

## Ashish Chadha vs Asha Kumari And Anr on 2 December, 2011

**Equivalent citations: AIR 2012 SUPREME COURT 431, (2013) 1 ALD(CRL) 42, 2012 AIR SCW 100, (2012) 109 ALLINDCAS 182 (SC), 2012 CRI. L. J. 773, AIR 2012 SC (CRIMINAL) 78, (2012) 2 MH LJ (CRI) 133, (2012) 1 UC 1, (2011) 13 SCALE 157, (2012) 1 RECCRIR 94, (2011) 4 CURCRIR 368, 2012 (1) SCC 680, (2012) 1 ALLCRIR 903, (2011) 4 DLT(CRL) 817, (2012) 76 ALLCRIC 370, 2012 ALLMR(CRI) 311, (2012) 1 CHANDCRIC 97, 2012 (1) SCC (CRI) 744**

**Bench: Ranjana Prakash Desai, Swatanter Kumar**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 893 OF 2005

Ashish Chadha

...Appellant

Versus

Smt. Asha Kumari & Anr.

...Respondents

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. The first respondent was the member of the Legislative Assembly of Banikhet Constituency from the year 1984 to 1990 and 1994 to 2001. A complaint dated 6.8.1998 was filed against her by one Shri Kuldeep Singh, Ex-Municipal Councilor, Dalhousie alleging interalia that the first respondent and her husband Brijender Singh (since deceased) had in connivance with Revenue Officials manipulated the revenue records, forged documents and got the land belonging to the Government transferred in the name of Brijender Singh. The said complaint was inquired into by Vigilance

Department and FIR came to be registered on 15.12.2001 against the first respondent and Brijender Singh and others under Sections 420, 218, 467, 468, 471 read with Section 120-B of the Indian Penal Code (for short, "the IPC"). The Special Judge, Chamba framed charges against the first respondent and others on 4.1.2005 under Sections 420, 218, 467, 468, 471 read with Section 120-B of the IPC. The first respondent filed Criminal Revision No. 20 of 2005 before the High Court of Himachal Pradesh at Shimla challenging the order dated 4.1.2005 framing charges. By the impugned order the High Court set aside the said order on the ground that the accused were denied an opportunity of being heard and that the trial court's observation that there was prima facie case against the accused was made without applying mind to the relevant record. The High Court also transferred the matter from the court of Special Judge Chamba to the Court of Special Judge Kangra at Dharmashala on the ground that the apprehension expressed by respondent no. 1 that she would not get fair trial in the Court at Chamba was well founded. A direction was issued that the matter be proceeded with in accordance with the provisions of Sections 239 and 240 of the Code of Criminal Procedure (the "Code" for Short). It may be stated here that the original complainant Shri Kuldeep Singh expired in 2001. The appellant was the elected Municipal Councilor of Dhalhousie Municipal Committee from 1995 to 2000 and from 2000 till it was suspended in 2003. It is the case of the appellant that the State of Himachal Pradesh for political reasons was not interested in challenging the impugned judgment though in this case there is illegal grabbing of Government forest land worth crores of rupees. He has, therefore, filed the instant appeal upon permission being granted by this Court in larger public interest.

2. It is necessary to give brief background of the case.

3. One Raja Laxman Singh the original owner of 85.10 bighas of land situate at Mauza Jandrighat Bhatyat (now Chuwari) expired on 20.5.1971. His properties were inherited by one Raja Prem Singh and after coming into force of the Himachal Pradesh Ceiling on Land Holdings Act, 1972, the said land vested in the State of Himachal Pradesh. Brijender Singh got married to respondent no. 1 in 1978. Between 1977 and 1978 revenue records were tampered with in connivance with the revenue officials and the names of the domestic servants of Brijender Singh namely Piar Singh, Arjun Singh, Bem Ram, Narvada Devi, Nand Lal and Laxmi Devi were entered in revenue records as non-occupancy tenants in respect of 67.3 bighas of land. After protracted litigation the aforesaid persons were declared non-occupancy tenants of 67.3 bighas of land and proprietary rights in respect thereof were conferred upon them vide mutations attested on 23.6.1987 and 8.12.1987. Thereafter Brijender Singh is stated to have fabricated two Wills - one of Arjun Singh and other of Piar Singh. On the basis thereof Brijender Singh is stated to have got the land of Piar Singh and Arjun Singh mutated in his favour vide mutation dated 29.7.1994. The first respondent is stated to have obtained three General Power of Attorneys on 29.1.1993 and 30.1.1993 from Narvada Devi, Nand Lal and Bem Ram authorizing her to sell their land in favour of her husband Brijender Singh for consideration. On the basis of the said General Power of Attorneys the first respondent is stated to have made two sales in favour of her husband Brijender Singh. Thus, in short, the allegation against the first respondent and her husband Brijender Singh is that they conspired to get wrong entries made in the revenue records and to secure illegal orders regarding conferment of proprietary rights in favour of the servants of Brijender Singh who finally managed to become owner of the said land. This was done by using forged Power of Attorneys and fictitious Wills with connivance of Revenue Officials.

4. We have heard learned counsel for the parties at some length. We have also gone through the written submissions tendered by them.

5. At the outset we must refer to the preliminary objection raised by counsel for respondent no. 1. Counsel submitted that the original complainant has expired and as such the present appellant has no locus to file the instant appeal. Counsel submitted that the appellant has a personal grievance against respondent no.1. He is the son of Smt. Chadha a member of legislative assembly. Smt. Chadha had filed election petition against respondent no.1. It was dismissed. The appellant has filed the present petition to settle Smt. Chadha's political scores. Counsel submitted that the appeal is politically motivated and deserves to be dismissed on that ground also. Ms. Arora learned counsel for the appellant has vehemently opposed this submission.

6. So far as the preliminary objection is concerned we may usefully refer to the judgment of this Court in *PSR Sadhanantham v. Arunachalam*<sup>1</sup>. There the State not having filed an appeal against the judgment of the High Court acquitting the accused who had allegedly committed the murder of her brother, the petitioner filed petition in this Court under Article 136 of the Constitution of India challenging the said judgment of acquittal. Objection was raised to the maintainability of the said petition. Dealing with the scope of Article 136, this Court observed that in express terms it does not confer a right of appeal on a party as such, but it confers wide discretionary power on the Supreme Court to interfere in suitable cases. This court further observed that it is true that strict vigilance over abuse of the powers of this court should be maintained and in the criminal jurisprudence this strictness applies a fortiori, but in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation to the expression 'standing' is necessary for Article 136 to further its mission. No dogmatic proscription of leave under Article 136 to a non-party applicant can be laid down inflexibly. 1 (1980) 3 SCC 141 This court rejected the objection raised to the maintainability of the petition.

7. In our view the preliminary objection raised by counsel for the first respondent is liable to be rejected in the light of the above judgment. The allegations made against the first respondent are serious. There is a prima facie case against the first respondent. By the impugned order the charge framed against not only the first respondent but against all the accused is quashed. It is true that the matter is remanded, but while remanding the matter the High Court has expressed that there is no prima facie case against the first respondent, thus frustrating the purpose of remand order. We, therefore feel that interference by this Court is necessary. We do not think that the petition is politically motivated. But assuming there is political rivalry between the first respondent and the appellant's aunt in our opinion since the charge is about grabbing of government land in the larger public interest the appeal cannot be dismissed in limine. The preliminary objection is, therefore, rejected.

8. We shall now go to the other submissions advanced by the counsel. Ms. Arora learned counsel for the appellant submitted that the High Court has erroneously come to the conclusion that the first respondent had been denied an opportunity of being heard. In fact the first respondent was given adequate hearing. At the penultimate stage an application for change of counsel was made by her. Counsel submitted that this shows mala fides and motive to delay the proceedings. Counsel

submitted that at the stage of charge, the trial court has to peruse the police report and the documents submitted with it and consider whether prima facie case is made out or not. The trial court has rightly come to the conclusion that there is prima facie case and framed the charge. The High Court however, while exercising its revisional jurisdiction wrongly went into the material, analysed the facts and made observation that there was no prima facie case. In this connection counsel relied on *State of Orissa v. Debendra Nath Padhi*<sup>2</sup> and *Munna Devi V. State of Rajasthan*<sup>3</sup>. Counsel submitted that the High Court wrongly transferred the case to the Special Judge, Kangra on the basis of baseless allegations made by respondent no.1. Counsel urged that for the aforementioned reasons the impugned judgment and order deserves to be quashed.

9. Mr. P.S. Patawalia, learned senior counsel for respondent no.1 submitted that the allegations made against the first respondent and her husband Brijender Singh have already been adjudicated by various courts in Himachal Pradesh. The State of Himachal Pradesh through its officer denied the contention that the names of servants of Brijender Singh were recorded as non-occupancy tenants in connivance with Revenue Officials. The High Court therefore, dismissed that writ petition. Counsel submitted 2 (2005) 1 SCC 568 3 (2001) 9 SCC 631.

that thereafter a civil suit was filed in the court of Civil Judge, Dalhousie by a MLA making the same allegations. Again the State of Himachal Pradesh denied the allegations. The suit therefore came to be dismissed. Counsel submitted that Shri Kuldeep Singh gave written complaint on 6.8.1998. The FIR came to be lodged on 15.12.01. This delay casts shadow of doubt about its genuineness. Counsel submitted that by the impugned order the High Court has merely remanded the matter to the trial court. This is not a case, therefore, where this court should interfere in its jurisdiction under Article 136 of the Constitution of India. In this connection the counsel relied on *Mathai alias Joby vs. George & Another*<sup>4</sup> and *Jamshed Harmusji Wadia vs. Port of Mumbai*<sup>5</sup>.

10. Counsel further submitted that respondent no.1 got married to Brijender Singh on 19.4.79. She was, therefore, not present in Himachal Pradesh when the names of the 4 (2010) 4 SCC 358 5 (2004) 3 SCC 214 tenants were recorded in the revenue records. This important fact is not noted by the trial court. Counsel submitted that the record of the case shows that before the land vested in the Government, the non-occupant tenants were already in possession of the land and were paying annual rent. Smt. Narbada Devi in her bail application before the Sessions Court stated that she had issued General Power of Attorney in favour of respondent no. 1 without any fear or coercion. The report of the forensic expert states that signatures of the persons who gave Power of Attorneys were not forged and none of the said three persons had made any complaint with regard to the non-receipt of sale amount.

11. Counsel submitted that the trial court did not allow respondent no.1 to engage a counsel and framed the charge in the absence of her counsel which has caused great prejudice to her. In this connection counsel relied on *Netraj Singh vs. State of M.P.*<sup>6</sup>. Counsel submitted that the High 6 (2007) 12 SCC 520.

Court has rightly invoked the revisional jurisdiction, because respondent no.1 was deprived of her legitimate right under Section 303 of the Code to engage a counsel of her choice. Council submitted

that in the circumstances no interference is necessary with the impugned order.

12. Counsel for respondent no. 1 is right in submitting that though the discretionary power vested in this Court under Article 136 is apparently not subject to any limitations, it has to be used sparingly and in exceptional cases. But we have no manner of doubt that this indeed is an exceptional case where interference under Article 136 is called for. In our opinion, the High Court has completely misdirected itself in reversing the trial court's order framing charge. The High Court's judgment is tainted with legal infirmities and has resulted in miscarriage of justice. Following are the reasons for this conclusion of ours.

13. The High Court has in its revisional jurisdiction appraised the evidence which it could not have done. It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into the evidence. It has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. In this connection, we may usefully refer to the observations of this court in *Munna Devi vs. State of Rajasthan & Anr.* 7 "We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

7 (2001) 9 SCC 631

14. Ignoring the above settled position in law, the High Court has noticed that fake entries were made in the revenue records during the years 1973-1974; that respondent no. 1 was married to Brijender Singh in 1978 and that there is no evidence that before her marriage, respondent no. 1 was not residing in her parent's house in Madhya Pradesh as is her case but was residing in Chamba with her prospective in-laws. The High Court has then concluded that it cannot be held, prima facie, that respondent no. 1 was a conspirator in bringing about the fake entries in the revenue records in the years 1973-1974. It cannot be forgotten that it is also the prosecution case that respondent no. 1 obtained three Power of Attorneys from three of the tenants in January, 1993 and, on the basis thereof, she made two fraudulent sales in favour of her husband, Brijender Singh. Two Wills are stated to have been fabricated by her husband Brijender Singh to get Government land transferred in his name. The facts are inextricably interwoven. Brijender Singh, the husband of respondent no. 1 is stated to be deeply involved in the alleged conspiracy. In such circumstances, the High Court should have left the final adjudication to the trial court by not quashing the charge. The High Court unnecessarily observed that the charge is vague. It overstepped its revisional jurisdiction. It is contended that the State of Himachal Pradesh had taken a stand that concerned revenue entries are genuine. In our opinion, whether concerned revenue entries are genuine or not will also have to be decided by the trial court after perusing the evidence led by the parties.

15. Besides, the tenor of High Court's order suggests that the High Court has formed an opinion that there was no prima facie case against respondent no. 1. A prima facie opinion of the High Court in such a strongly worded language is likely to influence the trial court. If the High Court wanted to remand the matter on the ground that respondent no. 1 was denied opportunity to engage a counsel it should have stopped at that. By expressing opinion on merits of the case, the High Court almost decided the matter in favour of respondent no. 1 thus frustrating the remand and virtually acquitting respondent no. 1.

16. We are also not impressed by the submission that respondent no.1 was denied her right to be defended by a lawyer of her choice. From the impugned order and from the order of learned Special Judge it is clear that the Special Judge conducted the proceedings for framing charge on 6.12.2003, 12.12.03, 3.1.2004, 14.1.2004, 7.2.2004, 15.3.2004, 5.4.2004, 26.4.2004, 10.5.2004, 4.6.2004, 12.7.2004, 6.12.2004, 8.12.2004, 10.12.2004 and 4.1.2005. From the Special Judge's order it is clear that Mr. Malhotra was appearing for respondent no.1 and also for her husband Brijender Singh. It is pertinent to note that during the course of the hearing the State filed its reply on 4.12.2004. The case was posted for consideration of charge on 8.12.2004. On 8.12.2004 co-accused Brijender Singh raised an objection that copy of the reply dated 7.2.2004 was not supplied to him. He was permitted to inspect the record. Shri Malhotra submitted that he was not in a position to argue the case on charge. The request for adjournment was disallowed. Shri Malhotra then submitted that he was ready to argue the case even on behalf of respondent no. 1. In fact, he advanced arguments. He, however, stated that he would make further submissions on 10.12.2004 after inspection of the record. The case was then adjourned to 10.12.2004. On that day neither the counsel for the first respondent was present nor the first respondent was present. Respondent no. 1 made a telegraphic request for adjournment on the ground that her mother was ill. That application was rejected. On 4.1.2005, Shri Malhotra who had been appearing for respondent no. 1 stated that he had no instructions to appear for respondent no. 1. Respondent no. 1 filed an application that she wanted to be defended by a counsel of her choice. Learned Special Judge rejected the prayer and framed the charge observing that Shri Malhotra had advanced arguments on behalf of respondent no. 1 and since State's reply dated 4.12.2004 did not disclose any new facts adjournment was not necessary. Learned Special Judge rejected the contention of respondent no. 1 that Shri Malhotra was not her counsel because order sheet of 8.12.2004 made it clear that Shri Malhotra had moved application for exemption from personal appearance on behalf of respondent no. 1.

17. The manner in which the proceedings were conducted on behalf of respondent no. 1 leads us to conclude that respondent no. 1 wanted to delay the framing of charges. Shri Malhotra had appeared for respondent no. 1 and also for her husband Brijender Singh. He had made exemption application on behalf of respondent no. 1. Respondent no. 1's desire to change the horse in the midstream was obviously not genuine but was a dilatory tactic. The High Court wrongly came to the conclusion that respondent no.1 was not given a chance to engage a counsel of her choice. We have no hesitation in observing that, in this case, there is no violation of Section 303 of the Code or Article 22 (1) of the Constitution of India.

18. It is also significant to note that while the order was being dictated by learned Special Judge, respondent no.1 moved an application for transfer of the case since allegedly an opportunity of being

heard through an advocate of her choice was denied to her. This application was rightly rejected by Special Judge for want of jurisdiction. Learned Special Judge then framed charges against respondent no.1 and other accused. Respondent no.1 then requested the High Court to transfer her case from the file of learned Special Judge Chamba to the Court of Special Judge, Kangra on the ground that she had reasonable apprehension that she will not get a fair trial. The High Court, in our opinion, wrongly transferred the case as desired by respondent no.1. Apprehension expressed by respondent no.1 that she would not get a fair trial was baseless. We have already noted the number of dates on which learned Special Judge adjourned the proceedings. It is only when he was satisfied that respondent no.1 was purposely seeking adjournment and that Mr. Malhotra, counsel appearing for respondent no.1 had argued her case that learned Special Judge refused to grant further adjournment. We do not find any material to substantiate the fear expressed by respondent no.1 that she would not get a fair trial. The High Court, therefore, should not have transferred the case to the Special Judge, Kangra. Needless to say that such transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts. Unless a very strong case based on concrete material is made out, such transfers should not be ordered. We must also note that the High Court has quashed the charge not only against respondent no.1 but also against all the accused when no such prayer was made. Reliance placed by the High Court on the judgment of learned Single Judge of Calcutta High Court in Bimal Chand Dhandhia vs. State<sup>8</sup> is totally misplaced. In that case, learned Single Judge of the Calcutta High Court has observed that learned Magistrate had failed to proceed in accordance with the procedure established by law in framing the charges against the accused. No such case is made out here. It was improper for the High Court to go beyond the scope of the prayers made by respondent no.1 and quash even the charges framed against all other accused.

19. In view of the above, we are of the opinion that the impugned order has resulted in miscarriage of justice. It will have to be, therefore, set aside and is, accordingly, set aside. We confirm the order framing charge dated 4.1.2005 passed by learned Special Judge, Chamba and direct him to proceed further in accordance with law. We make it clear that if any observations made by us touch the merits of the case, they should be treated as prima facie observations. Learned Special Judge shall deal with the case independently and in accordance with law.

20. The appeal is disposed of in the aforestated terms.

.....J. (SWATANTER KUMAR) .....J.  
(RANJANA PRAKASH DESAI) NEW DELHI DECEMBER 2, 2011