Mauvin Godinho vs The State Of Goa on 17 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 749, 2018 (2) SCC (CRI) 63, (2018) 1 UC 244, (2019) 1 CRIMES 40, (2018) 3 CURCRIR 1, (2018) 70 OCR 151, (2018) 3 CURCRIR 159, (2018) 103 ALLCRIC 1006, (2018) 186 ALLINDCAS 185 (SC), (2018) 4 ALLCRILR 889, 2018 CALCRILR 2 5, (2018) 2 CAL LJ 37, 2019 (1) SCC (CRI) 402, (2018) 186 ALLINDCAS 185

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Bench: S. Abdul Nazeer, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 315/2011

MAUVIN GODINHO Appellant(s)

VERSUS

STATE OF GOA Respondent(s)

WITH

CRIMINAL APPEAL NO. 314/2011

M/S MARMAGOA STEEL LTD.& ORS. Appellant(s)

VERSUS

STATE OF GOA Respondent(s)

CRIMINAL APPEAL NO. 313/2011

T. NAGARAJAN Appellant(s)

VERSUS

STATE OF GOA Respondent(s)

CRIMINAL APPEAL NO. 312/2011

KATREDDI VENKATA SAHAYA KRISHNAKUMAR Appellant(s)

VERSUS

STATE OF GOA Respondent(s)

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CRIMINAL APPEAL NO. 311/2011

M/S GLASS FIBRE DIVISION Appellant(s)
(A Division of Binani Zinc Ltd.) presently known as
M/S GOA GLASS FIBRE LTD.

VERSUS

STATE OF GOA Respondent(s)

JUDGMENT

N.V. RAMANA, J.

1. These Criminal Appeals, by way of special leave, are filed by the appellants against a common order dated 26 th October, 2007 passed by the High Court of Bombay at Goa in Criminal Revision Application Nos. 3, 10, 19, 21 and 22 of 2007, whereby the High Court while setting aside the charges framed by the learned Special Judge, Panaji against the accused—appellants for the offences punishable under Sections 120-B, 409, 420, 465 and 471, IPCand directed to frame charges against them under Sections 13 (1)(d)(i) and 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 read with Section 120-B, IPC.

2. In a nutshell, the genesis of the dispute in all these appealspertains to a Notification dated 30 thSeptember, 1991 issued by the Government of Goa, duly approved by the Cabinet, according to which those industrial units who apply for bona fide use of High Tension or Low Tension power supply to their industrial units would be eligible for a rebate of 25% in their tariff for a period of five

years. The appellant in Criminal Appeal No. 315 of 2011 (Accused No. 1) was the Minister of Power for the State of Goa during the period 22-12-1994 to 29-07-1998 whereas the appellant in Criminal Appeal No. 313 of 2011 (Accused No. 2) was also a public servant at that time being Chief Electrical Engineer.Accused Nos. 3 and 4 were Managing Director and Executive Director, respectively, of the appellant Company in Criminal Appeal 314 of 2011 (Accused No. 6), while the appellant in Criminal Appeal No. 312 of 2011 (Accused No. 5) was the General Manager of appellant Company in Criminal Appeal No. 311 of 2011 (Accused No. 7).

3. The Government of Goa, during the tenure of accused No. 1 as Minister of Power, with the consent of Cabinet, issued another Notification dated 31-03-1995 cancelling the earlier Notification dated 30-09-1991 without assigning any reason for its cancellation. Afterwards, it is alleged that another Notification dated 15-5-1996 was issued, without approval of the Cabinet introducing another category of 'Extra High Tension' power supply and after that one more Notification dated 01-08-1996 was issued, again without Cabinet approval, restoring the benefit of 25% rebate, at the instance of accused No. 1, only to benefit accused nos. 6 & 7 Companies.

4. Acting upon a complaint lodged by an M.L.A., the State levelled allegations against the accused individuals that by entering into a criminal conspiracy they provided wrongful gains to both the appellant Companies (Accused Nos. 6 & 7) and favored the two Companies for availing 25% rebate on power tariff by illegal means and thereby caused huge loss of Rs.4,52,77,856/- to the exchequer of Government of Goa.

5. Taking note of the allegations levelled against the accused, the Special Judge, Panaji by order dated 8 thDecember, 2006 framed charges against the accused—appellants for the offences punishable under Sections 120-B, 409, 420, 465, 468 and 471, IPC and also under Section 13(1)(d)(i) and 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988. The aggrieved appellants approached the High Court by way of Criminal Revision Applications. The High Court on the analysis of facts, arrived at the conclusion that the facts of the case do not disclose an offence of cheating and there was no offence of criminal breach of trust. Accordingly, the appellants were discharged from the offences punishable under Sections 120-B, 409, 420, 465, 468 and 471, IPC. However, the High Court observed that there is sufficient prima facie material against the accused for framing charges against them under Section 13(1)(d)(i) and 13(1)(d)(ii) read with Section 120-B, IPC. Feeling aggrieved thereby, the accused— appellants are before us in these appeals.

6. We have heard Mr. M.L. Varma, learned Senior counsel appearing for the appellant in Criminal Appeal No.315/2011, Ms. Binu Tamta, learned counsel appearing for the appellant in Criminal Appeal No.311 of 2011, Ms. Asha Gopalan Nair, learned counsel appearing for the appellant in Criminal Appeal No.313 of 2011 and alsothe learned counsel appearing for the State of Goa at length.

7. Learned senior counsel for the appellant in Criminal Appeal No. 315 of 2011 relying upon this Court's order in Civil Appeal Nos. 3206-3217 of 1999, passed on 13 th February, 2001 while dealing with the same Notifications, submitted that there is no need to continue further criminal

proceedings against the appellants herein. The said order reads thus:

> "The High Court by the impugned judgment has held that the circular dated 31st March, 1998 issued by the Government of Goa suspending the release of rebate with immediate effect as well as suspension of rebate agreed to be governed in sixty monthly installments has no legal efficacy and is, therefore, invalid. The High Court has further held that the notification dated 24th July, 1998 is legal and valid. Consequently the High Court directed that the writ petitioners are entitled to 25% rebate in power tariff till 26th July, 1998. This has been challenged by means of the present appeals. Second set of appeals have been filed by the writ petitioners against the judgment of the High Court whereby and whereunder the High Court has held that notification dated 27th July 1998 is valid.
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> We have heard counsel for the parties and perused the record. The High Court has taken the aforesaid view after taking into consideration overall facts and circumstances and inasmuch as public interest which, according to us, is very balanced view of the matter. We, therefore, are not inclined to interfere with the matters Both the sets of appeals fail and are accordingly dismissed. There shall be no order as to costs".

8. It is further argued before us that the High Court erred in not taking into account the factum that the complaint against the accused—appellants was filed by political opponent of the appellant whohad foisted the charges which are mala fide, misconceived and concocted with a view to score political vendetta.Whereas power rebate policy was existing in the State since 1991 and in 1993, out of the High Tension category an Extra High Tension category was carved out by the Government for the purpose of providing additional benefit to industrial consumers. Drawing our attention to a judgment of this Court in MRF Limited vs. Manohar Parrikar & Others, (2010) 11 SCC 374, learned senior counsel submitted that this Court has already considered the Notifications in question, in an earlier round of litigation and expressed the view that the decision taken by the appellant herein—accused No. 1 as a Minister was balanced.

9. Ms. Binu Tamta, learned counsel appearing for the appellantsin Criminal Appeal Nos. 311 & 312 of 2011 submitted that as a matter of fact, the complaint in question was already closed on 2.2.1999, but to meet the political will of the complainant when he came to power in the State, the complaint was reopened at his instance. The view taken by the Courts below in framing charges against the accused is entirely wrong inasmuch as the trial Court made an observation that the circumstances give rise to suspicion that accused Nos. 1 to 5 conspired to extend benefit to the accused Nos. 6 & 7 Companies. Mere suspicion does not warrant framing of charges against the appellants. learned counsel wrongly placed reliance on a decision of this Court in Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi, (2003) 5 SCC 257 and submitted that by virtue of the Notifications in question, no benefit was got by the appellant and whatever amount had to be paid, has already been paid, and accordingly the charges against the appellant should be dropped.

10. Learned counsel appearing for the appellant in Criminal Appeal No.313 of 2011, Ms. Asha G. Nair, submitted that the appellant in his official capacity had only made submissions in accordance with the instructions received by superiors in the normal course of discharging his official duties. By any stretch of imagination, the appellant cannot be equated as conspirator when the deciding authorities were the Secretary and the Minister. She has further submitted that the appellant has already retired from his service and virtually he has no role to play in the alleged conspiracy and the allegation that he is close to Minister does not form a ground for levelling charges against him.

11. Learned counsel for the State while supporting the impugned judgment, submitted that there was enough material on record to establish that accused Nos. 1 & 2, being public servants at the relevant time, had entered into a criminal conspiracy to facilitate wrongful gains to accused Nos. 6 & 7 Companies in collusion with their officials (accused Nos. 3 & 4). In pursuit of their criminal conspiracy, they abused their positions and caused huge loss to the public exchequer and benefited accused Companies by illegal means. It is also vehemently argued that accused No. 1 while abusing his official capacity prepared a false document giving an appearance of genuine one and deceived the Government in taking policy decision and enabled the accused Companies to avail 25% rebate on power supply. He ultimately made a submission that taking note of misdeeds of all the accused, the High court has in clear terms expressed the opinion that there is sufficient prima facie material to frame charges against all the accused, hence there is no occasion for this Court to interfere and revisit the matter.

12. At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. [Refer Sajjan Kumar v. CBI, (2010) 9 SCC 368; State v. A. Arun Kumar, (2015) 2 SCC 417; State by the Inspector of Police, Chennai vs. S. Selvi and Ors., (2018) 1 SCALE 5.]

13. Having thoughtfully considered the arguments advanced by respective learned counsel and upon going through the record, particularly the impugned judgment, in the light of sequence of events, prima facie, it cannot be said that no case can be made out against the accused—appellants. Allegedly, the Notifications dated 15-5-1996 and 1-8-1996 were issued without the approval of Cabinet and by violation of rules. Looking at the facts of the case in a holistic manner, we do not think it necessary to go into the aspect of thorough examination of merits of the case, particularly when the issue is still at the stage of framing of charges only. There is no error in framing charges, as suggested by the High Court, when presumably the material on record obligated the Court to do so.

14. In light of the above discussion, we do not see any illegality in the impugned order. Therefore, we find no reason to interfere with the order passed by the High Court. However, learned counsel appearing for the appellants, at this stage wants to place before the trial Court, the material, judgments and the earlier passed order of this Court which are referred before us. We grant liberty to the learned counsel to do so.

15. With the above observations, the appeals are disposed of.

.....J. (N.V. RAMANA) .....J. (S. ABDUL NAZEER) NEW DELHI, JANUARY 17, 2018.