Yusufkhan Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-17-2002

Reported in : 2003(1)MPHT42

Judge : S.L. Kochar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 228; Prevention of Corruption Act, 1988 - Sections 13(1) and 13(2); Indian Penal Code (IPC), 1860 - Sections 120; Madhya Pradesh General Provident Fund Rules, 1955 - Rules 14, 15, 16 and 16(B)

Appeal No. : Criminal Revision No. 433/2002

Appellant : Yusufkhan

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. General

Advocate for Pet/Ap. : B.A. Nigam and ;Umesh Maheshwari, Advs.

Disposition : Revision allowed

Judgement :
ORDER

S.L. Kochar, J.

1. In our country to have our own house is virtually a dream at least for Classes III and IV employees. The State Govt. in the year 1996 liberalized grant of advances to employees from their GPF A/cs., but unfortunately these teachers have been put to trial though they have taken advances as per GPF Rules.

By this common order Criminal Revision No. 434/2002 (Laxminarayan Tiwari v. State); Criminal Revision No. 435/2002 (Kailashchandra v. State); Criminal Revision No. 436/2002 (Narayan v. State); Criminal Revision No. 506/2002; in all these revisions applicants are teachers and in Cr. R. No. 537/2002 (Radhakant v. State); Cr. R. No. 538/2002 (Radhakant v. State); Cr. R. No. 539/2002 (Radhakant v. State); Cr. R. No. 540/2002(Radhakant v. State) and Cr. R. No. 541/2002 (Radhakant v. State) wherein applicants are Block Education Officers, are also being disposed of. Accountant Keshav Joshi has not filed any revision against the impugned order.

2. The aforesaid Criminal Revision Nos. 433/2002, 434/2002, 435/2002, 436/2002, 506/2002, 537/2002, 538/2002, 539/2002, 540/2002 and 541/2002 have been directed against the order dated 6-6-2002 passed by learned Special Judge (I ASJ Indore) in Special Case Nos. 24/2000, 23/2000, 22/2000, 21/2000, 12/2001, 12/2000, 23/2000, 24/2000, 21/2000 and 22/2000 respectively framing charges against the petitioner under Section 13(1)(c)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity 'the Act') read with Section 120, IPC.

3. The prosecution case lie in a narrow compass that the applicants are teachers and were posted in the Government Higher Secondary School at Sanwer District Indore. At the relevant time, they took advances from their GPF A/c for house construction. Officers of Lokayukta Office initiated the proceedings on their own information, no complaint or report was lodged by the concerned department of the teachers against release of house advances.

4. As per the prosecution case, the applicants during their service tenure, submitted applications before the B.E.O. and Accountant Keshav Joshi for grant of advance from their GPF Account for the purpose of construction of the house and the same was sanctioned by the B.E.O. contrary to the Rules and Regulations

applicable in the Department, thereby the applicants and the co-accused persons have caused wrongful loss to the Government and wrongful gain to themselves.

In all these revisions, mute question is involved for consideration that whether all the teachers have been granted advances more than the limit prescribed under M.P. GPF Amended Rules (for brevity 'the Rules') and whether in doing so, any criminality was involved in the action of the concerned authorities alongwith the teachers.

5. After usual investigation, the prosecution has filed charge-sheet against the petitioner and other co-accused persons in different cases as stated above. Learned Special Judge framed the charges by order dated 6-6-2002.

6. The contention of the learned Counsel for the applicants is that advances were sanctioned after fully adhering the rules as amended on 1st March, 1996 in Madhya Pradesh General Provident Funds Rules.

7. According to Clause 2 of the circular, after completion of 5 years service, temporary advance upto the whole amount standing credited in the account of subscriber, may be granted by sanctioning authority and according to Clause 3 of the said circular all those Government employees may be granted advances more than standing amount credited in the account of thesubscriber before 15 years of the date of superannuation and on the excess amount, subscriber shall have to pay interest @ 2% higher than the interest payable for advances in the GPF A/c.

8. It is also stated in the circular that an amendment has been brought into GPF Rules with a view to facilitate the Government employee to get advances for purchase of plot/house/flat for residential purpose in accordance with the new housing policy of the State Government.

9. In the year, 1987, if the Government employee had taken advance for the construction of the house from the State Government then including this amount the withdrawal from the GPF A/c would not exceed Rs. 1,50,000/-. The limit of this amount has been increased upto Rs. 5,00,000/-by amendment in GPF Rules. For convenience this circular is extracted as follows :--

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e/;izns'k lkekU; Hkfo';fuf/k fu;eksa esa la'kks/ku dh vf/klwpuk dh izfr layXu g SA la'kks/kuksa dk eq[;ms'; jkT; dh ubZ vkokl uhfr ds rgr ljdkjh deZpkfj;ksa dks vkokl ds fy;s vklkuhls vfxze miyC/k djkuk g SA blds vykok igys ls pyh vk jgh dqN folaxfr;ksa dks nwjfd;k x;k g SA

2- vHkh rd IykV [kjhnus vkSjedku [kjhnus vkSj cukus ds fy, tks vfxzu feyrk gS] mldh lhek ogh Fkh tks vU;iz;kstuksa ds fy, FkhA vc 5 lky dh lsok iwjh dj ysus ij va'knkrk ds [kkrs esatek iwjh jkf'k vfxze ds :i esa nh tk ldsxhA

3- ftu 'kkldh; lsodksa dhlsok fuo`fk ds de ls de 15 lky ckdh gS] mUgsa vius [kkrs esa tek jkf'k ls vf/kdvfxze Hkh fn;k tk ldsxkA bl vfxze ij 'kkldh; lsod ls C;kt fy;k tkosxk ftldh njlkekU; Hkfo'; fuf/k ls tek jkf'k ij fn;s tkus okys C;kt dh nj ls 2 izfr'krvf/kd gksxhA

4- vHkh rd lkekU; izdj.kksa esa jktif=r vf/kdkfj;ksads ekeys esa foHkkxk/;{k vkSj fMIVh dfe'uj dks vfxze Lohr djus ds vf/kdkj FksAfo'ks'k dkj.kksa ds fy, vfxze eatwj djus ds vf/kdkj vkSj fod'kZ.k(withdrawal) eatwj djus ds vf/kdkj jktif=rvf/kdkfj;ksa ds ekeys esa jkT; 'kklu vkSj vjktif=r deZpkfj;ksa ds ekeys esafoHkkxk/;{k vkSj fMIVh dfe'uj dks FksA vc jktif=r vf/kdkfj;ksa vkSj vjktif=rdeZpkfj;ksa ds chp ;g Hksn lekIr dj fn;k x;k g SA blds vykok vfxze vkSjfod'kZ.k Lohr djus ds vf/kdkj fupys Lrj ij Hkh fn;s x;s g SA blds QyLo:ifofHkUu foHkkxksa ds }kjk tks izR;k;kstu vkns'k tkjh fd, x;s Fks mUgsa vf/klwpuktkjh gksus ds fnukad ls fujLr ekuk tkosxkA

5- o'kZ 1987 ds fod'kZ.k ij ;g lhekHkh yxkbZ x;h Fkh fd vxj va'knkrk us jkT; 'kklu ls x`g fuekZ.k vfxze fy;k gS rksfod'kZ.k }kjk izkIr /ku vkSj x`g fuekZ.k vfxze dk tksM+ :i;s 1]50]000 ls vf/kdugha gksxkA bl lhek dks c<+kdj vc :i;s ikap yk[k dj fn;k x;k gSA

6- jkT; 'kklu ds Kkiu ekad1885@12@15@vkj&2@pkj] fnukad 4 vxLr] 1964] ekad 611&427@vkj&2@pkj]fnukad 6 ekpZ 1967] ekad 164&pkj;&fu;&2@69] fnukad 25 tuojh] 1969vkSj ekad 2750@,&2270@fu&2@pkj@70] fnukad 3 fnlEcj] 1970 }kjk tkjhfunsZ'k vkSj vU; funsZ'k tks la'kksf/kd fu;eksa ds izfrdwy gS vf/klwpuk tkjhgksus dh rkjh[k ls lekIr ekus tkosaxsA

7- vfrfjDr vf/kdkj lkSais tkus ds lkFk&lkFkLohrdrkZ; vf/kdkfj;ksa ls vis{kk gS fd os fu;eksa dk ikyu lko/kkuhiwoZd djsaxsA

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Applicants submit that in view of the circular, total withdrawal and advance for house construction has not exceeded Rs. 5,00,000/-. In the present case, therefore, release of house advance from GPF A/c is within the ambit of the aforesaid circular. It has also been putforth that after taking the house advance from the GPF A/c, the applicants are regularly paying instalments as fixed by the Accounts Section and maximum amount has already been paid. There is no mens rea on the part of the applicants or any of the accused persons for causing any wrongful loss to the Government Exchequer and wrongful gain to them. Therefore, prima facie, at the face of the said circular and rules, no case is made out for putting the applicants to trial.

11. It is, further submitted for the sake of argument that as per Rule 14, Sub-rule (7)/Rule 16, Sub-rule (6) of the Rules, if advance has been withdrawn by a subscriber and the advance granted, is subsequently disallowedor in excess before repayment is complete, the whole or balance amount withdrawn shall forthwith be repaid or ordered to be recovered by deduction from the emoluments of the subscriber in lumpsum or in monthly instalments. Therefore, if the authority was of the opinion that advance was not granted in accordance with the rules, the same could have been ordered to repay as per these provisions. Under Rule 14 Sub-rule (7) of the Rules, on excess payment, interest can be charged.

12. In contra, Mr. Girish Desai, learned Deputy Advocate General has submitted that house advances have been sanctioned to the teachers contrary to the amended rules. The applicants cannot get any benefit of the circular because along with the circular dated 1st March, 1996 (Annexure A-9) original amended rules are also attached (Annexure A-11) and concerned officials were directed to act in accordance with the Rules. If something contrary is mentioned in the circular (Annexure A-9) which is in Hindi, applicants cannot get benefit of the circular (Annexure A-9).

13. Having heard learned Counsel for the parties and after perusing the entire record of the case, this Court is of the opinion that the advances sanctioned for the purpose/construction of house/flat to the teachers by the sanctioning authority, i.e., B.E.O. was well within the Provisions of Rules. Learned Trial Court has considered only Rule 15, Sub-rule (5) and failed to consider sub-rules (4), (5) and (7) of Rule 15 as well as Rule 16-B, Sub-rule (4) (i) of the Rules. For convenience sub-rules (4), (5) and (7) of Rule 15 reads as follows :--

'Rule 15...

(4) After completion of five years of service, a temporary advance upto the whole amount standing to the credit of the subscriber may be granted by the sanctioning authority for the purchase of construction of a residential house or for the purchase

of a flat or to meet any advance payment towards the allotment of a residential house or flat.

(5) After completion of five years of service and before fifteen years of the date of superannuation of the subscriber for the construction or purchase of residential house or flat, an amount of 840% of the monthly pay may be granted to a subscriber irrespective of the amount standing to his credit in the fund. The advance in this case will be in addition to the advance for the same purpose under Sub-rule (4).

(6)..

(7) In the case of advance under Sub-rule (5) the subscriber shall also liable to pay interest at the rate of 2% higher than the interest prescribed under Rule 14 and shall be payable by the subscriber in the manner laid down in Sub-rule (4) of Rule 16.'

14. According to Rule 15, Sub-rule (4) after completion of 5 years of service the whole amount standing to the credit of the subscriber may be granted by the sanctioning authority for purchase or construction of a residential house or for purchase of a flat and the amount mentioned in Rule 5 will be in addition to the advance for the same purpose under Sub-rule (4) of the Rules. Learned Court below has considered only Sub-rule (5) of Rule 15 for the purpose of calculation of granting advances, which will be the amount of 840% of the monthly pay of the subscriber whereas this amount is in addition to the whole amount standing to the credit of the subscriber in his GPF A/c, if the subscriber has completed 5 years service and before 15 years of the date of superannuation.

15. In the present cases, all teachers have fulfilled both the requirements and they have completed 5 years service and applied for advances for the construction of house before the date of their superannuation. This factual position is not disputed. Learned Trial Court has also failed to consider Rule 16-B, Sub-rule (4) (i) of the Rules which says that the amount of advance shall not exceed Rs. 5 lacs. Learned Trial Court has also failed to consider circular (Annexure A-9) alongwith the original rules. This circular is in the name and by order of the governor duly

signed by the Finance Secretary and clauses (2), (3) and (5) of the said circular are very clear regarding house advances, which may be sanctioned to the Government employees. This circular is fully in consonance with the Rules and the teachers have been granted advances for purchase/construction of house/flat in accordance with the circulars and rules. (Annexures A-9 and A-11)

16. Apart from what has been stated hereinabove, Rule 15, Sub-rule (7) as well as Rule 16, Sub-rule (6) are also very clear regarding excess advances made or subsequently disallowing the application of the employees for grant of advances, to recover the amount withdrawn.

17. In the present cases, all teachers have paid maximum amount of advances which were granted to them for the construction of houses. In the charge-sheet, charges have been levelled that teachers and B.E.Os. as well as Accountant Keshav Joshi after entering into conspiracy, B.E.Os. and Accountant after receiving illegal gratification from the teachers sanctioned advances. But for this allegation, there is absolutely no material available in the charge-sheet. This allegation is based on presumption. Court is not obliged to accept ipse dixit of prosecution without material on record. Supreme Court has ruledin number of cases that Judge is not mainly required to act as the post office or mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of evidence and the documents produced before the Court. At the same time, Supreme Court has also restricted for making a rowing inquiry into the pros and cons in the matter and weighing evidence at the stage of framing of charge. Reference can safely be made to the decisions (1) State of Karnataka v. L. Muniswamy and Ors. (AIR 1977 SC1489), (2) Century Spinning & . v. The State of Maharashtra (AIR 1972 SC 545); (3) Niranjan Singh v. Jitendra [AIR 1990 SC 1962 : (2002) 2 SCC135]; (4) State of U.P. v. UdaiNarayan and Anr. [(1999) 8 SCC 741]; (5) Munna Devi v. State of Rajasthan and Anr., (2001) 9 SCC 631. This Court has also considered in detail the application of law at the stage of framing of charge in case of PA. Samual v. State of M.P. [2002(3) M.P.H.T. 393].

18. In the present cases, Court is required to consider application of the Rules, Circulars (Annexures A-9 and A-11). It is very clear that teachers have been

granted advances for the construction/purchase of house/plot in accordance with these Rules. The teachers are regularly paying their instalments and very meagre amount is remained to be paid by them. They are paying their instalments with interest as per Rules. In totality of the circumstances of the case, there appears no mens rea on the part of the applicants, therefore, no useful purpose would be served to put all the applicants to trial, which may cause financial loss to the public exchequer as well as waste of important and precious time of the Court and also put the applicants in mental, physical, financial and social loss and agony which is contrary to the Provision of Art. 21 of the Constitution of India.

19. One of the co-accused, Keshav Joshi, Accountant has not filed any revision against the impugned order of framing of charge, but since all the charges framed against the applicants are quashed by this order and that the case of this co-accused stands on same footing, the same benefit be also given to Keshav Joshi, as per Supreme Court judgment reported in Akhil Ali Jehangir All Sayyad v. State of Maharashtra [2002 (II) MPWN 35] as well as in Ajit Singh v. State of Haryana [1997 (I) MPWN 85].

20. Consequently, these Criminal Revisions are allowed and the proceedings pending before the Courts below against the applicants/accused persons are hereby quashed.

21. Copy of this order be placed in the aforesaid connected Criminal Revisions.