

Balkrishan Sharma Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-09-2002

Reported in : 2002CriLJ4364

Judge : M.R. Verma, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13(2), 120B, 409 and 420;
;Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 173, 397 and 481

Appeal No. : Crl. Revn. No. 59 of 2001

Appellant : Balkrishan Sharma

Respondent : State of H.P.

Advocate for Def. : P.M. Negi, Asstt. A.G.

Advocate for Pet/Ap. : Ranjana Parmar and; Karuna Kumar, Advs.

Disposition : Petition allowed

Judgement :

ORDER

M.R. Verma, J.

1. This revision petition under Section 397 read with Section 481 of the Code of Criminal Procedure (hereafter referred to as 'the Code') is directed against the

order dated 23-2-2001, passed by the learned Special Judge (Forest), Shimla, whereby a charge against the accused-petitioner (hereafter referred to as 'the accused') has been ordered to be framed under Sections 409, 420, 120-B and 13(2) of the [Prevention of Corruption Act, 1988](#) and has been accordingly framed.

2. Case of the prosecution against the accused is that Child Welfare Council of India sent 3500 Greeting Cards of the value of Rs. 7,941.30 paise for sale by Child Welfare Council of Himachal Pradesh .(hereinafter referred to as 'the State Council'). The State Council sold the Greeting Cards through the office of H. P. Vidhan Sabha. A sum of Rs. 7000/- realised as sale proceeds was paid by the Secretary, Vidhan Sabha, Himachal Pradesh to the State Council. Two receipts each amounting to Rs. 1750/- and one amounting to Rs. 3500/- were issued by Uma Joshi alias Uma Sharma, who was working as the Executive Officer of the State Council at the material time. The accused is stated to be working as Accountant at that time. This amount, however, was not accounted for in the account books of the State Council and was not sent to the Child Welfare Council of India. On investigation, the investigating agency found that this amount had been misappropriated by said Uma Joshi and the accused and, thus, cheated the council of the said amount. The investigating agency moved for prosecution sanction against said Uma Joshi and the accused which was granted in the case of the accused but was refused in the case of Uma Joshi. A charge-sheet was, thus, presented by the investigating agency against the accused, mentioning Uma Joshi in column No. 2 of the form of the charge sheet as a person against whom the charge sheet was not submitted. After hearing the parties and perusal of the material placed on record, the learned Special Judge found that the material on record, if remains unrebutted, it appears, would lead to the conviction of the accused. Accordingly, he passed the impugned order directing framing of the charge against the accused as aforesaid and by a separate order of the same day, framed the charge.

3. Being aggrieved, the accused has preferred the present petition.

4. I have heard the learned Counsel for the accused and the learned Assistant Advocate-General for the State and have also gone through the records.

5. It may be pointed out at the very outset that when after considering the police report and the documents sent with it under Section 173 of the Code and making such examination, if any, of the accused, as the trial Court thinks fit, if it is of the opinion that the said material prima facie discloses that the accused has committed an offence which it is competent to try, then it shall frame in writing a charge against the accused. When the Court forms such an opinion, it is not supposed to give reasons in detail for arriving at the prima facie conclusion that the accused has committed the offence and there are grounds to proceed against him and to charge him for the commission of such offence. However, if the Court, after perusal of the aforesaid material, finds that there is no ground for pre suming that the accused has committed an offence, the charge must be considered to be groundless, that is to say, that there is no ground for framing a charge against the accused and he should, therefore, be discharged. However, the Court is expected to record its reasons for so doing, it may, however, be pointed out that the Court though is not required to record detailed reasons for framing a charge against the accused, but the record it has relied upon, to arrive at the prima facie conclusion that there are grounds to proceed against the accused, must disclose that in fact there are reasons to proceed against the accused for the commission of the offence for which he has been ordered to be charged.

6. In the instant case, the precise case of the prosecution is that a sum of Rs. 7000/- was received in the office of the State Council vide three receipts, respectively for Rs. 3500/-, Rs. 1750/- and Rs. 1750/-. These receipts are available on record and are marked Q-1, Q-2 and Q-3. It is admitted case of the prosecution that these receipts were issued by Uma Joshi. The receipts marked as Q-1 and Q-2 are dated 10-8-1988 and the receipt Mark Q-3 is dated 21-1-1989. The further case of the prosecution is that this amount was asked for from the Himachal Pradesh Vidhan Sabha Secretariat by the accused on the basis of authority letter and was brought by one Bhagwan Dass, who paid it to the accused in the presence of one Deep Ram. On inquiries being made about this amount, Deep Ram admitted in writing that the sum of Rs. 7000/- was paid by Bhagwan Dass to the accused in his presence. This writing was submitted by Deep Ram to the then Speaker, Vidhan Sabha, on 16-8-1990. It is further case of the prosecution that the accused, vide his noting Q-4 and Q-6, admitted the receipt of

this amount, but could not account for the amount so received and, thus, in conspiracy with Uma Joshi, misappropriated the amount.

7. A perusal of the record, however, does not reveal the grounds to proceed against the accused for the commission of the offences alleged to have been committed by him.

8. As already stated, the receipts Q-1 to Q-3 acknowledging the receipt of the amount in question had been issued by Uma Joshi. She had acknowledged the receipt of Rs. 3500/- (Q-1) on 8-10-1988, receipt of Rs. 1750/-(Q-2) on the same day i.e. 10-8-1988 and receipt of another sum of Rs. 1750/ (Q-3) on 21-1-1989. These dates are mentioned in the receipts and Lachhman Dass Bhatia, in his statement under Section 161 of the Code has stated that the aforesaid amounts were received by Uma Joshi against the aforesaid receipts. Thus, on the basis of this material, particularly, the receipts, what can be said is that the aforesaid amounts were received by Uma Joshi on the aforesaid dates mentioned by her under her signatures in each of the receipt.

9. Said Uma Joshi, vide note No. 73 dated 29-5-1990 available on the file, had mentioned that the amount was handed over to the accused through Bhagwan Dass. Now Uma Joshi is not a witness in the case to state on oath about the handing over of the amount because she is mentioned as an accused in column No. 2 of the charge-sheet, because sanction to prosecute has not been accorded by the concerned authority. Even otherwise, she being a co- conspirator, much reliance cannot be laid on her noting. In any case, a perusal of the statement of Bhagwan Dass recorded by the police under Section 161 of the Code reveals that he was deputed by the accused in the year 1989 to bring the amount of Rs. 7000/- from Vidhan Sabha which was not handed over to him by the concerned person in the Vidhan Sabha on the ground that he had no authority letter. Therefore, on the next day, he was given a letter by the accused and on the basis thereof, he brought the aforesaid amount of Rs. 7,000/- and handed it over to the accused in the presence of Deep Ram Sharma. It is pertinent to note that according to this witness, the entire amount of Rs. 7000/ was brought by him from Vidhan Sabha and handed over to the accused in the year 1989.

10. A perusal of statement of said Deep Ram Sharma, as placed on record (which is only a supplementary statement and the initial statement is not placed on record) reveals that the writing dated 16-8-1990, is in his handwriting and that a sum of Rs. 7000/- was handed over by Bhagwan Dass to the accused in his presence. In the said statement, he has nowhere stated as to when the aforesaid amount was paid by Bhagwan Dass to the accused. Even in the writing, he has not mentioned even the year of such payment. His original statement, to which a reference has been made in the aforesaid supplementary statement, has not been placed on record meaning thereby that such statement has not been relied by the prosecution and has been withheld for the reasons best known to it.

11. It is the case of the prosecution itself that the aforesaid writing was submitted by Deep Ram, Sharma to the then Speaker, Vidhan Sabha. The Speaker, vide note dated 16-8-1990, had mentioned that, said Deep Ram had made a statement before her that a sum of Rs. 7000/- was brought by Bhagwan Dass, peon in June 1989 and was handed over to the accused in his presence. Thus, the facts as stated by Deep Ram Sharma before the then Speaker, Vidhan Sabha, relate to the happenings in the month of June 1989.

12. In view of the various statements discussed hereinabove, what is revealed is that it was in June 1989 that Bhagwan Dass brought a sum of Rs. 7000/- from H. P. Vidhan Sabha Secretariat and handed over the said amount to the accused in the presence of Deep Ram Sharma. Evidently, the prosecution case is not in respect of any receipt or handing over of a sum of Rs. 7000/- in the year 1989 but is in receipt of three different amounts of Rs. 3500/-, Rs. 1750/- and Rs. 1750/- respectively received by Uma Joshi on 10-8-1988, 10-6-1988 and 21-1-1989, respectively vide receipts Q-1, Q-2 and Q-3.

13. There is no material whatsoever on record to show that these amounts, after having been received by Uma Joshi, were ever handed over to the accused. Thus, there is no material either to prima facie disclose that the aforesaid amounts were ever received by the accused by fraudulent means or were entrusted to him.

14. The above discussion leads me to the conclusion that there are no grounds to proceed against the accused for the commission of the offences for which he has

been ordered to be charged by the impugned order and has been charged.

15. As a result, this petition is allowed, the impugned order is set aside. The proceedings taken in pursuance to the impugned order are quashed and the accused is discharged.

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