

Pritam Singh Vs. State

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Court : Himachal Pradesh

Decided On : Oct-08-1980

Reported in : 1981CriLJ554

Judge : H.S. Thakur, J.

Appellant : Pritam Singh

Respondent : State

Judgement :

ORDER

H.S. Thakur, J.

1. The petitioner has filed this application under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, for quashing the charges framed against him by the Special Judge, Solan and Sirmur Districts, on 18th October, 1979,

2. In order to appreciate the facts of the case, it is desirable to reproduce the report made against the petitioner by the Delhi Special Police Establishment. Ambala Branch, as contained in the application:

Information: Information has been received that Sh. Pritam Singh while posted as Income-tax Officer at Simla during the year 1974-75 was dealing with the Income-

tax assessment cases of M/s. Mohan Meakins Breweries, Solan involving large amount of Income-tax relating to the assessment year 1973-74. It is alleged that Shri Pritam Singh, during the pendency of the said assessment case accepted. hospitality from the said assessee firm in the form of his stay in Hotels at Chail, Kasauli, Delhi and Lucknow with his wife/family at the cost of the said assessee firm which incurred heavy expenditure towards the entertainments of Shri Pritam Singh and family on various occasions. It is further alleged that in the month of December, 1974, Shri Pritam Singh visited Mohan Nagar, Ghazlabad in connection with the said Income-tax assessee firm had arranged for their boarding and lodging at Janpath and Akbar Hotel, New Delhi besides keeping a car at their disposal during the relevant period.

It is further alleged that Shri Pritam Singh claimed TA from the Government for his journey from Simla to Delhi and back and Simla to Lucknow and back and thereby obtained a sum of Rupees 337.80 P. and Rs. 447.00 respectively and that he was on tour from 9-9-1974 to 19-9-1974 to Solan wherefrom he went to Chail and stayed there from 14-9-1974 to 15-9-1974. Shri Pritam Singh thus misused his official position as public servant and thereby committed offence of cheating coupled with the offences punishable Under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

The above facts prima facie make out a case punishable under Section 420, I.P.C. and Section 5(2) read with Section 5(1)(d) P.C. Act, 1947. An RC therefore is registered and investigation entrusted to Shri Girdhar Gopal Inspector: SPE/Ambala.

A challan was put up in the court of Special Judge, Solan and Sirmur Districts and the learned Judge after perusing the documents framed the following charges against the petitioner:

That you on 14/15-9-1974 in the capacity of an Income-tax Officer, In charge Assessing Circle, A-Ward, Simla being public servant by corrupt or illegal means by abusing your position as public servant obtained for yourself and your family pecuniary advantage to the tune of Rs. 293.15 P. as charges of your stay in Palace Hotel Chail from Mohan Meakins Breweries with its registered office at

Solan, an assessee firm thereby committed an offence under Section 5(i)(d) of Prevention of Corruption Act punishable under Section 5(2) of that Act within my cognizance.

Again you on 1st and 2nd February, 1975 in the capacity of an Income-tax Officer, Incharge Assessing Circle A-Ward Simla being public servant by corrupt or illegal means by abusing your position as public servant obtained for yourself and for two other persons pecuniary advantage to the tune of Rs. 103/- as charges of your stay at Alasia Hotel Kasauli from Mohan Meakin Breweries with its registered office at Solan, an assessee firm, thereby committed an offence under Section 5(i)(d) of prevention of Corruption Act within my cognizance.

Again you on 27/28-2-1975 at Lucknow in the capacity of Income-tax Officer, Incharge Assessing Circle A-Ward Simla being public servant by corrupt or illegal means by abusing your position as public servant obtained for yourself and your family pecuniary advantage to the tune of Rs. 340/- in shape of air travel charges from Lucknow to Delhi from 'Mohan Meakin Breweries with its registered office at Solan, an assessee firm, thereby committed an offence under Section 5(i)(d) of Prevention of Corruption Act punishable with Section 5(2) of that Act within my cognizance.

3. It has been frankly conceded by the learned Counsel for the petitioner that there is some material on record to warrant the framing of, charges, in respect of the first two items of the charge-sheet. He has, however, strongly contended that there is no material on record to justify the charge' for the, third, item, that is, regarding obtaining pecuniary advantage to the tune of Rs. 340/- in the shape of air travel charges, from Lucknow to Delhi, from Mohan Meakins Breweries (in short, called the Company). Accordingly, he has confined his arguments to this charge alone. The learned Counsel has drawn my attention to the evidence on record on the basis of which the said charge is intended to be established. I have examined the record and have also heard the arguments of the learned Counsel for the parties. It is not disputed by the learned Counsel for the respondent that this charge is to be established on the basis of the statements recorded under Section 161 of the Code of Criminal procedure of S/Shri V.P. Goel, R.K. Raizada and Prem Mohan,

besides some documents. In his statement Shri V.P. Goel, who is Station Manager, Indian Air Lines, Lucknow, has stated on the basis of the record, that as per passenger list of flight of 28th February, 1975, one Mr. P. Singh along with Mrs. Singh had travelled from Lucknow to Delhi against tickets Nos. 7233678 and 7233679, along with one infant. The above tickets, according to him, were issued on 27th February, 1975. The witness, however, showed his inability to state the name of the person who purchased these tickets. It is further stated by him that Mr. P. Singh was carrying 58 Kgs. luggage against the permissible limit of 40 Kgs, against two tickets. Rest of 18 Kgs. was adjusted with one Shri P. Mohan who was also travelling by the same flight. The other relevant witness is Mr, R. K. Raizada, Accountant, of the Company at Lucknow. It is stated by him that he had seen voucher No. 70 dated 3-3-1975 for Rs. 344.60 P. He has further stated that he had submitted the bill which contained his signatures. He has also stated that he had purchased two air tickets from Lucknow to Delhi for the guests of the Company, for Rs. 340/- on some date during 25-2-1975 to 2-3-1975. He has further stated that he did not remember the names of the guests for whom the air tickets were purchased. Another witness whose statement is relevant to the matter in issue, is Shri Prem Mohan. He has stated that during February, 1975 he was on official visit to Lucknow and that he met Mr. Pritam Singh, Income-tax Officer, in his factory at Lucknow, who had come there for making some enquiries. He has further stated that he came in contact with Pritam Singh for the first time when he was introduced to him by Mr. Yogesh Kumar. He has also stated that on 28-2-1975 he travelled by Indian Air Lines plane in the evening, from Lucknow to Delhi. Shri Pritam Singh, Income-tax Officer, arrived at the Air Port by a car, along with his wife and a child of about a year or so, and that all of them travelled by the same plane. I have also seen the voucher submitted by Shri R. K. Raizada. In the voucher it is not indicated when the air tickets were purchased. The numbers of such tickets are also not given in the voucher.

4. It is contended by the learned Counsel for the petitioner that even if the aforesaid evidence is taken at its face value, it cannot even prima facie be inferred that the aforesaid air tickets were purchased for the petitioner. Even the date of the purchase of these tickets is not given in the voucher. It is frankly stated by the learned Counsel, that no doubt the petitioner travelled by air from Lucknow to

Delhi, but he had made the payment for the same. Simply because the petitioner happened to be in Lucknow and travelled by air, does not mean that he travelled on the basis of the air tickets purchased by the aforesaid Company. Shri V.P. Goel has specifically stated that he does not know the name of the person, who had purchased these tickets. Shri R.K. Raizada cannot even state the date on which he purchased the tickets for guests.

5. The learned Counsel for the petitioner has referred to a decision of the Supreme Court in *Union of India v. J. S. Khanna* 1972 Cri App R 141 : 1972 Cri LJ 849, In this case, their Lordships of the Supreme Court observed that to frame a charge there should be some material, at least to connect an accused with the commission of an offence. On this account, it is contended by the learned Counsel that the aforesaid charge could not be framed against the petitioner even if the entire evidence on record is believed to be true.

6. On behalf of the respondent, the learned Counsel has contended that at the initial stage of the framing of the charge if there is a strong and grave suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused and that it is at the stage of the conclusion of a trial that the suspicion cannot take the proof of his guilt. For this submission he has placed reliance on the decision of the Supreme Court in *State of Bihar v. Ramesh Singh* 1977 Cri LJ 1606. The learned Counsel has also referred to the decisions in *Union of India v. Praphulla Kumar Samal* : 1979 CriLJ154 and *Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar* : 1979 CriLJ1390 . In *Union of India v. Praphulla Kumar* 1979 Cri LJ 154 (supra), the observations of the Supreme Court as contained in paragraph 10 of the judgment may be reproduced:

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.

Similarly, in paragraph 18 of the judgment in *Supdt. and Legal Remembrancer of Legal Affairs 1979 Cri LJ 1390* (supra) their Lordships of the Supreme Court observed as under:

It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in *State of Bihar v. Ramesh Singh : 1977 CriLJ1606*, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure,

1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

The essence of the aforesaid decisions is that at the initial stage of framing a charge the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged and that the standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing a charge. At that stage even on a very strong or grave suspicion founded upon materials, a charge can be framed.

7. Applying the principles enunciated in these decisions, it has to be seen whether on the basis of the material on record, the charge framed against the petitioner can be sustained. I am of the view that the material is lacking even to provide necessary links, connecting the petitioner with the commission of the aforesaid charge. The only evidence on record is that the petitioner along with his wife and an infant travelled by air from Lucknow to Delhi, on 28th February, 1975. As observed earlier above, this fact is not disputed even by the petitioner. Travelling by air is not an offence. The precise question is as to who made the payment. There is not an iota of evidence on record to show that the air tickets on the basis of which the petitioner travelled were purchased by the aforesaid Company, for the petitioner. The two air tickets were purchased for a sum of Rs. 340/-. The petitioner, who is an Income-tax Officer, cannot be presumed to be unable to afford this amount. At this stage I am not to consider the defence of the petitioner, but have confined my discussion to the material on record in proof of this charge. I am of the view that on the basis of the record, there does not arise even a strong or grave suspicion, of the commission of the said offence, by the petitioner.

8. For the foregoing reasons, I have no alternative but to quash the last item of charge against the petitioner, relating to the obtaining of pecuniary advantage to the tune of Rs. 340/- in the shape of air travel charges from Lucknow to Delhi, from the Company, The other items of charge-sheet against the petitioner, however,

survive.

9. The application is accordingly partly allowed, to the aforesaid extent. The record of the case be sent back immediately to the learned Special Judge, for further proceeding in the case.

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