2024 INSC 1010

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.3175 of 2024
(@ SLP (Crl.) No. 10262 of 2024)

The State of Orissa

...Appellant(s)

Versus

Pratima Behera

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. In this Appeal by Special Leave, the appellant challenges the judgment dated 31.01.2017 passed by the High Court of Orissa, Cuttack in Criminal Revision No.381 of 2016. The said Revision Petition was filed by the respondent herein challenging the order dated 05.03.2016 passed by the Court of Special Judge (Vigilance), Balasore, in T.R. Case No.43 of 2013 whereunder it rejected the application of the respondent under Section 239 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for discharge and the challenge against framing of charge under Section 109 of

the Indian Penal Code, 1860 (for short, "the IPC") read with Section 13(1)(e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "the PC Act"). As per the impugned judgment dated 31.01.2017, the High Court set aside the framing of charge under the aforementioned sections of the said enactments and discharged the respondent under Section 239 of the Cr. P.C.

2. Heard the learned counsel for the petitioner-State and the learned senior counsel appearing for the respondent.

3. The facts in brief necessary for the disposal of this Appeal are as follows: -

On 25.11.2019, FIR No.56/2009 came to be registered against Sh. Anil Kumar Sethi, the husband of the respondent, under Section 13(1)(e) punishable under Section 13(2) of the PC Act. In the course of the inquiry, it was found that he is a public servant working as Assistant Engineer, Rural Works Sub-Division, Kakatpur, District Puri and was in possession of disproportionate assets to his known source of income to the tune of Rs. 40,54,561/-. He was unable to account for such resources for the disproportionate income and therefore, found him liable to be prosecuted under the aforesaid sections of the PC Act. During the course of

investigation, it was found that the said Anil Kumar Sethi entered in service as Stipendiary Engineer in the year 1993 in Orissa State Housing Board Corporation and worked there till March, 1997. Thereafter, he joined as Stipendiary Engineer in R.D. Department in March, 1997 and later became a regular Assistant Engineer from January, 1999. In the year 1996 he married the respondent. Though the respondent, the wife of the said Anil Kumar Sethi, claimed that she had been filing Income Tax Returns, they could not be found in the IT Department, though the Income Tax Authorities were able to furnish copies of the Income Tax Returns of Sri Anil Kumar Sethi. The disproportionate assets of the said Anil Kumar Sethi was found to be Rs.39,96,857.7/- as against his known source of income of Rs. 25,81,494/- during the check period from 03.09.1993 to 26.08.2009, which was calculated to be 155% of the total income. In a bid to obtain copies of the Income Tax Returns of the appellant, another attempt was allegedly made by the then Investigating Officer Sri Nirmal Chandra Mohanty and he personally visited the Income Tax Office at Bhubaneswar to obtain the same, but could not get them. The Income Tax Authorities could not trace them out. It was in the said circumstances that they were charge-

sheeted under the sections specifically mentioned hereinbefore.

4. The respondent and her husband Sh. Anil Kumar Sethi, thereupon moved applications for discharge under Section 239, Cr.P.C., before the learned Special Judge (Vigilance), Balasore. As noted earlier, it is the dismissal of the said petition that led to the filing of the Criminal Revision before the High Court and ultimately leading to impugned judgment. Evidently, the Trial Court found that there is a potential *prima facie* case against the appellant and her husband and the same could not be interfered with at the nascent stage. The High Court, as per the impugned judgment, held that there is no clinching material to show that the appellant abetted her husband or made any conspiracy or instigation for the alleged acquisition of disproportionate assets. After allowing the Revision Petition qua the respondent, the High Court observed and held that the impugned judgment should not influence the mind of the learned Trial Court in adjudicating the trial qua the co-accused Anil Kumar Sethi in accordance with law. It is in the said circumstances that the captioned Appeal has been preferred.

5. The learned counsel appearing for the State submitted that an offence under Section 13(1)(e) punishable under Section 13(2) of the PC Act, could be abetted by a non-public servant and in such eventuality the only mode of prosecution qua that offender is only through the trial as envisaged under the provisions of the PC Act. It is paradoxical that to drive home the rival stands on the framing of charge under Section 109, IPC both the parties are relying on the decision of this Court in ***P. Nallammal and Anr. v. State***[1]***.*** While the appellant relies on the same to support the contention that offence under Section 13(1)(e) of the PC Act could be abetted by a non-public servant and the only mode of prosecuting such an offender is through trial as envisaged in the PC Act, the respondent would rely on the very self-same decision to contend that merely because some of the disproportionate assets stand in the name of non-public servant, without any element of abetment, the couple could not be asked to face the trial along with the public servant on the ground of their relationship. In short, going by the respondent, there is no material to support the charge under Section 109, for abetting the husband

[1] (1999) 6 SCC 559; 1999 INSC 314

Sri Anil Kumar Sethi to commit the aforesaid offence under the PC Act.

6. It is contended by the learned counsel for the appellant that though the respondent claimed that she was an income tax assessee and had filed tax returns, she did not furnish the tax return receipts and despite earnest efforts, they could not be found in the IT Department. It is the further submission of the appellant that having found grounds to proceed against the respondent, and a *prima facie* case made out against her and her husband, the Trial Court framed charges against the respondent as mentioned above. The order impugned dated 05.03.2016 of the Trial Court rejecting the petition of the respondent herein for discharge filed under Section 239, Cr. P.C. would reveal that the Court virtually considered only the question whether the final report filed in Crime No.56/2009 can be said to be groundless. It is further submitted that a scanning of the said order dated 05.03.2016 would also reveal that the said question was considered within the scope of Section 239, Cr. P.C. by the Trial Court and it is upon finding that the essential ingredients of the offence for which the respondent is sought to be charged were satisfied and they are sufficient to form a *prima facie* case, the said application was rejected by the High Court and the

respondent was called upon to answer the charge and later framed the charge as mentioned above.

7. Per contra, the learned counsel appearing for the respondent would contend that the High Court has rightfully considered the question whether the Trial Court was correct in calling upon the respondent herein to answer the charge later and to frame the charge after declining to discharge the respondent herein, under Section 239, Cr. P.C. It is the further submission that the High Court has rightly held that the Investigating Officer had failed to prove that the respondent had no source of income. In that regard, the counsel for the respondent drew our attention to paragraph No.6 of the impugned judgment whereunder the High Court observed and held thus: -

> *"…It is established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all ingredients of the offence charged, and the burden never shifts on the accused to disprove the charge framed against him..."*

8. It is also the contention of the respondent that she is a self-dependent lady having her own source of income and, therefore, could not be held liable for the

alleged acquisition of disproportionate assets by her husband. Furthermore, it is contended that the respondent is an income tax assessee since 2000-2001 and has been filing Income Tax Returns regularly. According to her, she is doing dairy farming and also earning money by tuition and she is a M.A. degree holder from Utkal University, Bhubaneswar and also had completed a course in data entry and started data entry business since 2003-2004. It is also her case that she purchased the land at Bhubaneswar after borrowing Rs.2.5 lakhs from her father. In short, it is the contention made on behalf of the respondent that the Investigating Officer had not conducted investigation to find out the source of income of the respondent as well as to obtain the Income Tax Returns filed by her.

9. Before considering the rival contentions on merits in order to consider the sustainability or otherwise of the impugned judgment, we think it only appropriate to consider certain relevant position of law in relation to certain aspects involved in the case on hand. We will firstly consider the scope of Section 239, Cr. P.C. In the decision in ***R.S. Nayak v. A.R. Antulay & Anr.***[2], this Court held that the obligation to discharge the accused under

[2] (1986) 2 SCC 716; 1986 INSC 86

Section 239 arises only when the Magistrate considers the charge against the accused to be groundless. In the decisions in ***State of Delhi v. Gyan Devi and Ors.***[3], this Court held thus: -

> ***"7.*** *In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to*

[3] (2000) 8 SCC 239; 2000 INSC 491

hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

10. We may hasten to state at this juncture that though at the stage of framing of issue what is to be seen is only whether there is a *prima facie* case to make the accused to stand the trial at the trial, certainly, the presumption of innocence should be in favour of the accused.

11. Taking note of the fact that in the case on hand, the High Court set aside the charge framed against the respondent while exercising the revisional power, it is relevant to refer to the decision in ***Minakshi Bala v.***

Sudhir Kumar & Ors[4]. This Court on the question of quashing of charge by the High Court made the following pertinent observations: -

> *"7…To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.*
>
> *8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC the High Court has*

[4] (1994) 4 SCC 142; 1994 INSC 201

dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a Trial Court to delve into and decide upon the respective merits of the case."

(underline supplied)

12. In short, while reiterating the position that in a prosecution, presumption of innocence should be in favour of the accused, it has to be said that at the stage of framing charge, even a very strong suspicion, of course, founded upon materials and presumptive opinion would enable the Court to frame charge against an accused.

13. In view of the divergent finding on the question whether final report was 'groundless' or not, we will consider that aspect and, in that regard, we will have to bear in mind the position(s) of law mentioned hereinbefore. Upon going through the order of the Trial

Court rejecting the petition for discharge, we have no hesitation to hold that the Court considered that question fully realising the scope of Section 239, Cr. P.C. As can be seen from the order dated 05.03.2016, upon such consideration, though detailed reasons have not been given, the Trial Court held that *prima facie* case exists as borne out from the materials and the final report. We have, therefore, to consider whether the High Court is legally correct in interfering with and setting aside the same and discharging the respondent.

14. At the outset, it is to be noted that the respondent who did not raise a contention that during the investigation she has produced the receipts of the Income Tax Returns before the investigating officer, filed income tax documents 'stated to have been obtained' under the Right to Information Act, 2005 (for short, ''the RTI Act'') from the Income Tax Authorities, as observed by the High Court. Obviously, paragraph 6 of the impugned judgment would reveal that the High Court had considered 'the said documents stated to have been obtained under the RTI Act' and after disregarding the contention of the appellant that during the investigation neither the respondent furnished the receipts of the Income Tax Returns nor they could be found in the office of the IT Department even on repeated attempts to get

the same by the Investigating Officer. After going through such materials, certified copies of Income Tax Returns for the assessment years from 2008-2009 to 2016-2017, produced by the learned counsel for the respondent before the High Court, the High Court observed and held that it could be inferred that the investigating agency had deliberately withheld the material documents like returns of the appellant and mechanically submitted the chargesheet against her. A perusal of the impugned judgment would reveal the nature of the exercise undertaken for passing the impugned judgment. In fact, the aforesaid observation was made after going through the documents filed by the respondent before the High Court. In this context, it is also to be noted that the High Court has also referred to the contentions of the respondent, including the one that for purchasing land at Bhubaneswar, she had borrowed an amount of Rs.2.5 lakhs from her father. After such exercise, it was held by the High Court that there is no clinching material showing that the appellant abetted her husband or made any conspiracy or instigated him in the alleged acquisition of disproportionate assets. This observation itself would go against the very scope of Section 239, Cr. P.C. as at the stage of consideration of a petition for discharge what is to be considered whether

there is a '*prima facie*' case and certainly, the endeavour cannot be to find whether 'clinching' materials are there or not. In the common parlance the word 'clinch' means 'point' or circumstance that settles the issue. We have no hesitation to hold that such meticulous consideration for presence or absence of clinching material is beyond the scope of power of the Court while considering the question of discharge under Section 239, Cr. P.C. as also while considering the question of quashing of charge framed by the Trial Court, while exercising the revisional jurisdiction. It is to be noted that at that stage the materials collected by the prosecution would not mature into evidence and therefore, beyond the question of existence or otherwise *prima facie* case based on materials, the question whether they are clinching or not could not be gone into.

15. Bearing in mind the said manner of consideration, we are also constrained to consider the way in which the Court appreciated the contentions of the appellant based on various decisions referred to in the impugned judgment. The Court referred to ***Nallammal's*** case (supra) and extracted paragraphs 10 and 26 thereof to hold that merely because some of the disproportionate assets stand in the name of the non-public servants, without any element of abetment, they could not be

asked to face the trial along with the public servants on the ground that they are the kith and kin of the public servants. Though, there can be no two views on that, we are of the view that while considering the question of abetment for commission of offence under Section 13(1)(e) punishable under Section 13(2) of the PC Act, the question is whether there is material(s) or circumstances casting strong suspicion of the co-accused to have played significant role in negotiating on the figure of amount disproportionately amassed. The judgment would reveal that to fortify the said findings, the High Court elucidated an instance, which is misfit for the context and circumstances obtained in this case, as hereunder: -

> *"4…For example, if the son of the public servant asks his father to purchase a motorcycle for him to attend his college and accordingly the motorcycle is purchased in the name of the son, if the public servant is found to have acquired disproportionate assets to his known source of income, the son cannot be compelled to face trial as an accused along with his father…"*

16. The long and short of the discussion as above, in the light of the settled position of law stated and

reiterated by this Court, the judgment under challenge in the case on hand cannot stand the scrutiny. The High Court has clearly erred in its approach and exercise of revisional jurisdiction in quashing the charge framed by the Trial Court upon finding a *prima facie* case, and also in discharging the respondent – Smt. Pratima Behera.

17. Accordingly, the Appeal is allowed. The impugned judgment dated 31.01.2017 in Criminal Revision No.381 of 2016 is set aside. The Trial Court shall proceed with the case in accordance with law. Considering the fact that the case is of the year 2013, the Trial Court shall endeavour to conclude the trial as expeditiously as possible.

......, J.
(C.T. Ravikumar)

......, J.
(Sanjay Karol)

New Delhi;
December 19, 2024