

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 971 of 2019

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PRADEEP NIRANKARNATH SHARMA
Versus
STATE OF GUJARAT
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Appearance:

MR RJ GOSWAMI, ADVOCATE for the Applicant
MR MITESH AMIN, PUBLIC PROSECUTOR for the Respondent - State
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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 01/11/2023

ORAL ORDER

1. By way of present application under Article 226 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure, 1973, the applicant has challenged the impugned order dated 30.03.2018 passed by the learned Chief Judicial Magistrate, Kachchh at Bhuj, below application Exh.184 in Criminal Case No.892 of 2011 filed under Section 239 of the Code of Criminal Procedure, 1973 for discharge, in connection with the offence being C.R. – I No.1 of 2011 registered with the C.I.D. Crime, Rajkot Zone Police Station, District : Rajkot Zone for the offences punishable under Sections 217, 409 and 120B of the Indian Penal Code, whereby the learned trial Court has rejected the same, which is partially confirmed by the learned Revisional Court i.e. the learned Additional Sessions Judge, Kachchha at

Bhuj vide an order dated 27.09.2018 passed in Criminal Revision Application No.36 of 2018, to the extent the charge levelled against the applicant for the offences punishable under Sections 409 and 120B of the Indian Penal Code and discharged the applicant to the extent the charges levelled against him for the offence punishable under Section 217 of the Indian Penal Code.

2. The brief facts of the case are epitomized as under :

2.1 When the applicant was working as a Collector at Kachchh for the period from 2003 to 2006, he has allotted some Government lands to Saw Pipe Limited allegedly in lower rates and granted without permission of the Deputy Secretary, Revenue Department, Gandhinagar and thereby violated the Government Resolution dated 06.06.2003 in connivance with the other accused. Hence, the complaint.

2.2 After investigation, charge-sheet is filed which is culminated into Criminal Case No.892 of 2011 before the learned Chief Judicial Magistrate, Kachchh at Bhuj. During the trial, the applicant has preferred an application under Section 239 of the Code of Criminal Procedure, 1973 for discharge at Exh.184, which was rejected by the learned trial Court vide order dated 30.03.2018.

2.3 Being aggrieved, the applicant has challenged the same before the learned Revisional Court i.e. the Additional Sessions Court, Kachchh at Bhuj, which is partly allowed by the learned Revisional Court, whereby the learned Revisional Court has discharged the applicant from the charge levelled against him for the offence punishable under Section 217 of the Indian Penal Code and confirmed the charges levelled against him for the offences punishable under Sections 409 and 120B of the Indian Penal Code.

2.4 Hence, this application before this Court.

3. Heard learned advocates. Rule. Learned Public Prosecutor waives service of notice of rule for and on behalf of respondent – State, forthwith. With consent of both the learned advocates, this application is taken up for hearing and final disposal today.

4.1 Learned advocate Mr.R.J. Goswami for the applicant has submitted that there is no sanction granted for launching prosecution against the applicant as required under Section 197 of the Code of Criminal Procedure, 1973 as the applicant was working as the Collector, Kachchh. He has submitted that when the learned trial Court has taken

cognizance on 30.05.2011 on perusal of the charge-sheet, there is no sanction by the competent Authority. He has submitted that the learned trial Court was barred by the provisions of Section 197 of the Code for taking cognizance.

4.2 He has further submitted that the applicant has allotted Government land to the industrial unit at a cheaper rate in the capacity of the Collector, which was not taken in suo motu nor being set aside by the State Government nor by any other authority, if the applicant has committed any wrong. He has submitted that the applicant has not violated any rules or law in the said process. He has submitted that the ingredients of Sections 409 and 120B of the Indian Penal Code do not satisfy, as there is no entrustment or domain over the property and there is no benefit to the applicant from the said allotment.

4.3 He has also submitted that the applicant, in his official capacity and in discharging his duty, allotted the land to the industrial unit.

4.4 He has also submitted that from the entire papers of the charge-sheet, there is no iota of evidence to show that there was any conspiracy hatched by the applicant with the co-accused and in absence of such evidence, both the learned

Courts below have rejected the applicant of the applicant for discharge.

4.5 He has also submitted that the prosecution has not joined the industrial unit to whom the land was allotted by the applicant, is not joined as accused in the offence in question. He has submitted that this application may be allowed.

4.6 Except the above, no other submissions are canvassed by the learned advocate for the applicant.

5.1 *Per contra*, learned Public Prosecutor Mr.Mitesh Amin with learned Additional Public Prosecutor Mr.Chintan Dave for the State has submitted that allotment of the lands to the company was made by the orders of the applicant. He has submitted that the Saw Pipes Limited moved an application dated 21.01.2004 for allotment of land for industrial purpose wherein the lands of Survey Nos.326, 336/2 and 336/3 were demanded and by making out two more xerox copy of the company's application, three applications dated 21.01.2004 came to be noted in inward register. Thus, by converting one application into three applications, lands admeasuring 20538 sq.mtrs., were allotted to the company, which is supported by the statement of the Liaison Officer of

the company and hence, the allegations levelled against the applicant is not baseless.

5.2 He has further submitted that the lands in question were allotted by the applicant to the said company at a lower rate than the rates prescribed by the Government. He has submitted that the applicant has not taken any permission from the higher authority under the circumstances.

5.3 He has also submitted that the applicant has misused his power and authority during such transaction and allotted the Government lands to the industrial unit. He has submitted that since the applicant has not acted in accordance with rules, regulations and laws, he should be punished though holding any post in the Government. He has submitted that every officer of the Government should be acted as per his powers, authorities, rules, regulations and laws, which is the normal expectations from him by the Government.

5.4 He has also submitted that there is prima facie offence made out against the applicant and therefore, this Court should not exercise its powers in favour of the applicant. He has submitted that the trial is already commenced before the learned trial Court and it is at the

stage of recording of evidence. He has submitted that this Court should not exercise its powers in favour of the applicant at this stage since there is a prima facie case made out against the applicant and it is a serious offence committed by the applicant being a highest authority of the district, which should not be tolerated in any circumstances. He has submitted this application may be dismissed.

6. It is noted that after the investigation, charge-sheet was initially filed and thereafter, supplementary charge-sheet is also filed by the investigating officer before the learned trial Court. Further, there were two accused initially. The applicant is accused No.1. Thereafter, the names of other accused were there in the supplementary charge-sheet, including the authorised person of the industrial unit to whom the lands in question were allotted by the applicant. It is reported that the trial is already commenced and it is at the stage of evidence before the learned trial Court.

7.1 I have heard rival contentions raised by the learned advocates for the respective parties. I have perused the documents available on record, including the impugned orders passed by the learned Courts below. It is noted that the applicant is aware that neither before the learned trial Court nor before the learned revisional Court below, the

applicant has raised contention about the issue of sanction. In absence of the same, the learned trial Court or the learned revisional Court below cannot consider the same. Further, the applicant has raised the said issue before this Court for the first time at this stage.

7.2 Further, after perusal of the impugned orders passed by the learned Courts below, it is required to be noted that the learned Courts below have given concurrent findings against the applicant. From record it transpires that, there is a prima facie case made out against the applicant. The learned trial Court in its order impugned has observed in detail that there is no dispute that the allotment of the lands to the company was made by the orders of the applicant. Further, it is also observed that the said industrial unit – company has made one application and the applicant has made out two more xerox of the said single application and noted in inward register as three applications and thus, by converting one application into three applications, lands admeasuring 20538 sq.mtrs., were allotted to the said company by the applicant. It is further observed that there is no material on record to show that the allegation is not without any basis. Further, it is also observed that the lands were allotted at lower price to that company by the applicant and without permission / sanction from the State Government

and thereby misused his powers and authorities vested with him in the interest of the private industrial unit.

7.3 Further, the learned Revisional Court has also confirmed the order passed by the learned trial Court to the extent the charges levelled against the applicant for the offences punishable under Sections 409 and 120B of the Indian Penal Code. The learned Revisional Court has also observed that before allotting such huge land to one industrial unit, the applicant has to get approval of the Revenue Department of the State Government.

7.4 Further, the learned Revisional Court has also observed after gone through the statements of the various witnesses – Government Officers that the applicant has approved false remarks.

7.5 With regard to the contention qua the issue of sanction which is raised by the learned advocate for the applicant first time before this Court at this stage, it would be refer to the decision of the Hon'ble Apex Court in the case of Rajib Ranjan and others versus R. Vijaykumar reported in (2015) 1 SCC 513, more particularly paragraphs 16 to 18 thereof, which reads as under :

“ 16. This principle was explained in some more detail in the case of Raghunath Anant Govilkar v. State of Maharashtra, which was decided by this Court on 08.02.2008 in SLP (Cri.) No.5453 of 2007 (reported in AIR 2008 SC (Supp) 1486 : 2008 AIR SCW 1375), in the following manner: (Para 29 of AIR, AIR SCW)

“11. “7. ...”66. ...On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay (AIR 1955 SC 287) and Amrik Singh v. State of Pepsu (AIR 1955 SC 309) was as follows:

‘8. ...It is not every offence committed, by a public servant that requires sanction for prosecution under Section 197 (1) of Criminal Procedure Code; nor even every act done by

him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Sections 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal

conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

17. *Likewise, in Shambhoo Nath Misra v. State of U.P. and others (1997) 5 SCC 326 : (AIR 1997 SC 2102 : 1997 AIR SCW 1938), the Court dealt with the subject in the following manner:*

"5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate

the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained."

18. *The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact,*

the High Court has dismissed the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated as part of the appellants normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied.

8. Under the circumstances, since there is prima facie offence made out against the applicant vis-a-vis the concurrent findings given by both the learned Courts below and considering the fact that the trial is already commenced and it is at the stage of evidence, this Court finds that this is not a fit case to interfere in the impugned orders passed by the learned Courts below. The learned Courts below have not committed any error while appreciating the documents available with them and it is rightly justified. This application therefore needs to be dismissed and is dismissed accordingly. Rule is discharged.

(SANDEEP N. BHATT,J)

M.H. DAVE