

A.K. Kachroo Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-13-2003

Reported in : 2003CriLJ3510

Judge : Kuldip Chand Sood, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 420; ;Code of Criminal Procedure (CrPC) , 1974 - Section 239

Appeal No. : Cr. Revn. No. 2 of 2003

Appellant : A.K. Kachroo

Respondent : State of H.P.

Advocate for Def. : P.M. Nagi, Asstt. Adv. General

Advocate for Pet/Ap. : Kuldip Singh and; Jyotika, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Kuldip Chand Sood, J.

1. This petition arises out of the orders made by the learned Sessions Judge, Solan, on 27-12-2002 whereby the order of discharge of the accused, including

the petitioner, recorded by the learned Additional Chief Judicial Magistrate, Kandaghat dated 11-10-2001 was set aside.

2. In order to appreciate the controversy, few facts may be noticed :

3. It appears, in the year 1985, a report under Section 173 of the Code of Criminal Procedure was filed before the learned Chief Judicial Magistrate, Solan, against six persons, for offences punishable under Sections 406 and 420 of the Indian Penal Code. In that report the petitioner, Dr. Kachroo, was not named as an accused.

4. The Government of Himachal Pradesh, formulated a Scheme, under which loan and subsidy for the purchase of cattle including Mule and Buffaloes etc. was extended to poor people. The Scheme was implemented through District Ruler Development Agency. (DRDA for short) with the cooperation of the scheduled banks.

5. On 4-4-1984, Mr. D.R. Chandel, Project Officer of DRDA, lodged a complaint with the police regarding misappropriation of the loan and subsidy extended to some beneficiaries in Haripur Gram Panchayat of Solan Block. The beneficiaries allegedly went to Patiala on 19-11-1983 to purchase the cattle but factually neither cattle were purchased nor any cattle were brought by the beneficiaries. The amount of subsidy and loan thus was misappropriated/misutilised.

6. After the investigation of the case, a final report was submitted in the year 1985 to the Court for offence punishable under Sections 406 and 420 of the Indian Penal Code. The petitioner and other members of the Purchase Committee were not named as accused. It was the case of the prosecution that these officers had gone to Patiala along with beneficiaries for purchase of cattle. Documents regarding purchase of mules etc. were forged to misappropriate the loan and subsidy amount. According to the prosecution case, it was in 1984 that the Block Development Officer detected the fraud and reported the matter to the higher authority. Ironically, in that case only beneficiaries were made accused and members of Purchase Committee were let off. When the matter came up before the learned Chief Judicial Magistrate, he observed that there were certain gapping

holes in the case and the investigation was not conducted on the right lines. He further observed that the mules were neither purchased at Patiala nor were ever brought to the respective places of the beneficiaries, though on papers it was claimed that the mules were inspected by the purchase committee and were brought by the beneficiaries to their respective places. He also observed that the connecting evidence was not collected by the police from the barrier and discharged the accused with a hope that further investigation would yield evidence to show implication of all who were involved in this case.

7. The Investigating Agency took its own time in further investigation. It was in the year 2001 a fresh challan was filed before the learned Additional Chief Judicial Magistrate against the beneficiaries and the members of purchase committee including present petitioner Dr. A.K. Kachroo, then Assistant Project Officer (DRDA), Manager of the Central Bank of India and Gram Sewak representing EDO. According to the prosecution case, under the scheme, it was the duty of the Purchase Committee to inspect the animals about its quality, price etc. It was also the duty of the members of the Purchase Committee to have ensured that the animals so inspected were actually purchased and brought to the respective places of beneficiaries. This fraud, it is alleged, could not have been committed without their connivance. The prosecution obtained sanction to prosecute the concerned officers of the Purchase Committee.

8. Learned Additional Chief Judicial Magistrate by his order dated 11-10-2001 discharged the accused on the grounds that :

(a) it was not open to the learned Addl. Chief Judicial Magistrate to order for further investigation in the case;

(b) no additional evidence was collected against the accused save and except that sanction was obtained to prosecute the Government Officers.

9. Learned Additional Chief Judicial Magistrate took a view that as the accused were earlier discharged, therefore, they Could not be prosecuted on the basis of the fresh challan, particularly when there was no fresh material or evidence on record. Learned trial Magistrate went to the extent saying that there was no

evidence that mules in fact were not purchased or brought to their respective places by the beneficiaries.

10. Dissatisfied, the State filed a revision petition before the learned Sessions Judge, who vide his impugned order allowed the petition and directed the learned trial Magistrate to proceed with the trial of the case after framing charges for offences punishable under Sections 406, 420 read with Section 120-B of the Indian Penal Code.

11. Dissatisfied, one of the accused Dr. A. K. Kachroo is in this petition.

12. I have heard Kanwar Kuldip Singh, learned Senior Advocate, instructed by Ms. Jyotika for the petitioner and Mr. P.M. Negi, learned Assistant Advocate General.

13. Mr. Kanwar, relying upon *Randhir Singh Rana v. State (Delhi Administration)*, (1997) 1 SCC 361 : (1997 Cri LJ 779) contends that it was not open to the learned Chief Judicial Magistrate when the final report was submitted by the police at the first instance in the year 1984, to have asked for fresh or further investigation. The Apex Court in *Randhir Singh Rana*, after digesting several similar cases, observed that a Magistrate of his own cannot ask for fresh investigation. He can only act on the material placed before him and proceed in accordance with law. However, in case of discharge of the accused, the police can investigate the case further of its own and fresh charge-sheet can be filed in the Court on the basis of fresh investigation. In the present case, the learned Chief Judicial Magistrate in the context of the case observed that the case should be further investigated on the lines indicated by him. Such an order may not be a proper order but nevertheless the fact remains the Investigating Agency did add names of the purchase committee as accused taking into consideration the evidence available on record and submitted a fresh challan. Even if the observation of the learned Chief Judicial Magistrate directing further investigation is ignored, the Investigating Agency was within its right to file fresh charge-sheet against the accused in the Court. In any event, the petitioner was not made an accused in the earlier challan and therefore cannot make any grievance against the charge-sheet submitted against him.

14. Mr. Kanwar then relying upon *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, AIR 1962 SC 876 : (1962 (1) Cri LJ 770), contends that fresh charge-sheet against the accused was not competent unless it is shown that the previous order was passed on an incomplete record or on misunderstanding or such an order was manifestly unjust or absurd. Fresh challan in the absence of the factors noticed above, would be abuse of the process of the Court and not in the interest of justice.

15. Mr. Negi, learned Assistant Advocate General contends that the present petitioner was not named as an accused in the first charge-sheet and, therefore, he can make no grievance about it. If at all, some one can have grievance then it could only by the persons who were named as accused in the earlier challan.

16. In *Saroj Ranjan*, a complaint was filed by Saroj Ranjan Sarkar in the Court of Chief Presidency Magistrate against four persons. Earlier a similar complaint was made by one Promode Ranjan. Similar complaint was dismissed at threshold, under Section 203 of the Code of Criminal Procedure, by the then Chief Presidency Magistrate. A revision against the dismissal of the . complaint was dismissed by the High Court. It was a complaint case. In this background learned Judge took note that procedure for complaint cases was dealt in Chapter 16 of the Code of Criminal Procedure. Interpreting the provisions of Sections 202 and 203, it was observed that an inquiry which is to be made by a Magistrate is limited to find out the truth or otherwise of the complaint so as to determine whether process should be issued or not? The Magistrate has to consider statement of the complainant and result of inquiry, if any, and if the Magistrate after applying his mind to the material placed before him proceed to make an order then such order cannot be erroneous. Learned Judge observed that there was no bar to entertain a second complaint on the same facts but it would only be in exceptional circumstances where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or if a fresh complaint is brought with new facts which could not be ascertained when the first complaint was filed.

17. The present is not a complaint case.

18. The first charge-sheet was filed only against the beneficiaries and not against the members of the Purchase Committee, though prima facie, according to the learned Chief Judicial Magistrate and learned Sessions Judge members of the Purchase Committee were implicated. Learned Sessions Judge, observed that the members of purchase committee, consisting of Dr. A.K. Kachroo, petitioner herein, Gram Sewak Davinder Kumar, Representative of EDO and R.K. Gupta, Branch Manager of Central Bank of India along with beneficiaries had in fact gone to Patiala to purchase mules and buffaloes. The Manager of the Bank paid the amount to the vendors and obtained the receipts. The cattle were certified to be of good quality by Dr. A.K. Kachroo. However, factually no mule was purchased and fraud was committed by the Purchase Committee in connivance with the beneficiaries. In the circumstances, learned Sessions Judge relying upon Supdt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja, AIR 1980 SC 52 : (1979 Cri LJ 1390) took a view that the Court at the time of framing of charge has to consider the material with a view to find out whether there was a ground for presuming that the accused has committed the offence or not. The Court at that stage is not to look into the merits of the case or the evidence collected by the police. In the present case, as observed earlier, the petitioner was not named as accused when the final report was submitted to the Magistrate in the year 1984. It is only later when fresh challan was filed that the accused-petitioner was added as an accused. In these circumstances, it is not open to the accused to make any grievance that he is being vexed twice as on the basis of same material he was discharged.

19. Taking into consideration the material on record, in my view, it cannot be presumed at this stage that the petitioner-accused has not committed any offence. As pointed out by the learned Sessions Judge, there are, grounds for proceeding against the accused for having committed the offence, alleged against him.

20. There is no merit in this petition and is accordingly dismissed.

21. The petitioner shall appear before the learned trial Court on 8-4-2003. The records of the case be sent forthwith to the concerned Court, so as to reach there on or before the date fixed.

22. It is clarified that any observation made hereinabove shall not be construed to be an observation on the merits of the case, which, needless to say, shall be decided by the learned trial Magistrate at its own merit.

23. Cr.MP No. 22 of 2003.

24. In view of the disposal of the main petition, the application has become infructuous. Order dated 9-1-2003 shall stand vacated.

25. The application is disposed of.

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