(2023) 06 CAL CK 0053

In the Calcutta High Court

Case No : Criminal Revision No. 318 Of 2020

Asit Baran Saha — APPELLANT

Vs

Central Bureau Of Investigation & Anr. — RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Indian Penal Code, 1860 — Section 120B, 420
Code Of Criminal Procedure, 1973 — Section 173, 239

Citation : (2023) 06 CAL CK 0053

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Phatik Chandra Das, Chandreyi Alam (Gupta)

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against order no.78 dated 20.12.2019 passed by the learned Judge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta in Special (CBI) Case No.01/2014 (State (CBI/ED) -vs-Asit Baran Saha & Ors.) by which the discharge application filed by the petitioner has been rejected and on 03.02.2020 was fixed for framing the charge.

2. The petitioner's case is that the petitioner is a retired employee under Bharat Sanchar Nigam Limited, Kolkata who has retired from service on superannuation with effect from 31st August, 2010 as DGM/Finance, BSNL.

3. The Tender notice published by the Bharat Sanchar Nigam Limited, a Government of India Enterprise on July 2009 in the office of CAO, IFA, Krishnagar, BSNL, was finalized on 17.11.2009, when the petitioner was not in the office of GMT, Krishnagar, BSNL. When the petitioner took over the charge as Chief Accounts Officer, CAO, IFA, Krishnagar, BSNL, work Orders were already being issued under the supervision of other officers of the BSNL at that point of

time. There was no involvement of the petitioner in the so-called tender process.

4. Vide office order dated 25.02.2010, the petitioner was transferred as Chief Accounts Officer to CAO, IFA, Krishnagar, BSNL and he took over charge on 8th March, 2010. Although the petitioner requested the authority concerned that he was appointed at Kolkata and due to his personal reason, he may be posted at any office of BSNL at Kolkata. He did not mention in his representation that he should be posted as CAO, IFA, Krishnagar, BSNL. When the applicant/petitioner was transferred from Kolkata office to Krishnagar office, before that, all the tender process was finalized and the works orders were issued, therefore, there is no involvement of the petitioner in the so called CBI proceeding. But how the investigating authority issued a charge sheet against the petitioner is not known to the petitioner, which is thus bad in law.

5. The petitioner after retirement from his service, got all the settlements dues and pensionary benefits and long after that the said CBI proceeding was started against him.

6. The BSNL authority and the Vigilance department of the said authority without applying their minds levelled the allegations against the petitioner under Section 13(2) of the Prevention of Corruption Act, 1988 and also under Section 120B read with Section 420 of IPC. Since the petitioner has retired from service long ago and the entire tender process was finalized under the supervision of other officers prior to his joining, the said Act is not applicable in respect of the present applicant. The investigating authority has failed to assign reasons for the charge of criminal conspiracy against the petitioner. The First Information Report dated 28.02.2013 and the complaint lodged by one Rajesh Murmu, the then Additional General Manager (Vigilance), BSNL, West Bengal Telecom Circle, Kolkata against the petitioner and others could not establish the involvement of the petitioner.

7. On the basis of such complaint and the First Information Report, a case being Special (CBI) Case No.01 of 2014 was started before the Court of learned Judge, Special (CBI) court No.1, Bichar Bhawan, Calcutta.

8. Mr. Phatik Chandra Das, learned counsel for the petitioner has submitted that the complainant unnecessarily incorporated the name of the petitioner in the said First Information Report, because the petitioner joined duty in the particular office when the tender process had already been floated and after all these things related to the tender process had been completed. Thus there is no any role on the part of the petitioner in the said tender process. The officers who were present at that point of time and those who were in the office under whom the entire tender process was completed, they should be penalized if any conspiracy is there. But under no circumstances, there is any involvement of the petitioner in the said tender process. Therefore, whatever report has been furnished by the authority concerned in the complaint are baseless and malafide.

9. On the basis of such complaint and the first information report, a charge sheet has been submitted against the petitioner and others under Section 173 of the

Code of Criminal Procedure, wherein no documentary evidence is on record wherefrom it will be found that the petitioner is guilty. The investigating agency could not establish in the charge sheet that the petitioner is guilty for the said charges.

10. During pendency of such criminal proceedings before the concerned CBI Court, the petitioner filed an application under Section 239 of the Code of Criminal Procedure before the court of the learned First Special Judge at Bichar Bhawan, Kolkata in Special Case No.1 of 2014 vide RC 4/A of 2013 under Sections 120B/420 of IPC, Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988 for discharging him from the said proceeding.

11. The specific points raised by the petitioner in his discharge application are that being an officer of the BSNL Authority, he has retired from service with effect from 31.08.2010 and he has joined in the particular office of CAO, IFA, Krishnagar, BSNL on 8th March, 2010. Before that, all the tender process was completed and work order were issued. Therefore, on the said cogent ground the petitioner filed a discharge application under Section 239 of the Code of Criminal Procedure before the learned CBI Court but the learned CBI court without considering the points of arguments raised by the petitioner in his discharge application rejected the prayer of the petitioner.

12. It is submitted that the proceeding in the CBI court against the petitioner would result in an abuse of process of the court, and would not serve the ends of justice.

13. That until and unless the order no.78 dated 20.12.2019 passed by the court of learned Judge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta in Special (CBI) Case No.01/2014 (State (CBI/ED)-vs-Asit Baran Saha & Ors.) in respect of the petitioner is set aside/quashed, there shall be serious miscarriage of justice.

14. That the continuation and/or any further continuation of the said proceedings would be an abuse of the process of law and the petitioner will suffer irreparable loss and injury.

15. Mrs. Chandreyi Alam, learned counsel for the opposite party/CBI has submitted that the involvement of the petitioner is prima facie present as can be seen from the materials on record/report submitted and as such, the order under revision is in accordance with law. The revision is thus liable to be dismissed.

16. The final report in the form of charge sheet filed by the CBI, ACB, Kolkata on 31.03.2014 under Section 120B, 420 IPC Section 13(2) r/w 13(1) (d) of the P.C. Act, 1988, before the CBI Court, shows that:-

"…………….Investigation has revealed that none of these officers i.e. Shri A.B. Saha and Shri S K Rana objected to split requisitions. Splitting of requisitions is not allowed as per para 9.1 (a), Chapter 2 of the Hand book on "BSNL Material Management and Inventory Control by CVR Reddy (Enlarged Edition 2007)". Further, none of them (Shri S K Rana, Shri A.B. Saha or Shri A.K. Sanyal) pointed out that the approved cost of the tender for all the 119 items was only Rs. 30 lakhs. They all conspired to pass the split requisition so that they individually remain within the approved cost of 30 lakhs, whereas the expenditure sanction and administrative approval was given for purchase of testers worth Rs. 1,28,44,000…………..”

17. Thus, there is prima facie material on record against the petitioner in respect of the offenses alleged to proceed towards trial and setting aside the order under revision which is in accordance with law, would be an abuse of the process of law/ order. The case should be allowed to proceed towards trial at the earliest in the interest of justice. The petitioner is at liberty to place his defence during trial.

18. The revisional application being CRR 318 of 2020 is dismissed.

19. No order as to costs.

20. All connected applications stand disposed of.

21. Interim order, if any, stands vacated.

22. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

