. The charge for the offence of criminal conspiracy under Section 120-B could only be framed if there was any prima facie proof of agreement to do or cause to be done an illegal act or an act which was not illegal by illegal means and there was not even the slightest indication from the material placed before the High Court that there was any such agreement. The entire material on the record did not show any prima facie commission of the offences with which Apte and Talwar has been charged. It was ordered that the charges be quashed and a direction was made that no judicial proceedings pursuant to the charges should be held.

8. The learned counsel for the Union of India has carefully taken us through the statements recorded under Section 161 of the Criminal Procedure Code and has referred to such other material and facts and circumstances as are to be found on the record of the case before us to establish that the High Court was in error in coming to the conclusion that a prima facie case had not been made out against Apte and Talwar. According to the statement of A.A. Noronaha who was holding the appointment of S.O.I. (Works) since September 15, 1960, an office order had been issued by the Chief Engineer, dated March 13, 1961, as to the procedure which was to be followed with regard to the quotations for supply of stores. These quotations were to be called from the firms dealing in the material required by a specific time and date. It was necessary to call as many quotations as possible to get the benefit of competition in the Market both in respect of rates and quality. The head of the office or the authorised officer as accepted the lowest quotation but where he did not do so reasons had to be given for accepting the higher quotation. J.K. Basu who has described his designation as Supervisor B/S Grade I was working in E(III) Section till September 14, 1960, during the material period. Talwar, according to him, used to name the firms to whom quotations were to be sent. Quotations were prepared by him and were handed over by him to Talwar. Talwar used to place the supply orders on the firm which was "the lowest tenderer". He gave instances of Talwar having asked him to bring some blank quotation inquiry forms and then to prepare quotation for certain items which Talwar directed him. He was further told that the quotations should be addressed to Kedar Mal Badri Narayan Agarwal & Co. and K.B. Stores. The supply order was then placed on K.B. Stores, after the forms had been received back duly filed up in the writing probably of the firm's representative. With regard to the supply order, dated August 6, 1960, his version was that

Talwar called him to office and had asked him to bring some blank quotation forms which he did. Talwar then told him to prepare three quotations for Airvoice, K.B. Stores and Agarwala & Co. These forms were taken blank by him and after certain particulars had been filled in were later on returned duly completed by the firms. The rate of K.B. Store had been amended on one of the forms. Talwar asked him to alter the rates in the comparative statement register accordingly and delete the name of Airvoice which had been previously recommended by Basu as being the lowest tenderer and put the name of K.B. Stores instead. The rate, however, which was paid was the same as quoted by Airvoice. The next instance of any consequence was furnished by Morohaha according to whom a supply order was placed for Kudalies on K.B. Stores without handles at Rs. 450/- each the total amount of the order being Rs. 2,538/-. In the original quotations firms had been asked to mention the weight of Kudalies with handles. This was done only by to firms N. N. Dey & Co. of Calcutta and Trade and Industry (Assam) P. Ltd. The latter gave quotation with the weight including handle as 3 pounds whereas N. N. Dey & Co. had quoted kudalies with handles with a weight of 4 pounds. Comparing the quotations of Trade and Industry (Assam) P. Ltd. with K.B. Stores they were lower by the quotations of K.B. Stores were accepted even though they were higher and no quoted. It had been certified by Apte that the Stores were purchased by negotiations due to emergency and also because they were urgently required. It may be mentioned that Trade and Industry (Assam) P. Ltd. was alleged to be an allied concern of K.B. Stores. It has next been pointed out on behalf of the Union that the quotation for paints (green and white) offered by Pipes and Hardwares was lower than that of Trade and Industry (Assam) P.Ltd. on whom the supply order was placed for that paint. Pipes and Hardwares had offered the paint at Rs. 22/- per gallon whereas Trade and Industry (Assam) P. Ltd. on whom the order was placed had quoted Rs. 27.83. As regards the supply order, dated July 19, 1960, it was placed on K.B. Stores by Apte at the rate of Rs. 36.75 per gallon whereas the quotation which had been received was for Rs. 36.62 per gallon. Nothing was mentioned about the total amount that was paid in excess.

9. It is significant that the learned counsel for the Union in spite of laborious research has been able to point only to the above four items in respect of which the evidence was that orders were placed with K.B. Stores, Tezpur and higher rates were paid even though the quotations from Calcutta firms and other local firms were lower. In the petition filed to the High Court by Apte which was supported by his affidavit it had been explained that the Tusker Project had been declared to be an emergent project by the Central Government. The position in the summer of 1960, was such that if the incoming army units were not supplied the material of various kinds required for the work immediately and were allowed to remain idle until quotation enquiries were issued and processed, the daily loss to the exchequer would have run into a huge figure. Moreover the incoming army units required immediately the articles of personal use which were to be supplied to them at once without issuing of inquiries relating to quotations. The M.E.S. Rules which were applicable at that time gave discretion to the officers concerned to purchase materials directly without even issuing of quotation enquiries and that emergency certificates could be issued whenever purchases were made without inviting quotations. Whatever orders were placed or quotations were received were from the approved firms and K.B. Stores was one of them. This store was the largest stockist of Tezpur and being on the army list of suppliers most of the orders were placed with it not only during the tenure of Apte and Talwar in their respective posts but orders had also been placed even prior and subsequently by other officers including Brigadier Mani and Col. De'Souza.

10. As regards the 47 items mentioned in the first information report Talwar maintained in his petition supported by an affidavit before the High Court that he never accepted any of the tenders; in most of the causes he processed the tenders and only forwarded them and submitted the same to the proper authorities for acceptance.

11. It has been pointed out on behalf of the respondents that the evidence relating to the four items on which counsel for the Union has greatly relied was of a very vague and indefinite nature. No facts and figures have been given of the loss resulting to the Government and the gain made by K.B. Stores or its allied concerns. It is emphasised that the difference in the rates of K.B. Stores which were accepted and the quotations of other firms was minimal and it all depended on the immediate requirements and the confidence, particularly in the matter of quality and promptness, which the officer had in K.B. Stores. This store had been on the approved list and had been making supplies even before the respondents took charge of their assignments in the Tusker Project.

12. This Court has laid down in *R. P. Kapur v. The State of Punjab*, ((1960) 3 SCR 388 : AIR 1960 SC 866 (1961) 1 SCJ 59.) that the inherent power of the High Court saved by Section 561-A of the Criminal Procedure Code could be exercised to quash proceedings in a proper case either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. The following were some of the illustrations given where the proceedings could and should be quashed : (a) where the allegations in the first information report or the complaint did not make out the offence alleged; (b) where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge. It has been emphasised that the High Court cannot embark upon an inquiry as to whether the evidence in the case is reliable or not to justify the framing of the charge.

13. Now the judgment of the High Court in the present case seems to indicate that firstly no attempt appears to have been made on behalf of the Union to bring to its notice the material which, after so much research, counsel for the Union has been able to place before us; secondly even in some material was brought to its notice the High Court was satisfied that it was of such a nature that the ingredients of the offences with which the respondents were sought to be charged had not been made out.

14. It has now to be seen whether there should be interference with the orders of the High Court under Article 136 of the Constitution. The limitation on the exercise of that power cannot be defined with any precision. But the power is of an exceptional and overriding nature and has to be exercised sparingly, the paramount consideration always being the perpetuation of justice. Now there is no doubt that there is some prima facie evidence regarding the procedural and other irregularities in the matter of acceptance of quotations while placing orders for supplies but out of 47 items which were mentioned in the charge-sheet out attention has been drawn mainly to four items only in which in two orders certain higher quotations of K.B. Stores or its allied concerns were accepted. In one case the difference was of 13 nP. per gallon only. The mere acceptance of a higher quotation by itself cannot amount to the commission of any offence. The Military authorities do not appear to have taken any departmental action against the respondents who have since retired from service and are living in places distant from Assam. Even the material evidence sought to be produced relating to the year 1960, may not be readily available after a lapse of nearly 11 years. In these circumstances we feel that it will not promote the interest of justice to set aside the orders of the High Court even if it be assumed that the High Court was somewhat wrong in quashing the charges and the proceedings against the respondents.

15. The appeals are consequently dismissed.

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