

A STATE OF JAMMU AND KASHMIR  
v.  
SUDERSHAN CHAKKAR AND ANR.

MAY 10, 1995

B [DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

C *Indian Penal Code, 1860/Prevention of Corruption Act, 1988: Sections 120-B, 467, 499/5(2)—Criminal conspiracy and misappropriation—Trial Court discharging some of the accused—Negligence but not criminal conspiracy attributed to them—Omission on their part to do their mandatory duties for months together—Not to be taken in isolation—Overall view to be taken—Trial Court's order set aside and matter remitted back to it.*

D The respondents were tried for criminal conspiracy and misappropriation of foodgrains and empty bags of the Food and Supplies Department worth Rs. 3,22,119.36 after forging official documents. The trial Court held that a prima facie case was made out only against three and discharged the other two, against which the State filed a revision which was dismissed by the High Court. Hence this appeal.

E Allowing the appeal, this Court

F HELD : 1. The question whether the respondents omitted to do their mandatory duties for months together designedly or negligently can be inferred only on an over all view of all the material collected during investigation and not in isolation as has been done in the instant case by the Courts below. That apart, in a case instituted upon a Police Report, the Court is required, at the time of framing of the charges, to confine its attention to the documents referred to under section 173 of the Code of Criminal Procedure only. In that context, the Court is not justified in referring to, much less, relying upon the letters purportedly written by the accused when their authenticity and veracity are yet to be gone into.

G [296-D-E]

H 2. The impugned orders are set aside. The Trial Judge shall proceed with the matter afresh in accordance with law and in the light of the observations now made. By way of abundant caution it is made clear that in dealing with the matter the Trial Judge shall not allow himself to be

influenced by anything said in this order in regard to the merits of the case. [296-F] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 649 of 1995.

From the Judgment and Order dated 27.5.94 of the Jammu and Kashmir High Court in CrI.R.No. 66 of 1993. B

Ashok Mathur for the Appellant.

R. Sasiprabhu for the Respondents. C

The following Order of the Court was delivered :

Delay condoned.

Special leave granted. D

On a First Information Report lodged by the Director, Food & Supplies, Jammu, a case under sections 120-B, 467 and 409 IPC and section 5(2) of the Prevention of Corruption Act was registered against the two respondents herein, who at the material time were the Tehsil Supply Officers of Ramban, one Nijamuddin, a Store Keeper, and two transport contractors, the allegation being that all of them hatched a criminal conspiracy and pursuant thereto misappropriated foodgrains and empty bags of the Food and Supplies Department worth Rs. 3,22,119.36 after forging official documents. The Police Vigilance Organisation took up investigation of the case and submitted a chargesheet, whereupon the Special Judge, Anti Corruption, Jammu took cognizance. Thereafter he heard the parties on the question of framing of charges and held that a prima facie case was made out only against the other three arraigned but not against the two respondents. Accordingly he discharged them by his order dated June 28, 1993. Aggrieved thereby the appellant filed a revisional application in the High Court of Jammu & Kashmir which was dismissed. Hence this appeal. E F G

On perusal of the record we find that one of the circumstances on which the prosecution sought to rely to prove its case against the two respondents was that they did not perform their mandatory duties of monthly inspection of the stores of the Food & Supplies Department and checking of the daily remittances of the sale proceeds to the Treasury. H

- A According to the prosecution this omission on the part of the respondents for months together along with other materials collected during investigation clearly indicated that it was deliberate and that the involvement of the two respondents in the offences alleged against them, particularly the offence of criminal conspiracy stood established. In dealing with the above circumstance the learned Courts below observed that, at best, it indicated
- B negligence on the part of the two respondents and not their criminal misconduct. The learned courts below next referred to and relied upon certain letters purportedly written by the respondent No. 1 to its higher authorities, wherein he had complained against irregularities being committed by the accused Nijamuddin, to conclude that the letters clearly
- C demonstrated the bonafides of the two respondents.

- In our considered view, the learned Courts below erred in basing their respective orders on the above findings. The question whether the respondents omitted to do their mandatory duties for months together
- D designedly or negligently can be inferred only on an over all view of all the materials collected during investigation and not in isolation as has been done by the learned Courts below. That apart in a case instituted upon a Police Report the Court is required, at the time of framing of the charges, to confine its attention to documents referred to under section 173 of the Code of Criminal Procedure only. In that context the Court was not
- E justified in referring to, much less, relying upon the letters purportedly written by the accused when their authenticity and veracity are yet to be gone into.

- For the foregoing discussion we allow this appeal set aside the impugned orders and direct the learned Trial Judge to proceed with the
- F matter afresh in accordance with law and in the light of the observations made hereinbefore. By way of abundant caution we make it clear that in dealing with the matter the learned Judge shall not allow himself to be influenced by anything said in this order in regard to the merits of the case.

G.N.

Appeal allowed.