

State Of Madhya Pradesh vs Mohanlal Soni on 19 July, 2000

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, S.R.Babu

PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
MOHANLAL SONI

DATE OF JUDGMENT: 19/07/2000

BENCH:
Shivaraj V. Patil, S.R.Babu

JUDGMENT:

Shivaraj V. Patil,J.

This petition is by the State of Madhya Pradesh directed against the order dated 10.11.1998 passed by the High Court of Madhya Pradesh in criminal Revision No. 274/98 by which the charges framed against the respondent under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short the 'Act') were quashed.

The relevant and necessary facts to dispose of this petition are:

The respondent was working as a Road Transport Inspector in the Regional Office of the Road Transport Corporation, Bhopal and is a public servant as such. A complaint under Section 13(1)(e) read with Section 13(2) of the Act for the check period 25.9.1982 to 27.3.1993 was filed stating that he had acquired the property in excess of the known source of his income. During the investigation properties and assets belonging to his mother-in-law, father, brother and nephew were shown as assets of the respondent. The assets of his wife, who is an income-tax payer and a self-earning member, were also connected with the assets of the respondent. While submitting charge sheet several important documents, which were collected during the course of investigation, were withheld. According to the respondent the said documents supported him. If those documents were considered even prima facie there was no scope to frame charges against him. At the time of framing charges the respondent made an application seeking production of these documents in court before

proceeding to frame charge. But the said application was rejected stating that for the purpose of framing charges only the documents forwarded to the court under Section 173(5) Cr.P.C. need to be considered. Hence he filed Criminal Revision No. 337/97 in the High court. The said Revision Petition was disposed of by the order dated 8.9.1997 in the following terms: -

"In the result the revision is allowed, the order impugned is set-aside and it is directed that the documents made available by the accused during investigation be produced and may be taken into consideration by the court below while framing the charge."

Thereafter the trial court framed charges under Section 13(1)(e) read with Section 13(2) of the Act. Aggrieved by the order dated 4.4.1988 framing charges in the Special Case No. 26/96 by the Special Judge, Indore, the respondent filed Criminal Revision No. 274/98. The High Court by order dated 10.11.1998 accepted the case of the respondent, set aside the order of the learned Special Judge, Indore, framing charges and discharged the respondent. In these circumstances the State has come up in this petition challenging the said order of the High Court.

The learned Senior Advocate for the petitioner contended that at the stage of framing charges for offence under section 13(1)(e) read with Section 13(2) of the Act the Trial Judge was not required to consider documents like income-tax return and income-tax orders and calculation chart of the accounts; the documents like income-tax assessment orders and calculation chart submitted by the respondent ought not to have been accepted at the stage of framing charges without proving them and that those documents could be proved during trial by the author as per the provisions of Evidence Act. He referred to and relied on the decision of this Court in State of M.P. vs. S.B. Johari and Others .

On the other hand, the learned senior counsel for the respondent submitted that the order impugned in this petitioner is unassailable; the trial court committed manifest error in not considering the documents collected during the course of investigation though produced late but before framing charges, by the investigating agency itself pursuant to the order dated 8.9.1997 passed by the High court in criminal Revision No. 337/97 which prima facie supported the respondent; and that the High Court having considered all the material that was available at the time of framing charges rightly set aside the order of the trial court framing charges and discharged the respondent.

We have examined the rival submissions made by the learned senior counsel for the parties. Our attention was specifically drawn to the earlier order of the High court dated 8.9.1997 passed in Criminal Revision No. 337/97 in which the trial court was directed that the documents made available by the accused during investigation be produced and they be taken into consideration by the court while framing charges. The said order became final, it having not been challenged further. In this situation the parties and the trial court were bound and governed by the said direction. Since the trial court did not follow the said direction, the High Court having considered all the material including the documents produced by the prosecution itself, which were collected during the course

of investigation, and on being prima facie satisfied taking the documents on their face value held that no offence was made out and as such no charge could be framed against the respondent. In this view, the High Court set aside the order of the trial court and passed the order discharging the respondent. The High Court in the order under appeal has elaborately considered the documents collected during the course of investigation and produced by the prosecution itself which were available at the time of framing charges. It may be added that most of the documents relate to the income-tax returns or income-tax assessment orders. All these documents pertain to the period prior to 26.3.1993. Some of them even relate to the year 1988. In the normal course the documents could not have been prepared in anticipation that the respondent would have to face such charges on a future date. The documents being the orders of assessment or return filed with the income-tax authorities on their face value supported the case of the respondent. The High Court in the order dated 8.9.1997 passed in Criminal Revision No. 337/97 relied on the decision of this Court in Satish Mehra vs. Delhi Administration and Another . In the said decision it is held: -

"The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that sessions Judge would be within his power to consider even materials which the accused may produce at the stage contemplated in section 227 of the Code."

Be that it may, when the said order attained finality as already noticed above, the trial court was bound to follow the directions given therein. Its failure to follow the directions resulted in framing charges against the respondent ignoring the documents, which on their face value supported the respondent.

The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

In Anand Bezbaruah vs. Union of India the Gauhati High Court was of the view that where accused was charged with the offence of having resources and property disproportionate to his income and trial court failed to consider and evaluate the income tax return which clearly established that the property included in the assets of accused and shown to be disproportionate is the wife's property bought from her own resources and should have been excluded from assets of the accused.

Yet in another decision of this Court in Niranjana Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya and Others it is held that at the time of framing charges having regard to Sections 227 and 228 of Cr.P.C. the court is required to evaluate the material and documents on record with a view of finding out if the facts emerging therefrom taken at their face value disclose the existence of all the

ingredients constituting the alleged offence. The court may for this limited purpose to sift the evidence, as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or broad probabilities of the case.

Further in Satish Mehra's case (*supra*) this Court has stated that the Sessions Judge was not expected to hold a roving inquiry into the pros and cons of the case at the stage of framing charges by weighing the evidence as if he was conducting the trial.

Decision in the case of State of M.P. vs. J.B. Johari and Others (cited above), strongly relied on by the learned counsel for the petitioner, in our view does not advance or support the case of the petitioner. That was a case where FIR was lodged at the Police Station, Bhopal to the effect that there was criminal conspiracy in purchase of medicines by the concerned hospital authorities including Dean, Superintendent, Medical Officer In- charge and others. It was alleged that aforesaid accused entered into criminal conspiracy with some local businessmen of Indore by misusing their posts and also by using some forged documents caused wrongful loss to the Government. It was stated that though many of items had not been purchased, amount was paid on bogus vouchers. After considering the material on record, learned Sessions Judge framed the charges against the accused for the offence punishable under Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1948 read with Section 120B IPC and in the alternative for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The High Court in revision quashed the charges accepting the contentions raised by the accused after detailed consideration of material produced on record. Having regard to the facts and circumstances of the case and referring to earlier decisions of this Court in paragraph 4 it is held thus:

"4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the *prima facie* case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by the defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Pubjabi etc. v. Jitendra Bhimraj Bijjayya and Others etc.* reported in (1990) 4 SCC 76, after considering the provisions of Sections 227 and 228, Cr.P.C., Court posed a question, whether at the stage of framing the charge, trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials

constitute the offence with which the accused could be charged. The Court may peruse the records for the limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4 and *Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja* (1979) 4 SCC 274, and held thus:

"From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

As is evident from the paragraph extracted above if the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that accused committed the particular offence then the charge can be quashed.

From the decisions referred to in the same paragraph and the decisions already referred to above there was no bar to consider the material on record in the case on hand, which was collected during the course of investigation and produced before the court and particularly in view of the directions given earlier by the High Court.

In this view, the High Court looking to the material and documents that were made available at the stage of framing charges on their face value in the light of the directions given earlier in Criminal Revision No. 337/97 and bearing in mind the position in law concluded that charges could not be framed against the respondent, consequently, set aside the order of trial court and discharged the respondent.

On the facts and in the circumstances of the case and having regard to the legal position stated above, we see no good reason or valid ground to upset the impugned order. Hence the petition is dismissed. No costs.