

SUPREME COURT OF INDIA

Soma Chakravarty

Vs.

State Through CBI

Crl.A.No.710 of 2007

(S.B. Sinha J.)

10.05.2007

JUDGMENT

S.B. SINHA, J:-

1. Although I entirely agree with the concluding part of the judgment rendered by my learned Brother, but I would like to state my own reasons therefor.

2. Charges have been framed against the appellant and several others on 25.09.2004. Trial has already started and it is not in dispute that some witnesses have been examined. It is likely that the trial would be over within a few months. Thus, it would not be proper for us to enter into the merit of the matter at this stage.

3. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith.

The learned Trial Judge, it appears, did not properly apply its mind in regard to the different categories of accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exists some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.

4. In *Union of India and Another v. Major J.S. Khanna, Etc.* [(1972) 3 SCC 873], this Court opined:

"22 . It is true that at the stage when the Special Judge drew up charges and decided to proceed with the case on the footing of a conspiracy to defraud the Government, he had only to see that there was a prima facie case against the two respondents. That could also be the basis upon which the High Court had to try upon two revision applications. Even so, there had to be some material before the Special Judge which could point towards a conspiracy in which the two respondents had joined. Such of the statements which the investigating officer could procure did not, as the High Court observed, point to such a conspiracy. What appears to have been lost sight of by the Special Judge was the fact that the period during which the orders in question were placed was an emergency period, when procedure laid down for such orders could not perhaps be strictly adhered to. He also appears to have lost sight of the fact that out of the thirteen orders in question, four of the value of Rs 32,000 and odd were placed by Brig. Mani, and orders only for the balance of Rs 8000 and odd were placed by Res. Khanna. It may be that someone had played fraud in the matter of quotations in

the name of Darrang Transport, United Motor Works, Auto Stores etc. But unless there was some material at least to link these two officers with the person who tendered those quotations, it is difficult to say that there were conspirators who had joined with the rest of the accused to defraud the Government. In these circumstances, we find ourselves unable to agree with the contention of Mr Mukherjee that the High Court was in error in coming to the conclusion that no prima facie case had been made out against either of the two officers."

5. In *State of Maharashtra and Others v. Som Nath Thapa and Others* [(1996) 4 SCC 659] , this Court held:

"30. In *Antulay case Bhagwati, C.J.*, opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to *Shri Jethmalani*, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word 'presume'. In *Black's Law Dictionary* it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In *Shorter Oxford English Dictionary* it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", *Stroud's Legal Dictionary* has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged."

(emphasis supplied). In *Law Lexicon* by P.

Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence.

It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

6. The courts although may take a strict view of an offence where fraud is alleged against a public servant, but only because it is found to have been committed, the same by itself may not be sufficient to arrive at a conclusion that all officers who have dealt with the files at one point of time or the other would be taking part in conspiracy thereof or would otherwise be guilty for aiding and abetting the offence. It is necessary to deal with the individual acts of criminal misconduct for finding out a case therefor.

7. In a case of this nature, the learned Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind.

An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completed exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/ or whether the exonerated officer in the department proceeding also faced same charges including the charge of being a party to the larger conspiracy.

8. In *L. Chandraiah v. State of A.P. and Another* [(2003) 12 SCC 670], it was held:

"It may be, and as rightly observed by the courts below, that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules. The learned counsel also brought to our notice the fact that in respect of the same sub-post office some vouchers prepared and countersigned by A- 3 on the reverse side were sent to the head post office at Mancherial. PW 5, the investigating officer has referred to several such vouchers which were sent to the head post office for payment, and the officers of the head post office also sanctioned payment on the basis of such fabricated vouchers. Obviously, the officers at the head post office were also not very careful, and as a result A-3 succeeded in his evil design to fraudulently withdraw a large sum of money.

The learned counsel submitted that on the basis of these facts not only the appellants were cheated by A-3 but even the officers of the head post office were similarly cheated by A-3."

9. Ordinarily, we would have remitted the matter to the Special Judge, for consideration of the matter afresh, but as the prosecution has already started examination of witnesses and as we have been assured by the learned Additional Solicitor General that all endeavours would be made for early disposal of the matter, we may not exercise our discretionary jurisdiction under Article 136 of the Constitution of India at this point of time. We, however, keeping in view the fact that a large number of officers of the Union of India are involved and as it is stated at the bar that they have not been promoted because of the pendency of this case, would request the learned Special Judge to dispose of the matter as expeditiously as possible.