Om Parkash Sharma vs Central Bureau Of Investigation, Delhi on 24 April, 2000

Equivalent citations: 2000 (6) SRJ 300, 2000 (4) LRI 569, AIR 2000 SUPREME COURT 2335, 2000 AIR SCW 2420, 2000 CRILR(SC MAH GUJ) 443, 2000 SCC(CRI) 1014, 2000 ALLMR(CRI) 2 1400, 2000 CRILR(SC&MP) 443, 2000 (4) SCALE 264, 2000 CRIAPPR(SC) 487, 2000 (5) SCC 679, (2000) 6 JT 554 (SC), (2000) 2 CRIMES 276, (2000) 2 EASTCRIC 781, (2000) 2 RECCRIR 859, (2000) 28 ALLCRIR 1644, (2000) 2 CHANDCRIC 44, (2001) SC CR R 269, (2000) 41 ALLCRIC 266, (2000) 3 SUPREME 745, (2000) 4 SCALE 264, (2000) 3 ALLCRILR 263

Bench: Doraiswamy Raju, S.S.Ahmad

PETITIONER:
OM PARKASH SHARMA

Vs.

RESPONDENT:
CENTRAL BUREAU OF INVESTIGATION, DELHI

DATE OF JUDGMENT: 24/04/2000

BENCH:
Doraiswamy Raju, S.S.Ahmad

JUDGMENT:

Raju, J.

Leave granted. The above appeal has been filed against the order of the learned Single Judge of the Delhi High Court dated 4.1.99 in Criminal Revision No.123/97, repelling a challenge made to the order passed by the Special Judge, Delhi, on 26.11.96 in Sessions Case No. OC-224/94, rejecting an application made by the appellant under Section 91, Cr.P.C., for summoning and production of documents enumerated in the application. Those documents were stated to be required to show that the appellant had not shown any favour to persons commonly known as Jain Brothers or to any person for that matter in the course of discharge of his duties while working as DIG, CBI, and that present action against the appellant is vitiated on account of malafides on the part of the CBI, who is alleged to bear animus against the appellant.

The said application was hotly contested by the CBI and the Special Judge held that none of the documents sought to be summoned would help to show that the case of the prosecution was improbable or unworthy of even a trial and that summoning them at that stage of the proceedings was meant by the appellant to delay the proceedings initiated by the CBI. The appellant, as noticed supra, also unsuccessfully knocked at the doors of the High Court before approaching this Court. The learned Judge in the High Court elaborately considered the governing legal principles as laid down by the Courts and the factual details produced and observed that though the language of Section 91, Cr.P.C., is very wide, not only the powers have to be exercised judiciously but such jurisdiction to order for production of a thing or document would come into play on the Court being satisfied that it is necessary or desirable, that it should be produced as being relevant for the inquiry. Therefore, the learned Judge proceeded to advert in detail to the reasons assigned by the Special Judge and concurred with them that those documents are not of such a nature which would show that the case of the prosecution is improbable and unworthy of trial and that the said attempt of the appellant was merely to delay the proceedings, leaving liberty to summon them at the relevant time. The exercise of discretion by the Trial Judge in disallowing the claim was considered to be neither unjust nor unreasonable or improper and the order was held to be neither illegal nor vitiated by any infirmity, so as to call for interference, in exercise of the revisional jurisdiction of the High Court.

The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra vs Delhi Administration and Another. [(1996) 9 SCC 766] laying emphasis on the fact that the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in Ashok Kaushik vs State [1999 (49) DRJ.202]. Mr. Altaf Ahmed, the learned ASG for the respondents, not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings.

Section 227 in Chapter XVIII, pertaining to trial before a Court of Sessions, pursuant to a committal order and Section 239 in Chapter XIX relating to trial of warrant cases by Magistrates, of the Code stipulates the circumstances and stage at which there could be a discharge of the person accused, and that stage is a stage of consideration, anterior in point of time to framing charges. It is envisaged therein that upon consideration of the record of the case, Police Report and the documents submitted therewith and after hearing the prosecution and the accused, the Court is obligated to decide whether there is sufficient ground to proceed against the accused or that the charge is groundless - and as a consequence thereof either discharge the accused or frame in writing the charges against the accused. The decision reported in (1996) 9 SCC 766 (Supra) and the other decisions adverted to therein dealt with, no doubt, the manner of exercise of such powers and the object underlying those provisions of the Code while construing the amplitude of both the language and content of powers conferred therein. It is in this context this Court held that there is nothing in the Code which shrinks the scope of hearing by confining it to only oral argument of the accused and consideration based upon the police report and documents sent therewith or the materials

presented by the prosecution at that stage. In substance, looking into also, by receiving any materials which the accused is able to produce in support of his stand during such arguments was held to be not an anathema. The further question as to whether even at that stage Section 91 of the Code could be pressed into service by the accused was never in the contemplation or consideration by the learned Judges.

The powers conferred under Section 91 are enabling in nature aimed at arming the Court or any officer in charge of a Police Station concerned to enforce and to ensure the production of any document or other things necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the in-built limitation inherent therein takes it colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the Trial Court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving enquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide Union of India vs Prafulla Kumar Samal & Anr. [(1979) 3 SCC 4]. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the Court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The Court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the Court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the Court superior to that Court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the Court and not of any rights concretised in favour of the accused.

Therefore, it is to be only seen as to whether the Trial Court has judiciously and judicially exercised its discretion. The Trial Court as also the High Court, seem to have properly applied their minds by going into the nature of the documents sought to be summoned, their bearing and relevance for the nature of consideration to be made at that stage of the proceedings before the Special Judge as well as the necessity and desirability whereof. The consideration so made by the courts below in rejecting the claim of the appellant, could not be held to be either condemnable or constitute any gross or improper failure to exercise their jurisdiction and consequently, it does not call for any interference in our hands. Therefore, the appeal fails and shall stand dismissed.

The learned counsel for the appellant brought to our notice certain observations made in the order of the High Court about the alleged conduct of the appellant on receipt of the bribe amount and immediately after the arrival of the raiding party which are not borne out by the facts stated in the FIR but which are really matters for evidence and argument. The Trial Court is not only expected but obligated to proceed in the matter only strictly as per the materials placed on record and the evidence that may be let in at the appropriate stage, unmindful of any such observations and there is no need for this Court, to decide such grievance at this stage.