

G.D. Chadha Vs. the State

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Court : Rajasthan

Decided On : Apr-11-1972

Reported in : 1972CriLJ1585

Judge : L.S. Mehta, J.

Appellant : G.D. Chadha

Respondent : The State

Judgement :

ORDER

L.S. Mehta, J.

1. This is a revision-petition submitted on behalf of Mr. G. D. Chadha against the charge-sheet framed by learned Special Judge. Bharatpur on January 14. 1972. The prosecution allegation in brief is that when Mr. Chadha acted as District Superintendent of Police. Bharatpur from June 8, 1960 to July 7. 1962. he had accepted gratification other than legal remuneration from persons as detailed in Annexure 'A' for doing favour to them and thereby he committed offence under Section 161. I. P.C. The prosecution allegation further is that Mr. Chadha habitually accepted or obtained or agreed to accept or attempted to accept from persons as detailed in Annexure 'A' for himself directly or through Kundan Lal and Hira Lal gratification other than legal remuneration as a motive or reward as mentioned in Section 161, I. P.C. and Section 5 (1)(a) of the Prevention of

Corruption Act and thereby he committed an offence punishable under Section 5 of the said Act.

The prosecution also alleges that Mr. Chadha, while functioning as District Superintendent of Police, Bharatpur, habitually accepted or obtained or agreed to accept or attempted to accept for himself valuable things without consideration or for a consideration which he knew to be inadequate from persons who were officially connected with him, as detailed in Annexure 'A' and thereby committed criminal misconduct as defined in Section 5 (1)(b) of the Prevention of Corruption Act, punishable under Section 5 (2) of the Act. On May 18, 1967, after the Anti-Corruption Department submitted a charge-sheet to the Court of the Special Judge, Bharatpur the learned Special Judge, Mr. Rajvi Amar Singh discharged the petitioner under Section 5 (1)(a) read with Section 5 (2) of the Prevention of Corruption Act.

He, however, ordered that he should be charged under Section 161, I. P.C. read with Sections 5 (1)(a) and Section 5 (1)(b) of the Prevention of Corruption Act. He also ordered that Hira Lal and Kundan Lal should be charged under Sections 162, 164 and 165A, of the Indian Penal Code and Sections 5 (1)(a) and 5 (1)(b) of the Prevention of Corruption Act, read with Section 114 or 109, I. P.C. The aforesaid order was challenged before this Court by Mr. Chadha in Criminal Revision Petition No. 259 of 1967 and by the State of Rajasthan in Criminal Revision No. 295 of 1967. Both the revision applications were dismissed by this Court on May 21, 1970.

2. The main grievance of learned Counsel for the petitioner is that the trial Court did not adjudicate upon his application marked Annexure 'B' before framing the charge-sheet. In that application it had been, pointed out that the Anti-Corruption Department recorded self exculpatory and confessional statements of certain police officials even before the case was registered. Such statements were got signed by their makers. These statements were recorded contrary to the provisions of Section 161, Cr. P.C. The trial Court ought to have ignored them and if those statements were to be ignored, there remained hardly any material on the record constituting prima facie case against him.

Another point raised on behalf of the petitioner is that the alleged allegations against him are about 10 years old. If the case is remanded to the Court below to frame a fresh charge-sheet, he would be subjected to undue harassment. Learned Deputy Government Advocate submitted that when this Court has already taken a decision by its judgment. dated May 21. 1970. it is not within its competence to give a fresh mandate. His further argument is that the allegations against the Petitioner are serious in nature and. therefore proceedings against the accused cannot be dropped at this stage.

3. The first point that deserves consideration is whether, after it has already given a decision, this Court can again look into the matter.

4. Section 430. Cr. P.C. provides that judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in Section 417 and Chapter XXXII. Section 430 in terms applies to judgments and orders passed by an appellate Court. It has no application to decisions or orders made by the High Court in revision. The scope of Chapter XXXII relating to references and revisions has been enlarged by the addition of Sub-section (6) to Section 439. Cr. P.C. The scope of exception to Section 430 also stands enlarged so as to include within the exception whatever may come within Chapter XXXII. As has been observed by their Lordships of the Supreme Court in U. J. S. Chopra v. State of Bombay : 1955 CriLJ1410 . cases coming within Chapter XXXII must stand free from the rule of finality embodied in Section 430, Cr. P.C.

Section 36,9, Cr. P.C. provides that save as otherwise provided by the Code or by any other law for the time being in force no Court, when it has signed its Judgment shall alter or review the same, except to correct a clerical error. The very language of this section demonstrates that after announcing the Judgment the Court which pronounced it becomes functus officio. However, Section 369. is subject to the other provisions of the Code and that section has to be read subject to Section 430. Cr. P.C. as the finality enshrined in Section 430. does not attach to the decisions or orders made in revision by reason of Chapter XXXII. The rule of finality embodied in Section 430. Cr. P.C. cannot affect the provisions provided in Chapter XXXII That being the settled law. the petitioner is entitled to seek a fresh

order from this Court under Chapter XXXII of the Code. The plea raised by learned Deputy Government Advocate is, therefore, devoid of substance.

5. As to the first point raised on behalf of the petitioner it may be stated that before the charge was framed by the Special Judge on 14-1-1972, it has been brought to the notice of the Court that the statements of the witnesses were recorded by the Anti-Corruption Department prior to the registration of the case and that assurances had been given to the police officials concerned that if they confessed their guilt or made incriminatory statements, no harm would be done to them. On the basis of such belief their statements were recorded and got signed by them. The question is whether such statements can form the foundation for framing a charge against the accused.

Statement recorded subsequent to the receipt of the definite information of the commission of an offence would be a statement hit by Section 162, Cr. P.C. The fact of registration of the first information report long after the recording of the statements of witnesses is no doubt a definite step in the investigation of a case. The recording of such statements cannot be got round on the ground that the formal first information report was registered at a subsequent stage. The question whether the investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording first information report by the concerned police officer: vide *K. M. Nanavati v. State of Maharashtra* : AIR 1962 SC605 .

6. The policy underlying the prohibition against taking signatures of the maker of the statement as laid down by Sub-section (1) of Section 162, Cr. P. C. appears to be that the witness should be free to make any statement before the trial Court which he may wish to make unhampered by any thing which he might have said before the police. The result of taking signature of the maker would be to bind him down so that he might not make a different statement before the trial Court. The maker of the statement may feel that as he has already signed a statement, he cannot give a divergent account before the trial Court. In this manner the effect of obtaining signature of a witness on his statement recorded by the police would seriously impair the evidence of the witness before the trial Court. When Section

162. Cr. P.C. specifically provides that no signature of a witness should be obtained by the police, that procedure or that prohibition has to be observed. In other words the specific provisions of law cannot deliberately be flouted.

7. Under the provisions of Sub-section (4) of Section 173, Cr. P.C. the officer incharge of the police station has to furnish or cause to be furnished to the accused a copy of the report forwarded under Sub-section (1) and of the first information report recorded under Section 154. Cr. P.C. and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely. including the statements and confessions if any. recorded under Section 164. Cr. P.C. and the statements recorded under Sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. Under Section 251-A (3). Cr. P.C. the Magistrate has to consider the documents and then has to arrive at the conclusion as to whether charge should be framed or not. The examination of the accused referred to in Section 251-A Cr. P.C. can only be with reference to the documents.

These documents include the statements and confessions, if any. recorded under Section 164 and the statements recorded under Sub-section (3) of Section 161. Cr. P.C. of all the persons whom the prosecution proposes to examine as its witnesses. The documents referred to in Section 173. Cr. P.C. are in a sense evidence though only at the stage of inquiry, before a charge is framed. Infraction of the provisions of the Criminal Procedure Code in the matter of investigation brought to the notice of the Court before the framing of the charge, cannot be overlooked. No doubt, irregularity or illegality committed in the course of investigation would not affect the competence or jurisdiction of the trial Court concerned. But the position would be different if the illegality is discovered at the early stage of the trial. In this connection a reference is made to *Siraiuddin v. State* : AIR1968 Mad117 This aspect of the matter in that Judgment has been approved of by their Lordships of the Supreme Court in *P. Siraiuddin v. State of Madras* : 1971 CriLJ523 . Their Lordships of the Supreme Court have made the following observation in para 25 of their Judgment:

There can be no excuse for the Directorate of Vigilance and Anti-Corruption for proceeding in the manner adopted in the preliminary enquiry before the lodging of the first information report. As soon as it became clear to them ...that the appellant appeared. to be guilty of serious misconduct, it was their duty to lodge such a report and proceed further in the investigation according to Chapter XIV of the Code. Their omission to do so cannot prejudice the appellant and the State ought not to be allowed to take shelter behind the plea that although the steps taken in the preliminary enquiry were grossly irregular and unfair, the accused cannot complain because there was no infraction of the rules of the Evidence Act or the provisions of the Code. (Criminal Procedure Code)

Their Lordships further observed that the grant of pardon to the witnesses being highly irregular and unfortunate was not in the discretion of the police authorities.

8. The petitioner brought the above illegalities or irregularities to the notice of the trial Court, but that Court did not give any decision thereon and straightway framed the charge against the accused. In the light of the foregoing discussion, it is clear that the order of the Special Judge. Bharatpur. directing the framing of the charge without first deciding the various illegalities alleged to have been committed by the investigation is obviously wrong and deserves to be quashed.

9. Learned counsel for the petitioner, in the end. submitted that the matter is more than 10 years' old and therefore, the case should not be remanded to the Special Judge for reconsideration. The entire proceedings, he submits, should be quashed. He relied upon *Krishnamurthy Iyer v. State of Madras* : AIR 1954 SC406 . In that case vague charge of conspiracy to falsify bank accounts and to bring into existence a false balance-sheet was framed. It was also impracticable to try all the accused persons without confusion at one trial and in that peculiar circumstance their Lordships of the Supreme Court set aside the order of the Madras High Court directing a de novo trial of the accused, keeping in view the fact that the accused stood a protracted trial. That case is obviously distinguishable from the facts of the present case.

10. In the result. I partially accept this revision petition and quash the charge-sheet dated January 14. 1972. The Special Judge will exclude from consideration all the

statements which have been recorded in violation of the provisions of Sections 162 and 163. Cr. P. C and which are found vitiated in the light of the observations made above. The Special Judge will also exclude portions of the statements recorded by the police which are self-inculpatory and confessional in character and then decide the matter afresh.

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