

Ranendra Mohan Shome and Another Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: Feb. 15, 1999

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 161, 482
Penal Code, 1860 (IPC) " Section 120B, 201, 417, 420, 464
Prevention of Corruption Act, 1988 " Section 13, 13(1), 13(2)

Citation: (1999) 1 GLT 260

Hon'ble Judges: A.P. Singh, J

Bench: Single Bench

Advocate: A.K. Phukan, A. Devi and H. Das, for the Appellant; K. Deka and D.K. Das, for the Respondent

Judgement

A.P. Singh, J.

These two Criminal Revisions have been filed by Sri Ranendra Mohan Shome - Petitioner of Criminal Revision No.497/98

and by Sri Birendra Nath Sarma-Petitioner of Criminal Revision No. 484/98. Though arguments in both the cases have been advanced separately

but for the reason of similarity both in the matter of fact and the points involved in the cases I proceed to dispose of both by a common judgment.

Copy of judgment shall be kept in both the files and this judgment will govern both the cases.

2. Petitioner Sri Ranendra Mohan Shome herein after referred to as accused A3 and Petitioner Sri Birendra Nath Sarma hereinafter referred to as

accused No. A5 were posted as Director and Senior Finance and Accounts Officer in the department of Animal Husbandry & Vety. in the Govt.

of Assam at the time of the occurrence. Financial irregularity known as LOCs scam was detected and was referred to the Central Bureau of

Investigation for investigation criminal case was registered against number of accused persons including A3 and A5 u/s 120B, 420, 417, 471,

477A, 201 of the IPC read with Sections 13(1), 13(2) and 13(i) (d) of Prevention of Corruption Act, 1988. Accused A3 has been charge

sheeted by the Special Judge, Guwahati, Assam by means of the impugned order dated 31.10.98 to stand trial u/s 120B and 420 IPC and Section

13(2) of the Prevention of Corruption Act, 1988 wherein accused A5 has been directed to stand trial on charges framed against him for

commission of offence punishable u/s 120B, 420 IPC read with Section 13(2) and 13(i) (d) of Prevention of Corruption Act, 1988. Said accused

persons have now approached this Court by means of above two Criminal Revision applications filed u/s 482 Code of Criminal Procedure for

quashing of the order of the Special Judge on the ground that they are being subjected to unnecessary harassment by means of impugned order as

there is no sufficient plausible material justifying their trial on the charges which have been levelled against them and the charges framed against

them by the I Special Judge. Therefore the charges are liable to be quashed. It is contended on their behalf that there is no likelihood of their

conviction on the charges for the absence of credible evidence on record.

3. The prosecution case in brief is that the accused (Ai) Deputy Secretary, Veterinary Department, Govt. of Assam dishonestly issued 14 LOCs

amounting to Rs. 89,95,430/- without any fund provisions and budget sanction of the Finance Department which were used by the accused for

passing the RCC bills. All the accused in furtherance of their criminal conspiracy forged one LOC dtd. 28.11.91 by inflating its amount from Rs.

9000/- to Rs. 3009,000/-. It is alleged that A(14) inflated the amount by adding 300/- before Rs. 9,000/- on his typewriter which was later on

destroyed by him. 5 LOCs amounting to Rs. 1,16,61,200/- for the months of August, 1992 and September 1992 were also forged by the accused

by forging the signatures of the concerned officers and used them as genuine. Against those forged and false LOCs an amount of Rs.

1,20,20,897.60 was fraudulently withdrawn.

4. It is alleged that 9 false sanction orders were issued by A6, A3 and A2 the Ex-Directors of Veterinary Department and A5 and A4 Sr. Finance

and Accounts Officers by opening Part files. These files were subsequently destroyed by A2. The said sanction orders were used by the accused

for clearing the RCC Bills. The accused (A7 and A8) the officers incharge, ICDP Howly and A10 Accountant and Biraj Das, (Approver) and A9

Store Keeper of ICDP, Howly procured false Veterinary medicines bills from A14, A15, A16, A17 and A18 though they did not receive any

medicines. The approver Biraj Das and A9 made false entries in the stock book in token of having received the medicines. A7 and A8

falsely...stock book without receiving the same. A10 prepared 15 false RCC bills amounting to Rs. 1,21,35,879.13 which were passed for

payment by A7 & A8.

5. The said bills were processed by A13, the Accountant Treasury Office, Barpeta which were dishonestly passed by A11 and A12 the Treasury

Officers Barpeta Treasury by violating the norms and procedures of Treasury Rules. The bills were brought to the SBI, Barpeta Branch and the

bank made the payment to the peon of the office of the ICDP, Howly either in cash or in draft who handed over the same to A10. After receiving

the money A10 entered the amount in the cash book and showed it to be disbursed to the supplier firms A14 to A18. A14 to A18 did not supply

any medicines and submitted false bills. The A8 also procured false bills in the name of the firm M/s Panchoi.

6. Thus according to the prosecution all the above accused persons in conspiracy with each other cheated the Govt. of Assam through the

Veterinary Department to the tune of Rs. 1,21,35,879.13 on the basis of false LOCs sanction orders and false supplier's bills. After completing

the investigation and obtaining the necessary sanction orders to prosecute the Government servants the I.O. submitted the charge sheet against all

the accused u/s 12B/420/467/471/477A/201 of the IPC u/s 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act.

7. The CBI examined number of witnesses and has also filed large number of documents for substantiating its cases. The witness apart from many

others included Witness No. 14. Sri Surendra Nath Sarma, witness No. 17 Sri Naren Talukdar, witness No. 20 Sri Ramani Kanta Deka, witness

No. 28 Sri Ganesh Barman, witness No. 29 Ashraf Ali who worked with the Petitioners in the Vety. Department at the relevant time. Relying on

the statement of the witnesses and the documents filed in support of the prosecution case, learned Special Judge has arrived at the satisfaction of

prima facie guilt of Petitioners for the offences with which they have been charged and has put them to face trial on those charges.

8. In support of the, revision petition filed by A3 arguments were advanced by Sri A.K. Phukan, learned Sr. Advocate and by Sri D.K. Misra on

behalf of the accused No. A5. They contended that there was wholly insufficient and unreliable material on the record before learned Special

Judge which could not support the charges which have been levelled against the two accused persons. They argued that for the reason for absence

of evidence there is no likelihood of the prosecution succeeding in establishing the charges against Petitioners and if the trial of the Petitioners is

held on those charges it will amount to abuse of the process of Court causing unnecessary harassment and injustice to the accused persons.

Therefore, this Court in exercise of its power u/s 482 of the Code of Criminal Procedure should quash the proceedings initiated against them by

means of the impugned order and discharge them from the case. In support of his contention Mr. A.K. Phukan invited my attention to the sanction

orders passing whereof have been attributed by the prosecution to A3 being Nos. 11, 13, 17, 18, 42 and 43. Copies of those sanction orders

have been filed by A3 with his petition so as to pay emphasis to his contention that the said sanction orders having been issued in the year 1992

cannot be attributed to A3 as his tenure as Director in department was confined to the year 1991 between the period of 16.3.91 to 28.3.91. Sri

Phukan further contended that a bare perusal of the statements of witness No. 7 and 14 and other witnesses who have allegedly deposed against

A3 would show that accused A3 had issued genuine sanction orders. Hence no criminal liability can accrue against him for issuance of genuine

sanction orders. Mr. Phukan lastly contended that there is absolutely no material for proving charge of criminal conspiracy between the accused

A3 and other accused persons. Hence charge u/s 120B of IPC has wrongly been framed against accused A3, hence the charge must be quashed.

9. Mr. D.K. Misra, learned Counsel for the accused No. A5 contended that the reason of not being the sanctioning authority accused A5 cannot

be held liable for the wrongful issuance of sanction orders. He tried to prove the innocence of A5 contending that as Senior Finance & Accounts

Officer, the accused had put the entire picture including budgetary provisions and available funds to the respective directors who had passed the

sanction orders hence no criminal liability, either for the issuance of false sanction orders, or for opening of part file for that purpose, can be laid on

the accused AS. Sri Misra further contended that the sanction orders having been passed by the respective directors being accused Nos. A2, A3

and A4 hence accused A5 as senior Finance and Accounts Officer had no alternative but to sign the Sanction orders as per rules and to issue them

for further action. Mr. Misra also contended that issuance of false sanction order is not fully made out for the reason that the term "false" order as it

is understood under the provision of Section 464 of the IPC cannot be applicable to the sanction orders which are passed by competent authority.

Hence no punishable offence is made out from the prosecution story against AS for the alleged issuance of false sanction orders. Mr. Misra further

contended that the statement of witness No. 7 Sri Tushar Kant Chakraborty witness No. 14 Sri Surendra Nath Sharma clearly bear out innocence

of A3 whereas statements of witness No. 28 Sri Ganesh Barman and witness No. 29 Sri Mohommad Asraf Ali being false cannot be used for

incriminating AS for the commission of any of the used for incriminating A5 for the commission of charged offences.

10. Having heard learned Counsel for the two accused persons A3 and A51 do not think a case for interference by this Court u/s 482 of the Code

of Criminal Procedure has been made out by them.

11. Section 482 Code of Criminal Procedure reserves with the High Court extra-ordinary power for the purpose for preventing injustice and

abuse of the process of Court. The power is not meant for being utilised for the purpose of review of orders passed by the competent courts of

law in exercise of their powers. The scope of the power of this Court viewed so it obviously follows that the provision does not offer a remedy to

accused persons to delay trial or investigation of a criminal case. Thus where a person is accused of an offence but from the report or complaint

filed in that regard against him taken on its face value does not disclose any cognizable offence. In that situation the Court will be duty bound to

exercise its power u/s 482 Code of Criminal Procedure and bail out the accused from unnecessary harassment which is bound to occur to him if

the case is allowed to be investigated. Similarly where an accused has been put to trial on some criminal charges but there is no material suggesting

his guilt on those charges on which he has been put to trial in that event also this Court would step in the aid of such accused and quash the charges

and entire proceedings against him. This is obviously for the reason that law permits trial only of such person against whom there is sufficient

material to indicate commission of offence by him. If there is no material suggesting his involvement in the commission of offence for which he has

been brought to trial or if the material is not sufficient to substantiate the charges and there is no likelihood of his conviction this Court will not

permit such trial to proceed against him. On the contrary if there is sufficient material which on its face suggests involvement of the person

concerned in the commission of the offence for which he has been charged and has been put to trial it will not at all be proper for this Court to

exercise its power u/s 482 Code of Criminal Procedure or under Article 226 of the Constitution to stop the trial and quash the proceedings against

him. In substance the High Court while dealing with such cases has a very limited role to play. It cannot assess the evidence to adjudicate the

credibility of the witnesses whose statements recorded u/s 161 Code of Criminal Procedure suggest involvement of the accused in the commission

of the offence for which he has been charged. This court would also not consider the explanation which the accused may have to offer for justifying

the action taken by him which is termed by the prosecution as a crime. The statements recorded by the I.O. and other material collected by it for

substantiating the charges have to be taken on its face value without doubting correctness. In this regard reference may be had to the view taken by

the Supreme Court in R.P. Kapur Vs. The State of Punjab, Supreme Court has observed as below:

High Court cannot enquire as to whether the evidence in the case is reliable or not. The court also cannot assume innocence of the accused person

on the explanation that the accused has to offer before the High Court in his petition u/s 482 Code of Criminal Procedure

12. In the present case reading of the statement of witnesses specially witness No. 14 and perusal of the documents on which reliance has been

placed in support of the prosecution case there is no doubt in my mind that there is sufficient reason for prima facie belief about the involvement of

accused A3 in the commission of offence for which he has been charged. There is sufficient evidence on the record also to show that a criminal

conspiracy existed between the accused persons in the matter of issuance and passing of sanction orders resulting in incurring of unauthorised

expenditure therefrom. Such a suggestion is fully borne out from the evidence on record against the accused. Similarly statements of witness Nos.

7, 14, 28 and 29 taken together along with other available material the charge which have been framed against accused A5 are fully borne out.

Those statements if taken on its face will be sufficient to result in his conviction on the charges levelled against him. Therefore it cannot be believed

that accused A3 and A5 have unnecessarily been put to trial without support of any material suggesting their involvement in the crime for which

those two accused have been charged. The statement of the witnesses named above would clearly suggest that false sanction orders were issued

by the accused persons who also were instrumental in the opening of part files for that purpose. The plausible defence which the two accused

persons have offered in the revision petition cannot be looked into by this court. They will have opportunity to advance it before the trial court

which will consider it from the evidence that may be filed by accused persons to substantiate their explanations. As regards the contention that the

sanction orders having been signed and issued by A5 after the same were passed by the directors hence cannot be termed to be false sanctions

order is concerned. I find no substance in this contention of Mr. Misra as well.

13. The evidence collected by the prosecution specially statements of witness Nos. 7, 14, 28 and 29 would clearly demonstrate that A5 was in

criminal conspiracy with other accused persons had manipulated and produced sanction orders by opening part files for incurring expenditure

without there being budgetary provision and funds which in fact and under rules could not and were not actually incurred and therefore the sanction

orders so procured and issued were not one of which are normally issued for incurring expenditure for the purposes for which the budgetary

provision is made. Hence such sanction orders would be nothing but "false" or fraudulent sanction orders issued for the purpose of defalcating

public money. The charge therefore are fully made out.

14. In view of the above discussions I find no good ground to interfere with the impugned order of the Special Judge. Rather I uphold that order

and fully endorse the reasoning given by the learned Special Judge in support of his decision to put without to trial on the framed charges.

15. Revision petitions lacks merit and are accordingly dismissed in limini.