(2001) 03 JH CK 0028

In the Jharkhand High Court

Case No : CWJC No. 207 of 2000

B. Akala (Balaswamy Akala) APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2001) CrLJ 4159 : (2001) AIR Jhar HCR 350 (2001) 1 JLJR(Jhar) 184 (2001) 49 BLJR 2067 :

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and D.K. Bharati, for the Appellant; P.P.N. Roy, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—This application has been filed by the sole petitioner under Articles 226 and 227 of the Constitution of India for quashing the entire criminal prosecution arising out of Case No. RC 13(A)/2000(R) which was registered u/s 120B read with 420, IPC and Section 13(2) read with 13(l)(d) of the Prevention of Corruption Act. 1988.

Another petition has also been filed for seeking protection from coercive action of respondent (CB1).

2. The facts of the case lies in a narrow compass :

The Investigating Officer. Dy. S.P., CBI, SPE, Ranchi lodged an FIR stating therein that the accused persons including the petitioner entered into a criminal conspiracy among themselves and in furtherance of the said conspiracy they abused their respective official position and they also helped the private firm, namely, M/s. C.T.C.C. by way of illegally and unauthorisedly transferring differing grade of coal/slurry to the private firm (C.T.C.C.) and also by way of intentionally and dishonestly suppressing relevant facts before the Hon''ble Courts, as a result of which C.C.L. Ranchi was put to a wrongful loss to the tune of Rs. 90 lakhs. It is further alleged that M/s. C.T.C.C. did not deposit the value of the coal to be lifted as it was not in position to sell such a huge quantity of coal and neither the petitioner, the then Chief of Marketing CIL nor Shri R.P. Shrivastava, the then General Manager (Sales & Marketing) CIL, Ranchi asked M/s. C.T.C.C. to deposit the coal value and to lift the coal. It is further alleged that it was decided/ recommended during a meeting held jointly by the Director (Finance) CCL Ranchi, CGM Argada area, CCL, Sales Officer, Argada Area, CCL, CGM (Sales & Marketing Division) CCL, Ranchi etc. to impose a penalty on M/s. C.T.C.C. in case it failed to lift 10 thousand M.T. of coal per month as per the orders of the Hon''ble Supreme Court. When this note duly recommended by the Committee was put up with the accused, the petitioner, the then Director (Technical) and (Projects & Planning) CCL, Ranchi he observed in favour of the party to the effect that "they parry shall have to be made to forego the unlifted quantity after stipulated period, and it will in itself, be sufficient and recovery/penalising for unlifted quantity may not be required." This observation of the petitioner was for promoting the interest of Contractor M/s. C.T.C.C. rather than that of CCL, Ranchi. It is further alleged that after expiry of 20 months, accused Shri S.K. Srivastava, the then General Manager (Sales), CCL, Ranchi and Shri Mahesh Gandhi of M/s. C.T.C.C. entered into an unwarranted agreement (MoU) on 23.3.2000, by which M/s. C.T.C.C. was given a chance for lifting coal from Bokaro, Barkakana, Sayal and Dhori Area in addition to the aforesaid three Collieries of Argada area, as allowed by the Coal Controller. After the expiry of stipulated period of 20 months. M/s. C.T.C.C. was allowed by the accused persons including the petitioner to lift extra quantity of 45.000 M.T, of Steam Coal at the rate applicable to the actual users and thereby CCL. Ranchi was put to a wrongful loss to the tune of Rs. 90 lakhs and corresponding to wrongful gain to the private party (CTCC) and themselves.

3. The petitioner alleged in the application that the respondent No. 1 has no authority to institute this case as it has got no jurisdiction, when the said Authority, namely. CBI can only operate within the confines of a State, only if the State concerned has given an appropriate consent required to be given u/s 6 of the Delhi Special Police Establishment Act. 1946. The State of Jharkhand was born on midnight of 14/15th November. 2000 whereas this FIR was lodged on 15th November, 2000 and as such the respondent No. 1 did not have the requisite consent of State of Jharkhand and as such the institution of the said case was without any authority of law. It is also ''alleged that this FIR has been lodged with mala fide intention at the instance of respondent Nos. 3 to 6 as well as there is no specific or direct allegation against the petitioner to constitute the offence against the petitioner.

4. On the other hand, the respondent No. 1 also filed counter affidavit controverting the allegations as made out by the petitioner and it is claimed that

the Notification has been issued by the State of Jharkhand u/s 6 of the Delhi Special Police Establishment Act according consent to all members of Delhi Special Police Establishment to exercise power and jurisdiction under the said Act in the whole of the State of Jharkhand in respect of registration and investigation of the case. It is further claimed that there is a direct and specific allegation against the petitioner who was holding responsible post at the relevant time and a huge amount of CCL was misappropriated under deep conspiracy. It is further claimed that the First Information Report has been registered against the petitioner and others in routine course and not at the instance of respondent Nos. 3 to 6, nor there is any material to show about mala fide motive or intention and as such the application filed by the petitioner is fit to be rejected.

5. Mr. Anil Kumar Sinha, learned Senior Counsel appearing on behalf of the petitioner assailed the whole prosecution on two counts :

(I) The respondent No. 1 has got no jurisdiction to register and institute the case against the accused-persons including the petitioner in absence of requisite consent from the State of Jharkhand, which was born on midnight of 14/15th November. 2000 and there was no requisite consent for institution of the case;

(II) The registration of the First Information Report on the ground that the allegation as made out in the FIR even if they are taken at their face value, do not prima facie constitute any offence or make a case against the petitioner.

At the same time, it is also submitted that this case has been initiated at the instance of respondent Nos. 3 to 6 with mala fide intention as the petitioner was already selected and placed as number one on the selection list by the Public Enterprises Selection Board and the respondent No. 4 was placed as number two and filing of this FIR was only for a purpose of stopping the appointment of the petitioner as Chairman, CIL to discredit him at the instance of the respondent Nos. 3 to 6. On this score, the Senior Counsel relied in the cases of State of Haryana and others Vs. Ch. Bhajan Lal and others, . K. Chandrasekhar Vs. The State of Kerala and Others, and Union of India and another Vs. W.N. Chadha, .

6. On the other hand, Mr. P.P.N. Roy, the learned counsel appearing on behalf of the respondent No. 1 (CBI) contended before me that there is no illegality in registering FIR against the accused persons including the petitioner who was holding responsible post at the relevant time and a huge amount of CCL was misappropriated under deep conspiracy of the accused persons including the petitioner by favouring the Contractor M/s. C.T.C.C. It is also argued that there is no question of legal bar in the institution of the First Information Report by the CBI as re- quired consent has duly been notified vide Notification No. 2 dated 1.1.2001 authorising the respondent No. 1 in exercise of power conferred u/s 6 of the Delhi Special Police Establishment Act and the said Notification was treated as effective from 15th November, 2000 and so the respondent NO. 1 has acted in accordance with law and FIR was lodged within the Jurisdiction because the appropriate consent has duly been accorded by the State of Jharkhand. It is

farther argued that the allegations levelled against the accused persons including the petitioner, prima facie constitute the offences and there is a specific allegation against the petitioner as well who conspired with the accused persons resulting in a loss of about Rs. 90 lakhs to CCL. It is further argued that the investigation is at the initial stage and against the order of stay passed by the Hon''ble Calcutta High Court in W.P. No. 352 of 2001, the respondents also moved before the Apex Court, by which the investigation was allowed to continue as per the Order dated 2.3.2001. It was also argued that the petitioner neither in the capacity of Director (Technical) & (P & P) nor in the capacity of CMD, CCL. Ranchi took any punitive action against M/s. C.T.C.C. for the default as well as the MoII was signed by accused Shri S.K. Shrivastava on behalf of CCL as per instruction of Shri Akala, the petitioner vide note dated 18.3.2000 which shows the connivance with M/s. C.T.C.C. and there is no cogent material to show mala fide intention or motive for institution of the First Information Report. The counsel for the respondent also relied upon the cases reported in State of Bihar and Anr. v. P.P. Sharma, IAS and Anr. 1992 (1) SCC 222 and Director, Central Bureau of Investigation and Others Vs. ''Niyamavedi'' represented by its Member K. Nandini, Advocate and Others, .

7. Obviously, Notification has already been made in exercise of the powers conferred by Section 6 of the Delhi Special Police Establishment Act. 1946 and the State of Jharkhand accorded the consent to all members of the Delhi Special Police Establishment to exercise powers and jurisdiction under the said Act and the said Notification was ordered to be treated as effective from 15.11.2000. It is also clear that the respondent No. 1 moved before the Apex Court against the Order dated 23.2.2001 passed by Single Judge, Cal- cutta High Court by which the Central Bureau of Investigation was restrained from carrying on any further, investigation and the Apex Court permitted the respondents by order dated 2.3.2001 to continue the investigation.

8. From perusal of the First Information Report which was registered u/s 120B. IPC also and there is allegation against the petitioner as well for promoting interest of M/s. C.T.C.C. rather than that of CCL, Ranchi. No doubt, the petitioner was holding responsible post during the period and there was a wrongful loss to CCL. Moreover, the investigation, which has just started, in my view, should not be interfered at this very initial stage. It is well settled that extraordinary power under Article 226 of the Constitution of India for quashing of criminal proceeding should be exercised sparingly and with circumspection.

In the case of D.K. Yadav Vs. J.M.A. Industries Ltd., , it was observed by the Apex Court as under :

"It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premises that one or two ingredients have not been stated with details. For quashing an FIR, the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence."

9. Mere fact that the offence was'' committed during the course of commercial transaction by itself not sufficient to quash the complaint.

10. The allegations as made out in the First Information Report clearly constitute the offences and if on the basis of allegations, a prima facie case is made out then this Court should be reluctant to quash the proceeding. Not only that, this Court is not justified in judging the probabilities, reliability and genuineness of the allegations made in the FIR. It is equally settled that quashing of criminal proceeding at the inception stage by the High Court is not called for merely on the ground of mala fide.

11. Having regard to the whole facts and circumstances coupled with the discussions made above, I do not find any merit in this application, which is accordingly dismissed.

The application for seeking protection from coercive action stands to be rejected.

12. Writ petition dismissed.

