

# **SUPREME COURT OF INDIA**

State of M.P.

Vs.

S.B. Johari

Crl.A. No. 49 of 2000

(K.T.Thomas and M.B.Shah JJ.)

17.01.2000

## **ORDER**

**M.B. SHAH, J.**

1. Leave granted

2. The aforesaid appeals are filed by the State of Madhya Pradesh challenging the orders passed by the High Court of Madhya Pradesh, Bench at Indore allowing Criminal Revision Applications Nos. 613 of 1998 and 159 of 1999 and quashing the charges framed by the Additional Sessions Judge, Indore in Special Case No. 28/96 against the respondents for the offences punishable under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1948 read with Section 120-B I PC and in the alternative for the offence punishable under Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988.

3. FIR was lodged at the Police Station Bhopal to the effect that there was criminal conspiracy in purchase of medicines for S.G. Cancer Hospital, Indore. At the relevant time, Dr. C.P. Tiwari was posted as Dean, Medical College, Dr. M.S. Dwivedi was working as Superintendent, Mr. S.B. Johari (Respondent No. 1 in SLP No. 2854/99) was working as Medical Officer In-charge of Stores and Mr. Sudhir Pingle (Sole Respondent in SLP No. 2855/99) was working as Accountant in the hospital. It is alleged that all the aforesaid accused entered into criminal conspiracy with some local businessmen of Indore by misusing their posts and also by using some forged documents that caused wrongful loss to the Government. It has been stated that though many of the items have not been purchased, amount is paid on bogus vouchers. On the basis of the material on record, it was pointed out that some medicines were purchased at Jabalpur at lesser price, roughly at half the rate. After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against respondents by accepting the contention raised and considering details of material produced on record. The same is challenged by filing these appeals.

4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and

arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijjayya and Ors etc.* reported in: 1990CriLJ1869 , after considering the provisions of Sections 227 and 228, Cr.P.C., Court posed a question, whether at the stage of framing the charge, trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh*: 1977CriLJ1606 , *Union of India v. Prafulla Kumar Samal*: 1979CriLJ154 and *Supdt. & Remembrancer of Legal Affairs, West Bengal V. Anil Kumar Bhunja*: 1979CriLJ1390 , and held thus:-

From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom *taken at their face value disclose the existence of all the ingredients constituting the alleged offence*. The court may for this limited purpose shift the evidence as it cannot be expected even at the 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.

(emphasis supplied)

5. In the present appeals dealing with the contention of respondent Dr. Johri, Mr. A.P. Acharya and Dr. O.P. Tiwari, the High Court observed that role of Dr. Johri in purchase of the medicines was limited to the extent that he prepared only a comparative statement of tenders and that the other two persons were members of the Purchase Committee. The Court arrived at the conclusion that comparison of different prices at different places at different periods on the basis of different transactions between different persons cannot straightway by made the basis for alleging corruption or corrupt practice on the part of the accused. The Court further observed that the trial court has not properly appreciated that there is a difference of about 550 miles between Jabalpur and Indore and therefore price difference in purchase of medicines would be there. The Court also held that the medicines were purchased at two places during different periods and therefore also, there would be a price difference. With regard to A.P. Acharya and Dr. O.P. Tiwari the Court observed that they were not shown to have any control over the purchase of the goods and, therefore, they cannot be saddled with the criminal prosecution. The Court further considered that as per the statement of Manufacturing Company the quotations given by the M/s. Allied Medicine Agency, Indore were genuine and, therefore, held that charges leveled against the respondents Dr. Johri, Mr. A.P. Acharya and Dr. Tiwari cannot stand for a minute. Similarly, dealing with the contention of respondent Sudhir Pingle in CrI. Revision No. 159 of 1999, the High Court observed that it cannot be disputed that respondent had prepared the bills on account of instructions given to him by superiors, namely, Dr. Johri and Dr. Tiwari and that on his own account he could not have prepared the said bills for making payment to M/s. Allied Medical Agency. The Court also observed that he was neither empowered to place orders nor competent to make payment thereof unless the same was approved by the doctors who were actually in charge of the hospital. The Court, therefore, held that there was

no sufficient material available for framing the charge against him.

6. In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further again non-joining of two remaining members to the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power under Section 319 of the Criminal Procedure Code. Not only that, the Court erroneously considered the alleged statement of manufacturing company that quotations given by M/s. Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount is paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial court.

7. In this view of the matter, the impugned orders passed by the High Court require to be quashed and set aside and we do so. The appeals are allowed accordingly.