

CASE NO.:  
Appeal (crl.) 479 of 2008

PETITIONER:  
Hem Chand

RESPONDENT:  
State of Jharkhand

DATE OF JUDGMENT: 13/03/2008

BENCH:  
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:  
JUDGMENT

CRIMINAL APPEAL NO. 479 OF 2008  
(Arising out of SLP(Crl.) No. 5934 of 2007)

S.B. SINHA, J.

1. Leave granted.

2. Appellant is an IPS Officer of 1971 batch of the West Bengal cadre. He joined the Central Coalfields Ltd., a Government Company as a Chief Vigilance Officer on deputation. He was re-designated as Executive Director (Vigilance).

A raid was conducted by the CBI Officials at his residence in the night of 30/31.8.1992, pursuant where to, a first information report was lodged. A charge sheet was filed in the said case against him on or about 18.6.1997. Appellant filed an application inter alia for supply of the copies of item Nos. 1 and 20 of the documents mentioned in the said charge sheet. The same was not issued to him. Several contentions in regard thereto were raised. He moved the High Court in revision which was marked as Criminal Revision No. 90 of 1999

3. By an order dated 20.4.2001, a learned Single Judge of the High Court directed supply of the said documents to the petitioner, stating;

"16. Various points were raised on behalf of both sides but it is unnecessary to enter into all those points on merit at this stage as I find that the order passed by the learned Special Judge has got to be set aside and thus it would be appropriate to remit the matter back to the court below leaving it open to the parties to raise their respective contentions before the learned Special Judge, C.B.I. and the learned Special Judge, C.B.I., Ranchi is directed to furnish the copies of Item Nos. 1 and 20 of the Search List to the accused/petitioner and those documents may also be taken into consideration along with other documents placed by the C.B.I. while passing the order on the matter of discharge."

4. Appellant filed an application for his discharge inter alia on the premise that no case for framing of charge has been made out. He, furthermore, filed some documents in his own defence. The said application for discharge was rejected by the learned Special Judge, CBI, opining that the documents relied on by the appellant cannot be looked into for the purpose of passing an order on his application for discharge.

Revision Application filed by the appellant thereagainst under Section 397 of the Code of Criminal Procedure has been dismissed by the High Court by reason of the impugned judgment.

5. Appellant admittedly, is facing trial for an alleged commission of an offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1998.

Allegations against the appellant are that he was found to be in possession of assets more than his known source of income.

The question is as to whether any documents, whereupon the appellant may rely upon in support of his defence, can be looked into at the stage of framing of the charge.

6. Mr. Saurabh Mishra, the learned counsel appearing on behalf of the appellant would submit that keeping in view the order passed by the High Court on 20.4.2001 in Criminal Revision No. 90 of 1999, it is evident that Central Bureau of Investigation itself has seized the said documents from the residence of the appellant and in that view of the matter, he could rely thereupon.

7. Mr. B.B. Singh, the learned counsel appearing on behalf of the State, on the other hand, would submit that from a perusal of the order passed by the learned Special Judge, it would be evident that the appellant intended to rely upon some documents which were filed before the learned Special Judge for the first time, the impugned judgment should not be interfered with.

8. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial.

The documents whereupon the appellant intended to rely upon were:

(i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.

9. It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely upon.

10. The learned Special Judge has noticed that sixteen number of documents had been filed by the appellant together with his application for discharge. The prosecution has also relied upon a large number of documents which were 56 in number, out of which 5 being related to the matter of investigation, have nothing to do with the merit of the matter. Out of the 51 documents, seventeen related to the expenditure purported to have been incurred by the appellant. Four documents related to income of the appellant's wife. Out of remaining 30 documents, 6 documents related to the assets of his wife exclusively and one related to his mother's assets. 23 documents, thus, related to the assets of the appellant which are reflected in his declaration of assets made annually by him.

11. The learned Special Judge, however, considering the documents on record opined;

"\005But at this stage I find that unless the documents filed by the defence are not formally proved no finding can be given, because it would amount to discussion the merit of the case before conclusion of trial. However, the materials collected in the case diary by the prosecution reveals that there are ground for framing charge under the

aforesaid sections against the accused petitioner. Hence, the above petition stands rejected."

12. The learned counsel for the CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related the documents filed by the appellant alongwith his application for discharge.

The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

In State of M.P. Vs. Mohanlal Soni [(2000) 6 SCC 338], this Court has held;

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

It was furthermore observed;

"\005As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed."

We agree with the said view.

See also State of Orissa Vs. Debendra Nath Padhi [(2005) 1 SCC 568]

We may, however, add that in this case, this Court is not concerned with other legal principles, which would be applied in determining the issues at that stage.

13. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.