

(2006) 04 OHC CK 0045

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 55 of 2003

Ashok Kumar Sahu and Others

APPELLANT

Vs

Director General, Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) CLT 1161 (Suppl CrI) : (2006) 1 OLR 708

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Advocate : A. Mukherji and G. Mukherji, A.C. Panda and S.R. Patra, for the Appellant; S.K. Padhi, for O.P. No. 1 and Govt. Advocate for O.Ps. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

I. Mahanty, J.—This writ application under Articles 226 & 227 of the Constitution of India has been filed in the form of a Public Interest Litigation by one Sri Ashok Kumar Sahu and three others challenging the inaction of the police in deliberately and intentionally trying to suppress the involvement of various bureaucrats and officials and other important individuals in the alleged criminal conspiracy of forged postal National Saving Certificates (in short "NSC") for abetting and assisting the principal accused persons in destroying the evidence and seeking a direction from this Court to transfer investigation of the case to C.B.I. Notices have been issued to the opposite parties and counter affidavit in this regard has been filed by the opposite party No. 3-Inspector-in-Charge of the Town Police Station, Baripada, District-Mayurbhanj.

Mr. Ashok Mukherji, learned Sr, Advocate appearing on behalf of the petitioners submits that a deep rooted conspiracy and unholy nexus exists between the accused persons and police resulting the failure of the police in taking effective steps/investigation into the allegation made against the accused persons. The petitioner further averred that the police has intentionally not seriously

investigated into the matter and obviously with the intention to assist the accused persons in the present case has hidden various important persons who may be connected with the crime and have also aided and abetted in the destruction of evidence. The learned Govt. Advocate appearing for the Opp. Parties places reliance on the counter affidavit filed on behalf of Opp. Party No. 3 and submits that since the investigation is being carried out by Opp. Party No. 3, no useful purpose would be served in transferring the investigation to the C.B.I.

2. The relevant facts of the present case as revealed from the writ application indicate that one Shri Jagdish Prasad Saha had pledged ninety numbers of NSCs. and another forty NSCs in the name of his wife Puspa Devi to Mayurbhanj Central Co-operative Bank Limited (in short "M.C.C. Bank Ltd."), against which the M.C.C. Bank Ltd. advanced a loan of Rs. 6,49,500/- to Jagdish Prasad Saha and Rs. 3,00,000/- to Puspa Devi. It is stated further that the total face value of the NSCs. amounts to Rs. 13,000,000/-. It is further averred that the auditors Sri Shridhar Sahoo and Sri Subash Chandra Panda audited the accounts of M.C.C. Bank Ltd. and its Evening Branch for the year 2000-01 and they discovered that the NSCs. pledged by the aforesaid persons were part of the forty-five thousand NSC, KVP, IVP which went missing while they were being transported from the Security Press Nasik (Maharashtra) to West Bengal. In order to intimate all the Banks of such loss of securities, the Reserve Bank of India had issued circulars containing specific direction to all Banks directing them not to grant any loan against the missing postal securities. The said Auditors on verification of the serial numbers of the NSCs pledged by the accused persons noted that the same were part of the missing postal securities and accordingly filed F.I.Rs. on 12.10.2001 and 8.11.2001 with Baripada Town Police Station which was ultimately registered as F.I.R. No.18/2002 on 29.1.2002 Under Sections 420/468/471/120-B of the I.P.C.

Further in the writ application, the petitioners averred that on detection of such fraudulent transaction and on the basis of Audit Report, the Asst. Auditor General, Co-operative Societies, Mayurbhanj Circle, Baripada by their letter dated 3.10.2001 intimated about the postal NSC scam to the Deputy Registrar, Co-operative Societies, Baripada and to the Secretary of Mayurbhanj Central Co-operative Bank for necessary actions. He also vide his letter dated 12.10.2001 submitted copies of Audit reports to the Officer-in-Charge, Baripada Town Police Station as well as Senior Police Officers of Police Department and the Collector & Dist. Magistrate, Mayurbhanj-Cum Management-in-Chief of the Mayurbhanj Central Co-operative Bank Limited, Baripada for taking necessary action. Further an F.I.R. said to have been filed vide his office letter No. 2646 dated 12.10.2001 was lodged by the Mayurbhanj Audit Circle office in the Baripada Town Police Station. It is further averred that despite the aforesaid F.I.R. having been filed on 12.10.2001, no action on the same has been taken.

Since no action on the F.I.R. dated 12.10.2001 was taken, the Asst. Auditor General, Co-operative Societies, Mayurbhanj Circle, Baripada vide his letter No.

2963 dated 8.11.2001 lodged a fresh F.I.R. with the O.I.C., Baripada Town Police Station requesting him to take early action on the NSC scam as the informant apprehended manipulation and tampering of records to destroy the evidence in this scam.

3. From the aforesaid facts it is clearly evident that the opposite party No. 3, i.e., O.I.C., Baripada Town Police Station neither registered the F.I.R. nor has investigated into the matter on the basis of the said F.I.Rs. said to have been filed on 12.10.2001 and 8.11.2001, until 29.1.2002 on which date the O.I.C., Baripada Town Police Station registered the same as FIR No. 18/2002 under Sections 420/468/471/120-B, I.P.C. purportedly on the basis of the letter No. 2963 dated 8.11.2001 of the Asst. Auditor General, Co-operative Societies, Mayurbhanj Circle at Baripada. This fact by itself clearly indicates that the investigating authorities were delaying in registering an FIR and also hesitating to take any action against the accused persons. No justifiable reason is stated in the counter affidavit for not having taken immediate action after receipt of such information from the Assistant Auditor General on 12.10.2001 and 8.11.2001. It is only after lapse of a period of nearly three months, i.e., only on 29.1.2002 that an FIR was registered by the O.I.C., Baripada Town Police Station.

4. Pursuant to the direction of this Court, the learned Counsel for the State has produced the Case Diary being maintained at Baripada Town Police Station pertaining to F.I.R. No. 18 of 2002 and on a perusal of the same, the perfunctory manner in which the investigation was being carried out is self-evident. On most of the occasions the entries have been made in the case diary and action taken is noted only after the instructions were received from the higher police authorities. The case diary is replete with entries justifying their own inaction, due to their purported pre-occupation with law and order duty. While various Investigating Officers were changed from time to time, the investigation remained incomplete. On 3.4.2006, this Court took note of the fact that the case diary produced by the State contained the record of investigation till 6.6.2004 and therefore, by order dated 3.4.2006 directed as follows :

Put up the matter on 5.4.2006.

Learned Govt. Advocate is directed to obtain instruction as to at what stage the investigation is and also is directed to produce copy of the opinion given by the Govt. Pleader for return of the original N.S.Cs. to the depositors.

On the next date of hearing i.e. on 5.4.2006, the learned Counsel for the State produced few more pages of the case diary which contain certain noting made intermittently which are of no consequences vis-a-vis pertaining to the investigation in the matter and the last entry dated 11.9.2005 reads as follows :

Took charge of investigation of the case from retired Inspector J.R. Buxi with up-to-date Case Diaries and connected papers.

Closed the S.D. for the day pending further investigation of the case.

Submitted Sd/- 30.6.2005 I.I.C., Town P.S., Baripada

In sum total, a perusal of the case diary clearly establishes prima facie the allegations made by the petitioners to the effect that the investigating authorities and the manner in which they have proceeded for the last six years exemplifies the total inaction in the matter of proceeding with the investigation of the case.

5. It is indeed surprising that the police authorities in their counter affidavit have essentially sought to play down or cover up their own inaction by trying to shift the blame for handing over original N.S.Cs to the M.C.C. Bank Ltd. This stand of the police authorities is clear from the fact that they seek to absolve themselves of all responsibilities in the matter of the original NSCs being no more available and being handed over to the main accused J.P. Saha, by relying upon the letter of I.I.C., Baripada Town P.S. in which he directed the M.C.C. Bank Ltd. in writing by letter No. 4129 dated 17.11.2001 not to release the postal N.S.Cs even after clearance of the loan for verification of genuineness. While this may be a fact and probably the authorities of the M.C.C. Bank Ltd. would have to explain their conduct, yet, even if such a letter was addressed by the Inspector of Baripada Town P.S. on 17.11.2001, there exists no reason whatsoever for the self-same police officer not to register the F.I.R. on the basis of the earlier information given to him by the office of the Assistant Auditor General, Co-operative Societies on 12.10.2001 and 8.11.2001. Therefore, it is evidently prima facie clear that no F.I.R. was registered until 29.1.2002 by which date the main accused Jagdish Prasad Saha had already managed to take return of the original N.S.Cs from the M.C.C. Bank Ltd.

6. From the averments made in the writ application, the documents annexed thereto and the counter affidavit of Opp. Party No. 3, it is indeed surprising that the Secretary of the M.C.C. Bank Ltd. Sought for the opinion of the Government Plader on the query as to whether he could return the original N.S.Cs to Jagdish Prasad Saha after the said person cleared up the loan. It is surprising for two reasons:

(i) The present case being criminal in nature and investigation being in progress, the opinion of the Public Prosecutor could have been sought and definitely not that of the Government Pleader.

(ii) Since the note of the Government Pleader in the file of the M.C.C. Bank Ltd. indicates that he was aware that the Inspector-in-charge of Baripada Town Police Station had directed not to release the original documents, under what circumstance, such an opinion to release the original N.S.Cs was given, overlooking the fact that the Government Pleader had no such jurisdiction in the matter as well as over-looking the direction of the Inspector-in-charge of Baripada Town Police station clearly requires to be investigated.

7. Mr. Ashok Mukherji, learned Senior Advocate for the petitioners has relied upon the decision of this Court n the case of Anjana Mishra Vs. Indrajit Ray (Advocate General), , in response to the objection raised by the learned

Government Advocate to the petitioners" prayer for transfer of the investigation to the C.B.I. On perusal of the same, we think it appropriate to quote paragraph-8 of the said decision, which reads as follows:

We have heard all the learned Counsel at length. We are of the opinion that it is a fit case to hand over the investigation to the C.B.I. Normally, we would have asked the affected party to seek remedy as available in the Code of Criminal Procedure, 1973 (in short, the "Code"). The principles have been succinctly stated by the Apex Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and Ors.* (1997(3) SCC (Crimes) 303). But, some peculiar and unusual features have surfaced, which necessitate a departure. Allegations, counter-allegations, lack of confidence have been expressed so far as high placed police officials are concerned by the parties. DIG, Central Range, who is the investigating officer in respect of the first case filed by Anjana, has been accused of exerting pressure on her to withdraw accusations in respect of the second case, by her father. In this background, observation of Lord Denning M.R. in *Metropolitan Properties Ltd. v. Lannon* (1968)3 AII.E.R. 304 is relevant :

Justice must be rooted in confidence, and confidence is destroyed when right minded people go away thinking. The Judge is biased. Substituted "Judge" by "Investigator", the effect would be the same. Considering the sensitivity of the matter and the likely effect on the credibility and reputation of many persons, investigation by C.B.I. appears to be ideal.

8. We are of the view that the principles enunciated in the aforesaid decision squarely apply to the peculiar circumstances of this case since the allegations have been made against various authorities holding very high offices, clear and apparent dragging of investigation for over five years, apparent loss of documentary evidence and further investigation into this case requires investigation in different States, the result of which may assist in unearthing the larger loss of Postal securities in the course of transit from Nasik (Maharashtra) to West Bengal.

9. While expressing no opinion on the allegations made in the writ application, we are constrained to record our dissatisfaction on the manner in which the investigation into the present case has progressed. Accordingly, we direct the C.B.I. to investigate into the matter for the following reasons :

(a) Since the F.I.R. pertains to N.S.Cs alleged to have been lost in transit between the Security press Nasik and West Bengal;

(b) Due to the fact that the said N.S.Cs were alleged to have been issued by the G.P.O., Patna; and

(c) Because of apparent lack of any progress made an investigation into the matter by the local police over the last five years.

10. In view of the aforesaid reasons we dispose of the writ application with the

following directions :

(I) We are of the view that the investigation into the present case based on the F.I.R. No. 18 of 2002 registered at Baripada Town Police Station should be transferred to the C.B.I. along with all necessary records of investigation carried out till date. The C.B.I. is directed to undertake investigation into the matter with all seriousness that the case deserves in accordance with law.

(II) The C.B.I. is further directed to investigate not only to the allegations made in the F.I.R., but also the circumstances under which the original N.S.Cs were permitted to be returned to the main accused and further to take appropriate action against all persons who may be involved for causing disappearance of evidence.

(III) All the papers in connection with F.I.R. No. 18 of 2002 registered at Baripada Town Police Station and its investigation be handed over to the C.B.I, within one month from the date of communication of this order.

(IV) We further direct the Director General of Police to initiate appropriate Departmental proceedings against the persons, who, in the opinion of the administration, are responsible for not discharging their public duties in the matter of investigation into the present case.

(V) Copy of this order shall be sent by the Registry by speed post to the Director, C.B.I, who shall entrust the matter to a special cell, as indicated above. Copies shall also be made available to the learned Addl. Govt. Advocate, learned Counsel for the C.B.I. and all other learned Counsel appearing for the parties.

With the above observations and directions, the writ application is allowed.

L. Mohapatra, J.

11. I agree.