(2002) 07 MP CK 0050

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Revision No"s. 326, 327, 416, 417, 453 and 456 of 1999

P.A. Samual		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: July 2, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228
- Penal Code, 1860 (IPC) - Section 120B
- Prevention of Corruption Act, 1947 - Section 5(1), 5(2)
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Citation: (2002) 3 MPHT 393 : (2002) 4 MPLJ 514

Hon'ble Judges: S.L. Kochar, J

Bench: Single Bench

Advocate: B.L. Pavecha and Yogesh Mitta, for the Appellant; G. Desai, Dy. A.G., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.L. Kochar, J.

By this common order, Cr.R. No. 417/99 (P. A. Samual v. State of M.P.), Cr.R. No. 327/99 (Sharad Panwar v. State of M.P.), Cr.R. No. 326/99 (Sharad Panwar v. State of M.P.), Cr.R. No. 453/99 (Krishna Rashinkar v. State) and Cr.R. No. 456/99 (Krishna Rashinkar v. State) are also being disposed of.

These Cr. Revision Nos. 416/99, 417/99, 327/99 and 328/99 have been directed against the order dated 26-3-99 passed by the learned Special Judge, Indore in Special Sessions Trial No. 7/97 relating to plot Nos. 793, 794 and 795 and in another Special Sessions Trial No. 8/97 relating to plot Nos. 792, 795, 797 and 798, framing the charges against

the petitioners under Sections 5(1)(d)/5(2) of the Prevention of Corruption Act, 1947 read with Section 120B of the Indian Penal Code and in the alternative u/s 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 120B of the Indian Penal Code.

The Special Police Establishment, Lokayukta Office, Indore had filed a charge-sheet against the petitioners and against the other co-accused persons for the aforesaid offences. The prosecution case is that the M.P. Housing Board of Indore had developed a colony called as ''Bajrang Nagar Colony, Indore''. In the year 1983, three plots were allotted through Chairman quota from Bhopal. The allegations against the accused persons in both these cases are that the three plots bearing Nos. 793, 794 and 795 in Special Case No. 7/97 and Plot Nos. 792,796,797 and 798 relating to Special Case No. 8/97 were initially of the size of 45'' x 50''. But later on in the year 1987, the size of these plots were increased and they were allotted in the year 1987 with the size 50'' x 73''. This size was increased without having any lawful authority, power and jurisdiction by the concerned accused persons and thereby obtained wrongful gain to themselves and wrongful loss to the Housing Board/State because the allottee of the plots have sold their plots to other persons in pieces on higher prices. According to the prosecution, all the accused persons including the petitioners have taken active participation right from the allotment of plots till delivery of possession to the allottees at one point of time or other. They all were knowing the legal position that according to the rules, regulations and provisions of the Housing Board, the size of plots could not be increased and, therefore, by doing so, they have committed the aforesaid offences after hetching conspiracy.

The prosecution has filed the charge-sheet containing approximately 450 sheets.

In Cr. Revision Nos. 453/99 and 156/99, the petitioner Krishna Rashinkar, Executive Engineer has challenged the order of framing of charge dated 9-4-1999. According to the learned Counsel for the petitioner, he has counter-signed on the plot measurement certificates after a decision for allotment and this was his duty to which he could not deny.

The contention of the learned Counsel for the petitioner (P.A. Samual) is that the action of allotment of plots and delivery of possession and different proceedings were held in between 9-8-83 and 3-3-87. He was not authorised to allot the plots nor to increase the sizes thereof. According to him, he was transferred from Bhopal Division No. 2 to Indore as Executive Engineer by order dated 10-4-82. He was not posted in the area of Bajrangnagar. He has also contended that he did not sign over any document about allotment, measurement or handing over possession of the plots, apart from this, he was transferred from Indore by order dated 2-12-86, whereas the certificates of measurement of increased size were given on 7-2-87. According to him, there is no sufficient material available in the charge-sheet to make out the prima facie case for proceeding against him with the trial.

Learned Counsel for the petitioner Sharad Panwar has submitted that he was posted in M.P. Housing Board, Indore from 17-9-86 to 4-5-87 Whereas the plots were allotted prior to his posting. According to him, he had only issued the notice for recovery/payment of price of increased size of plots, but that too when he was temporarily in-charge of the then Estate Officer accused Satischchandra Gupta. He has also submitted that for all these matters, the enquiry was conducted by the Chief Vigilence Officer and in the said enquiry, nothing incriminating has come out against him.

The learned Dy. Advocate General appearing for the State has submitted that there is sufficient material in the charge-sheet for constituting a prima facie case against the petitioner accused-persons. He supported the order passed by the learned Trial Court dated 26-3-99 and 9-4-99.

Before considering the rival contention of the parties, it would be apposite to consider and refer the jurisdiction and scope of the Courts for consideration of the matter at the stage of framing of the charge.

In State of U.P. Vs. Udai Narayan and Another, , the Supreme Court has held as under:--

"Having examined the rival submission at the Bar and on scrutinising the impugned judgment of the High Court, we have no hesitation to come to the conclusion that the High Court committed a serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinising the evidence and materials produced by the prosecution. We refrain from recording any positive conclusion on the materials as it may affect the trial. Suffice it to say that a bare perusal of the judgment of the High Court would indicate that the High Court exceeded its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of voncition. So far as the contention of Mr. Krishnan is concerned as to whether Reshamwala not being a public servant could be prosecuted under the provisions of the Prevention of Corruption Act, the said question has recently been answered by a Bench of this Court in the case of P. Nallammal v. State. We, therefore, do not find any force in the aforesaid contention. In the circumstances, the impugned judgment of the High Court is set aside. These appeals are allowed. The Special Judge is directed to proceed with the trial at an early date."

Again, in Munna Devi Vs. State of Rajasthan and anr, , the Supreme Court observed that:--

"We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the Appellate Courts are required to do. Revisional Powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and

accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in Kanti Bhadra Shah v. State of W. B. has held that there is no legal requirement for the Trial Court to write a reasoned or lengthy order for framing the charges."

In the light of the aforesaid legal dictum by the Supreme Court, this Court has examined the contentions of the learned Counsel for the petitioners and finds no substance therein. In para 6 of the impugned order, the learned Trial Court has mentioned that the action of allotment of plots commenced from 9-8-83 and completed upto 3-3-87, During this period, the size of plots also increased and all the required steps were taken for allotment, increase of size of plots, issuance of notices for recovery/payment of price and delivery of possession. All the accused persons at one or another point of time during this period, remained posted in the office of the Housing Board. According U.C." Sanghvi was posted as Deputy Commissioner, accused Sharad Panwar as; Estate Officer, and accused-petitioner A. Samual as Executive Engineer. The prosecution has filed the copy of the Departmental circular/report showing the duties and responsibility of the accused persons. The Dy. Commissioner is , authorised to allot the plot. Estate Officer is authorised to deliver possession and recovering the price of the plot and Executive Engineer is authorised to issue the measurement-certificate. The acts of these officials are connected to each other.

It has also been mentioned that the investigating agency has collected the information from the Housing Board as well as on the basis of the report of the Chief Vigilence Officer revealing the fact that the Dy. Commissioner, Estate Officer and Executive Engineer were not authorised to increase the size of plots. Because of their illegal action, the other persons were deprived of getting the plots and the allottees of the plots had sold the plots in pieces on higher prices thereby they earned profit and caused loss of revenue to public exchequer.

In view of these facts and findings of the learned Trial Court, it would not be just and proper to enter into deep evaluation of the material filed by the prosecution to fix and consider the individual act and liability of the accused persons especially when they have roped into the crime with the help of Section 120B of the Indian Penal Code. For the offence of conspiracy, it is difficult to get direct evidence. Same can be considered on the basis of the facts and surrounding circumstances of each case.

In the present case, the Trial Court, after considering the complete material on record as well as in para 7, considering the law of framing of charge, based on the judgments of the Supreme Court held in para 8 that the accused persons were the important responsible officials of the Board and were having sufficient knowledge that the size of plots could not be increased, even then none had objected to it and all had proceeded with the matter right from allotment till delivery of possession of the plots to the allottees. But none had raised any objection. This raise a strong suspicion against the petitioner/accused persons which is sufficient for making out a prima facie case against them and framing charge.

Learned Counsel for the petitioner/accused persons has placed reliance on the judgments reported in State of Karnataka Vs. L. Muniswamy and Others, and Dilawar Balu Kurane Vs. State of Maharashtra, . There cannot be any dispute about the proposition of law explained by the Supreme Court on the issue of function of the Judge while considering the issue of framing of charge or discharge under Sections 227 and 228 of the Code of Criminal Procedure, holding that the Judge is not merely required to act as the Post Office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of evidence and the documents produced before the Court. But at the same time, should not make a rowing inquiry into the pros and cons in the matter and weight evidence as if he was conducting a trial. Applying these propositions of law, as discussed by the Supreme Court in the aforesaid cases, this Court is of the opinion that the finding arrived at by the Trial Court in paras 6,7 and 8 of the impugned order appears to be just and proper and does not require any interference, in the revisional jurisdiction because, the Trial Court has not committed any illegality, irregularity or impropriety while passing the impugned order.

In the result, all these revision petitions having no legal substance, are dismissed accordingly. The Trial Court is directed to proceed with the trial and decide the cases expediliously in accordance with law bearing in mind the long duration of incidents. Nothing stated herein shall be treated as expression of opinion on the merits of the case and the Trial Court shall decide the matter without in any way influenced by the above observations.

The record of the Trial Court be remitted along with the copy of this order immediately. A copy of this order be placed in the records of Cr. Revision Nos. 417/99, 327/99, 326/99, 453/99 and 456/99.