(2015) 07 JH CK 0113

In the Jharkhand High Court

Case No : Criminal Revision No. 106 of 2015

Avrendra Kumar APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

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

Citation : (2015) 3 JLJR 388

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Indrajeet Sinha, for the Appellant; K.P. Deo, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J—This revision application is directed against the order dated 22/01/2015, passed by the learned Additional Sessions Judge-X--cum-Special Judge, CBI, Dhanbad, in R.C. Case No. 12(A) of 2009-D, whereby and whereunder, the application filed under Section 239 of the Code of Criminal Procedure, was rejected.

2. The case of the CBI is that a Memorandum of Understanding (MOU) was executed in between the representative of Director General, Resettlement, New Delhi and the then G.M. (Production) of Coal India Limited, Kolkata on 16/04/1999, with an aim of having union free captive transport organizations in coal subsidiaries and for providing an opportunity to ex-servicemen for resettlement. The terms and conditions as stipulated under MOU, on amongst others, are that initial contract shall be valid for 5 years from the date of commencement of the work. Renewal of contract for another term of 4 years may be considered by both the parties jointly provided the past performance and functioning of the ESM Company has been satisfactory; all the tippers and

loaders will be owned by the eligible Ex-Service Men (ESM), widows/disabled/ dependents of entitled ESM or the ESM Company. Hire purchase is permissible but hiring of loaders and tippers is not permitted and that the DGR should evolve a system to ensure compliance of MOU provisions regarding deployment of ex-servicemen, their vehicles, their payments and the constitution of Board of Directors. In case DGR finds anything in variance with the MOU, his office will inform the CIL and initiate suitable action and that all ESM Company will submit a half yearly and annual return so as to reach DGR by 30th July and 30th January respectively, without fail. Aim of these reports is to check deployment of vehicles/equipments, percentage of ESM, detecting irregularities, if any, and to monitor the progress of ESM Company by DGR. Non submission of specified reports of incorrect facts/figures may result in cancellation of sponsorship/non-renewal of the contract and that specific/relevant portion of the reports concerning the coal subsidiary will be authenticated by the authorized representative of the coal subsidiary and that ESM Company will deploy a minimum of 75% of local regular employees as ESM within 6 months of commencement of work.

Upon execution of the aforesaid MOU, a sponsorship letter was sent to the Chief General Manager (CMC), BCCL for undertaking coal transportation work from ESM. Accordingly, after observance of all the required formalities and having necessary approval the work order was issued in favour of M/s. Maa Lilori Transport (P) Ltd., on 17/06/2008, for transportation of 15.95 Lakhs MT of coal at the cost of Rs. 7,46,85,750/- in the area during the period from 20/06/2008 to 31/03/2009. Subsequently, another work order was issued for transporting coal during the period from 01/04/2009 to 16/07/2009.

It was found that during the period from 20/06/2008 to 17/07/2009 M/s. Maa Lilori Transport (P) Ltd. had transported total 16,85,665.53 MT of coal from different collieries of Bastacola to Railway Siding. On account of transportation of the aforesaid quantity of coal, the Company received a sum of Rs. 7,61,11,513/- from area office Bastacola. Further on scrutiny of biannual and annual reports, it got transpired that 70% ESM employees were not deployed in the transport work, which was mandatory and at the same time it got also revealed that the ESM Company in course of transportation of coal had engaged private tippers, which was strictly prohibited under MOU. In that event, ESM Company had no right to claim ESM rate by suppressing the fact about utilizing hired vehicles and employing huge numbers of civilian employees and by claiming ESM rate the Company received a sum of Rs. 1,26,13,577/- in excess as the schedule rate for private transporters were less than the rate on which ESM Company transported the coal for which both the ESM Company and the Principal Employer was responsible as the responsibility to check correct deployment of vehicles/ equipments, employment of ESM etc. was there on the coal subsidiary Company (BCCL) and, thereby, annual and biannual reports, forwarded to DGR, were required to be authenticated by the Principal Employer alongwith remarks on the functioning of the ESM coal loading and transportation company.

Further case of the CBI is that one Jwala Prasad, the then Area Sales Manager had issued permission for transportation by tippers during the relevant period and as such, it was in his knowledge that ESM Company was supposed to deploy 75% of ESM but he did not take care to ensure implementation of terms and conditions of the MOU.

3. So far this petitioner, who at the relevant point of time was posted as Area Manager (Planning) had authenticated on behalf of the BCCL biannual and annual reports submitted by the said ESM Company during the relevant period without verifying the aforesaid deployment of private/hired vehicles and deployment of civilian employees etc.

4. On the aforesaid allegations, the charge sheet was submitted, alleging therein that the petitioner and others committed offence punishable under sections 120B read with Section 420 of the Indian Penal Code and also under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Upon it, the Court took cognizance of the aforesaid offences vide its order dated 29/09/2010. That order was challenged before this Court in Cr. M.P. No. 1198 of 2012, which was permitted to be withdrawn with a liberty to raise all those points, which have been raised in the said application, at the time of framing of charge or at the stage of discharge. Pursuant to that order, an application under Section 239 Cr.P.C. was filed, which was rejected vide order dated 22/01/2015, which is under challenge.

5. Mr. Indrajeet Sinha, learned counsel appearing for the petitioner submits that biannual report, a sample of which has been annexed with the application, contains as many as 18 columns. Of them the representative of the coal Company is required to give requisite informations against all the columns except column Nos. 7, 8 and 9, which pertains to deployment of ESM/Civilian and deployment of ESM owned vehicles. Any information furnished under those three columns are required to be authenticated by the ESM Company and not by the representative of the coal company and, thereby, after furnishing requisite informations against those columns, biannual report was submitted jointly by the Directors ESM Company and the representative of the Coal Company. The petitioner is being prosecuted on the assumption that the petitioner did authenticate the fact mentioned in column Nos. 7, 8 and 9 though said information given under those columns were never in accordance with the terms and conditions of MOU relating to deployment of ex-servicemen as well as tippers and loaders but the fact is that the said facts mentioned against column Nos. 7, 8 and 9 had been authenticated by the representative of ESM Company which was in terms of MOU stipulating therein that necessary information are to be furnished in the respective columns both by the Directors ESM Company and Area Manager Company, which has been taken notice of by the Investigating Officer while submitting charge sheet, still the petitioner is being prosecuted as the information furnished in column Nos. 7, 8 and 9 was not in accordance with terms and conditions of the MOU and the work order. But for that the Director of

the ESM Company would be responsible as those columns are necessarily required to be furnished by ESM Company, which fact would also be evident from Annexure-3, which has been furnished to the petitioner under the RTI by Ministry of Defence, Directorate General (Settlement). Since the petitioner being Area Manager has never been assigned with such duty, he cannot be held responsible for omission and commission of the act relating to deployment of tippers and ex-servicemen in contravention of the terms and conditions and, thereby, any prosecution of the petitioner would be illegal and would amount to abuse of the process of the Court.

6 As against this, Mr. K.P. Deo, learned counsel appearing for the CBI submits that biannual report and the annual report admittedly had been submitted jointly by the Director, ESM Company and the Area Manager and, thereby, every column of the reports are required to be authenticated jointly. The petitioner cannot shirk his responsibility of not ensuring the observance relating to deployment of ESM and tippers/dumpers and also ESM personnel in accordance with the terms and conditions of MOU.

In this regard, it was submitted that admittedly the ESM Company neither did deploy the tippers nor did deploy the ex-servicemen in the requisite numbers. In spite of that the Company was allowed to execute the work and even the payments were made though the coal company under the instructions issued by the DGR was required to ensure that the work is executed by the ESM Company in accordance with the terms and conditions. Thus, it was submitted that in spite of the fact that number of tippers/dumpers and ex-servicemen being not deployed in terms of the MOU, still information given under biannual report were authenticated by this petitioner being representative of the coal company and by the representative of the ESM company and, thereby, the petitioner is rightly being prosecuted.

7. Having heard learned counsel appearing for the parties, it does appear that the petitioner being the Area Manager is being prosecuted simply on account of the fact that he was one of the signatories to the biannual report and the annual report, which contains numbers of column under which requisite information are to be furnished. According to learned counsel for the petitioner, biannual report though is submitted jointly but necessary information are to be furnished under the column by the persons which concerns it, which would be evident from the terms and conditions of the MOU, notice of which has also been taken by the CBI, which reads as follows:-

"Specific/relevant portion of the report concerning the local subsidiary will be authenticated by the authorized representative of the coal subsidiary."

8. According to the case of the petitioner, column Nos. 7, 8 and 9, which pertain to deployment of ex-servicemen and also tippers and dumpers in terms of the MOU was required to be authenticated by the ESM company. This submission does find support from the document, which have been annexed as Annexure-3

procured under the RTI Act from the Ministry of Defence, Directorate General Resettlement (Self employment), which document can be said to be unimpeachable in character.

9. Under the circumstances, authentication of any information given under column Nos. 7, 8 and 9 never required to be authenticated by the petitioner. However, it is also the case of the CBI that in terms of the instructions issued by the DGR, the coal company is required to ensure that the ESM company in order to execute the work has been observing terms and conditions of the MOU relating to deployment of tippers/dumpers and also deployment of ex-servicemen. But for that it appears to be the case of the prosecution that such responsibility was lying with the then Area Sales Manager and not with this petitioner.

10. Under the circumstances, when the petitioner neither is supposed to authenticate the requisite information furnished under column Nos. 7, 8 and 9 nor did he authenticate the said information, rather he did authenticate the information furnished under the other columns of the report, he cannot be said to have done any wrong and, thereby, any prosecution of the petitioner would be quite illegal. The trial court did not take into account all these aspects of the matters in right perspective and, thereby, order dated 22/01/2015, under which prayer for discharge was rejected, is hereby set aside. Consequently, the petitioner is discharged from the case.

11. Thus, this revision application stands allowed.