

Kuldip Singh Jamwal Vs. State

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Court : Jammu and Kashmir

Decided On : Jul-24-1997

Reported in : 1998CriLJ790

Judge : Bilal Nazki, J.

Acts : Prevention of Corruption Act; ;Ranbir Penal Code (IPC) - Sections 120B, 409, 420, 467, 468 and 471; ;Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 Smvt. - Section 561A

Appeal No. : B.A. No. 32 of 1997

Appellant : Kuldip Singh Jamwal

Respondent : State

Advocate for Def. : J.P. Singh, Sr. Adv.

Advocate for Pet/Ap. : D.D. Thakur, Sr. Adv. and; D.S. Thakur, Adv.

Judgement :

ORDER

Bilal Nazki, J.

1. This is a case in which the petitioner is in custody for almost one year. He has been charge sheeted for offences Under Sections 420, 409, 467, 468, 471/120-B,

R.P.C.

2. The petitioner had filed an application for bail earlier also in this Court and this Court while rejecting the bail application had observed :-

The accused cannot indefinitely be kept in custody particularly if the trial is to take a decade and if matters like this are allowed to be dragged for decades in a Court of law, the confidence of public in Courts itself gets shakened but presently the Sessions Judge Jammu must be having hundreds of cases and therefore even if he tries his best he will not be able to decide the matter even within five years. Therefore, Government should take the observations made in this order seriously and think of having a Special Court where the accused, if charge-sheeted, are tried on day to day basis and the trial comes to a conclusion in a reasonable period of six months.

This Court had further observed :-

It has been stated at the Bar that the Challan has been produced and trial Court has yet to come to a conclusion whether the accused need to be charged or not. That will be an important aspect of the matter. This Court has summoned the record also, but if this Court goes into the record to examine to whether prima facie a case exists against the accused or not, it may prejudice the parties because the trial Court has yet to decide whether the petitioners have to be charge-sheeted or not, therefore, it will be proper and fair, in the interest of justice, if the trial Court is given the liberty to look into the matter and see whether prima facie charge is made out or not. If the accused are not charged, they will automatically be released, and if, on the other hand, they are charge-sheeted, they can move bail application before the Sessions Judge, who will be in a better position to decide the application for bail on merits.

3. After this order was passed, for most of the time the file of the trial Court remained in the High Court. Certain applications were made at Srinagar and trial Court file was called. From Srinagar the file came to Jammu and is presently before one, so the accused could not be heard on charge.

4. By order dated 13th of December, 1996, I have also commented upon the role of the excise officials and referred the matter to the Vigilance Commissioner, with these observations :-

I am pained to note that the conduct of the Excise Officials particularly of Deputy Commissioner has not at all been investigated by the Police. Whether it was share negligence on the part of the Deputy Commissioner or he was a party to the game had to be ascertained by the Investigating Agency, therefore, I, direct that a copy of this order be sent to the Vigilance Organisation which shall look into the matter and see whether the Excise Officials were party to the conspiracy or it was negligence/incompetence of the Officials of the Excise Department that for one year they were not in a position to discover that fraud is being played with them.

5. Now, during the pendency of this application, report has been received from the Vigilance Commissioner which is styled as 'Preliminary Enquiry Report'.

6. This report has indicted certain officials including the then Deputy Commissioner Excise (Executive). I do not want to comment on the preliminary report at this stage which may prejudice some of the persons but I am convinced that from the Investigation conducted by the Vigilance Organisation so far, there is ample evidence of investigating the cases completely as against the officials of the State Government. The earlier investigation as such is incomplete and the Police Officials who have investigated the case appear to have conducted it without the required zeal. From the preliminary report submitted by the Vigilance Organisation, it is imperative that Vigilance Organisation will have to register a case and investigate and book all those against whom evidence is collected by the Vigilance Organisation. In case the Vigilance Organisation comes to the conclusion that certain more persons, particularly the Government servants have to be charge-sheeted in a Court of law, the present accused may suffer because there is an allegation under Section 120-B against them at present. During the investigation by the Vigilance Organisation, may be, it is found that certain persons other than the accused were also involved in the conspiracy, in that case the trial which the Sessions Judge may start will be of no use and of no consequence. If any Government servant is charge-sheeted by the Vigilance Organisation, even the

forum may have to be changed because those persons may also have to be charge-sheeted under the provisions of Prevention of Corruption Act.

7. The preliminary report also shows that case has so far been investigated very casually, therefore, it will be in the interest of nobody to start the trial of the accused persons, therefore, exercising my powers under Section 561-A, Cr. P. C, I direct that the Sessions Judge shall not proceed with the trial till the investigation is completed by the Vigilance Organisation.

8. The Vigilance Organisation shall register a case on the basis of the preliminary report submitted by it and start investigation in right earnest. The enquiry must be completed within a period of two months. A weekly progress report of investigation shall be submitted to this Court.

9. In the meantime, because of the developments which have occurred in the case, I have no doubt in my mind that accused must be bailed out because they are in custody for one year and the investigation conducted so far is far from satisfactory.

10. Accordingly, all the accused who are in custody, except the accused who are absconding, shall be released on bail on their furnishing bail bonds in the amount of Rs. 50,000/- each with two sureties each in the amount of Rupees 1,00,000/- (one lac), to the satisfaction of the Registrar (Judicial) of this Court.

11. The file pertaining to the case shall be retained in this Court. If the Vigilance Commissioner, during investigation, needs the file or any document of the file, he can approach the Registrar (Judicial) of this Court for obtaining the copies of such documents as will be needed by him for investigation.

12. The progress reports in the investigation shall be submitted by the Vigilance Commissioner weekly in a sealed cover to the Registrar (Judicial) of this Court at Jammu.

Application is accordingly disposed of.