

State of U.P.

Vs

Udai Narayan and Another

Criminal Appeals Nos. 1164-65 of 1999

(G. B. Pattanaik, M. B. Shah, JJ)

01.11.1999

JUDGMENT

PATTANAİK, J :

1. Leave granted.

2. The State of U.P. is in appeal against the judgment of the High Court of Allahabad, Lucknow Bench in Criminal Revisions Nos. 177 and 225 of 1998. By the impugned judgment, the High Court allowed both the revisions filed by the accused and discharged the accused persons.

3. Accused Udai Narayan is an officer of the Customs Department and accused Reshmwala is a private individual. It is alleged by the prosecution that the Customs Authorities at Jaipur seized a sum of Rs. 21,23,050 from the said Reshamwala and on that score the matter is pending before the Collector, Customs and Central Excise. Accused Udai Narayan is the Additional Collector of Customs at Lucknow. It is further alleged that on 8-11-1993 Reshmwala arrived at the Lucknow Airport by an India Airlines flight. The police had received an information that some illegal transaction was going to be made between Reshamwala and Udai Narayan and, therefore, the DSP had arranged a trap. As soon as Reshamwala came out of the aircraft and entered the airport lobby, he was received by Udai Narayan and then there was some conversation between them which was heard by some persons in the vicinity, who have been examined by the prosecution. It is further alleged that Reshmwala went in the personal Fiat car of Udai Narayan, whereas the official car of Udai Narayan was occupied by the other officials. The Fiat car, being driven by Udai Narayan and having Reshamwala with him was intercepted by the police authorities and when the briefcase of the said Reshamwala was opened, a sum of Rs. Two lakhs was recovered. It was the prosecution case that Udai Narayan earlier had telephoned Reshamwala and told him to come with necessary case papers and a sum of Rs. Two lakhs, so that this pending case at Jaipur could be settled. On these allegations, after completion of investigation, charge-sheet was filed against both the accused persons under Section 8, 10, 13(2) read with Section 12(1)(d) of the Prevention of Corruption Act and Section 120-B of the Indian Penal Code. The said learned Special Judge rejected that petition by order dated 13-5-1998. Against the said order, the accused persons moved the High Court in revision. The High Court by the impugned order having allowed both the revisions and having discharged the accused persons, the State has come up in appeal.

4. Mr. Altaf Ahmed, the learned Additional Solicitor General appearing for the prosecution contended that at the stage of considering an application for discharge, it is not open for the court to sift the evidence and come to a conclusion one way or the other about the guilt of the accused persons. The court at that state will not be in a position to decide the trustworthiness of the

witnesses and discard the same by sifting and scanning, as a court does in trial. This court has already indicated the parameters of the powers of the court to discharge an accused, before framing of charge and the impugned judgment runs contrary to the same. According to the learned Additional Solicitor General, an elaborate examination of the statements recorded during investigation and forming an opinion after scanning and sifting of the same is not warranted under law.

5. Mr. Rakesh Dwivedi, the learned Senior Counsel appearing for accused Udai Narayan and Mr. Krishna, the learned Senior Counsel appearing for the accused Reshamwala on the other hand contended that if the court is fairly certain that there is no prospect of the case ending in conviction on a consideration of the materials produced by the prosecution, then the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date and adjudged from that standpoint, the impugned judgment cannot be said to be infirm in any manner, In support of this contention, reliance was placed on the decision of this Court in *Satish Mehra v. Delhi Admn.*¹ Mr. Krishna, in addition contended that Reshamwala not being a public servant, could not have been prosecuted under the provisions of the Prevention of Corruption Act.

6. Having examined the rival submission at the Bar and on scrutinising the impugned judgment of the High Court, we have no hesitation to come to the conclusion that the High Court committed a serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinising the evidence and materials produced by the prosecution. We refrain from recording any positive conclusion on the materials as it may affect the trial. Suffice it to say that a bare perusal of the judgment of the High Court would indicate that the High Court exceeded its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of conviction. So far as the contention of Mr. Krishnan is concerned as to whether Reshamwala not being a public servant could be prosecuted under the provisions of the Prevention of Corruption Act, the said question has recently been answered by a Bench of this Court in the case of *P. Nallammal v. State*². We, therefore, do not find any force in the aforesaid contention. In the circumstances, the impugned judgment of the High Court is set aside. These appeals are allowed. The Special Judge is directed to proceed with the trial at an early date.