

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1138 OF 2008

State of Punjab

Appellant(s)

Versus

Nirmal Singh

Respondent(s)

O R D E R

In this appeal, the assail is to the order dated 30th August, 2006, in Criminal Revision No.744 of 2004, passed by the learned Single Judge of the High Court of Punjab and Haryana High Court at Chandigarh, whereby he has quashed the charges framed against the respondent for offences punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'the 1988 Act').

The respondent, a stenographer in the Punjab State Transport Appeals Tribunal, Chandigarh, was arrayed as an accused in F.I.R. No.9 dated 12.05.2002 for the aforesaid offences under the 1988 Act by the Police Station Vigilance Bureau, FS-I, Mohali, on number of allegations. After the investigation was complete, a charge-sheet was filed before

the learned Special Judge, Rupnagar, and it formed the subject matter of Sessions Case No.15/21.05.2003. At the time of framing of charges, on behalf of the accused-respondent, it was vehemently contended that the materials brought on record did not warrant for framing charges against him for proceeding with the trial. The learned Special Judge, critically analyzed the stand and stance put forth by the accused-respondent and declined to discharge him of the charges.

Being grieved by the aforesaid order of declination, the respondent preferred the Criminal Revision No.744 of 2004 before the High Court. The learned Single Judge took note of one fact that there was an allegation by the prosecution that the accused-respondent had purchased a vehicle on 10th November, 1997, in the name of his son and that the check period i.e. February, 1991 to January, 1996; that the allegation of the prosecution that the vehicle, a mini bus, was purchased from the funds given by the accused-respondent in the year 1995 and, thereafter, that was transferred in the name of his son in 1997 and hence, it came within the check period was absolutely incorrect. Being of this view, the High Court proceeded to state as follows:

"Learned counsel for the petitioner states that the purchase was of the year 1997 and when the check period was February, 1991 to January, 1996, then this mini bus and its

value could not be included.

From the order framing charge, it would come out that the check period was February, 1991 to January, 1996. The excess expenditure shown was Rs.4,49,486.50 after adding money of purchase of mini bus of Rs.4,35,000.00. When this amount is excluded, then the remaining amount excess will be a small one i.e. about Rs.14,000/- of a period of five years.

Under these circumstances, I find merit in this petition on the ground that the petitioner was not liable for charges under Section 13(1)(e) with Section 13(2) of the Prevention of Corruption Act."

Ms. Anvita Cowshish, learned counsel appearing for the State, has taken us through the order framing charge. On a scrutiny of the same, it is evident that the learned Special Judge has noted the check period, taken note of the income side and expenditure side and has adverted to the statement of Gian Chand Sharma recorded under Section 161 of Criminal Procedure Code wherefrom the factum of purchase of vehicle from the funds of the accused-respondent and, thereafter, the transfer in the name of his son were evincible and, accordingly, had rejected the prayer for discharge. It is interesting to note that the learned Special Judge has noted the stand of the accused-respondent with regard to the land that was purchased. It was contended by the accused-respondent that the properties named in some of the items, as alleged by the prosecution, were purchased by his father and, therefore, could not be treated to be his

properties; that the valuation was low; that the properties shown in some of the items in the name of the sons of the accused-respondent were contributed by them and, therefore, could not be taken to be his properties. The said submissions were not accepted by the learned Special Judge on the ground that they are the matters to be adverted during trial. As far as the statement of Mr. Gian Chand Sharma is concerned, the court opined that the evidence has to be weighed during the trial. In the ultimate analysis, the Special Judge observed thus:

"Considering the test as mentioned in the ruling of the Apex Court, no doubt the accused has relied upon many entries which are alleged to be taken in the side of income and also tried to explain these entries. However, as it is already discussed that at the stage of framing of charge only prima-facie case is to be seen. Therefore, the explanation furnished by the accused cannot be taken as genuine and the same is required to be proved by leading evidence."

In our considered opinion, it was not a case where the learned Single Judge should have straight away opined that the amount was small i.e. Rs.14,000/- for a period of five years and, therefore, the case deserved to be quashed. In our view, the charges framed under Section 13(1)(e) read with Section 13(2) of the 1988 Act, are to be viewed seriously and the material brought on record are not to be scrutinized solely on the basis of documentary evidence and

charges should be quashed.

In view of the aforesaid analysis, we allow the appeal and set aside the order passed by the High Court and direct the learned Special Judge, Rupnagar, to proceed with the trial in accordance with law.

.....J.
[Dipak Misra]

.....J.
[Adarsh Kumar Goel]

New Delhi
February 10, 2015.

ITEM NO.4

COURT NO.5

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.1138 of 2008

STATE OF PUNJAB

Appellant(s)

VERSUS

NIRMAL SINGH

Respondent(s)

(With office report)

Date : 10/02/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Ms. Anvita Cowshish, Adv.
Mr. Ajay Pal, AOR

For Respondent(s) Mr. Prem Malhotra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)