

**Brijkumar Sharma Vs. State and ors.**

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**Court :** Rajasthan

**Decided On :** May-27-1997

**Reported in :** 1998CriLJ1449

**Judge :** Mohd. Yamin, J.

**Acts :** Prevention of Corruption Act - Sections 5(1) and 5(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 227 and 482; Indian Penal Code (IPC) - Sections 210B and 409

**Appeal No. :** S.B. Cr. Misc. Petition No. 916/1996

**Appellant :** Brijkumar Sharma

**Respondent :** State and ors.

**Advocate for Def. :** Chandra Lekha, P.P.

**Advocate for Pet/Ap. :** M.D. Purohit, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Mohd. Yamin, J.**

1. This is a misc. petition under Section 482, Cr. P.C. against the order of learned Special Judge, Anti-Corruption cases, Udaipur passed on 6-9-1996 by which he

framed charge under Section 409 read with Section 120B, IPC and under Section 5(1)(d)(2) read with Section 5(2) of Prevention of Corruption Act.

2. I have heard the learned counsel for the petitioner as well as learned P. P.

3. The case of the prosecution is that one Ramesh Chandra Dedor and petitioner were working in the Panchayat Samiti, Girwa. The petitioner was Vikas Adhikari while Ramesh Chandra was working as Jr. Engineer. Girwa was declared as a famine stricken area and famine works commenced w.e.f. 20-5-88 which came to an end on 15-7-87 when a declaration was made that no more famine work should continue. In all a sanction of Rs. 1,60,000/- was given by the government to be spent for the famine work. Out of it Rs. 79,000/- was to be spent towards the materials and Rs. 81,000/- were sanctioned for famine relief work. It is said that upto 15-7-88 out of Rs. 81, 000/- sanctioned for labour purposes, a sum of Rs. 80,980/- was already spent but towards the purchase of materials a sum of Rs. 18,346.74 was spent in excess of the sanctioned amount for which Ramesh Chand Dedor did not take sanction of the government nor of Panchayat Samiti. On 26-8-1988 Ramesh Chandra made an application to the petitioner for issuing 70 bags of cement as the plaster work had remained incomplete and as the monsoon season was on the property might be damaged due to rains. It is alleged that on an application of Ramesh Chandra a sanction was given and it was ordered that 50 bags of cement may be issued. After receipt of 50 bags of cement from the store on the application of Shri Dedor, he was transferred from that place. 50 bags of cement was not utilised by Ramesh Chandra. A complaint was filed before the Anti Corruption department and thorough investigation was done and challan presented. Special Judge, Anti Corruption framed charge as stated above.

4. It has been submitted before me that there was no conspiracy and that the petitioner passed an order issuing cement on the application of Shri Dedor who was the Jr. Engineer. He submitted that mere issuance of 50 bags of cement to Ramesh Chandra on his application does not constitute any offence. At the best it may be an irregularity for which no offence under Section 409, IPC can be made out. He submitted that it is not the case of the prosecution that the petitioner has misappropriated or embezzled the sale proceeds of the said cement (about Rs.

28,000/-) and' caused the government or panchayat samiti any loss. He also submitted that there is no iota of evidence to show that the petitioner was ever a party as illegal gratification or the sale proceeds were shared by him. He has, therefore, prayed that the charge against the petitioner may be quashed under Section 482, Cr. P.C.

5. On the other hand, learned PP has opposed it.

6. It is settled law that at the stage of framing of the charge, a Judge/Magistrate has to see a prima facie case. In 1996 (1) Crimes 21 : 1996 Cri LJ 1372 (SC), State of Bihar v. Sri Rajendra Agrawalla, it was observed that the High Court cannot appreciate evidence in coming to conclusion that no offence is made out and if it does so, exceeds its jurisdiction under Section 482, Cr. P.C. However, I have regarded this petition as a revision because a revision can be filed against the order of framing the charge. I will like to say that it is also well settled that the charge can be framed on the basis of strong suspicion. The petitioner was definitely Vikas Adhikari and knew it very well that the work had been completed. He on the basis of an application of Jr. Engineer issued 50 bags of cement is itself a circumstance against the petitioner. Trial Court at the time of framing of charge is to decide whether or not there exist sufficient grounds for framing the charge. The inquiry at that time is limited to evaluation of the material and documents on record with a view to find out as to whether the facts emerging therefrom taken at their face value disclose the existence of ingredients of the offence or not.

7. In Ram Singh v. State of Rajasthan 1981 Cr LR (Raj) 143 the following guiding principles were laid :-

(1) That the Judge while considering the question of framing the charge 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.

8. I have gone through the event on record and I find that the learned special Judge has not committed any illegality.

Consequently, the petition has no force and it is hereby dismissed.

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