
(2012) 2 RLW 1725

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Revision Petition No. 1375 of 2011

Surendra Kumar
Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: Nov. 14, 2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 219, 220, 223, 397, 401

Citation: (2012) 2 RLW 1725

Hon'ble Judges: Meena V. Gomber, J

Bench: Single Bench

Advocate: J.S. Sodhi, for the Appellant; N.A. Naqvi, A.A.G. with Mohd. Rahil Kalam, Addl. Govt. Counsel, for the Respondent

Judgement

Meena V. Gomber, J.

Above mentioned revision petition, filed u/s 397 read with Section 401 of the Code of Criminal Procedure

(hereafter referred to as "the Code"), is directed against the order passed by the Special Judge, Prevention of Corruption Act Cases, Ajmer, in

Special Sessions Case No. 2/2011, on 5.9.2011, whereby petitioner"s application filed u/s 219 of the Code, had been dismissed. Briefly stated

facts of the case are that on 6.8.2010, a secret information was received by Anti Corruption Bureau, Ajmer, to the effect that Mr. Surendra

Kumar Sharma (petitioner herein), the then Deputy Manager, Quality Control, Rajasthan Cooperative Dairy Federation, Ajmer, as such working

as Public Servant, had collected an illegal commission from Suppliers and Firms, and was carrying said money to the tune of Rs. 1 lac and odd, in

his Wagon R Car No. RJ 01 1C 2939. On receipt of said information, the Additional Superintendent of Police, along with his team, intercepted

the vehicle driven by the petitioner, in the presence of independent witnesses, and found a sum of Rs. 1,02,500/-, for which petitioner could not

give satisfactory explanation. In the car itself, the Additional Superintendent of Police also found some transaction slips with a white envelope,

having endorsement of Ambika Trading Company.

2. Finding the case to be prima facie made out, FIR No. 241/2010 was registered and thereafter search of his house situated at 1-Kh-6, Vaishali

Nagar Housing Board, Ajmer was made on the information that he was holding disproportionate assets in the name of his wife, relatives and

himself. Search was made, wherein property worth Rs. 4 crore plus, as also 10 kilo 900 gram gold was found. Second FIR No. 242/2010 was

registered for his having disproportionate assets.

3. After a while, third FIR No. 256/2010 also came to be registered. The learned trial Court opened the case arising out of FIR No. 241/2010,

wherein besides the petitioner, other accused persons are his colleagues in the Cooperative Dairy, who have been booked for criminal conspiracy

besides other offences. In this case, about 5 witnesses have already been examined.

4. In the second case, arising out of FIR No. 242/2010, 58 witnesses had already been examined, wherein besides the petitioner, his wife, son and

daughter, have also been made accused, but they are absconding and proceedings under Sections 82 and 83 of the Code, had to be initiated.

Their applications seeking anticipatory bail had also been dismissed by this Court. The revision filed by the co-accused i.e. the wife, son and

daughter of petitioner, against the order passed under Sections 82 and 83 of the Code, is also pending before this Court, listed sometime next

week.

5. So far as the third FIR No. 256/2010 is concerned, the investigation is yet to complete. Nobody knows what would be the fate of that FIR.

6. The petitioner's application u/s 219 of the Code, had been filed before the trial Court after the examination of 5 witnesses in Sessions Case No.

16/2010 (FIR 241/2010) and 58 in Session Case No. 2/2011 (FIR 242/2010), and the learned trial Court dismissed the application by giving

cogent reasons that it was not a case where provisions of Section 219 of the Code were attracted because the trial had already commenced in

both the cases and by then, a considerable number, probably 58 witnesses out of a list of 95, had been examined and in the other also, 3 had been

examined, and besides that, there were other co-accused, some of whom (his own wife and children) were absconding. The learned trial Court

also found that it would not be convenient also to try the two cases together just because they have been committed in a period of one year. They

cannot be said to be part of same transaction, and the other co-accused, who are petitioner's colleagues/his family members, have not made any

such prayer.

7. Learned Public Prosecutor, appearing for respondent State, placing reliance on the case of Lalu Prasad @ Lalu Prasad Yadav Vs. State

through C.B.I. (A.H.D.) Ranchi, Jharkhand, , supporting the order of learned trial Court, submitted that since prosecution has already commenced

its trial and considerable number of witnesses have already been examined, it can at the most be said to be a prayer for amalgamation, as

prescribed u/s 223 of the Code, which also cannot be allowed because no such request has been made by co-accused of FIR Nos. 241/2010 and

242/2010, and the result of FIR No. 256/2010 is yet to come, which is still pending investigation. Moreover, according to him, in a case of

amalgamation also, the power of the Minister is discretionary, as he has to satisfy himself that the person would not be prejudicially affected, and

that it is expedient to amalgamate the cases. Attention of this Court was also drawn to clauses (a) to (g) of Section 223 of the Code and it was

submitted, that neither the case of petitioner falls under the provisions of Section 219 or 223 of the Code. So far as Section 220 of the Code is

concerned, it was submitted that the case of disproportionate assets pertains to the period from 15.2.1982 to 6.8.2010, since the time petitioner

came in to service, and so far as Section 219 of the Code is concerned, the learned counsel for C.B.I. argued that the periods are also different.

8. During arguments, petitioner"s counsel fairly conceded that he does not press his application or the petition with regard to amalgamation of FIR

No. 256/2010, because this case is still under investigation and does not know whether charge-sheet will be filed or not. His prayer is restricted to

the extent of framing of charge in the two FIRs i.e. 241/2010 and 242/2010, and their trial together.

9. After having gone through the record, I find that in the case registered in FIR No. 241/2010, besides the petitioner, there are other co-accused,

who are his colleagues in the Cooperative Dairy. In the same manner in FIR No. 242/2010, considerable progress has already been made as 58

witnesses out of 90 have been examined. Even if some of the witnesses are yet to be crossed, it cannot be said to be a case fit for amalgamation.

Both cases are for different offences, and in one of the cases, the other co-accused are his family members (who are still absconding), whereas in

the other one, other co-accused are his colleagues in the office, who are also charged for criminal conspiracy, and no other accused has given

consent for being tried together. Stages of the cases are also different and the learned trial Court has observed, while rejecting the application,

besides being inconvenient, it will also not be justified to try them together. Learned trial Court has given cogent reasons while dismissing the

application and what influenced the trial Court most, was that it was not a case of Section 219 of the Code, but it was more a case of

amalgamation u/s 223 of the Code. First, the interception of the vehicle was made and he was found in possession of an amount of Rs. 1 lac plus,

which he could not explain, and second was for the check period from 1982 to 2010, for collecting assets disproportionate to his known sources

of income and, therefore, Section 219 of the Code was not applicable.

10. Even otherwise, the stages were different, separate sets of witnesses and separate sets of accused in FIR No. 241/2010 were to be examined.

Moreover, in the same manner, 58 witnesses out of 90 have already been examined in FIR No. 242/2010, and no prayer has been made by any

other co-accused, that they want them to be tried together. In the background of settled legal position and for the foregoing reasons, no illegality or

perversity is found in the order impugned. The Revision petition has no merit and is hereby dismissed, but with no order as to costs. The stay

application also stands disposed.