P. S. Rajya

Vs

State of Bihar

Criminal Appeal No. 434 of 1996

(Dr. A. S. Anand, K. Venkataswami JJ)

09.05.1996

JUDGMENT

K. VENKATASWAMI, J.-

1. Heard learned counsel for the parties.

2. The appeal was allowed with costs by our order dated 27-3-1996 reserving the reasons to be given later. Now the reasons are given.

3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.

4. Short facts are as under.

5. The appellant started his career in a college in the year 1955 and switched over to TISCO in the year 1959 till he was selected and appointed as Inspector in the Income Tax Service in the year 1961. The appellant's wife was also a teacher in the Central School at Bokaro steel city. She was allotted on long lease a plot at Bokaro in the year 1980 for a sum of Rs 20,000 by the Steel Authority of India Limited (for short "SAIL"). As per terms and conditions imposed by SAIL, shops in the ground floor and residence at first floor were constructed by the appellant with his earnings as well as the earnings of his wife. The construction was strictly under the supervision and on the drawings supplied freely by SAIL township authority. Subsequently the building was valued by SAIL township engineer at Rs 4.75 lakhs.

6. The appellant in the meanwhile got promotion and was functioning as Income Tax Officer, A Ward, Dhanbad from 1981 to 1985. It appears that in the course of discharge of his duties, he impounded the books of accounts of certain business people who seemed to have complained to the local Congress Party M. P. who in turn complained about the appellant to the Minister of Finance with a request to transfer the appellant and to order for a CBI enquiry. Accordingly, an FIR was lodged on 9-4-1986 and the appellant's residence and office were raided on 11-4-1986, However, nothing worth mentioning was found. Ultimately a charge-sheet was filed on 31-7-1989 showing the assets of the appellant consisting of cash, immovable property (house) and jewellery as follows:

(i) Building at Bokaro Rs. 7,69,300.00

(ii) NSCs Rs. 82,5000.00

(iii) Bank balance Rs. 1,584.91

(iv) Household articles Rs. 1,34,709.00 -- Total Rs. 9,88,093.91 --

7. As against this the estimated savings for the check period (1973 to March 1986) was arrived at in the sum of] Rs 6,30,000 and on that basis it was alleged that the assets were disproportionate to the extent of Rs 3,57,439.00.

8. The appellant aggrieved by the above charge being taken cognizance of by the Special Judge challenged the same by moving the Patna High Court under Section 482 CrPC. The High Court by order dated 3-8-1990 allowed the petition and remitted the matter back to the Special Judge directing him to get a preliminary enquiry conducted by higher authority of the appellant or do it himself before taking cognizance of the matter.

9. It is the grievance of the appellant that without strictly complying with the remit order of the High Court, the Special' Judge took cognizance of the matter and wanted to proceed further. Aggrieved by that the appellant again moved the Patna High Court under Section 482 CrPC for quashing the cognizance of charge as mentioned above. This time the High Court dismissed the petition holding that the issues raised before it have to be gone into in the final proceedings and those cannot be raised at the preliminary stage.

10. The appellant aggrieved by the order of the High Court has filed the above appeal by special leave.

11. It may not be quite out of place just to mention how the appellant was persecuted, if we may use that expression on the facts of this case.

12. On the basis of the FIR and consequential raid the appellant was placed under suspension on 24-11-1986. No progress was shown nearly for two years which obliged the appellant to move the Central Administrative Tribunal, Calcutta ('CAT' for short). On 1-6-1988 the Tribunal directed the Government to complete the investigation within three months failing which the order of suspension would automatically stand revoked. Since the CBI did not complete the investigation as directed by CAT, the suspension stood automatically revoked. Thereafter the CBI got the appellant's house inspected by a team of three CPWD engineers on 27-9-1988 on which date the appellant and his family members were away and the house was locked. The appellant was forced to move Central Administrative Tribunal, Patna for getting his promotional order and in that course the Tribunal passed some strictures against the authorities. At last the CBI filed a charge- sheet on 31-7-1989 and the main basis for this charge-sheet was the valuation of the appellant' s house at Bokaro which the CBJ fixed at Rs 7,69,300.00 as against the earlier valuation by the Income Tax Department at Rs 4.67 lakhs.

13. We may also mention that the only ground on which the arguments were addressed both by the learned counsel for the appellant and the learned Senior Counsel for the respondent centred round the valuation fixed by the CBI to the appellant's house at Bokaro.

14. Soon after the Special Judge took cognizance of the charge, the appellant was again placed under suspension on 31-5-1990. As mentioned above by order dated 3-8-1990 the High Court of Patna quashed the cognizance taken by the Special Judge and remitted the matter for fresh

consideration. The appellant again moved the Central Administrative Tribunal, Patna for promotion and other reliefs which in turn directed the revocation of the order of suspension and also to release all increments from 1987 onwards and for opening of the sealed cover in which the appellant's promotion order had been placed by the Department. That order of the CAT was challenged by the Department in this Court and this Court dismissed the special leave petition on 14- 10-1991. Simultaneously the appellant was given a departmental charge- sheet containing identical charges. For more than two years no progress was made by the Department as no Inquiry Officer was appointed. Again, the appellant was forced to move the CAT, Patna for quashing the departmental charge-sheet. A direction was given by the CAT, Patna on 22-2-1993 to complete the departmental enquiry by 15-5- 1995. The departmental enquiry was conducted by the Central Vigilance Commission and the Central Vigilance Commission after a detailed enquiry submitted a report exonerating the appellant of all the charges. The Department forwarded the report of the Central Vigilance Commission for the opinion of the Union Public Service Commission. By a long report, the Union Public Service Commission concurred with the conclusion of exonerating the appellant of all the charges. Accepting the report of the Union Public Service Commission, the President passed the final orders in favour of the appellant. In spite of that we are informed that the appellant has not got the full retrial benefits.

15. Now reverting to the merits of the case it is the contention of the learned counsel for the appellant that in view of the clear reports of the Central Vigilance Commission and the Union Public Service Commission concerning identical departmental charge, there is absolutely nothing for the prosecution to proceed further. He also submitted that notwithstanding the direction of the High Court to the Special Judge to hold a preliminary enquiry before taking cognizance of the charge-sheet either by himself or through higher authorities of the appellant, the learned Special Judge has taken cognizande once again without holding any preliminary enquiry. Therefore, the order of the Special Judge taking cognizance of the charge-sheet confirmed by the High Court cannot be sustained. On this point he placed reliance on a judgment of this Court in the case of P. Sirajuddin v. State of Madras. [(1970) 1 SCC 595 : 1970 SCC (Cri) 240 : (1970) 3 SCR 931] According to Mr Prashant Bhushan the result of departmental enquiry must be taken as preliminary enquiry and in view of the exoneration order, further proceedings in criminal charge should be dropped. It is the further submission of the learned counsel for the appellant that the very same engineers who have given the report earlier to the Income Tax Department now at the instance of the CBI, presumably on pressure, have given different valuation and here again there are overwritings and alterations in several places. According to the learned counsel the Central Vigilance Commission has dealt with this aspect in its report elaborately and ultimately came to a conclusion that the subsequent valuation reports on which CBI placed reliance are of doubtful nature. The same view was taken by the Union Public Service Commission. Even otherwise the value given as basis for the charge-sheet is not the value given in the report subsequently given by the valuers.

16. Mr Malhotra, the learned Senior Counsel appearing for the respondent, contended that both the learned Special Judge and the learned Single Judge of the High Court have not shut out the appellant from establishing his case in the final hearing and the points now raised can very well be established by giving evidence at the appropriate time and there is no case made out for quashing the charge itself. According to the learned counsel notwithstanding the findings rendered under the departmental enquiry, the CBI is entitled to proceed on the basis of the material available and the mere allegation that the reports regarding the value of the building was of doubtful nature will not take the place of proof and that has to be gone into and established in the final hearing after taking evidence of the valuers concerned. He, therefore, supported the orders of the learned Special Judge

and the learned Single Judge of the High Court.

17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings. In this context, we can usefully extract certain relevant portions from the report of the Central Vigilance Commission on this aspect.

"Neither the prosecution nor the defence has produced the author of various reports to confirm the valuation. The documents cited in the list of documents is a report signed by two engineers namely S/Shri S. N. Jha and D. N. Mukherjee whereas the document brought on record (Ex. S-20) has been signed by three engineers. There is also difference in the estimated value of the property in the statement of imputation and the report. The document at Ex. S-20 has been signed by three engineers and the property has been valued at Rs 4,85,000 for the ground floor and Rs 2,55,600 for the second floor. A total of this comes to Rs 7,40,900 which is totally different from the figure of Rs 7,69,800 indicated in the statement of imputation. None of the engineers who prepared the valuation report though cited as prosecution witnesses appeared during the course of enquiry. This supports the defence argument that the authenticity of this document is in serious doubts. It is a fact that the income tax authorities got this property evaluated by S/Shri S. N. Jha and Vasudev and as per this report at pp. 50 to 63 they estimated the property at Rs 4,57,600 including the cost of land Rs 1,82,000 for ground and mezzanine floor plus Rs2,55,600 for first floor and Rs 20,000 for cost of land. Thus both the engineers who prepared the valuation report for income tax purposes also prepared the report for the CBI and there is no indication in the subsequent report as to why there is a difference in the value of the property. A perusal of these two reports reveals that there is difference in the specification of the work. The valuation report prepared by Shri S. N. Jha for ground floor for income tax purposes clearly states that the structure was having "SCC pillars at places, brickwork in cement mortar, RCC lintel, 60 cm walls, 9 inch floor height, 17.6, 8.00, 8.00 inch" but in the report for CBI which was also prepared by him the description is "RCC framed structure open verandah on three sides in the ground floor". Similarly, for the first floor it is written in the report as "partly framed structure and partly load being walls, floor heights 3.20 mm. Further Shri S. N. Jha on p. 54 of Ex. D-1 had adopted a rate of Rs 290 per sq. mtr. for ground floor and adding for extra height he had estimated ground floor including mezzanine floor at Rs 2,02,600. But for the report at Ex. S- 20 the rate has been raised to 365 per sq. mtr. There is no explanation for this increase of rate by Rs 75 per mtr. It is also observed that for the updating of the cost of index 5% was added to the rate of Rs 290 as per p. 55 of Ex. D-1 by Shri S. N. Jha but this has been raised to 97% as an escalation to the cost of index in Ex. S- 20 without explaining or giving the reasons therefor. It is surprising that same set of engineers have adopted different standard for 6 evaluating the same property at different occasions. Obviously, either of the report is false and it was for the prosecution to suitably explain it. In the absence of it the only inference to be drawn is that report at Ex. S-20 is not authentic. Since the same set of engineers have done the evaluation earlier and if subsequently they felt that there was some error in the earlier report, they should have explained detailed reasons either in the report itself or during the course of enquiry. Therefore, Ex. S-20 is not reliable.

20. Moreover a perusal of Ex. S-20 reveals that Shri Vasudev, Executive Engineer has recorded a note as follows:

> 'Hence the valuation of Shri S. N. Jha was never superseded by any other estimates. As is confirmed from the records, his estimated figures were'only accounted for by the ITO Bokaro.

Thus according to Shri Vasudev, who was the seniormost among the three CPWD engineers who prepared Ex. S-20, the valuation of ground floor remains at Rs 1,82,600 plus Rs 20,000 for the cost of land. The first floor as per Ex. S-20 was estimated at Rs 2,55,600 and a total of all this comes to Rs 4,57,600 which is very near to the declaration of actuals to the income tax authority and also the estimated cost by the Bokaro Steel Township Engineer and the government approved valuer.

21. It is clear from the above discussions that though the document cited in Annexure III is a joint report of two engineers what has been brought on record is a document signed by three engineers, the same set of engineers who evaluated the property for income tax purposes, and there is a vast difference in the specifications and the rates adopted for calculating the cost in Ex. S-20 have been increased without any explanation and none of these engineers were produced during the course of enquiry to clarify the position. Hence the authenticity of Ex. 5-20 is doubtful as claimed by the defence.

22. It needs to be mentioned that the report at Ex. S-20 has evaluated the ground floor at Rs 4,85,300 and a note to the effect that 10% should be allowed for self-supervision and procurement of material has also been recorded at the end. On this basis the net value of ground floor comes to Rs 4,36,810 (Rs 4,85,344-Rs 48,534). The first floor has been evaluated at Rs 2,55,600 after allowing the allowance for self-supervision and a total of both items would come to Rs 6,62,410. Thus, even the report at Ex. S-20 does not support the prosecution case that as per the report of CPWD Engineers the property is valued at Rs 7,69,800. As the property assessed by the income tax authority for Rs 4.67 lakhs and even the valuation given by the Bokaro Steel Township Engineer and the government-approved valuer are very near to this figure, the reasonable value of this property could only be taken as 4.75 lakhs assessed by the Bokaro Township Engineer on detailed estimate basis."

18. It may not be out of place to extract a portion from the order exonerating the appellant from the charge framed in the departmental proceedings. It reads as follows:

> "The Commission after careful consideration of the facts and records of the case, have advised that the savings of the applicant, Shri P. S. Rajya, were more than the assets acquired by him and, therefore, the charge of \acquisition of assets disproportionate to income does not stand proved. A copy of the advice of the Commissioner is enclosed. The Commission have also advised that the ends of justice would be met by exonerating the charged officer, Shri P. S. Rajya.
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> The President has given careful consideration to the facts and records of the case and advice of the UPSC. The President has come to the conclusion that the advice of the UPSC be accepted. It is, therefore, held that the articles of charge framed against Shri Rajya has not been proved. The President is, therefore, pleased to exonerate Shri Rajya, AIT (Retd.) of the charges framed against him and drop the proceedings initiated against him."

19. We are inclined to think that the above extracts give a correct picture about the issue.

20. At the risk of repetition, we may state that the charge had not been proved and on that basis the appellant was cleared of departmental enquiry. In this connection, we may also usefully cite a decision of this Court in State of Haryana v. Bhajan Lal. [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] This Court after considering almost all earlier decisions has given guidelines relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Code of Criminal Procedure for quashing an mR or a complaint. This Court observed as follows: (SCC pp. 378-79, paras 102-3)

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where

> the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
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> We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

21. The present case can be brought under more than one head given above without any difficulty.

22. The above discussion is sufficient to allow this appeal on the facts of this case.

23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.

24. Before parting with the case, we cannot but express our anguish about the way in which the CBI has conducted itself in this case. From the record it is seen that a number of adjournments were taken for getting instructions to withdraw the prosecution. After taking a number of adjournments, ultimately the Department decided to leave the matter to the Court's decision.

25. In this connection, it will be useful to set out a portion from the rejoinder-affidavit filed on behalf of the appellant which reads as follows:

> "It seems, however, that the reluctance of the Regional CBI in dropping the proceedings against the petitioner stumps (sic stems) from the fact that they used to forge the house valuation report as the sole basis for charging the petitioner. The fact that this report is forged is abundantly clear from the facts and circumstances set out in the SLP. By this report the house of the petitioner was sought to be valued at Rs 3 lakhs and odd above the original valuation by the same Engineer which was accepted by the Income Tax Department. On this basis the petitioner's assets were shown to be Rs 3 lakhs and odd and above as income.
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> The petitioner has in fact filed a complaint under Section 340 CrPC for taking cognizance against the officer concerned for using a forged document in charging the petitioner. This complaint of the petitioner is pending before the Special Judge (CBI) Patna. It is perhaps on account of the fear of being found guilty on forgery document that the Regional CBI officers are reluctant to withdraw the charge against the petitioner. That is why after having a short adjournment on 6 occasions from this Court to enable them to withdraw the proceedings against the petitioner, the CBI has

changed its stand and even their Senior Counsel in his place."

26. We cannot simply ignore the above extracts from the rejoinder affidavit in the facts and the circumstances of the case. To put it mildly we observe that we are not at all happy about the way in which the CBI has conducted itself in this case. We are sure that the Department will not give room for such observations in the future.