

State of Himachal Pradesh

Vs

Krishan Lal Pardhan and Others

Criminal Appeal No. 67 of 1987

(S. Natarajan, A. P. Sen JJ)

05.02.1987

JUDGMENT

S. NATARAJAN, J. -

1. Without a shred of evidence being recorded the rendering of a judgment of acquittal under the garb of an order of discharge of the accused by the Special Judge, Shimla and a summary dismissal of the criminal revision filed against that order by the High Court of Himachal Pradesh with the cryptic words "Heard. Dismissed" has impelled the State to file this appeal by special leave under Article 136 of the Constitution.

2. During the investigation of another case relating to FIR No. 71 of 1977 the investigating authorities came to seize 2607 scants. With reference to these scants a case was registered in FIR No. 94 dated December 25, 1977 against the first respondent and five others for commission of offences punishable under Sections 379, 411, 420, 218, 468 and 120-B of the Indian Penal Code read with Section 5(2)(d) of the Prevention of Corruption Act. Investigation revealed that the accused had entered into a criminal conspiracy for illicitly felling trees of Kail standing on government land and in pursuance of the conspiracy permits for cutting of trees standing on government land had been obtained by making use of forged applications and that certain Revenue Department officials and Forest Department officials had enabled the cutting of trees from government land by wrong demarcation of boundaries and issuance of felling permits and that the trees so cut were being sold as timber along with timber obtained by felling of trees standing on private land. However, while sending the report under Section 173 CrPC the names of Pratap Singh, Padam Singh and Jagdish Singh (respondents 7, 8 and 9 herein respectively) were shown in column 2 as "Accused persons not sent up for trial" and the name of Jai Singh (respondent 10) was not at all shown. It is relevant to state here that respondents 8 and 9 are respectively the son-in-law and son of Shri Ramlal, who was Chief Minister of Himachal Pradesh from March to August 1976 and again from 1980 till the end of March 1983.

3. After Shri Ramlal went out of office the Public Prosecutor filed an application before the Special Judge, Shimla for impleading respondents 7 to 9 as well as respondent 10 also as accused persons in the case. After hearing the parties the learned Special Judge passed an order on April 23, 1984 allowing the application. The relevant portions in the order of the Special Judge which require notice are extracted below and read as under :

Now coming to the question of materials appearing against the respondents in the report under Section 173 of the Criminal Procedure Code, I find that the Investigating Officer has assigned no reason as to why the persons mentioned in

column 2 of the charge-sheet were not challanned ..... I have gone through the statements recorded by the police under Section 161 of the Criminal Procedure Code. In my opinion, there is sufficient material on record to summon and implead the respondents as accused persons. At this stage, the court is not required to make a roving enquiry into the pros and cons of the matter, so as to find out whether the material on record would be sufficient to record conviction against the respondents. The material on record is sufficient to connect the respondents, Padam Singh and Jagdish Singh, with the offence of theft in respect of timber, duly converted from the trees standing on the government land, as well as offence of conspiracy read with offence under the Prevention of Corruption Act, committed by other accused persons in furtherance of the conspiracy to cause loss to the State of Himachal Pradesh by way of illicit felling of the trees in question .... A prima facie case of cheating, forgery and criminal conspiracy read with Section 5(1)(d)(2) of the Prevention of Corruption Act, is also disclosed against the respondents Pratap Singh and Jai Singh, in view of the statements of the aforementioned persons, relied upon by the learned Public Prosecutor .... Observation made while disposing of the present application shall have no bearing whatsoever on the merits of the case .... For consideration of charge, to come up on May 25, 1984.

4. Subsequently, there was a change in the Presiding Officer of the court and one Shri Surjit Singh came to be posted as Special Judge in place of the previous judge. On July 5, 1984 Shri Surjit Singh heard arguments relating to the framing of charges against the accused and on July 16, 1984 he passed an order of discharge as under :

There exists no ground for charging the accused with any of the offences of which they have been accused; accordingly all the accused are discharged.

The full text of the order runs to 16 pages and as mentioned at the very outset, it is not a mere order of discharge but a full-fledged judgment of acquittal as if rendered on appreciation of evidence.

5. Before examining the purported order of discharge, we may briefly set out the profile of the prosecution case. The first respondent is a village Pradhan and the seventh respondent is his son. The tenth respondent is an employee of the first respondent. Respondents 8 and 9 were partners of a firm dealing in timber viz. M/s. Thakur Timbers, Rohru. Respondents 2 to 4 are Revenue Department officials and respondents 5 and 6 are Forest Department officials. According to the prosecution respondents 1 and 7 were partners in a firm engaged in buying trees from land owners and cutting them and selling the cut wood as timber to the firm of M/s. Thakur Timbers of which respondents 8 and 9 were partners. The first respondent is alleged to have made use of respondent 10 to secure forged applications for obtaining felling permits from forest officials to cut trees. Respondents 2 to 4, the Revenue Department officials are alleged to have made wrong demarcations of government land and respondents 5 and 6 the Forest Department officials are alleged to have issued permits for felling of trees on government land, all in pursuance of the conspiracy and actuated by motive for illegal gratification. Respondents 5 and 6 are also alleged to have helped the first respondent and others to get away with the illegal felling of trees on government land by passing or obtaining orders for compounding of offences.

6. The prosecution records placed before the court for framing of charges revealed the following :

(1) Government land in Khasra No. 886 had been wrongly demarcated by showing it

as part of Khasra No. 3256.

(2) By reason of such wrong demarcation four trees belonging to government had been cut.

(3) Wrong demarcation of boundaries had further led to seven trees in Khasra No. 886 and one tree in Khasra No. 4355, belonging to government, being illicitly cut.

(4) Wrong demarcation of boundaries had also led to 44 unmarked trees in government land being cut.

(5) The illicit cutting of 44 unmarked trees had been wrongly compounded at the instance of respondents 5 and 6.

(6) Accused Jai Singh (respondent 10) had forged the agreement and application submitted in the name of witness Phali Ram.

7. Now coming to the order of the Special Judge the first glaring feature noticed is that his predecessor judge had found the materials placed before court to make out a prima facie case against all the ten accused persons regarding offences of conspiracy, theft, cheating and forgery besides offences by the public servants under the Prevention of Corruption Act. Very strangely, the successor Special Judge has come to a diametrically opposite conclusion on the same materials and held that the charges were groundless and hence no charges need be framed and all the accused should be discharged. In effect what the Special Judge has done is to review the order of his predecessor which he is not entitled to do under law. It is no doubt true that a magistrate or Special Judge is empowered under Section 239 CrPC to discharge the accused on the ground the charge against him is groundless. But in this case can the Special Judge say that the charges were groundless when on the same materials his predecessor has held that a prima facie case relating to various offences had been made out against the accused? The subsequent order, as already stated, is in effect a review of the earlier order which the Special Judge is not entitled to do under the Criminal Procedure Code.

8. We also find that the order of the Special Judge suffers from some other infirmities. The first grievous error committed by him is in failing to comprehend the offence of criminal conspiracy and mistakenly treating the acts done in pursuance of the conspiracy as the offence of conspiracy itself. Because of this erroneous perception the Special Judge has vivisected the conspiracy into three different sets of acts and viewed in isolation the conspiratorial acts of the accused involved in each transaction and concluding that the other conspirators stood absolved of the offences. In the opinion of the Special Judge every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. Such a view is clearly wrong. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. The learned Judge is, therefore, wrong in taking the view that the offences complained of constitute three different sets of acts and should, therefore, be treated as individual acts and judged in that limited perspective.

9. Another grave error committed by the Special Judge is in basing his order on surmises and

assumptions without recording any evidence in the case. The Special Judge has held that the Revenue Department officials would not have wantonly made wrong demarcations of government land for if they had really wanted to do so, they would have included larger extents of government land within the limits of private lands. The reasoning of the Special Judge proceeds on the assumption that the private lands are surrounded on all sides by government lands with trees standing on them, and as such larger extents could have been added but were not so done. Another reason given by the Special Judge for disbelieving the prosecution case is that the number of trees belonging to government which had been illicitly cut bears a small proportion to the total number of trees cut from private lands. This conclusion also has been reached without there being any evidence about the number of trees standing on government land in that area. The Special Judge has proceeded on the basis that the felling of the unmarked trees stand on a different footing from the felling of marked trees on government land because the offence of felling of unmarked trees has been compounded by the Forest Department authorities. The Special Judge has not considered the prosecution case that the compounding of the offences had itself been done without proper authority.

10. The Special Judge, perhaps in his anxiety to absolve the accused of the offences complained of has failed to restrict his scrutiny within the limits of Section 239 CrPC. All that is required at the stage of framing of charges is to see whether a prima facie case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case. What the Special Judge has done is to decide the case on merits without giving the prosecution an opportunity to adduce evidence against the accused. The order of the Special Judge is therefore not in accordance with law and is clearly unsustainable. The State is, therefore, well founded in seeking the quashing of the order of the Special Judge. Whatever be the ultimate outcome of the case the Special Judge should have framed charges and taken the case for trial instead of discharging the accused under Section 239 CrPC on the ground that the charges mentioned in the police report are groundless.

11. Mr. C. S. Vaidyanathan, learned counsel for the respondents strenuously contended that the order of discharge does not call for quashing by this Court. The learned counsel urged that in respect of the 44 unmarked trees that were cut the offence has been compounded, that the number of marked trees that were cut is comparatively small and that the Revenue Department and Forest Department officials had not obliged the other accused in any manner nor had committed any offences. He also submitted that because of political considerations the respondents were being harassed. Lastly, the counsel stated that having regard to the long interval of time that has occurred, respondents may be spared the ordeal of a trial. He also pleaded that even if a trial is held the evidence adduced by the prosecution was not likely to result in conviction and, therefore, the trial will only be a futile exercise.

12. We do not wish to express any opinion on these submissions because they touch upon the merits of the case which can be judged only after evidence is recorded in the trial. We may, however, observe that the delay that has occurred is partly due to the making of the respondents themselves. In their zeal to have the case scotched at the threshold itself they had overreached in canvassing before the Special Judge that the charges were groundless and consequently they are entitled to an order of discharge. It is unfortunate that the High Court declined to quash the order of the Special Judge and direct the trial being held after framing of necessary charges.

13. In conclusion, we allow the appeal and set aside the order of discharge passed by the Special Judge and direct the case to be restored to file for being proceeded further in accordance with law.

We make it clear that none of our observations in this judgment should be construed as any expression on the merits of the case. We further observe that the Special Judge, after framing the necessary charges should endeavour to conduct the trial expeditiously and as far as possible on a day to day basis.

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