

The State Vs. C.K. Gulhati

The State Vs. C.K. Gulhati

SooperKanoon Citation : sooperkanoon.com/899401

Court : Jammu and Kashmir

Decided On : Apr-08-1982

Reported in : 1982CriLJ1923

Judge : I.K. Kotwal, J.

Appellant : The State

Respondent : C.K. Gulhati

Judgement :

ORDER

I.K. Kotwal, J.

1. The respondent was challaned to stand his trial before Chief Judicial Magistrate, Jammu for an offence under Section 420 R. P.C. for having supplied spurious spare parts of T. M. B. trucks to Salal Hydel Projects, Jammu, some time in the year 1971. The Chief Judicial Magistrate discharged him by his order dated 27-12-1974. A revision against the aforesaid order was taken to Sessions Judge, Jammu, which too was dismissed by him on 30-3-1976. Both these orders have been challenged in this revision petition as being contrary to law and facts.

2. A preliminary objection has been raised that the revision petition is not maintainable. To sustain it, reliance has been placed upon a Supreme Court decision viz: Jagir Singh, Appellant v. Ranbir Singh : 1979 CriLJ318 in particular,

to the following observations occurring therein (Para 4):.We are concerned with this provision in this appeal. The object of Section 397(3) is clear. It is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation. We may also mention here that even under Section 435 of the previous Code of Criminal Procedure, while the Sessions Judge and the District Magistrate had concurrent jurisdiction, like present Section 397(3) previous Section 435(4) provided that if an application under the Section had been made either to the Sessions Judge or District Magistrate no further application shall be entertained by the other of them.

3. Section 397 of the Code of Criminal Procedure (Central Act No. 2 of 1974) corresponds to Section 435 of the Code of Criminal Procedure (State Act No. 23 of 1989). Sub-section (3) of Section 397 upon which the aforesaid decision is based reads as under:

397.

(1) to (2) xx xx xx xx xx(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

4. There is no such provision in Section 435 to warrant the conclusion that once a party has invoked the revisional jurisdiction of the Sessions Judge, it cannot again approach the High Court in the same jurisdiction, if unsuccessful before the Sessions Judge. The revisional jurisdiction of the High Court, even though concurrent with that of Sessions Judge, has been kept unaffected under Section 435, with the result, that a party which has first approached the Sessions Judge, but without any success, can again approach the High Court in its revisional jurisdiction. Whereas the intention of the Union Parliament in enacting Sub-section (2) of Section 397, according to their Lordships, appears to be 'to secure prompt rather than perfect justice', the intention of the State legislature in retaining Section

435 in its present form, even after its amendment in 1978 by virtue of Act No. XXXVII of 1978, appears to be to secure not only prompt but also perfect justice. Unlike Section 397 whereunder the concurrent jurisdiction vests in the High Court and the Sessions Judge alone, revisional jurisdiction under Section 435 concurrently vests in the High Court, the Sessions Judge and the Chief Judicial Magistrate. the State Legislature, even though it has retained Sub-section (5) of Section 435 on the statute which says that if an application in revision has been made to either the Sessions Judge or the Chief Judicial Magistrate, no further application shall be entertained by the other of them, it has still not made a similar provision in regard to the concurrent jurisdiction of the High Court and the Sessions Judge. It clearly reflects the legislative intent to save the plenary powers of the High Court. Viewed thus, the preliminary objection has no force which is overruled accordingly,

5. Both the courts below after taking into consideration the evidence collected during the investigation in its totality have concurrently found that the charge against the respondent is groundless. The argument advanced by the learned Advocate General is that they had no power to sift the evidence, and so long there was some evidence to support it, the trial Magistrate was bound to frame the charge, as in that case it could not be said that the charge as envisaged by Sub-section (2) of Section 251-A was groundless, adding, that the charge could be said to be groundless only where there was absolutely no evidence to support it.

6. Three types of cases may arise Under Section 251-A: one, where every piece of the evidence collected during investigation supports the charge; two, where there is no evidence at all to support the charge; and three, where there is some evidence which supports the charge, but there is also other evidence which militates against it. No difficulty will obviously arise in the first two cases, for in the first case the Magistrate shall have to frame the charge, and in the second case he will have to discharge the accused. Difficulty may, however, arise in the third case. The true import of the expression 'groundless' in Sub-section (2) of Section 251-A fell for determination in *Century Spinning and . v. State of Maharashtra* : 1972 CriLJ329 . In that case the accused had been discharged by the Magistrate on the ground that the cumulative effect of the evidence collected during investigation

rendered the charge against them groundless. This finding was reversed by the High Court in whose opinion it was not a case where 'no reasonable person could come to the conclusion that there was any ground whatsoever to sustain the charge against the accused.' Their Lordships considered the entire evidence in its totality and upheld the order of the Magistrate, over-setting the one passed by the High Court. While dealing with the ambit and scope of Sub-section (2) it was observed (para 13):.Under Sub-section (2), if upon consideration of all the documents, referred to in Section 173, Criminal Pr. Code and examining the accused if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This Sub-section has to be read along with Sub-section (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two Sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charge. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in Sub-section (2). On the view that we have taken, we do not consider it necessary to refer to the various decided cases cited at the bar of this Court or discussed in the judgment of the High Court.

7. While dealing with the facts of the case their Lordships said :

Coming now to the facts of this case, in our view, the question principally depends on the scope and effect of the notification dated September 22, 1949, the circular dated Nov. 2, 1964 and the Deviation Order dated June 25, 1965. If on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for

considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does not substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.

8. It, therefore, follows that before charging or discharging the accused, the court has to apply its judicial mind to all the evidence collected in the case. It is the cumulative effect of all such evidence that must ultimately guide it in its decision whether to charge or discharge the accused. It is true that the evidence which may persuade it to hold the charge groundless, must be clinching in nature and the court cannot give benefit of doubt to the accused at that stage and discharge him. But, it is equally true that it is not to look into such evidence merely by way of an idle formality. It has to consider it along with other evidence, and if after doing that it finds that there is absolutely no ground for believing that the accused has committed any offence, it is bound to discharge him.

9. In the present case, both the courts below have recorded a concurrent finding of fact that the charge against the respondent is groundless. In holding so, what has weighed with them is the fact that after the spare parts were supplied, they were accepted by at least two responsible officers of the Project on verifying that the same were according to specifications. What happened to them after these were delivered to the buyer, the seller could not be held responsible. This evidence, there can be no doubt, could not have been ignored or brushed aside easily, as such, it cannot be said that the view taken by the courts below was either based on no evidence, or was otherwise perverse. Powers of this court in its revisional jurisdiction are limited and it cannot interfere with the finding of fact recorded by the two courts below even if it were to come to a different conclusion on the same evidence. It could have done so only if it were to find that the findings of the two

courts below were based upon no evidence, or that the same were otherwise perverse which, as already observed, is not the case here.

10. For the foregoing reasons, the revision petition fails which is dismissed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com