

SUPREME COURT OF INDIA

State of Orissa

Vs.

Debendra Nath Padhi

Crl.A.No.497 of 2001

(N. Santosh Hegde and B.P. Singh JJ.)

06.02.2003

ORDER

N. Santosh Hegde, J.

1. In this appeal, the State of Orissa has challenged the two orders made by the High Court of Orissa at Cuttack; the first one dated 21.6.1999 and the second one dated 12.9.2000 made in Crl. Miscellaneous Case No. 2374 of 1995.

2. In its order dated 21.6.1999, the High Court considered a petition filed by the respondent herein seeking quashing of the charges framed against him by the Special Judge, Vigilance, Bhubaneshwar under Section 13(1)(e) and 13(2) of the *Prevention of Corruption Act, 1998* (for short 'the Act'). By the said order, the High Court set aside the order of the Special Court dated 13.9.1993 taking cognizance of the offence as also the subsequent order dated 2.11.1993 framing charges against the respondent herein. By the said order, the learned Judge remitted the matter to the learned Special Judge with a direction to first call upon the prosecution to examine its case against the respondent herein, keeping in view the findings and observations made by the Commissioner of Income Tax in favour of the respondent herein and after giving an opportunity of hearing to the said respondent. There was a further direction to the trial Court to decide the matter by the end of July, 1999.

3. The High Court by its second order dated 12.9.2000 made on another application in the very same case, held that since the Special Judge who was directed by the earlier order to re-examine the matter by the end of July, 1999 having failed to do so, the proceedings before the trial Court amounted to harassment to the respondent herein, therefore, in the interest of justice, quashed the entire proceedings pending on the file of the Special Judge. It also made an order directing the release of the articles seized from the respondent herein and other persons within a fortnight of the said order.

4. In the composite SLP challenging both the said orders before this Court, this Court after issuing notice to the respondent granted 'leave' as also stay of the operation of the orders of the High Court.

5. In this appeal, Mr. Mukul Rohatgi, learned Additional Solicitor General appearing for the State of Orissa, has very seriously contended that it was not permissible for the High Court acting under Section 482 of the Code to direct the Special Judge to examine any material which was not available to the court at the time when either the cognizance was taken or when the charge was framed. He contended that at that stage the only material the court could take into consideration was the complaint and any other material produced by the prosecution and, that apart, there is no scope for the defence to produce any evidence in rebuttal. It is the contention of the learned counsel that if defence is permitted to produce evidence at that stage then it would amount to directing the court to conduct a mini trial at that stage which is not the scheme of the Act. Learned counsel relied upon the following judgments in support of his contention : *Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhujra and ors*¹., *Stree Atyachar Virodhi Parishad etc. v. Dilip Nathumal Chordia and anr*²., *Niranjan Singh Karam Singh Punjabi, Advocate etc. v. Jitendra Bhimraj Bijaya and ors*³., *Chandra Deo Singh v. Prokash Chandra Bose and Anr.*⁴ and *Nirmaljit Singh Hoon v. The State of West Bengal and anr*⁵.

6. Per contra, Mr. U.U. Lalit, learned counsel appearing for the respondent, contended that the High Court was justified in taking the view it took in the impugned orders because in view of the material available before the court, if taken into consideration there can be no conviction because the very basis of the complaint may not exist if such material produced by the defence is considered. Therefore, in the interest of justice as held by this Court in various judgments, it was necessary that the court taking cognizance or framing charges should look into such material also as may be produced by the accused at the time of taking cognizance or framing of charges. He also contended that in a given case it is open to the High Court, in exercise of its power under Section 482 of the Code, to direct the trial Court to take into consideration the materials which may have come into existence even after taking cognizance reframing of charges. In support of his case, learned counsel strongly relied on the following judgments of this Court in the cases of *G.L. Didwania & Anr. v. Income Tax Officer & Anr.*⁶, *Secretary, Hailakandi Bar Association v. State of Assam & Anr.*⁷, and *Uttam Chand & Ors. v. Income Tax Officer, Central Circle, Amritsar*⁸.

7. We have considered the arguments addressed on behalf of the parties as also the decisions relied upon by them. The question for our consideration in this appeal is whether there is any statutory requirement compelling or permitting the trial Court to take into consideration the material produced by the defence at the stage of taking cognizance or framing of charges. It is seen from Section 227 of the Code that in a case triable before the Court of Sessions, if the court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so. This Section nowhere contemplates an opportunity being given to the accused person to produce evidence in defence at that stage. The Section is quite clear that whatever consideration that has to be made by the court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the court comes

to the conclusion that there is ground for presuming that the accused has committed an offence then the court shall frame charge under Section 228 of the Code, otherwise it shall discharge the accused under Section 227 of the Code. Almost similar is the requirement of law when a warrant case is being considered for framing a charge under Section 240 of the Code. This Court in the case of *Supdt. and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors.* (supra) following the judgment of this Court in *State of Bihar v. Ramesh Singh*⁹ has held :

"It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in *State of Bihar v. Ramesh Singh*, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumption opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

8. In *Stree Atyachar Virodhi Parishad etc. v. Dilip Nathumal Chordia & Anr.* (supra), a two-Judge Bench of this Court following the judgments in *Prafulla Kumar's* case and *Ramesh Singh's* case (supra) has held :

"These two decisions do not lay down different principles. *Prafulla Kumar* case (1979(3) SCC 4) has only reiterated what has been stated in *Ramesh Singh* case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

9. In *Niranjan Singh Karam Singh Punjabi, Advocate etc. v. Jitendra Bhimraj Bijjaya & Ors.* etc. (supra), another 2-Judge Bench of this Court discussing the requirement under Section 227 of the Code has held:

"Under this section a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for

proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a *prima facie* case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. Once the charge is framed the trial must ordinarily end in the conviction or acquittal of the accused. This is in brief the scheme of Sections 225 to 235 of the Code."

10. Almost similar is the view of this Court in *Nirmaljit Singh (supra)* and *State of Bihar v. Ramesh Singh (supra)*.

11. From the above judgments referred to by the learned counsel for the appellant, it is clear that all the court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the court at that stage should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage.

12. However, the judgments relied upon by the learned counsel for the respondent, namely, *G.L. Didwania & Anr. v. Income Tax Officer & Anr. (supra)*, *Secretary, Hailakandi Bar Association (supra)*; and *Uttam Chand & Ors. v. Income Tax Officer, Central Circle, Amritsar (supra)* seem to support the stand of the learned counsel for the respondent. Though the judgment relied upon by the learned counsel for the appellant set out in the case of *Anil Kumar Bhunja (supra)* is a judgment of 3-Judge Bench and all other judgments are of 2-Judge Bench, still in view of the fact that in the case of *Satish Mehra v. Delhi Admn. & Anr.*¹⁰, the Bench had taken notice of the 3-Judge Bench judgment of this Court in the case of *Anil Kumar Bhunja (supra)* and despite the same, the latter Bench had taken somewhat different view, we think it appropriate that this matter should be referred to a larger Bench.

13. For the reasons stated above, we direct the Registry to place this matter before Hon'ble the Chief Justice of India for further orders.

Order accordingly.

¹(1979(4) SCC 274)

⁴(1964(1) SCR 639)

⁷(1996(9) SCC 74)

¹⁰(1996(9) SCC 766)

²(1989(1) SCC 715)

⁵(1973(2) SCR 66)

⁸(1982(2) SCC 543)

³(1990(4) SCC 76)

⁶(1995 Supp. (2) SCC 724)

⁹(1977(4) SCC 39)