

Rita Handa Vs. Cbi

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Court : Delhi

Decided On : Aug-01-2008

Reported in : 152(2008)DLT248; 2008(105)DRJ331

Judge : Sanjay Kishan Kaul, J.

Acts : Prevention of Corruption Act - Sections 13(1) and 13(2); Indian Penal Code (IPC) - Sections 120B and 420; Code of Criminal Procedure (CrPC) - Sections 227 and 395 to 401

Appeal No. : Crl. Revision Petition No. 965/2006

Appellant : Rita Handa

Respondent : Cbi

Advocate for Def. : Ashiesh Kumar, Adv.

Advocate for Pet/Ap. : H.S. Phoolka, Sr. Adv.,; M.S. Ahluwalia and; K. Faisal,

Disposition : Petition allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The Ministry of Health and Family Welfare, Government of India (GOI) selected M/s Rail India Technical and Economic Services ('M/s RITES' for short) as a

consultant for services including procurement and supply of Vitamin 'A' solution to various states of the country, finalizing of tenders and other related activities during the year 1997-98. M/s RITES invited bids and accepted the tender of M/s Reliance Bulk Drugs and Formulations Ltd. (for short 'M/s RBDFL') and entered into a contract for the supply of 33136 units @ Rs. 419.64 per unit of a specified quality.

2. It is stated that at the initial stage itself M/s RBDFL submitted forged bank guarantee B.G. No. BG/1219 dated 19-09-1997 along with forged BG extension covering letters signed by one Shri V.K. Chawla, Managing Director, M/s RBDFL (accused no. 3) and Atul Gupta, Assistant General Manager, M/s RBDFL (accused no. 4) on behalf of M/s RBDFL (accused no. 5) to the Ministry. The aforesaid documents were marked to Ms. Rita Handa/ petitioner, the then Joint General Manager, M/s RITES (accused no.1) and Shri Rajesh Sehra, Accountant, M/s RITES (accused no. 2) for proper verification which is alleged to have not been carried out.

3. It is stated the Ministry issued inspection notes for 17362 units to be supplied to various consignees in Tamil Nadu but M/s RBDFL supplied only 6666 inspected units and supplied sub-standard uninspected units to 8 districts of Tamil Nadu. For the said purpose, it got forged signatures and stamps of the consignees on the inspection notes to show that the supplies had been made and claimed payment from M/s RITES on the basis of the same. It is contended that the petitioner and accused no. 2 who were responsible for processing the said documents on behalf of M/s RITES, released the payment of Rs. 72, 85,790/- without making any verification about the delivery of the goods to the consignees and also released the balance 10% payment without prior confirmation from the Ministry.

4. Consequently, on 05-10-2000 on the basis of a source information the respondent registered Case RC 2(A)/2000/CBI/ACU-VII against all the accused persons and after the completion of the investigation, a charge sheet was filed. The Learned Spl. Judge, CBI after taking note of the factual matrix of the case and hearing the parties, framed charges against the petitioner and other co-accused vide order dated 28-03-2006 and 31-03-2006 Sections 420/120B of the Indian

Penal Code (IPC) and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (the PC Act for short). The petitioner assailed the aforesaid orders on charge before this Court by way of a Revision Petition and vide order dated 10-08-2006, this Court set aside the Trial Court's order and remanded the matter back to the Trial Court to consider the submissions made on behalf of the petitioner afresh and directed that it shall be open to the petitioner to raise all issues before the Trial Court hearing the question on framing of charges.

5. In compliance with the direction by this Court, the Trial Court after hearing the arguments afresh in respect of the petitioner, found against the petitioner and passed an order dated 05-12-2006 on charge and framed charges on 12-12-2006 Sections 420/120B IPC and Section 13(2) r/w 13(1)(d) of the PC Act. The petitioner thus by way of this present petition seeks to challenge the aforesaid orders on charge.

6. It is stated that the case is at the stage of prosecution evidence and 11 witnesses have been examined so far.

7. The learned Counsel for the petitioner vehemently argued that there is no evidence placed on record to prove the case against the petitioner. The attention of this Court was brought to certain paragraphs of the sanction order dated 08-09-2003 relevant to the case of the petitioner which show that it was one Shri A.K. Varshney, the then Addl. GM, MSM division, RITES who was responsible to check the genuineness of the bank guarantee but he did not check the same in pursuance of the criminal conspiracy with accused no. 3 and 4 and issued supply orders in favour of M/S RBDFL and facilitated M/s RBDFL to obtain the said contract.

8. It was contended that out of the 11 witnesses examined so far, the testimony of only four witnesses relate to the petitioner and all such witnesses have clearly stated that the verification of the bank guarantee was the responsibility of Shri A.K. Varshney and the role of the accounts department in relation to the BG was only to keep the same in safe custody.

9. Learned Counsel for the petitioner relied on the statements of PW 69, 70 and 71 to show that the verification of the documents and co-ordination with consignees was the exclusive role of the MSM Division and Shri A.K. Varshney being the co-ordinator on behalf of RITES was solely responsible for the same. In so far as clearance of payments from the accounts department is concerned, the statement of PW 70 shows that it was not mandatory to take clearance of MSM division before releasing payments which had to be made directly to the suppliers by the accounts department. As for the inspection notes, they were received by the MSM division and as per the practice in RITES retained by MSM division itself, thus it was contended that there was no question of verification of these inspection notes by the accounts department.

10. The argument raised by the learned Counsel for the petitioner was that the petitioner was falsely implicated in this case where as Shri A.K. Varshney, the overall in charge of the procurement project who was identified as the main accused has been left scot-free by the CBI. Learned Counsel further relied on a letter dated 01-03-2004 written by RITES to CBI wherein it is stated that the petitioner was caused gross injustice especially in view of the fact that there has been no case made out by the CBI against A.K. Varshney while the petitioner is being prosecuted even though her role was limited to only providing logistic support to A.K. Varshney.

11. It was stated that no mens rea can be imputed to the act of the petitioner since the petitioner working in her official capacity as Joint Accounts Manger, Accounts, RITES was merely responsible for signing the cheques which had to be duly processed by accused no. 2/accountant. In this regard, the learned Counsel for the petitioner placed reliance on the judgment in Anil Kumar Bose v. State of Bihar : 1974 CriLJ1026 wherein it was held that a failure on the part of the concerned employees to perform their duties or to observe the rules of procedure laid down in the duty chart in a proper manner may be an administrative lapse on their part and may be at the highest, a case of error of judgment or breach of performance of duty which per se, cannot be equated with dishonest intention. It was observed that mens rea is one of the essential ingredients of the offence of cheating.

12. It was submitted that there has been no material placed on record to show that the petitioner got any pecuniary advantage to herself or to the supplier so as to bring her within the ambit of Section 13(2) of the PC Act.

13. It was also pointed out that the petitioner was exonerated in a departmental preliminary enquiry conducted and that she is maintaining consistent outstanding service records and high integrity in the office whereby the department has promoted her. In *Surkhi Lal v. Union of India* 2005 (3) JCC 1788, the court held that if the departmental proceedings end in a finding in favor of the accused in respect of the allegations which also form the basis for the criminal proceedings then the departmental adjudication will remove the very basis of the criminal proceedings and in such situation the continuance of the criminal proceedings will be a futile exercise and an abuse of the process of the court.

14. On the other hand, the allegations made by the prosecution against the petitioner are two fold. The first one being that the petitioner did not verify the said bank guarantee alleged to be forged, submitted by accused no. 3 and 4 on behalf of accused no. 5 company purported to have been issued by PNB, Chandigarh as a performance guarantee. It is also contended that at the time of making payment to accused no. 5 against the bills raised, the petitioner released the said payment on the basis of forged signatures and stamps of the consignees without verifying the same from the consignees as also that the balance 10% of the payment was released without receiving a confirmation from the Ministry. It was thus contended that pursuant to a conspiracy hatched amongst the petitioner and the other co-accused, the petitioner abused her position as a public servant causing a wrongful loss of Rs.72,85,790/- to the GOI and a wrongful gain to herself and the other co-accused.

15. The learned Counsel for the CBI in support of its contentions submitted that the case is at the initial stage of evidence as also that there is sufficient material on record to sustain the charges framed against the petitioner. The testimony of PW1 and PW 4 shows that the said Bank Guarantee appeared to be forged and PW 2 in his statement submitted that accused no. 3 or accused no. 5 did not have a bank account in the concerned PNB Branch. It is contended that other than this,

there is enough documentary evidence to strengthen the case of the prosecution. D-10 proves submission of fake bank guarantee by RBDL for seeking said contract. D-11 proves the fake confirmation letter for the BG submitted by RBDL. D-12 to D17 proves the fake extension letters of BG. D-18 to D-20 proves that the cheque submitted by RBDL in place of the BG was returned unpaid by the bank. D-23 and D- 24 are files of the Ministry regarding complaints from Tamil Nadu regarding non-supply of Vitamin A. D-26 proves claims of payment by RBDL on the basis of fake inspection notes. D-29 proves payment made to RBDL by RITES. D-31 proves that the BG was not issued by PNB, Chandigarh. D-78 proves that the inspection notes issued by accused no. 4 were forged.

16. It was submitted that the testimonies of PW 69, 70, 71 and 72 are of much relevance in order to make out a prima facie case against the petitioner. PW 71, Shri N. Narayana Swami working as DGM, RITES in his statement stated that all the accounts matters pertaining to the procurement by RITES, MSM Division on behalf of the Ministry were dealt with by the petitioner and accused no. 2. It is stated that the petitioner had not sought any kind of guidance from him in this regard. It is further stated the alteration of the date of issue of inspection notes, the impossible nature of delivery to far of places in Tamil Nadu within a span of two days (which should have raised a suspicion) were over looked by the accounts department and the bills were passed without any application of mind. The testimony of PW 70 Shri Shivendar Kumar, Group General Manger MSM, RITES shows that the accounts department in case of any doubt was at a liberty to consult the MSM division before releasing the payment as also that there was nothing on record in the MSM file to show that such guidance was sought for. Such payment was released by the accounts department without seeking clearance from the MSM division due to which it became difficult to realize the performance guarantee amount from the account of accused no 5 for unsatisfactory performance of the contract for the bank guarantee submitted turned out to be fake.

17. The statement produced in evidence of PW 69 Shri Rajnish Gupta, Joint General Manger, MSM, RITES shows that it was the duty of the accounts department to see that the conditions of the contract have been met with by the

supplier and that some percentage of the payment against the supply bills is withheld which portion is released only after final acceptance of the goods by the consignees. PW 72 in his affidavit of evidence has stated that the logistic support included the co-ordination with the consignees by RITES as per the agreement with the Ministry.

18. The learned Counsel to further substantiate its case referred to the decision of the Apex Court in *Soma Chakravarty v. State* through CBI : 2007 CriLJ3257 and the relevant portion of the said decision is as under:

13. In our opinion once a person signs on a document he or she is expected to make some enquiry before signing it. In fact, accused Soma Chakravarty was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director. 14. No doubt Soma Chakravarty contended that she signed these fake bills by negligence but without any mala fide intention, but this is a matter which in our opinion, is to be seen at the time of the trial. There are serious allegations of misappropriation of a huge amount of money belonging to the government, and it cannot be said at this stage that there is no material at all for framing the charge against her. Hence, we agree with the view taken by the High Court in this connection.

19. In so far as prosecuting Shri A.K. Varshney is concerned, the learned Counsel submitted that the law prohibits his prosecution without sanction from the competent authority. The learned Counsel for the CBI referred to the case of *Prakash Singh Badal and Anr. v. State of Punjab and Ors.* : AIR 2007 SC1274 wherein it was held that the distinction between the absence of sanction and the invalidity of sanction on the ground of non application of mind is that the former question can be agitated at the threshold but the latter is a question which has to be raised during trial.

20. It was argued that there was no regular departmental enquiry conducted against the petitioner and thus the plea regarding exoneration from a charge has no bearing effect on the trial of the accused/petitioner in the case. The learned

Counsel relied on the judgment of Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. : 2005 CriLJ2161 to contend that even otherwise the mere fact that the petitioner has been exonerated in the departmental enquiry is of no consequence and will not effect the criminal proceedings initiated against the petitioner. The relevant portion of the above said judgment is re-produced hereunder:

24. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

21. The plea raised by the learned Counsel for the CBI was that at the stage of framing of charges, the accused cannot rely on any document to prove its case and thus the letter dated 01-03-2004 and its subsequent correspondence cannot be accepted or relied upon by the petitioner as a material piece of evidence in its favour and in this regard referred to the decision of the Apex court in Hem Chand v. State of Jharkhand : AIR 2008 SC1903 :

12. The learned Special Judge, however, considering the documents on record opined; But at this stage I find that unless the documents filed by the defence are not formally proved no finding can be given, because it would amount to discussion the merit of the case before conclusion of trial. However, the materials collected in the case diary by the prosecution reveals that there are ground for framing charge under the aforesaid sections against the accused petitioner. Hence, the above petition stands rejected.

22. The Apex court on many occasions has had the opportunity to reiterate the well settled principles on the law governing framing of charges. In Niranjana Singh Karam Singh Punjabi, Advocate v. Jitender Bhimraj Bijaya and Ors. : 1990

CriLJ1869 ; Union of India v. Prafulla Kumar Samal and Anr. : 1979 CriLJ154 ; Dilawar Balu Kurane v. State of Maharashtra : 2002 CriLJ980 ; Soma Chakravarty v. State through CBI : 2007 CriLJ3257 ; Om Wati (Smt) and Anr. v. State through Delhi Admin. and Ors. : 2001 CriLJ1723 ; State of Orissa v. Debendra Nath Padhi : AIR 2005 SC359 ; Neeraj Gupta and Ors. v. CBI 2007 V Ad (Cri.) (DHC) 517 the court has repeatedly held that the Court at the stage of framing charges has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him will give rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 of the Code the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

23. It cannot be lost sight of that Section 401 Cr PC conferring powers of an appellate court on the revisional court is with the limited purpose. The provisions contained in Section 395 to Section 401 Cr PC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. Thus, the High Court in revision while exercising supervisory jurisdiction of a restricted nature is justified in refusing to re- appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the Ld. Trial Court is correct. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to

prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

24. The aforesaid aspect have been emphasized to make it clear that this Court shall not go into the detailed scrutiny of this case so as to derive a different conclusion.

25. I have given my thoughtful consideration to the present matter and in my considered view, the Ld. Trial Court has failed to appreciate and examine the material and the evidence placed on record so as to frame charges against the petitioner. The petitioner was working as Joint General Manager (Accounts) in RITES at the time of commission of the alleged offence. A perusal of the evidence proved on record shows that it was exclusively the duty of Shri A.K. Varshney, MSM division to check/verify the genuineness of the said bank guarantee and the role of the accounts department was restricted to keep the same in safe custody. The statement of PW 85 apart from the others clearly shows that PW 85 working as a consultant in the MSM division, as per the direction of Shri A.K. Varshney, in course of discharge of his duty prepared a covering letter dated 22-10-1997 signed by Shri A.K. Varshney vide which the said bank guarantee and confirmation letter were sent to the accounts department to be kept in safe custody. Hence, the question of verification of the genuineness of the bank guarantee by the petitioner does not arise.

26. The primary duty of the petitioner in respect of the said contract was to release the payment after the receipt of vouchers signed by the consignees with an official seal as per the provisions of the agreement. However, it cannot be lost sight of that the task of co-ordination with the consignees to ensure receipt of the said supply and verification of the documents/vouchers was to be performed by Shri A.K. Varshney and not the accounts department. The duty of the accounts department was limited to the release of the payment after the receipt of vouchers signed by the consignees. The processing of these vouchers was the duty of accused no. 2 and the petitioner was only required to release such payment on receipt of such vouchers. It was only in case of any doubt that the accounts department was at a liberty to consult the MSM division before releasing the said

payment which means that it was not mandatory for the petitioner to seek any kind of guidance/clearance from the MSM division before releasing the said payment.

27. It may also be taken note of that the contract agreement provided for the terms of making the payment as also the lists of documents based on which such payment was to be released but it no where specified that such documents required verification to be done by the accounts department which was solely the duty of the MSM division. It is here that the case of Soma Chakravarty (Supra) can be distinguished from the present case whereby it can be said that it was Shri A.K. Varshney who was expected to conduct an enquiry into the same and not the petitioner.

28. The petitioner is being put in the dock on the ground that the impossibility of delivery to far off places in Tamil Nadu within a span of two days should have raised her suspicion. In my considered view, this is stretching the duty of care on the part of the petitioner too far. If the converse was to be taken as true, even then the statement of PW 70 clarifies that co-ordination with the consignees did not mean independent verification of receipt of materials by them against the supply contracts for the reason that there were about 500 consignees in this case. Individual verification therefore would have been substantial work. If this was to be intended, it would have been included in the items under logistic support of JPO (Joint procedure Order). The JPO did not lay down independent verification of receipts by the consignees as one of the items. Be that as it may the same by no stretch of imagination can be equated with the petitioner having a dishonest intention/ mens rea. The prosecution has failed to bring on record any evidence so as to prove the same as also that the petitioner in abuse of her official capacity as a public servant got any pecuniary advantage for herself or the supplier. I find myself in full agreement with the view taken in Anil Bose's case (Supra) wherein it can be said that there has been an administrative lapse (if at all) on the part of the petitioner in performance of her duty. The worst that can be imputed to the petitioner is an error of judgment and that cannot give rise to a criminal liability. Thus even after painting the worst scenario as set up by the respondent for the petitioner, there is no criminal culpability made out.

29. The extent of proof required in criminal proceedings is distinct from departmental proceedings. The degree of proof beyond reasonable doubt does not apply to a departmental enquiry. Despite this, there is a finding in favour of the petitioner in the departmental proceedings in respect of the allegations which form the basis of the criminal proceedings. No doubt, there was no regular departmental enquiry but this aspect is being emphasized to show that even the much lesser degree of proof in a departmental enquiry was not met in the case of the petitioner.

30. The settled legal position in law is that at the stage of framing of charges, the documents filed by the defence unless formally proved cannot be relied upon and no finding can be given on the same because it would amount to discussing the merit of the case before conclusion of trial as was held in Hem Chand's case (Supra), therefore the letter dated 01-03-2004 and its subsequent correspondence produced before this Court cannot be accepted or used as a material piece of evidence in favour of the petitioner. The whole approach of the prosecution appears to be faulty as sanction has not been obtained for prosecution of Shri A.K. Varshney who is responsible for the acts but on the other hand his subordinate (the petitioner) is sought to be prosecuted even though she hardly had any role in respect of the fraudulent transaction.

31. In view of the aforesaid, the charges so framed against the petitioner are not made out and there is no prima facie case against her. Hence, the impugned orders on charge dated 05-12-06 and 12-12-06 are set aside and the petition is accordingly allowed. The petitioner stands discharged.

32. The Trial Court Record be sent back.