

Suresh Kumar.G. Vs The Deputy Supdt. of Vigilance and Anticorruption Bureau

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Court : Kerala

Decided On : Jan-15-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : Crl.Rev.Pet/95/2023

Appellant : Suresh Kumar.G.

Respondent : The Deputy Supdt. of Vigilance and Anticorruption Bureau

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU MONDAY, THE 15TH DAY OF JANUARY 2024 / 25TH POUSHA, 1945 AGAINST THE ORDER/JUDGMENT CC 12/2021 OF ENQUIRY COMMISSIONER& SPECIAL JUDGE,THRISSUR REVISION PETITIONER: SURESH KUMAR.G. AGED 58 YEARS S/O GOVINDAM, KINASSERY, PERUVAMBA, PALAKKAD, PIN - 678531 BY ADV P.K.ABOOBACKER(EDAPPALLY) RESPONDENTS: 1 THE DEPUTY SUPDT. OF VIGILANCE AND ANTICORRUPTION BUREAU,VIGILANCE AND ANTICORRUPTION BUREAU, PALAKKAD,

PIN - 678001 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 OTHER PRESENT: RAJESH A ,SPL GP VIG.,REKHA SR PP THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 15.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

----- CRL.REV.PET.No.95 of 2023
----- Dated this the 15th day of January, 2024

JUDGMENT

The Challenge in this Crl.Rev. Petition is to the order dated 31.10.2022 passed by the Court of the Enquiry Commissioner and Special Judge, Thrissur in Crl.M.P.No.895 of 2022 in C.C.No.12/2021. The petitioner, who is accused No.1, faces charges under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, Secs.193, 196, 199, 200 and 120-B of the IPC and Section 7 read with Section 23 of the Kerala Conservation of Paddy Land and Wet Land Act.

Facts:-

2. During 15.11.2011 to 08.12.2012 the petitioner

was the Village Officer of Kannadi Village in Palakkad District. Accused No.2 was the Agricultural Officer in the Krishi Bhavan, Kannadi. Accused No.3 was the Deputy Tahsildar, Taluk Office, Palakkad.

3. A real estate firm by name Land Links submitted an application for converting the nature of 11.5 acres of land in Sy.Nos.764/1, 764/5, 764/6, 764/7, 764/3, 775/1, 774/1,

before the revenue authorities. The petitioner, the Agricultural Officer and the Deputy Tahsildar (A1, A2, A3) were entrusted with the responsibility to prepare the relevant reports to be

presented before the competent authority. The petitioner and the other accused hatched a conspiracy, abused their official position and prepared a false list regarding wet land and paddy land involved and also prepared a draft data bank illegally excluding the land owned by the real estate firm for facilitating the competent authority to take a decision in their favour for conversion of the nature of land.

4. In the conspiracy, accused Nos.4 to 8 are also

involved. The petitioner and the other accused, in pursuance of the conspiracy, committed criminal misconduct, fabrication of evidence etc. The VACB conducted investigation and submitted final report before the Court of Enquiry Commissioner and Special Judge. The petitioner appeared in response to the summons. He submitted CrI.M.P.No. 895 of 2022 seeking discharge under Section 239 Cr.P.C. The learned Special Judge dismissed the application holding that the prosecution

established a prima facie case against the petitioner. This order

is under challenge.

5. Heard the learned counsel for the Revision petitioner and the learned Senior Public Prosecutor.

6. The learned counsel for the petitioner submitted that there are no materials to connect the petitioner with the alleged

offences. It is submitted that the petitioner only prepared certain reports in accordance with law and the competent authority, following the reports submitted by the petitioner, issued proceedings in favour of the real estate firm by name Land Links. There is nothing to establish the link of the petitioner with the alleged offences.

7. The learned Senior Public Prosecutor submitted that

there is evidence to show that the petitioner was part of a conspiracy, and false report and documents were prepared which facilitated the real estate firm to get illegal gain.

8. Sections 239 and 240 of the Code of Criminal Procedure deal with discharge and framing of charge.

9. The obligation to discharge the accused under Section 239 Cr.P.C. arises when the Magistrate considers the charge against the accused to be groundless.

10. The primary consideration at the stage of framing charge is the test of the existence of a prima facie case. The probative value of the materials on record is not to be gone into at this stage.

11. The Apex Court in Onkar Nath Mishra and others v.

State (NCT of Delhi) and another [(2008) 2 SCC 561] while considering the nature of evaluation to be made by the Court at the stage of framing of charge held thus:-

11. It is trite that at the stage of framing of charge 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, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the Accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the Accused in respect of the commission of that offence.

12. In State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659], while dealing with the question of framing charge or discharge the Apex Court held thus:-

32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the Accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the Accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

13. In *State of M.P. v. Mohanlal Soni* [(2000) 6 SCC 338] the Apex Court held thus:-

7. The crystallised 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.

14. In *Sheoraj Singh Ahlawat and others v. State of*

Uttar Pradesh and another [(2013) 11 SCC 476], the Apex Court observed that while framing charges the Court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. It was further held that the Court cannot speculate into the truthfulness or falsity of the allegations,

contradictions and inconsistencies in the statement of witnesses at the stage of discharge.

15. Section 239 envisages a careful and objective

consideration of the question whether the charge against the Accused is groundless or whether there is ground for presuming that he has committed an

offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the Accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See: V.C. Shukla v. State through CBI (AIR 1980 SC 962).

16. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja [(AIR 1980 SC 52)] the Apex Court stated thus:-

At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

17. In State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R.Hiremath (2019) 7 SCC 515 the Apex Court

held thus:-

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and

evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

29. ... At this stage, probative value of the materials has to be

gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the Accused has been made out. To put it differently, if the court thinks that the Accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the Accused has committed the law does not permit a mini trial at this stage.

18. In *State through Deputy Superintendent of Police v. R. Soundirarasu and Ors.* (AIR 2022 SC 4218) the Apex Court while dealing with the scope of Section 239 Cr.P.C. held thus:-

61. Section 239 of the Code of Criminal Procedure lays down that if the Magistrate considers the charge against the Accused to be groundless, he shall discharge the Accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the Accused has committed the offence. The word 'groundless' used in Section 239 of the Code of Criminal Procedure means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the Accused.

73. This would not be the stage for weighing the pros and

cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the Accused can be said to be "groundless".

74. The word "ground" according to the Black's Law Dictionary

connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the Accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.

19. Therefore, the obligation to discharge the accused under

Section 239 Cr.P.C. arises when the Magistrate/Special Judge considers the charge against the accused to be groundless that is, there is no legal evidence or when the facts are such that no offence is made out at all and no detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken.

20. The case of the prosecution is that the petitioner and

other accused without conducting any field inspection and verification of revenue records jointly prepared a false draft data bank of paddy and wet land for Kannadi Grama Panchayath illegally excluding 11.5 acres of land owned by the real estate firm by name Land Links. It is further alleged that the petitioner reported that the land in question was being kept crop free for the last 48 years without any cultivation. Prior to the preparation of the draft data bank, the petitioner and accused Nos.2 and 3 intentionally prepared a false list of land which was included in the classification of wet land and paddy land in Kannady Village and reported

that the land was kept in fallow without any crop and illegally eliminated the land in question which was originally included in the data bank prepared in 2009. The prosecution also alleges that for the purpose of creation of a false data bank for the Kannadi Grama Panchayath, the petitioner prepared a false

statement in the name of CW34 and CW35. The prosecution relies on the oral evidence of CW34 and CW35 to allege that those witnesses had not given such statements. According to the prosecution, the intention of the petitioner and the other accused was to prepare materials in support of their report to the effect that 11.5 acres of land owned by the real estate firm remained without any cultivation for the last 48 years. On a perusal of the materials placed before the court, this Court is of the view that there are factual ingredients constituting the offences alleged. There are nothing to show that the charges levelled against the petitioner are groundless.

21. Unless the order passed by the Magistrate is perverse or

the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. {Vide: Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [(2015) 3 SCC 123], Munna Devi v. State of Rajasthan & Anr [(2001) 9 SCC 631] and Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation [(2018) 16 SCC 299)]}.

22. In Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation [(2018) 16 SCC 299] the Apex Court

held that interference in the order framing charges or refusing to

discharge is called for in the rarest of rare cases only to correct a patent error of jurisdiction.

23. The finding of the Court below that it could come to the

conclusion that the commission of the offences alleged against

the petitioner is a probable consequence, requires no interference in revisional jurisdiction.

24. This Court is of the view that the order impugned is not affected with any patent error of jurisdiction.

All the challenges in this revision petition therefore fail. It is made clear that I have not made any observation on the merits of the prosecution case. The observations made in this order are only for ascertaining whether the charges levelled are groundless or not. The petitioner is at liberty to raise all the contentions during trial. The revision petition stands dismissed.

Sd/- K.BABU, JUDGE saap APPENDIX OF CRL.REV.PET 95/2023 PETITIONER ANNEXURES Annexure1 CERTIFIED COPY OF THE ORDER DATED 31.10.2022 IN CRL.M.P.NO.895/ 2022 IN C.C. NO. 12/2021 ON THE FILE OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGES COURT (VIGILANCE), THRISSUR //True copy//PA to Judge

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