

Vijay Kumar Soni Vs. the State

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Court : Allahabad

Decided On : Mar-29-1989

Reported in : 1990CriLJ955

Judge : G.B. Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 157, 173 and 482; Indian Penal Code (IPC) - Sections 409, 466, 467 and 477; Prevention of Corruption Act - Sections 5(2)

Appeal No. : Criminal Misc. Cases Nos. 3469 and 3470 of 1983

Appellant : Vijay Kumar Soni

Respondent : The State

Advocate for Pet/Ap. : Imtiyaz Murtaza and ;V. Bhatia, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

G.B. Singh, J.

1. These three connected petitions under Section 482, Cr. P. C. shall be disposed of by this judgment. Vijai Kumar Soni, petitioner was Junior Engineer in the Public

Works Department at Gonda from 1974 to 1978. During the years 1976 to 1978 some constructions and repairs were made on Bahraich-Faizabad-Azamgarh Road and Colonelganj - Kukurbhukwa - Gonda Road. Brick ballasts, stone ballasts and bricks were supplied by the Thekedars for the aforesaid purpose. These constructions and repairs were carried on under the supervision of Vijai Kumar Soni. It seems that the complaints were made against him that he had misappropriated the material supplied and failed to account for them. The State Government, therefore, entrusted the matter to the Vigilance Department. The Superintendent of Police (Vigilance Department), Faizabad, entrusted the matter to a Vigilance Inspector for investigation. He found that Vijai Kumar Soni misappropriated 33.92 cubic metres of brick ballasts worth Rs. 1759/- supplied for Bahraich-Faizabad-Azamgarh Road and made fictitious entries in the Government records. He, therefore, submitted charge-sheet on 20-4-1983. On this charge sheet Special Judge, Gonda, took cognizance and summoned the petitioner. About Colonel-ganj-Kukurbhukwa-Gonda road the Vigilance Inspector found that Vijai Kumar Soni misappropriated 353.56 cubic metres stone ballasts worth Rs. 22,592.48 P., 2700 bricks worth Rs. 365/- and 1200 bricks worth Rs. 151.44 P. and made forged and fictitious entries in the Government records. The Vigilance Inspector submitted on charge sheet relating to misappropriation of 1200 bricks on 7-3-1983. It relates to the period of 1977-78. The other charge sheet submitted on 6-5-1983 relates to misappropriation of stone ballasts and 2700 bricks for the year 1977. On these two charges also the learned Special Judge took cognizance and summoned Vijai Kumar Soni. He appeared in all the three cases. After his appearance of a date for framing charge had been fixed. Before framing of the charge he moved these three petitions under Section 482, Cr. P. C. for quashing his prosecution.

2. The contention is that he did not commit any misappropriation or criminal breach of trust or forgery in public records and he has been falsely roped in the case at the instance of his superior officers and some other persons due to ill-will. It has also been pleaded by him that the charge sheets submitted against him do not make out any case prima facie and as such the learned Special Judge has wrongly taken cognizance of the matter. In the rejoinder affidavit a new plea had been raised. It is that no first information report had been lodged and as such the

Vigilance Inspector could not make investigation against him.

3. Heard the learned counsel for the petitioner and the learned Assistant Government Advocate. After having heard and considered the arguments advanced I am of the opinion that these petitions have no substance and deserve dismissal.

4. These petitions under Section 482, Cr. P. C. have been moved at interlocutory stage. It is well-settled that the inherent power at such a stage of the criminal case should be exercised sparingly with circumspection in rare cases and that too to correct patent illegalities or when some miscarriage of justice is shown. It may also be added here that if other remedy is open to the person aggrieved the inherent power should not be exercised. In the present case the petitioner did not raise any objection before the Special Judge that no prima facie case has been made out against him and as such he should not proceed with the case. At the time of arguments it was conceded by the learned counsel for the petitioner that such a point could be raised by the petitioner before framing charge against him to invite decision of the Special Judge. The petitioner has, therefore, undoubtedly approached this Court hurriedly and his petitions are liable to be dismissed on this ground alone.

5. The argument of the learned counsel for the petitioner is that there was no first information report against the petitioner and thus there could be no investigation. The argument does not appear to have any substance. It has been held in *Emperor v. Khwaja Nazir Ahmad* that in the case of cognizable offence receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation. Similar observation was made in *State of U. P. v. Bhagwant Kishore Joshi* : 1964 CriLJ140 . The learned counsel for the petitioner in order to support his contention that the F.I.R. should have been in existence before the commencement of the investigation relied upon the *State of Bombay v. Rusy Mistry* : AIR 1960 SC391 . It has been held in this case that it is the F.I.R. on which the investigation commences. It is a general observation and it has not been held anywhere in this reported case that the F.I.R. is a condition precedent for criminal investigation. Section 157, Cr. P. C. itself makes it clear that an

investigation can be initiated either on first information or otherwise. In view of this word 'otherwise' it was held in *Emperor v. Khwaja Nazir Ahmad and State of U. P. v. Bhagwant Kishore Joshi* (supra) that investigation can commence in the absence of the F.I.R. It cannot, therefore, be said that the investigation made in the case was illegal as contended by the learned counsel for the petitioner.

6. From the charge sheets it appears that first information reports had been lodged. According to these charge sheets the first information reports were the D.O. letters of Vigilance Section I of U. P. Government. Not only this the petitioner has alleged in para 8 of the petitions that fictitious reports were lodged against him for misappropriation of the bricks and the ballasts. Learned counsel for the petitioner in order to give strength to his contention pointed out that no crime number of police station has been given in the charge sheets and from this it can be inferred that no F.I.R. had been lodged. This point had not been specifically taken in the petitions and thus the opposite party did not get an opportunity to explain it in the counter-affidavit. The plea that no F.I.R. was lodged was also not taken in the petitions. It was raised in the rejoinder affidavit. Since it has been admitted in the petitions that the reports were lodged much importance cannot be attached to it for the purposes of the exercise of power under Section 482, Cr. P. C. However, it is made clear that the point if F.I.R. was lodged or not is a subject matter of evidence and so it will be decided by the trial court on the basis of evidence adduced before it. If competency to take cognizance on its basis is challenged, the trial court shall decide it in accordance with law. It may, however, be added that cognizance can be taken on the basis of the complaint giving out the facts constituting the offence or upon a police report of such facts. A complaint can be by a police officer. The charge sheet can be taken as a police report. It cannot be said that cognizance can be taken on the basis of a charge sheet filed under Section 173, Cr. P. C. only. Cognizance taken by the Special Judge cannot, therefore, be said illegal at this stage simply on the ground that no F.I.R. had been lodged in this case under Section 154, Cr. P. C.

7. So far as the contention of the petitioner's counsel that no prima facie case has been made out is concerned a glance on the facts narrated against the petitioner in the charge sheets (Annexure 3) makes it clear that the necessary facts for

constituting the offences enumerated in the charge sheets find place therein. It has been clearly mentioned that the petitioner misappropriated certain articles and thereby committed criminal breach of trust. It has also been mentioned in the charge sheets as to how the petitioner made false entries and committed forgery and prepared false accounts. Thus, the necessary details for constituting the offences under Sections 409, 466, 467, 477, I.P.C. and Section 5(2) of the Prevention of Corruption Act do find place in the charge sheets. The petitioner has contended that he would not have misappropriated such a small number of bricks and they could be used at various places in connection with construction and repairs of the roads going on at several places. It has also been pleaded by him that he has been falsely implicated at the instance of his superior officers and landlord of the house. All these facts can be appropriately appreciated at the stage of trial and cannot be gone into at this stage in the petition under Section 482, Cr. P. C. The pleas raised by him in the petitions do not go to show that the prosecution had no case and it would be a mock trial if it is allowed to proceed.

8. From the above discussion it is clear that the petitioner has failed to make out any case for interference by this Court in the exercise of inherent jurisdiction under Section 482, Cr. P. C. The petitions are, therefore, dismissed. The stay order is discharged. Send back the record of the lower court immediately so that the trials may proceed.