
Vijay Kumar Soni Vs The State

Criminal Miscellaneous Cases No"s. 3469 and 3470 of 1983

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: March 29, 1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 157, 173, 482#Penal Code, 1860 (IPC) â€” Section 409, 466, 467, 477#Prevention of Corruption Act, 1988 â€” Section 5(2)

Citation: (1989) AWC 1400 : (1990) CriLJ 955

Hon'ble Judges: G.B. Singh, J

Bench: Single Bench

Advocate: Imtiyaz Murtaza and V. Bhatia, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.B. Singh, J.

These three connected petitions u/s 482, Cr. P. C. shall be disposed of by this judgment. Vijai Kumar Soni, petitioner was

Junior Engineer in the Public Works Department at Gonda from 1974 to 1978. During the years 1976 to 1978 some constructions and repairs

were made on Bahraich-Faizabad-Azamgarh Road and Colonelganj - Kukurbhukwa - Gonda Road. Brick ballasts, stone ballasts and bricks

were supplied by the Thekedars for the aforesaid purpose. These constructions and repairs were carried on under the supervision of Vijai Kumar

Soni. It seems that the complaints were made against him that he had misappropriated the material supplied and failed to account for them. The

State Government, therefore, entrusted the matter to the Vigilance Department. The Superintendent of Police (Vigilance Department), Faizabad,

entrusted the matter to a Vigilance Inspector for investigation. He found that Vijai Kumar Soni misappropriated 33.92 cubic metres of brick

ballasts worth Rs. 1759/- supplied for Bahraich-Faizabad-Azamgarh Road and made fictitious entries in the Government records. He, therefore,

submitted charge-sheet on 20-4-1983. On this charge sheet Special Judge, Gonda, took cognizance and summoned the petitioner. About

Colonel-ganj-Kukurbhukwa-Gonda road the Vigilance Inspector found that Vijai Kumar Soni misappropriated 353.56 cubic metres stone ballasts

worth Rs. 22,592.48 P., 2700 bricks worth Rs. 365/- and 1200 bricks worth Rs. 151.44 P. and made forged and fictitious entries in the

Government records. The Vigilance Inspector submitted on charge sheet relating to misappropriation of 1200 bricks on 7-3-1983. It relates to the

period of 1977-78. The other charge sheet submitted on 6-5-1983 relates to misappropriation of stone ballasts and 2700 bricks for the year

1977. On these two charges also the learned Special Judge took cognizance and summoned Vijai Kumar Soni. He appeared in all the three cases.

After his appearance of a date for framing charge had been fixed. Before framing of the charge he moved these three petitions u/s 482, Cr. P. C.

for quashing his prosecution.

2. The contention is that he did not commit any misappropriation or criminal breach of trust or forgery in public records and he has been falsely

roped in the case at the instance of his superior officers and some other persons due to ill-will. It has also been pleaded by him that the charge

sheets submitted against him do not make out any case prima facie and as such the learned Special Judge has wrongly taken cognizance of the

matter. In the rejoinder affidavit a new plea had been raised. It is that no first information report had been lodged and as such the Vigilance

Inspector could not make investigation against him.

3. Heard the learned counsel for the petitioner and the learned Assistant Government Advocate. After having heard and considered the arguments

advanced I am of the opinion that these petitions have no substance and deserve dismissal.

4. These petitions u/s 482, Cr. P. C. have been moved at interlocutory stage. It is well-settled that the inherent power at such a stage of the

criminal case should be exercised sparingly with circumspection in rare cases and that too to correct patent illegalities or when some miscarriage of

justice is shown. It may also be added here that if other remedy is open to the person aggrieved the inherent power should not be exercised. In

the present case the petitioner did not raise any objection before the Special Judge that no prima facie case has been made out against him and as

such he should not proceed with the case. At the time of arguments it was conceded by the learned counsel for the petitioner that such a point

could be raised by the petitioner before framing charge against him to invite decision of the Special Judge. The petitioner has, therefore,

undoubtedly approached this Court hurriedly and his petitions are liable to be dismissed on this ground alone.

5. The argument of the learned counsel for the petitioner is that there was no first information report against the petitioner and thus there could be

no investigation. The argument does not appear to have any substance. It has been held in AIR 1945 18 (Privy Council) that in the case of

cognizable offence receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation.

Similar observation was made in *The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi*, . The learned counsel for the petitioner in order to

support his contention that the F.I.R. should have been in existence before the commencement of the investigation relied upon the *The State of*

Bombay Vs. Rusa Mistry and Another, . It has been held in this case that it is the F.I.R. on which the investigation commences. It is a general

observation and it has not been held anywhere in this reported case that the F.I.R. is a condition precedent for criminal investigation. Section 157,

Cr. P. C. itself makes it clear that an investigation can be initiated either on first information or otherwise. In view of this word "otherwise" it was

held in *Emperor v. Khwaja Nazir Ahmad and State of U. P. v. Bhagwant Kishore Joshi* (supra) that investigation can commence in the absence of

the F.I.R. It cannot, therefore, be said that the investigation made in the case was illegal as contended by the learned counsel for the petitioner.

6. From the charge sheets it appears that first information reports had been lodged. According to these charge sheets the first information reports

were the D.O. letters of Vigilance Section I of U. P. Government. Not only this the petitioner has alleged in para 8 of the petitions that fictitious

reports were lodged against him for misappropriation of the bricks and the ballasts. Learned counsel for the petitioner in order to give strength to

his contention pointed out that no crime number of police station has been given in the charge sheets and from this it can be inferred that no F.I.R.

had been lodged. This point had not been specifically taken in the petitions and thus the opposite party did not get an opportunity to explain it in the

counter-affidavit. The plea that no F.I.R. was lodged was also not taken in the petitions. It was raised in the rejoinder affidavit. Since it has been

admitted in the petitions that the reports were lodged much importance cannot be attached to it for the purposes of the exercise of power u/s 482,

Cr. P. C. However, it is made clear that the point if F.I.R. was lodged or not is a subject matter of evidence and so it will be decided by the trial

court on the basis of evidence adduced before it. If competency to take cognizance on its basis is challenged, the trial court shall decide it in

accordance with law. It may, however, be added that cognizance can be taken on the basis of the complaint giving out the facts constituting the

offence or upon a police report of such facts. A complaint can be by a police officer. The charge sheet can be taken as a police report. It cannot

be said that cognizance can be taken on the basis of a charge sheet filed u/s 173, Cr. P. C. only. Cognizance taken by the Special Judge cannot,

therefore, be said illegal at this stage simply on the ground that no F.I.R. had been lodged in this case u/s 154, Cr. P. C.

7. So far as the contention of the petitioner's counsel that no prima facie case has been made out is concerned a glance on the facts narrated

against the petitioner in the charge sheets (Annexure 3) makes it clear that the necessary facts for constituting the offences enumerated in the charge

sheets find place therein. It has been clearly mentioned that the petitioner misappropriated certain articles and thereby committed criminal breach of

trust. It has also been mentioned in the charge sheets as to how the petitioner made false entries and committed forgery and prepared false

accounts. Thus, the necessary details for constituting the offences under Sections 409, 466, 467, 477, I.P.C. and Section 5(2) of the Prevention of

Corruption Act do find place in the charge sheets. The petitioner has contended that he would not have misappropriated such a small number of

bricks and they could be used at various places in connection with construction and repairs of the roads going on at several places. It has also been

pleaded by him that he has been falsely implicated at the instance of his superior officers and landlord of the house. All these facts can be

appropriately appreciated at the stage of trial and cannot be gone into at this stage in the petition u/s 482, Cr. P. C. The pleas raised by him in the

petitions do not go to show that the prosecution had no case and it would be a mock trial if it is allowed to proceed.

8. From the above discussion it is clear that the petitioner has failed to make out any case for interference by this Court in the exercise of inherent

jurisdiction u/s 482, Cr. P. C. The petitions are, therefore, dismissed. The stay order is discharged. Send back the record of the lower court

immediately so that the trials may proceed.