
(1989) 05 AHC CK 0049

Allahabad High Court

Case No: Criminal Revision No. 1160 of 1988

Om Prakash Sharma and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 17, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 209, 226, 227, 228
- Penal Code, 1860 (IPC) - Section 120B, 161, 164, 165, 409
- Prevention of Corruption Act, 1947 - Section 5(2), 5(3A), 6(1)

Citation: (1990) 14 ACR 9

Hon'ble Judges: K.K. Chaubey, J

Bench: Single Bench

Advocate: C.L. Pandey and Yogesh Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Chaubey, J.

This petition purporting to be a Criminal Revision has been filed against charges framed on 17-5-1988 by the Special Judge/IVth Additional Sessions Judge, Aligarh in criminal case No. 9 of 1985 State v. Om Prakash Sharma and Ors.

2. I have heard Learned Counsel for the Petitioners at the admission stage and have gone through the record.

3. The learned Additional Sessions Judge on 17-5-1988 framed six charges against the Petitioners Om Prakash Sharma, Sushil Deo and Tota Ram. The charges are under Sections 120-B, 409, 420, 468, 471 IPC and 5 (2) of the Prevention of Corruption Act, 1947.

4. Learned Counsel for the Petitioners raised two legal questions in this petition. His first contention was that in framing of the charges no judicial considerations played part and all the charges are vague. The second contention was that Om Prakash

Sharma, applicant is a Junior Engineer. His appointing authority is the Chief Engineer, who is alone competent to give sanction for prosecution u/s 6 (1) (c) of the Prevention of Corruption Act, 1947, and not the Engineer-in-chief who has given sanction in this case. These points will be considered one by one.

5. Trial before the court of Sessions is conducted in accordance with Chapter XVIII of the Criminal Procedure Code, when the accused appears or is brought before the court in pursuance of commitment of a case u/s 209 of the Criminal Procedure Code (herein-after called the Code), Public Prosecutor shall open his case u/s 226 of the Code by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

6. If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge him u/s 227 of the Code and record his reasons for so doing.

7. If, however, after such consideration and hearing as aforesaid, the judge is of opinion that there is ground for presuming that the accused has committed the offence, he shall frame in writing a charge against the accused u/s 228 of the Code.

8. It is thus clear that before framing charge or charges the Sessions Judge has to hear the submissions of the accused and the prosecution, besides taking into consideration the record of the case and documents submitted therewith. Therefore, if the Sessions Judge frames a charge after hearing the parties and taking into consideration the record of the case and documents submitted therewith, the law must be allowed to take its own course, unless and until there is glaring injustice.

9. Learned Counsel for the applicants drew my attention to the judgment in Criminal Revision No. 1002 of 1988 Krishna Kumar Gupta and Anr. v. State of U.P. decided on 18-7-1988 by Hon^{ble} B.N. Sapru, J. by which the revision was allowed, charges framed against the accused were set aside and the Sessions Judge was directed to frame the charge. I have gone through that judgment. In this judgment there is no any finding that the accused persons were misled by any error or omission or that the framing of charge had occasioned a failure of justice. It was simply observed :
◆ If, however, at the earliest stage the defects are pointed out they must be rectified.◆ On this point I may refer the judgment of Supreme Court in State of Maharashtra v. Dilip Nathumal 1989 AWC 309 ; 1989 ACR 158. In paragraph 20 (of 1989 AWC of this judgment it has been observed :

We wish to add a word regarding interference by the High Court against a charge framed by the Sessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably

clear in the Section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and public prosecutor. He is required to hear both sides before framing any charge against the accused for discharging him. If the Sessions Judge after bearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self restraint on the part of the High Court should be the rule unless there is glaring injustice stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

10. In view of this observation of the Supreme Court the Petitioners cannot get any benefit of the aforesaid judgment of this court. Therefore, I am of the view that the first contention of the Learned Counsel for the Petitioners is without merits. Charges framed by the Special Judge/Additional Sessions Judge cannot be interfered.

11. Coming to the second contention of the Learned Counsel for her Petitioners it is a fact that sanction for prosecution was given by the Engineer-in-Chief and not by the Chief Engineer. Assuming that the Chief Engineer is the appointing authority of the Junior Engineer, a question arises as to whether the Engineer-in-Chief, who is a higher authority of the Chief Engineer was competent to give sanction.

12. In order of sanction dated 7-6-1986 the Engineer-in-Chief has specifically noted that he is competent to remove the applicant Om Prakash Sharma, Junior Engineer from service. Section 6 (1) (c) of the Prevention of Corruption Act, 1947 reads as under :

No court shall take cognizance of an offence punishable under Sections 161 or 164 or 165 of the Indian Penal Code (45 of 1860) or under sub-section (2) or sub-section (3-A) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction:

(a)

(b)

(c) in the case of any other person, of the authority competent to remove him from his office.

13. Therefore the authority competent to remove a public servant from the office is also competent to give sanction for prosecution. Even if it is assumed that the appointing authority is competent to give sanction, an authority higher in rank to the appointing authority is also competent to give sanction for prosecution. Of course an authority inferior in rank to the appointing authority cannot give such sanction. On this point reference may be made to Sampuran Singh v. State of Punjab AIR 1982 Supreme Court 1407, in which it has been held by the Supreme

Court that Article 311 of the Constitution does not require that dismissal or removal must be ordered by the same authority who made the appointment. There is a compliance with clause (1) of Article 311, if the dismissing authority is not lower in rank or grade than the appointing authority.

14. In *Sunderlal Shivana v. State of Madhya Pradesh*, 1989 Supreme Court Criminal Rulings 47, Full Bench of Madhya Pradesh High Court has held that a sanction for prosecution given by an authority higher than the appointing authority was valid. In the instant case as stated earlier even if the applicants were appointed by the Chief Engineer but their sanction for prosecution was given by the Engineer-in-Chief, it was a valid sanction.

15. In view of the above discussion I do not find any force in the contentions raised by Learned Counsel for the applicants and this petition is summarily rejected.