Union Of India (Uoi) vs Prafulla Kumar Samal And Anr. on 6 November, 1978

Equivalent citations: AIR1979SC366, 1979CRILJ154, (1979)3SCC4, [1979]2SCR229

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Bench: D.A. Desai, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal is directed against the judgment dated 30th August, 1976 of the High Court of Orissa by which the High Court has upheld the order of the Special Judge, Puri discharging respondents No. 1 and 2.

2. The facts of the case lie within a narrow compass and center round an alleged conspiracy said to have been entered into between respondents No. 1 and 2 in order to commit offences under Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the Act) read with Section 120B I.P.C. The main charge against the respondents was that between 19-2-1972 to 30-3-1972 the respondents entered into an agreement for the purpose of obtaining pecuniary advantage for respondent No. 1 P.K. Samal and in pursuance of the said conspiracy the second respondent Debi Prasad Jena, who was the Land Acquisition Officer aided and abetted the first respondent in getting a huge sum of money for a land acquired by the Government which in fact belonged to the Government itself and respondent No. 1 was a lessee thereof. It is averred in the charge-sheet that respondent No. 1 by abusing his official position concealed the fact that the land which was the subject matter of acquisition and was situated in Cuttack Cantonment was really Khasmahal land belonging to the Government and having made it appear that he was the undisputed owner of the same, got a compensation of Rs. 4,18,642.55. The charge-sheet contains a number of circumstances from which the inference of the conspiracy is sought to be drawn by the police. After the charge-sheet was submitted before the Special Judge, the prosecution requested him to frame a charge against the respondents. The Special Judge, Puri after having gone through the charge-sheet and statements made by the witnesses before the police as also other documents came to the conclusion that there was no sufficient ground for framing a charge against the respondents and he accordingly discharged them under Section 227 of the CrPC, 1973 (hereinafter called the Code). The Special Judge has given cogent reasons for passing the order of discharge. The appellant went up to the High Court in revision against the order of the Special Judge refusing to frame the charge, but the High Court dismissed the revision petition filed by the appellant and

maintained the order of discharge passed by the Special Judge. Thereafter the appellant moved this Court by an application for special leave which having been granted to the appellant, the appeal is now set for hearing before us.

3. The short point which arises for determination in this case is the scope and ambit of an order of discharge to be passed by a Special Judge under Section 227 of the Code. The appeal does not raise any new question of law and there have been several authorities of the High Courts as also of this Court on the various aspects and grounds on which an accused person can be discharged, but as Section 227 of the Code is a new section and at the time when the application for special leave was filed, there was no direct decision of this Court on the interpretation of Section 227 of the Code, the matter was thought fit to be given due consideration by this Court.

4. We might, state, to begin with, that so far as the present case (offences committed under the Prevention of Corruption Act) is concerned it is regulated by the procedure laid down by the Criminal Law Amendment Act under which the police has to submit a charge-sheet directly to the Special Judge and the question of commitment to the Court of Session does not arise, but the Sessions Judge has nevertheless to follow the procedure prescribed for trial of sessions cases and the consideration governing the interpretation of Section 227 of the Code apply mutatis mutandis to these proceedings after the charge-sheet is submitted before the Special Judge.

5. Before interpreting and analysing the provisions of Section 227 of the Code so far as pure sessions trials are concerned, two important facts may be mentioned. In the first place, the Code has introduced substantial and far-reaching changes in the Code of 1898 as amended in 1955 in order to cut out delays and simplify the procedure, has dispensed with the procedure for commitment enquiries referred to in Section 206 to 213 of the Code, of 1898 and has made commitment more or less a legal formality. Under the previous Code of 1898 the Magistrate was enjoined to take evidence of the prosecution witnesses after giving opportunity to the accused to cross-examine the witnesses and was then required to hear the parties and to commit the accused to the Court of Session unless he chose to act under Section 209 and found that there was no sufficient ground for committing the accused person for trial. Under the Code the Committing Magistrate has been authorised to peruse the evidence and the documents produced by the police and commit the case straightaway to the Sessions Court if the case is one which is exclusively triable by the Sessions Court. Thus, it would appear that the legislature while dispensing with the procedure for commitment enquiry under the Code of 1898 has conferred a dual responsibility on the Trial Judge who has first to examine the case on the basis of the statement of witnesses recorded by the police and the documents filed with a view to find out whether a prima facie case for trial has been made out and then if such a case is made out to proceed to try the same. In our view the legislature has adopted this course in order to avoid frivolous prosecutions and prevent the accused from being tried of an offence on materials which do not furnish a reasonable probability of conviction. In the instant case, as the offences alleged to have been committed by the respondents fall within the provisions of the Act, the Special Judge has been substituted for the Sessions Judge, the procedure of the Sessions Court having teen applied fully to the trial of such cases. Thus, it is manifest that the accused has got only one opportunity and that too before the Sessions Judge for showing that no case for trial had been made out. This was obviously done to expedite the disposal of the criminal cases.

6. Secondly, it would appear that under Section 209 of the Code of 1898 the question of discharge was to be considered by a Magistrate. This power has now been entrusted to a senior Judge, namely, the Sessions Judge who is to conduct the trial himself and who has to decide before commencing the trial as to whether or not charges should be framed in a particular case against the respondents. The discretion, therefore, is to be exercised by a senior and more experienced Judge so as to exclude any abuse of power. In this view of the matter, it is manifest that if the Sessions Judge exercises his discretion in discharging the accused for reasons recorded by him, his discretion should not normally be disturbed by the High Court or by this Court.

7. Section 227 of the Code runs thus :-

> If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.
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> The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post-office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex-facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh where Untwalia, J. speaking for the Court observed as follows :-

> Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in

cross-examination or rebutted by the defence evidence; if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.

9. In the case of K.P. Raghavan and Anr. v. M.H. Abbas and Anr. this Court observed as follows :-

No doubt a Magistrate enquiring into a case under Section 209, Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session.

To the same effect is the later decision of this Court in the case of Almohan Das and Ors. v. State of West Bengal where Shah, J. speaking for the Court observed as follows :-

A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment; and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit; it is the duty to discharge the accused : if there is some evidence on which a conviction may reasonably be based, he must commit the case.

In the aforesaid case this Court was considering the scope and ambit of Section 209 of the Code of 1898.

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and largo

> however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

11. We shall now apply the principles enunciated above to the present case in order to find out whether or not the courts below were legally justified in discharging the respondents.

12. Respondent No. 1 was a Joint Secretary in the Ministry of Information and Broadcasting from April, 1966 to January, 1969. Later he worked as Joint Secretary in the Ministry of Foreign Trade till 12-11-1971. Thereafter, respondent No. 1 was working as Joint Secretary, Ministry of Education and Social Welfare. The second respondent worked as Land Acquisition Officer in the Collectorate, Orissa from February 1972 to 18th August, 1973.

13. In the year 1969 the All-India Radio authorities were desirous of having a piece of land for construction of quarters for their staff posted at Cuttack. In this connection, the said authorities approached respondent No. 1 who had a land along with structure in the Cantonment at Cuttack. As the All-India Radio authorities found this land suitable, they approached respondent No. 1 through his mother for selling the land to them by private negotiation. As this did not materialise, the All-India Radio authorities moved the Collector of Cuttack to assess the price of the land and get it acquired. Accordingly, the Tehsildar of the area directed the Revenue Officer, Cuttack to fix the valuation of the land of respondent No. 1. The Revenue Officer reported back that the land belonged to respondent No. 1 and was his private land and its value would be fixed at Rs. 3000 per guntha. It is common ground that the land in question was situated in Cuttack Cantonment and was a Khasmahal land which was first leased out to one Mr. Boument as far back as 1-9-1943 for a period of 30 years. The lease was given for building purposes. In 1954 Mrs. Boument who inherited the property after her husband's death transferred the land to respondent No. 1 with the consent of the Khasmahal authorities. When respondent No. 1 came to know that the land in question was required by the All-India Radio authorities, he wrote a letter to Mr. A.S. Gill on 28th October, 1970 suggesting that the land may be acquired but price fixed by mutual consent. It may be pertinent to mention here that in this letter a copy of which being Ex. D-4 (12) is to be found at page 86 of the paper-book, respondent No. 1 never concealed the fact that the land really belonged to the Government. In this connection, respondent No. 1 wrote thus :-

> I have represented to you against the revenue authorities quoting a higher price for similar Government land more adversely situated and a lower price for my land despite its better strategic location.

14. We have mentioned this fact because this forms the very pivot of the case of the appellant in order to assail the judgment of the courts below. A perusal of this letter clearly shows that respondent No. 1 made no attempt to conceal that the land in question was a Government land which was leased out to his vendor. A copy of the original agreement which also has been filed shows that under the terms of the lease, the same is entitled to be renewed automatically at the option of the lessee and unless the lessee violates the conditions of the lease, there is no possibility of the lease being resumed. As it is, the lease had been continuing from the year 1943 and there was no possibility or its not being renewed on 1-9-1973 when the period expired. In these circumstances, therefore, it cannot be said that the letter written by respondent No. 1 referred to above was an evidence of a criminal intention on the part of respondent No. 1 to grab the huge compensation by practising fraud on the Government. Respondent No. 1 was a high officer of the Government and was a lessee of the Government, a fact which he never concealed and if he was able to get a good customer for purchasing his land or acquiring the same, there was no harm in writing to the concerned authority to fix the roper valuation and take the land. There was no question of any concealment or malpractice committed by respondent No. 1.

15. Apart from this, the contention of the appellant that the fact that the land being Khasmahal land belonging to the Government was deliberately suppressed by the respondents is completely falsified by the circumstances discussed hereinafter :

> The land in question was situated in a Cantonment area and it is not disputed that all lands in the Cantonment area were Khasmahal Lands belonging to the Government.

16. The High Court in this connection has observed as follows : Government authorities admit that the land in question was known to be Khasmahal land from the very inception. This must lead to an inference that the authorities knew that the interest of the opposite party No. 1 in the land was that of a lessee and the State Government was the proprietor.

The High Court has further observed that a number of witnesses who were examined by the police had stated that it was common knowledge that all khasmahal lands in the Cantonment area in Cuttack were Government lands. Relying on the statement of Mr. T.C. Vijayasekharan, Collector, Cuttack, the High Court observed as follows :-

> Shri Vijayasekharan who has admittedly played an important role in the land acquisition proceeding has said that it is a matter of common knowledge that all khasmahal lands in Cantonment area at Cuttack are Government lands. He has further categorically stated that Shri P.M. Samantray did not put undue pressure of any kind.

17. Furthermore, it would appear that Mr. B.C. Mohanty, Land Acquisition Officer submitted a report about the land in question on 15th February, 1971 in which he had clearly mentioned that the land in question was Government land and that respondent No. 1 was a Pattidar in respect of the land as shown in the record. Thus, one of the important premises on the basis of which the charge was sought to be framed has rightly been found by the High Court not to exist at all. The records of

the Government showed the nature of the land. Respondent No. 1 at no time represented to the All-India Radio authorities or the Government that the land was his private one and the records of the Government clearly went to show that the land was a Government land. In these circumstances, therefore, it cannot be said that respondent No. 1 acted illegally in agreeing to the land being acquired by the Government.

18. Another important circumstance relied on by the appellant was the great rapidity with which the land acquisition proceedings started and ended clearly shows that the respondents had joined hands to get the lands acquired and the compensation paid to respondent No. 1. In this connection, reliance was placed on the fact that the copies of the records of rights were prepared on 30th March, 1972 in which the land was no doubt shown as having been owned by the State. Bhujarat report was also prepared on the same date. Respondent No. 1 presented his copy of the deed of transfer also on the same date and respondent No. 2 made the award for Rs. 4,18,642.55 also on the same date. The entire amount was disbursed also on the same date and possession also was handed over on the same date. Prima-facie, it would appear that the Officer acted in great hurry perhaps at the instance of respondent No. 1. These circumstances are clearly explainable and cannot be said to exclude every reasonable hypothesis but the guilt of respondent No. 1. Admittedly, the All-India Radio authorities were in a great hurry to get the land acquired and take possession of the same. As respondent No. 1 was a high officer of the I.A.S. cadre there may have been a natural anxiety on the part of the small officers posted in the district of Cuttack to oblige respondent No. 1 by completing the proceedings as early as possible and meeting the needs of the All-India Radio.

19. It would, however, appear that once notices under Section 9(1) and 10(1) of the Land Acquisition Act were issued and the objection filed by the appellant was withdrawn, because there was no one else in the field, there was no impediment in the way of acquiring the land and taking possession from respondent No. 1. In fact, it would appear as pointed out by the High Court that as far back as 22nd February, 1972 the Land Acquisition Officer who was a person other than the second respondent had sent a letter to the Government with the counter signature of the Collector for sanctioning the estimate of acquisition of 2 acres of land belonging to respondent No. 1. Later, however, the area of the land was reduced from 2 acres to 1.764 acres and revised estimates as desired by the Revenue Department were sent on 7-3-1972. This estimate amounted to Rs. 4,18,642.55 and was sent through the A.D.M's letter on 8-3-1972. The Home Department by their letter dated 11-3-1972 sanctioned the aforesaid estimate. Thereafter, the Government indicated to the Collector that an award might be passed for acquiring 1.764 acres of land. These facts apart from negativing the allegations of criminal conduct against the respondents demonstrably prove the untruth of the circumstance relied upon in the charge-sheet, namely, that unless the respondent No. 1 and 2 acted in concert and conspiracy with each other, respondent No. 1 could not have known the exact figure of the compensation to be awarded to him. In this connection, reliance was placed on a letter written by respondent No. 1 to the Vigilance Officer, L.S. Darbari on 15th March, 1972 where he had mentioned that as Karta of the H.U.F. he would be getting a compensation of Rs. 4,18,642.55 which is to be paid to him on the 10th March, 1972 and it was argued that unless the two respondents were in league with each other how could respondent No. 1 get these details. We are, however, unable to agree with this contention.

20. We have already mentioned that a fresh estimate for 1.764 acres was prepared and the total compensation was Rs. 4,18,642.55 as only the Raiyyati or the lessee's interest was proposed to be acquired and this letter was sent to the Government for sanction and the estimate was sanctioned on 11-3-1972. It was contended that no notice was given to the Khasmahal department, so that the Government could claim compensation of the proprietary interest. It is obvious that what has been acquired in the present case is merely the Raiyyati or the lessee's interest and as the proprietary interest vests in the Government itself, there is no question of either acquiring or claiming compensation for the interest of the Government. In the case of Collector of Bombay v. Nusserwanji Rattanji Mistri and Ors., this Court observed as follows :-

> If the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public user.... When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition.
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> To the same effect is a later decision of this Court in the case of The Special Land Acquisition Officer, Hosanagar v. K.S. Ramachandra Rao and Ors. where this Court observed as follows :-
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> Mr. M. Veerappa, the learned counsel for the State of Mysore, contends that the Land Acquisition Officer had not assessed the compensation payable for the rights of the respondents in the land acquired.... We have gone through the Award made by the Land Acquisition Officer. The Land Acquisition Officer appears to have valued the rights of the respondents in the lands acquired. Whether the valuation made by him is correct or not cannot be gone into these proceedings.

21. As the appellant was naturally interested in finalising the deal as quickly as possible, there could be no difficulty in finding out the estimates which had been sanctioned a week before respondent No. 1 wrote the letter to the Vigilance Department. This fact proves the bona-fide rather than any wrongful conduct on the part of respondent No. 1 which may lead to an adverse inference being drawn against him.

22. Finally, it was argued that what was acquired by the Government was merely the lessee's interest, but the respondent No. 1 appears to have got compensation as the owner. This is factually incorrect. We have already referred to the circumstances which clearly show that the Government was fully aware that it was only the lessee's interest which was being acquired and even the fresh estimate for Rs. 4,18,642. 55, which was sent to the Government was shown as representing the Raiyyati interest. Mr. Agarwala appearing for the respondents fairly conceded that having regard to the nature, character and situation of the land, it could not be said that the amount of compensation awarded did not represent the market value of the lessee's interest of the land.

23. On the other hand, in the counter-affidavit at page 87 of the paper book, it has been alleged that 16 sale-deeds executed during the year 1970 and 5 sale-deeds executed during the year 1971 pertaining to the village in question were acquired at the rates varying from Rs. 42,165 to 750,000. The High Court has also pointed out that the records before the Trial Judge show that the Collector Vijayasekharan had valued the land at the rate of Rs. 1.70 lakhs per acre as far back as 3-2-1970 and if two years later the valuation was raised to Rs. 2 lakhs it cannot be said that the land was in any way over-valued.

24. Lastly, there does not appear to be any legal evidence to show any meeting of mind between respondents No. 1 and 2 at any time. Although the Collector at the time of the acquisition was a distant relation of respondent No. 1 he had himself slashed down the rate of compensation recommended by the Revenue Officer from Rs. 2,10,000 to Rs. 2,00,000 and it was never suggested by the prosecution that the Collector was in any way a party to the aforesaid conspiracy.

25. For these reasons, therefore, we find ourselves in complete agreement with the view taken by the High Court that there was no sufficient ground for trying the accused in the instant case. Moreover, this Court would be most reluctant to interfere with concurrent findings of the two courts in the absence of any special circumstances.

26. For the reasons given above, the judgment of the High Court is affirmed and the appeal is dismissed.