

Alexander Vs. C.B.i.

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SooperKanoon Citation : sooperkanoon.com/721276

Court : Kerala

Decided On : Mar-15-2006

Reported in : 2006(2)KLT240

Judge : V.K. Bali, C.J. and; J.B. Koshy, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); [Prevention of Corruption \(Amendment\) Act, 1988](#) - Sections 13(1) and 13(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(5), 239 and 482; [Constitution of India](#) - Articles 226 and 227; All India Services (Conduct) Rules, 1968 - Rule 16(2), 16(3) and 16(4)

Appeal No. : CrI. M.C. No. 3081 of 2005

Appellant : Alexander

Respondent : C.B.i.

Advocate for Def. : S. Sreekumar, Adv.

Advocate for Pet/Ap. : K.T.S. Thulasi, Sr. Adv.,; B. Raman Pillai,; R. Anil

Disposition : Petition allowed

Judgement :

ORDER

J.B. Koshy, J.

1. Petitioner, a retired Director General of Police, approached this Court under Section 482 of the Code of Criminal Procedure challenging Annexure C order passed in CrI. M.P. No. 239 of 2001 in C.C. No. 4 of 1995 on the file of the Special Judge (SPECBI) -1, Ernakulam and court charge (Annexure D) framed against him in C.C. No. 4 of 1995. According to Annexure D charge sheet, he was found in possession of assets worth Rs. 62,81,737-38 during the period 30-4-1980 to 20-9-1991 which are disproportionate to his income. It is the contention that the above charge sheet is baseless, illegal and irregular. Final report of the Police (Annexure A) itself and documents produced along with the police report, will prove that the charges are 'ground less' and nothing is going to be gained by asking the petitioner to face the trial of Annexure D charge except wasting the valuable time of the court and causing unbearable hardship and irreparable injury to the petitioner which are irreversible. Annexure D court charge is as follows:

That you, while working as public servant during the check period from 30-4-1980 to 20-9-1991, were found in possession of assets worth Rs. 62,81,737.38 which are disproportionate to your all known sources of income and for which you could not satisfactorily account and thereby you committed the offences punishable under Section 5(2) r/w. 5(1)(e) of the [Prevention of Corruption Act, 1947](#) and 13(2)r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and within the cognizance of this court.

Even though petitioner approached the Apex Court when there was an order for surrender of his passport while granting bail. Honourable Apex Court, though admitted the SLP with regard to that question, further observed that since final report and charge were filed accused can approach the Special Court for discharge or an appeal before the appropriate forum for questioning of the proceedings by Annexure E order. When proceedings were questioned, this Court was of the view that that contention has to be argued before the Sessions Court while framing charge and considering the question of discharge. Apex Court also took the same view, but, observed that:

However, we make it clear that the petitioner would be at liberty to raise all his contentions before the appropriate court. Without prejudice to the same, the special leave petition is dismissed.

2. Even though a preliminary objection was raised by Advocate Mr. Sreekukmar, counsel appearing for the CBI that since petition for discharge was dismissed, petitioner should have filed revision petition and not a petition under Section 482 of the Code of Criminal Procedure, no emphasis was given to that point. In view of the Apex Court decision in *Pepsi Food Ltd. and Anr. v. Special Judicial Magistrate and Ors.* AIR 1998 SC 128, the Apex Court observed as follows:

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts.

It was further observed as follows:

29. No doubt, the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

3. The main ground of the petitioner is that undisputed documents annexed to the charge sheet were not considered by the Sessions Court while dismissing his discharge application and framing the charges. It is his contention that he hails from a substantially rich family. His father was an assessee to Agricultural Income Tax. He has large extent of property prior to 1968 as can be seen from document

Nos. 5 to 9 in the charge sheet. He was a first rank holder and Lecturer in Department of Politics in the University of Kerala when he was selected to IPS in 1961. He married from a rich family and his wife is a heiress and he inherited large extent of agricultural property mainly rubber plantations. His three children have also become major before the check in period and they are also highly educated and earning members. They also had agricultural properties inherited from the in-laws of the petitioner much before the check in period, but, the income was calculated by the investigating agency including the independent income of his family members, that is, his wife and major children. It is the further case that apart from all other income, if the income mentioned in Exts. D468, D520, D522, D524, D550, D551, D552, D546, D543 and D17 are taken into account, it would show that the income of the wife and children through properties inherited by him from the petitioner's in-laws was to the tune of Rs. 78,43,720-50 during the check in period. The above documents and income are as follows:

Sl. Document Particulars Amount

No. Number

1. D-468 Proceedings conducted by the Rs. 8,22,838-00

AITO with respect to the properties

owned by the wife and children of the

petitioner in Kottarakara

Taluk for the period 1985 to 1991

2. D-520 Bank statements/records of Rs.28,47,731-07

Dhanya Estate (owned by the

petitioner's son Alexander

Jacob) bearing Current

Account Mo. 4248 in Canara

Bank, Kulashekham (TN)

3. D-522 Bank statements/records of Rs. 12,69,447-27

Aiswarya Estate (owned by the

petitioner's daughter Priti Jacob)

bearing Current Account No. 4247 in

Canara Bank, Kulashekham (TN)

4. D-524 Bank statements/records of Rs. 11,57,073-12

Haritha Estate (owned by the

petitioner's daughter Nidu Jacob)

bearing Current Account No. 4246 in

Canara Bank, Kulashekham (TN)

5. D-550 Account books and office records of Rs. 1,46,930-50

Joylands Estate, Kanyakumari Distt,

owned by the wife of the petitioner for

period 5-1-1990 to 30-3-1991 revealing

income from sale of misc. items like rubber

scrap, fallen rubber woods, plantation etc.

6. D-551 Office records of the Estates belonging to Rs. 77,211-63

the wife and children of the petitioner for the period 13-4-1985 to 20-9-1986, revealing income from sale of misc. items of the Estate.

7. D-552 Office records of the Estates belonging to Rs. 22,471-10

the wife and children of the petitioner for the period 9-6-1984 to 15-2-1985 revealing income from sale of misc. items of the Estate.

8. D-546 Office records of the Estate belonging to the Rs. 1,33,957-95

son of the petitioner w.r.t. the coconut garden for the period 9-4-1987 to Jan. 1991, revealing income from sale of coconut, cloves etc.

9. D-543 Slaughter Tapping Agreement between the Rs. 12,00,000-00

wife and children of the petitioner with

CW-59 (Mr.Pal Raj) w.r.t.4000 rubber

trees in 52.10 acres of rubber estate in

Velimala, revealing income from the lease.

10. D-17 Documents including the Court judgment and decree dt.5-12-1997 by which

the petitioner's wife got 1/5th share of

moveable properties of her father.

It is his case that these documents are annexed to the final report filed by the investigating officer and those documents are undisputable finalised assessment orders or awards or court judgments and official records. The alleged disproportionate income earned during the period was only Rs. 62,81,737-38. Considering the above documents alone, even without going into any other documents, there is a prima facie case to show that disproportionate assets of the petitioner as claimed by the investigating officer is only imaginary. This income is without including his own income as salary and interest. Non-consideration of those documents while framing charges and rejection of the petitioner's claim for discharge by Annexure C order, constitute grave error and injustice. Petitioner has also stated that investigating officer has not listed all the source of income of the petitioner and his family, but, he has suppressed such source of income. Coming for the income of the family as revealed, according to the petitioner, these contentions even though raised, that was rejected by the Sessions Judge by merely stating that the court is only to consider whether there is any prima facie case and it can be considered in the final disposal. The learned Sessions Judge held as follows: All the matters narrated in the Criminal M.P. and the written statements and also the submissions made by the learned Counsel for the accused are matters which are to be considered on merits of the case after giving an opportunity to the prosecution to prove the allegations.

For, the limited purpose of deciding whether there is a prima facie case against the accused for proceeding further, I have examined the materials produced by the prosecution. For the said limited purpose I have scrutinised the contents of the Criminal M.P. as well as the written statements of the petitioner. At present at this stage I do not find materials to consider the charge levelled against the accused to be groundless. At this stage I am satisfied that a prima facie case is made out against the accused for proceeding further and, therefore, charges have to be framed against the accused. This Criminal M.P. is devoid of merits, and is only to be dismissed, and I am doing so.

4. It is well settled law that at the time of framing of charges, court need consider only whether there is prima facie case or not. At the same time, if the documents relied on by the prosecution negatives the case of the prosecution, there is no need to put a citizen to harassment and botherisation and facing criminal charges. It is true that power under Section 482 should be exercised sparingly. If the documents accepted by the investigating officer and mentioned in the final report are considered, it will show that there is no prima facie case and no charges need be framed and appellants can be discharged. If final report is groundless and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the accused should be discharged. If the documents produced and relied on by the prosecution show that the charges will not lie, there is no need to compel a person to face criminal proceedings. A person who was holding a high office and enjoying a respectable status in the society, when facing prosecution injuring his reputation and exposing him to social ridicule itself is a punishment. Therefore, while framing charges, court should be careful and consider the documents attached to the charge to find out whether with the documents and evidence collected by the investigating officer, prima facie, constitute an offence.

5. How a trial Judge should consider an application for discharge under Section 227 of Cr.P.C. was considered by the Apex Court in Union of India v. Prafulla Kumar Samal and Anr. : 1979 CriLJ154 . At paragraph 10, it was observed as follows:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

'(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the 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.

(2) 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.

(3) 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 while giving rise to some suspicion but not grave, suspicion against the accused, he will be fully within his right to discharge the accused.

(4) that in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court 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.

6. Separate income of wife and children derived from the property given by in-laws of an officer cannot be taken as income of the officer concerned. If source of the income of the wife and children who themselves are assesseees are explained and failure to consider tax returns which is taken into account when disclosed no offence, the charge should not be framed as held by the Apex Court in State of M.R. v. Mohanlal Soni : 2000 CriLJ3504 . Hon'ble Court was considering a case wherein the State approached the Supreme Court when the High Court set aside the charges. The facts of that case as stated by the Supreme Court are as follows:

A complaint under Section 13(1)(e) read with Section 13(2) of the Act for the check period 25.9.1982 to 27.3.1993 was filed stating that he had acquired the property in excess of the known source of his income. During the investigation, properties and assets belonging to his mother-in-law, father, brother and nephew were shown as assets of the respondent. The assets of his wife, who is an income tax payer and a self-earning member, were also connected with the assets of the respondent. While submitting the charge-sheet several important documents, which were collected during the course of investigation, were withheld. According to the respondent the said documents supported him. If those documents were

considered even prima facie there was no scope to frame charges against him. At the time of framing charges, the respondent made an application seeking production of these documents in court before proceeding to frame charges. But, the said application was rejected stating that for the purpose of framing charges only the documents forwarded to the court under Section 173(5) Cr.P.C. need to be considered. Hence he filed Criminal Revision No. 337 of 1997 in the High Court. The said revision petition was disposed of by the order dated 8-9-1997 in the following terms: In the result the revision is allowed, the order impugned is set aside and it is directed that the documents made available by the accused during investigation be produced and may be taken into consideration by the court below while framing the charge.

The above view was upheld by the Apex Court. It is the contention of the petitioner that, here, he is not requesting for considering any additional documents. Even the documents relied on by the investigating agency to frame charges and attached to the charge sheet alone need be looked into. Document Nos. D-468, D-520, D-522, D-524, D-550, D-551, D-552, D-546, D-543 and D-17 would show that petitioner's wife and children during the check in period had an income of Rs. 78,43,720-50 from the properties inherited by them from petitioner's in-laws. If that is taken into account, the allegation of disproportionate income to the tune of Rs. 62,81,737-38, prima facie, will not lie. The petitioner also relied on Annexure H Circular of the Government of India which is as follows:

Sub-rules (3) and (4) of Rule 16 of the All India Services (Conduct) Rules, 1968, apply only to properties acquired, etc. by the members of the Service either in their own names or in the names of the members of their families. In other words, the properties either acquired by the members of the families of the officers from out of their own funds or inherited by them would not attract the provisions of the rules. As such, the movable/immovable properties owned, etc. by the members of the families of the officers, which are either inherited by them or acquired by them from out of their own funds, are not required to be included in the property returns envisaged in Sub-rule (2) of Rule 16 *ibid*.

Here, the main allegation of the petitioner is that before framing charges and dismissing his case for discharge, these documents were not considered and arguments of the petitioner was not appreciated even for considering the prima facie case. The Apex Court in Mohanlal Soni's case (supra) also approved the decision of the Gauhati High Court in Ananda Bezharuah v. Union of India 1994 Cri LJ 12. Paragraph 8 of Mohanlal Soni's case (supra) is as follows:

In Ananda Bezharuah v. Union of India 1994 Cri LJ 12 the Gauhati High Court was of the view that where the accused was charged with the offence of having resources and property disproportionate to his income and the trial court failed to consider and evaluate the income tax return which clearly established that the property included in the assets of the accused and shown to be disproportionate is the wife's property bought from her own resources and should have been excluded from the assets of the accused.

In that case, after remand, even though charge was framed, it was set aside by the High Court and the appeal filed before the Supreme Court was dismissed. Thereafter, in Mohanlal Soni's case (supra), it was observed by the Supreme Court as follows:

As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed.

7. It is true that in *Satish Mehra v. Delhi Admn.* : (1996)9SCC766 , the Apex Court held that the Sessions Judge was not expected to hold a roving inquiry into the pros and cons of the case at the stage of framing charges by weighing the evidence as if he was conducting the trial, but, in that case, it was observed as follows:

14. The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the court to decide whether it is necessary to proceed to

conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

In *Dilawar Balu Kurane v. State of Maharashtra* : 2002 CriLJ980 , it was observed as follows:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (See: *Union of India v. Prafulla Kumar Samal* : 1979 CriLJ154 .

8. In *State of Orissa v. Debendra Nath Padhi* : AIR 2005 SC359 , the Apex Court held that if the prosecution material is accepted and the same does not disclose offence, no charge can be framed. The entire previous case law was discussed by the Apex Court in the above case. Even though main question raised in the above

case was whether trial court, at the time of framing charge consider material filed by the accused, as it was contended by the State that only the documents attached with the police report alone can be looked into at the time of framing charges. Decision in Satish Mehra's case (supra) was overruled and Apex Court held that at the time of framing charges, the accused has no right to produce documents. It was held as follows:

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material Satish Mehra 's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.

But, 'the court also observed that the power under Section 482 Cr.P.C. is not limited to consider the unimpeachable evidence proved by the accused. At paragraph 21, it was observed as follows:

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce, material at the stage of framing charge.

In this case, there is no such controversy. Petitioner only requested the court to consider the materials produced along with the police report before framing charges. In *K. Ramakrishna v. State of Bihar* : 2000 CriLJ4597 , it was held that questions regarding sufficiency or reliability of evidence to proceed further need not be looked into. However, if upon the admitted facts and documents relied upon by the prosecution without swifiting of evidence, no case is made, the criminal case instituted against the accused are required to be dropped or quashed and order of discharge should be passed.

9. On going through the order refusing to make a discharge, it is seen that the trial court did not consider at all the effect of 12 documents relied on by the prosecution in the police report as requested by the petitioner. Merely because lengthy arguments were addressed, the trial court proceeded to observe that there is a prima facie case and the documents based on office records can be pressed at the time of trial. But, the Sessions Court refused to consider the unchallenged documents like assessment orders etc, produced by the prosecution along with the charge sheet to find out whether there is any prima facie case made out. As already pointed out, it is the specific case of the petitioner that if the above documents were perused, it can be seen that the prosecution has included the income of his wife and children inherited through their in-laws and there is no unaccounted income. After perusal of the order, we agree that no such task was done by the trial Judge. The above documents produced by the police and specifically pointed out by the petitioner ought to have been looked into and an effort ought to have been made to find out whether the income derived by his wife and children from the inherited properties of the in-laws of the petitioner are included in the income claimed as unaccounted income during this check in period and whether a prima facie case is made out. We leave the matter for finding of the trial Court and we are not expressing any opinion on the merits of the contentions for discharge in this order. In the above circumstances, we set aside Annexure C order and Annexure D charge and direct the Special Court to proceed from the stage of consideration of CrI. M.P. No. 239 of 2002 application for discharge filed under Sections 227 and 239 Cr.P.C. and only if he cannot be discharged, charges need be framed. The CrI.M.C. is allowed to the above extent.