

State Vs. J.N. Manchanda, Motor Vehicle Inspector, Delhi

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Court : Delhi

Decided On : Feb-24-1969

Reported in : ILR1969Delhi619

Judge : Hardayal Hardy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 251A

Appeal No. : Criminal Revision Appeal No. 313 of 1967

Appellant : State ;through Government Counsel, Delhi Administration

Respondent : J.N. Manchanda, Motor Vehicle Inspector, Delhi

Advocate for Pet/Ap. : R.K. Verma,; Nur-u-din Ahmed and; D.R. Sethi, Advs

Judgement :

Hardayal Hardy, J.

(1) This Criminal Revision has been filed by the State and is directed against an order made by Shri D. R. Dhamija, Special Judge discharging one Shri J. N. Manchanda who was sent up for trial before him on a charge under section 5(1)(c) read with Section 5 (2) of the Prevention of Corruption Act, 1947.

(2) It was alleged by the Prosecution that on 6-8-1965 the accused was working as a Motor Vehicle Inspector in the Directorate of Transport Delhi Administration. On

receipt of information that he was a corrupt officer and had by corrupt or illegal means amassed assets which were dis-proportionate to his known sources of income, the premises in his occupation were searched. As a result of the search and further investigation, his income was found to be Rs. 37,781.00 his expenditure was estimated at Rs. 39,463.00 - and his total assets were valued at Rs. 37,006.00. The details of his income, expenditure and assets were given in Annexures A, B and C attached to the charge-sheet submitted against him by the police.

(3) Learned trial Judge on consideration of the documents referred to in section 173 of the Code of Criminal Procedure and after giving the prosecution and the accused an opportunity of being heard, came to the conclusion that there was no prima facie case against the accused and consequently discharged him by an order dated 18-4-1967

(4) The correctness of that order has been attacked by the learned counsel for the State who has argued that under sub-section (2) of Section 251-A of the Code of Criminal Procedure an order of discharge can be passed by a Magistrate only when he considers the charge against the accused to be groundless. In, the present case, the learned Special Judge who was required under the law to follow the procedure prescribed for trial by a magistrate in a warrant-case instituted on a police report has, according to the learned counsel, fallen into an initial error inasmuch as he has approached the case from an entirely wrong stand-point. The foundation for this criticism is the following observation made by the learned Judge in the early part of his order. The learned Judge remarked:-

'I have gone through the police papers and heard Shri Dhal P.P. for the State and Shri Nurudin Ahmed for the accused. If the evidence collected by the prosecution and intended to be produced shows that if unrebutted it is sufficient for the conviction of the accused then there is a prima facie case against him and he should be charged, otherwise he is entitled to be discharged.'

(5) According to the learned counsel for the State, the scope of sub-section (2) of section 251-A which empowers a Magistrate to discharge the accused at the earliest stage, is similar to that under sub-section (2) of section 253. That section

also provides that the Magistrate is entitled to discharge the accused at any previous stage of the case if, for reasons to be recorded by him, he considers the charge to be groundless. According to the learned counsel, what the Special Judge has done in this case is to treat the case as if it fell within the purview of sub-section (1) of section 253 which reads as under :-

'IF, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.'

(6) My attention has in this connection been invited by the learned counsel to a decision of the Supreme Court in *Bipat Gope and others v. State of Bihar* where their Lordships were considering the scope of sub-section (6) of section 207-A on a comparison with the provisions contained in section 209 Criminal Procedure Code. It was held that the words of sub-section (6) of section 207-A and of section 209 were not the same and that it was possible to say that the force of the two sections was also not the same and that section 209 gave power to the Magistrate to enter upon a case in a manner which section 207-A did not warrant.

(7) The judgment has only an indirect bearing on the question arising for determination in this case. The next case cited by the learned counsel is single judgment of Mysore High Court in *State of Mysore v. Gundapa and others* (2). The case is directly in point as it deals with an order of discharge passed by a Magistrate under section 251-A (2) of the Code of Criminal Procedure. It was held that under that section the Magistrate has only to decide the question whether from the material considered, in the light of the arguments, it can be said that the charge against the accused is groundless i.e. whether the material furnished by the records is such that it does not afford any reasonable basis or foundation to support the accusation made against the accused. The Magistrate has not to consider at this stage whether the material when tested by cross-examination, would or would not be capable of acceptance for founding a conviction. Considerations which might prevail at the conclusion of the trial cannot be availed of at this stage. The jurisdiction of the Magistrate does not extend to the weighing

of the police statements and other records as if he is scrutinising the evidence given at the trial. He has only to consider whether the material as a whole produced before him, discloses an offence; if it does, he has to frame a charge and proceed with the trial.

(8) Applying the principle laid down in this judgment⁸ to the order under revision, it is difficult to say that the learned Judge has done anything more than to consider the material that was placed before him in the police report and the documents and statements of witnesses etc. which are required to accompany it in accordance with the provisions of sub-section (4) of section 173 Criminal Procedure Code. It is on the examination of that material only that the learned Judge has reached the conclusion that there is no prima facie case against the accused. It may be that the word 'groundless' would have been more appropriate to use; but the meaning of the learned Judge when he said that there was 'no prima facie case' against the accused, can be scarcely different. I therefore do not agree with the learned counsel for the State that there has been any error in the learned Judge's approach to the case.

(9) The next contention urged by the learned counsel for the State is that according to the learned Judge himself the assets and expenditure of the accused put together came to Rs. 40,813.00 whereas the income according to known sources of his income was Rs. 37,781.00. The assets thus exceeded the income by Rs. 3,032.00. This excess over known sources of income was arrived at after making a liberal allowance for the assets and expenditure. There was therefore no room for holding that the charge against the accused was groundless or there was no prima facie case against him.

(10) In support of his argument reliance is placed on two decisions of the Supreme Court in *Sajjan Singh v. State of Punjab* and *C.S.D. Swami v. The State*. *Sajjan Singh's* case had been cited before the learned Special Judge and was distinguished by him. It appears to me that the learned Judge was fully justified in holding that the decision did not help the argument of the counsel. *Sajjan Singh* who was appellant in that case was found to have assets amounting to Rs. 120,000.00 as against his net income of Rs. 1,03,000.00 out of which at least

Rs.36,000.00 had to be deducted on account of living expenses. His assets has therefore to be compared with a net income of Rs.67,000.00 leaving an excess of Rs. 53,000.00 which amount was held to be clearly dis-proportionate. In the present case, the excess is claimed to be not more than a paltry sum of Rs. 3,033.00 This can hardly be characterised as 'disproportionate' to the known sources of income of the accused. There can be no doubt that the word 'dis-proportionate' means something more than mere excess.

(11) The case of C.S.D. Swami is also of no assistance to the learned counsel. The High Court's finding in that case was that the appellant had not satisfactorily accounted for the receipt of Rs.73,000.00 and odd in cash and about Rs.18,000.00 by cheques during the years 1947-58. These amounts were held to be wholly dis-proportionate to his known sources of income, namely, his salary as a government servant and it was on that finding that he was found guilty of criminal mis-conduct in the discharge of his official duties.

(12) Learned counsel for the State then took me through various items of expenditure and assets as detailed in Annexures B and C to the charge-sheet and submitted that according to the prosecution the accused had spent during the relevant period Rs. 1,49,000 on the education of his son in St. Columba's School New Delhi whereas the learned Special Judge had taken the figure at RS.1,080.00 on the ground that the boy was not using the school bus. I asked the learned counsel to point out from the police papers the material in support of the figure of Rs. 1,490.00 He was unable to point out any such material which should incline me to hold that the expenditure of Rs.1,080.00 accepted by the learned trial Judge was an under-estimate in any manner.

(13) Likewise the learned counsel was not in a position to point out to any tangible evidence in support of the figure of Rs.22,387.00 in so far as it was made up to items of expenditure on food and clothing and other items of daily need and miscellaneous expenses. This figure had been arrived at on the basis of monthly expenses of the accused being Rs.280.00 and odd as against Rs.150.00 claimed by him. The impugned order states that the Public Prosecutor appearing before the learned Judge had to concede that there was no material to establish that the

monthly expenses of the accused under this head were Rs.280.00 and odd and upto Rs.150.00. The only improvement of the concession made before the trial Judge which the learned counsel for the State has been able to make in the course of his arguments before me is that besides expenditure on food and clothing the accused was also supposed to spend money on cosmetics like soap, hair oil, talcum powder, face cream etc. for which due allowance had to be made in calculating his monthly expenses. It may be that the accused and the members of his family were making use of cosmetics but if their monthly expenditure on food and clothing had to be accepted at a figure of Rs.150.00 per mensem obviously the expenses on toilet goods could not be to the extent of Rs.130.00 per mensem so as to enable one to accept the police estimate of monthly expenses of the accused at the figure of Rs.280.00 and odd.

(14) Learned Special Judge has also dealt with certain other items of expenditure and has held that on the material before him the figure relating to expenses seemed to be the result of an over-estimate.

(15) Turning now to Annexure C which deals with the assets of the accused, here again one finds the same tendency at exaggeration. A glaring instance of this exaggeration is to be found by the inclusion of a figure of Rs.20,000.00 being the value of a house in New Rajinder Nagar Delhi which according to the prosecution was purchased by the accused on 4-6-1964. The exclusion of this item from calculation by the learned Judge has evoked strong criticism from the learned counsel for the State. The material in support of the 'prosecution case in relation to this item is the expenditure by the accused of Rs.1,750.00 on account of cost of stamp and registration charges and the discovery of the original sale deed from a box owned by the accused. The evidence afforded by these two circumstances was counter-balanced by the statement of the prosecution witness who was examined to prove the transaction. He had stated that the transaction relating to the purchase of the house was entered into by the father of the accused and that the accused was not concerned with it at any stage. He had neither taken any part in the negotiations that preceded the purchase nor was he present at the time when the sale deed was executed. There was also material on record to show that Tuisi Das Manchanda, father of the accused who is shown to be the owner of the

house has two sons; one of them is a film producer in Bombay while the other is a commissioned officer in the Army. The police papers also showed that a bank draft for Rs.5,000.00 had been received from the accused's brother at Bombay which went towards the purchase of the house. This fact was conceded by the learned Public Prosecutor before the learned Special Judge. During the course of arguments before the learned Judge when different documents relied upon by the prosecution were being perused it also transpired that the attention of the learned Judge was drawn to another bank draft of Rs.10,000.00 which had been received by the accused from his brother in Bombay. Learned Judge called upon the prosecution to explain the origin and disbursement of this draft and an opportunity was given to the learned Public Prosecutor for that purpose.

(16) On 27-3-1967 learned Public Prosecutor asked for further time till 5-4-1967 but no Explanationn was furnished. On 12-4-1967 learned Public Prosecutor asked for further time to cite authorities on the question whether the house purchased by the father of the accused could be said to be held on behalf of the accused. No such authority was placed before the learned Judge nor has any such authority been placed before me. The house ostensibly stood in the name of the accused's father who could by no means be considered as a wholly impecunious person; it was nto disputed before me that he held the Degree of Bachelor of Arts from Government College Lahore and was. before the partition of the country, employed as a Manager of the Sind Purchasing Board at Karachi. He had two other sons besides the accused; one of them was engaged in the business of film production at Bombay while the other was a commissioned officer in the army and was probably holding the rank of a Major. There was in-controvertible evidence about a bank-draft for Rs.5,000.00 which had been sent by one of the sons from Bombay for the purchase of the house. There was also material to show that another draft of Rs.10,000.00 had been sent from Bombay shortly before the house had been purchased. The number and date of the draft and the name of the drawee bank were given to the prosecution and yet inspire of two adjournments the learned Public Prosecutor had nto been able to show that no such draft had actually been received of the amount if received, had been spent for some other purpose.

(17) There is no presumption in law that a house purchased in the name of the father who has three sons is the property of the son with whom the father is living. The circumstance that the sale deed was found lying in the box owned by the accused or the cost of stamp and registration of the sale deed had been met by the accused is hardly of any significance, especially when there is material to show that a considerable portion of the money required for the purchase of the house came from the accused's brother in Bombay.

(18) There is also an item of Rs,2054.00 being the value of a refrigerator which the prosecution claimed was the property of the accused. The material collected by the police showed that the receipt was not in the name of the accused. The Explanation of the accused was that the machine had been purchased by his cousin who had kept it with him.

(19) There are also certain other items such as a sum of Rs.2,436.00 lying in deposit in the post office savings bank account of a minor son of the accused and a sum of Rs.451.00 lying in deposit in the bank account of his wife. Neither of the two amounts lying in the account of the minor son or the wife of the accused can necessarily be treated as belonging to the accused. There is no material on record to trace the source of these amounts to the accused. In a reasonably well-to-do family it is not unusual for children to collect small sums of money from time to time on account of presents and gifts received from relations nor is it unusual for a wife to have a small sum of money of her own which she may have received as presents on festivals and other occasions from her relations. There is nothing to show that the Explanation given by the accused for the presence of these accounts was either improbable or false. The amounts ostensibly do not stand in the name of the accused nor were they so large as to give rise to an inference that they must have been put in the names of his wife and child with some ulterior purpose; and yet the money lying in the account of the minor son of the accused has been treated as an asset of the accused himself. In my opinion this amount could have been very well excluded there from. Likewise the cost of refrigerator should have also been excluded from the list of assets belonging to the accused. If some of these items are excluded from the list of assets there will be hardly any excess for which the accused might be held to be accountable in law.

(20) The object of the procedure laid down in section 251-A Cr.P.C. appears to me to avoid un-necessary delay in the trial of the case. Instead of examining witnesses before a charge could be framed against the accused as was the practice before the amendment of the Code in 1956, the new procedure eliminates that stage of the trial and substitutes for it the procedure of placing before the magistrate the statements of witnesses recorded by the police and the documents collected by them during the course of investigation to enable him to consider whether he will be justified in framing a charge or he should pass an order of discharge. The framing of charge is nto a mere formality and object is nto to prosecute accused persons no matter what the ultimate result of the trial might be. Its real object is to make the accused face a trial which may reasonably lead to a conviction. The 'groundless' in my judgment, does nto mean anything more nor less than the absence of a reasonable ground to expect a conviction. It is thereforee open to the Magistrate at this stage to examine the material placed before him by the prosecution and also the material and Explanationn suggested on behalf of the accused and to consider that material in the light of arguments addressed' to him by both sides.

(21) I fail to see how it can be said in the present case that on consideration of the material placed before the learned Special Judge by the prosecution and the accused and the Explanationn suggested in the arguments addressed to him by both sides there is any error in the order of discharge passed by him which requires to be corrected by this Court in the exercise of its revisional jurisdiction.

(22) The result of the fore-going discussion is that the revision fails and is thereforee dismissed.