

STATE OF U.P.  
v.  
UDAI NARAYAN AND ANR.

NOVEMBER 1, 1999

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

*Prevention of Corruption Act 1947/Penal Code, 1860/Criminal Procedure Code, 1973: Sections 8, 10, 13(2) read with Section 13(1)(d)/Section 120-B/Section 239—Respondents charged for corruption and criminal conspiracy—Application seeking discharge rejected by the trial court—Challenged in revision—Revision allowed and respondents discharged—On appeal, Held: High Court exceeded its jurisdiction—Evidence and materials produced by prosecution cannot be scanned at the stage of discharge application—A private individual could also be prosecuted under the Act.*

**Respondent No. 1 was the Additional Collector of Customs and Respondent No. 2 was a private individual. On the basis of information received by the Police that some illegal transaction was going to take place between R-1 and R-2, a trap was arranged by the police. On the day of occurrence when R-2 came out of the aircraft and entered the airport lobby, he was received by R-1. After some conversation between the two, R-2 went in the personal car of R-1 which was intercepted by the police authorities and a sum of Rs. 2 lacs was recovered from the briefcase of R-2. It was alleged that R-1 had earlier telephoned R-2 and told him to come with necessary papers and a sum of Rs. 2 lacs, in order to settle the pending case at Jaipur. Both the respondents were chargesheeted under Sections 8, 10, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 120-B of the IPC. Respondents application seeking discharge, moved under Section 239 of Criminal Procedure Code, 1973 was rejected by the Special Judge. The revision challenging the said order was allowed. Hence this appeal by the State.**

**The Appellant contended that the High Court had erroneously examined the statements recorded during investigation elaborately and had wrongfully formed an opinion after scanning and shifting the same as that was not warranted under law at the stage of considering the application for discharge. The respondents contended that if the court is fairly certain that on consideration of the materials produced by the prosecution, the case would**

**A** end in non-conviction then the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. It was also contended that R-2, not being a public servant, could not have been prosecuted under the provisions of the Act.

**B** **Allowing the appeals, the Court**

**HELD : 1.** The High Court committed serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinising the evidence and materials produced by the prosecution. A bare perusal of the Judgment of the High Court would indicate that the High Court exceeded its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of conviction. [258-F, G]

**D** *Satish Mehra v. Delhi Administration & Anr.*, [1996] 9 SCC 766 referred to.

**2.** R-2, though not a public servant could be prosecuted under the provisions of Prevention of Corruption Act. Thus, there is no force in the contention that R-2, not being a public servant, could not have been prosecuted under the provisions of the Act. [258-H; 259-A]

**E** *P. Nallammal etc. v. State Rep. By Inspector of Police*, (1996) 6 Supreme Today 516, relied on.

**F** **CRIMINAL APPELLATE JURISDICTION:** Criminal Appeal Nos. 1164-1165 of 1999.

From the Judgment and Order dated 21.1.99 of the Allahabad High Court in CrI. R.No. 177 and 225 of 1998.

**G** Altaf Ahmed, Additional Solicitor General, Ms. Rekha Pandey and Ms. Sushma Suri for the Appellant.

Rakesh Dwivedi and Rao Ranjit for the Respondent.

G. Krishnan, Radha Krishnan and Gopal Singh for the Respondent No. 2.

**H** The Judgment of the Court was delivered by

**PATTANAİK, J.** Leave granted.

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The State of U.P. is in appeal against the Judgment of the High Court of Allahabad, Lucknow Bench in Criminal Revision No. 177 of 1998 and Criminal Revision No. 225 of 1998. By the impugned Judgment, the High Court allowed both the revisions, filed by the accused and discharged the accused persons.

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Accused Udai Narain is an officer of the Customs Department and accused Reshamwala is a private individual. It is alleged by the prosecution that the Customs Authorities at Jaipur seized a sum of Rs. 21,23,050 from said Reshamwala and on that score the matter is pending before the Collector, Customs and Central Excise. Accused Udai Narain is the Additional Collector of Customs at Lucknow. It is further alleged that on 8.11.93 Reshamwala arrived at Lucknow Airport by Indian Airlines' Flight. The Police had received an information that some illegal transaction is going to be made between Reshamwala and Udai Narain and, therefore, the D.S.P. had arranged a trap. As soon as, Reshamwala came out of the aircraft and entered the airport lobby, he was received by Udai Narain and then there was some conversation between them which was heard by some persons in the vicinity, who have been examined by the prosecution. It is further alleged that Reshamwala went in the personal Fiat Car of Udai Narain, whereas the official car of Udai Narain was occupied by the other officials. The Fiat Car, being driven to by Udai Narain and having Reshamwala with him was intercepted by the Police authorities and when the briefcase of said Rashamwala was opened, a sum of Rs. two lacs was recovered. It was the prosecution case that Udai Narain earlier had telephoned Reshamwala and told him to come with necessary case papers and a sum of Rs. two lacs, so that his pending case at Jaipur could be settled. On these allegations, after completion of investigation, charge sheet was filed against both the accused persons under Sections 8, 10, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act and Section 120-B of the Indian Penal Code. The accused persons moved application under Section 239 of the Code of Criminal Procedure for discharge, before the learned Special Judge, Anti Corruption. The said learned Special Judge rejected that petition by order dated 13 May, 1998. Against the said order, the accused persons moved the High Court in revision. The High Court by the impugned order having allowed both the revisions and having discharged the accused persons, the State has come up in appeal.

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Mr. Altaf Ahmed, the learned Additional Solicitor General, appearing

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A for the prosecution, contended that at the stage of considering an application for discharge, it is not open for the Court to shift the evidence and come to a conclusion one way or the other about the guilt of the accused persons. The Court at that stage will not be in a position to decide the trust-worthiness of the witnesses and discard the same by shifting and scanning, as a Court does in trial. This Court has already indicated the parameters of the powers of the Court to discharge an accused, before framing of charge and the impugned Judgment runs contrary to the same. According to the learned

B Addl. Solicitor General, an elaborate examination of the statements recorded during investigation and forming an opinion after scanning and shifting of the same is not warranted under law.

C Mr. Rakesh Dwivedi, the learned Senior Counsel, appearing for accused Uday Narain and Mr. Krishnan, the learned Senior Counsel, appearing for the accused Reshamwala on the other hand contended that if the Court is fairly certain that there is no prospect of the case ending in conviction on consideration of the materials produced by the prosecution, then the valuable

D time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date and adjudged from that stand point, the impugned judgment cannot be said to be infirm in any manner. In support of this contention, reliance was placed on the decision of this Court in *Satish Mehra v. Delhi*

E *Administration and Anr.*, [1996] 9 SCC 766. Mr. Krishnan, in addition contended that Reshamwala not being a public servant, could not have been prosecuted under the provisions of the Prevention of Corruption Act.

Having examined the rival submission at the Bar and on scrutinising the impugned Judgment of the High Court, we have no hesitation to come to the

F conclusion that the High Court committed serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinising the evidence and materials produced by the prosecution. We refrain from recording any positive conclusion on the materials as it may affect the trial. Suffice it to say that a bare perusal of the Judgment of the

G High Court would indicate that the High Court exceed its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of conviction. So far as the contention of Mr. Krishnan is concerned as to whether Reshamwala not being a public servant could be prosecuted under the provisions of the Prevention of Corruption Act, the said question has recently been answered by a Bench of this Court in the case of

H *P. Nallammal etc. v. State Rep. by Inspector of Police*, (1996) 6 Supreme

Today 516. We, therefore, do not find any force in the aforesaid contention. A  
In the circumstances, the impugned Judgment of the High Court is set aside.  
These appeals are allowed. The Special Judge is directed to proceed with the  
trial at an early date.

R.C.K.

Appeals allowed.

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