(2012) 09 JH CK 0223

In the Jharkhand High Court

Case No : Criminal M.P. No. 1290 of 2012

Bhagwan Das Yadav APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 173(8)
Penal Code, 1860 (IPC) — Section 409, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 1 AJR 217

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Ajit Kumar Sinha, Mukesh Kumar Sinha, Pandey Neeraj Rai, P.C. Roy and Rohit Ranjan Sinha, for the Appellant; M. Khan, Advocate, for the C.B.I and Mr. Anoop Kumar Mehta, Advocate, for the C.C.L, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad

1. Since all the four cases arising out of the same case lodged by the C.B.I, it were heard together and are being disposed of by this common order. All these four cases are directed against the order dated 1.6.2012 passed by the learned special Judge, C.B.I in R.C No. 14(A) of 2010 whereby and whereunder cognizance of the offence punishable under Sections 409, 468, 471 and 477A of the Indian Penal Code and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act has been taken against the petitioners. The petitioners have also come up with alternative prayer whereby direction is being sought to'' be issued to the C.B.I to go for further investigation in terms of Section 173(8) of the Code of Criminal Procedure.

2. The case of the prosecution is that when C.B.I. did receive information regarding shortage of coal in the Jharkhand Open Cast Project (OCP), a unit of Central Coalfields Limited situated at Hazaribagh, a Joint Surprise Check (JSC)

was conducted on 1.2.2010 to 4.2.2010 at the said project with the assistance of the Vigilance officials of Central Coalfields Limited and Surveyors of the Central Coalfields Limited Headquarters. On measurement being taken, 1,57,100.8 M.T of coal was found available in the stock whereas stock of coal had been shown in the book as 1,87,988.8 M.T. Thus, shortage of 30,887.38 M.T of coal was found, value of which was assessed as Rs. 3,45,93,866/-.

3. Further allegation is that while preparing contour plan of heap no. 15 in the said OCP, the ground level was manipulated which was approved by Bhagwan Das Yadav, Chief General Manager of the area (petitioner in Cr.M.P. No. 1290 of 2012). The coal shortage was coming on since long but it was always concealed by preparing manipulated measurement books. Thus, it has been alleged that the Chief General Manager, Bhagwan Das Yadav and other Project Officers, Santosh Prasad Sarangi (petitioner in Cr.M.P. No. 1716 of 2012), Chandra Bhushan Sahay (petitioner in Cr.M.P. No. 1717 of 2012) and the Manager, Binay Kumar Thakur (petitioner in Cr.M.P. No. 1715 of 2012), who were custodian of the coal got the coal in huge quantities misappropriated and got the record fabricated in order to cover up shortage.

4. After completion of investigation charge sheet was submitted, upon which cognizance of the offences as stated above was taken, vide impugned order dated 1.6.2012 which is under challenge.

5. Mr. Ajit Kumar Sinha, learned Sr. counsel appearing for one of the petitioners submitted that at the relevant point of time, measurements of coal are being taken as per the guidelines issued under the Code for Uniform System of Maintenance Central and Verification of Coal Stock in all mines of CIL also known as ''yellow book'' issued by the Board of Coal India Limited. According to it, measurement is to be taken monthly by Colliery Surveyor, quarterly by Area Surveyor, 6th monthly by Company Surveyor and annually by Coal India Limited. In fact, measurements as per the guidelines used to be taken regularly but at no point of time any variation ? 5% was ever recorded which variation is permissible in between the physical stock and the book stock but the C.B.I has built up his case on the basis of measurement which has never been taken in accordance with the guidelines of the Code. Moreover, as per the measurement recorded earlier by Mr. R.K. Sinha, Assistant Survey Officer who was responsible for the measurement of the stock in the year 2008, 2009 and also in the year 2010, there was no shortage but it has been stated by him in his statement u/s 164 of the Code of Criminal Procedure that records were manipulated because there was shortage but such statement will have no evidentiary value, in view of the report submitted by him earlier.

6. It was further submitted that measurement of the coal is being assessed on the bais of contour plan prepared from before but the C.B.I come up with the case that contour plan had wrongly been made for covering the shortage. If that is so, then proper course for the C.B.I, as per the guidelines, should have been to remove entire coal stock and come to nil stock situation and then to make a

contour plan for taking measurement but instead of doing so, joint team innovated its own method whereby pits were dug to find out ground level and on that basis, calculation was made of the stock position. The method adopted by the team is foreign to norms and guidelines prescribed for measurement of the coal stock and therefore, any prosecution on the basis of faulty measurement would be abuse of the process of the court and hence, the order taking cognizance be quashed.

7. It was further submitted that as per the inspection made by Joint Surprise Team, shortage of coal was found to the extent of 30,887.38 M.T whereas in the charge sheet it has been shown that Rajesh Kumar Sinha, Assistant Survey, Officer had recorded shortage of coal to the tune of 175929.62 M.T for the month of November, 2009 and December, 2009 and again CMPDI has shown shortage quantity of which is different. In this situation, it can certainly be said that the C.B.I never recorded stock position of coal correctly and under the circumstances, direction be given to the C.B.I to go for further investigation and get the measurement be done either by the Geological Survey of India or by Indian Bureau of Mines. More so, in view of the statement made by C.C.L in its counter affidavit filed on behalf of opposite party no. 4 wherein it has been stated that measurement of coal stock was never carried out by the C.B.I as per the guidelines of the Coal India Limited as it did not check the floor contour and as such, the method which was adopted by the C.B.I for taking measurement of coal can certainly be said to be unscientific and that it is the stand of the opposite party no. 4 that no shortage of coal was ever found beyond permissible limit.

8. Mr. Mehta, learned counsel appearing for the opposite party no. 4 submitted that as per the record maintained, at no point of time variation of the actual stock and the book stock ever exceeded ? 5%. Therefore, measurement taken for ascertaining the coal stock can certainly be said to be unscientific.

9. More or less same arguments were adopted by all other petitioners.

10. Mr. Khan, learned counsel appearing for the C.B.I submitted that during investigation it has come that the accused persons in conspiracy with each other suppressed the report of shortage and manipulated the contour plan of Heep No. 15 and forged the measurement books and also the stock book to cover up the shortage.

11. It has further come that the accused persons dishonestly got the coal stock measured by using tape which never happens to be an approved method for measurement of huge coal stock but the petitioner, General Manager in conspiracy with other accused, Project Officers and Manager of Jharkhand Open Cast Project got it done for concealment of the coal stock.

12. It was further submitted that in course of inspection, 9 grid points were dug to verify the ground level by the surveyors of Central Coalfields Limited in presence of officers of the Jharkhand OCP, who were present and are among the

signatories to the JSC memorandum. During that course, it was found that the grid points were much above the reference level as mentioned in the approved contour plan. During investigation, it has also come that one R.K. Sinha, Assistant Survey Officer, Jharkhand OCP having joined the post in November. 2009 took measurement of the stock in the month of November and December, 2009 whereby he did notice shortage of 46% and 58%. The said matter was brought to the notice of the petitioner, Chandra Bhushan Sahay and also the Binay Kumar Thakur, who instead of taking any corrective measures did reprimand Mr. Sinha and then all the accused persons did conceal the report from the Central Coalfields Limited Headquarters.

13. Having heard learned counsel appearing for the parties, it does appear that during joint surprise check made by a team of C.B.I Officers, Officers from the Vigilance Department of the Central Coalfields Limited and Surveyors from the Central Coalfields Limited, measurements were taken in presence of some of the petitioners whereby stock of coal was never found to the extent which was recorded in the records of the Company, rather there Was much difference in between stock recorded in the book and the stock found on physical verification.

14. However, it is the stand of the petitioners that measurements was neither taken scientifically nor the team did adhere to guidelines relating to measurement of stock of coal laid down in ''yellow book'' and as such, any prosecution on the premise of shortage of coal recorded on the basis of wrong measurement would be quite illegal, particularly when number of documents relating to measurement taken periodically at different points of time never showed any variation in between physical stock and book stock more than ? 5% but this is not the stage to go into the matter to find out as to whether the case of the petitioners or the case of the C.B.I. is correct, rather whatever allegation has been imputed by the prosecution that has to be accepted to be correct and if it is accepted to be true, one would hardly come to the conclusion that no offence is made out. Moreover, documents upon which reliance is being placed are itself under scrutiny and therefore, those documents cannot be determining factor.

15. Under the situation, the order taking cognizance never warranted to be quashed.

16. So far other prayer for direction to the C.B.I to go for further investigation is concerned, that also does not seems to be tenable in the facts and circumstances of the case.

17. It has already been recorded that it is not that the joint surprise team comprised of only the members of the C.B.I, rather it comprised of C.B.I Officers, Officers from the Vigilance Department of the Central Coalfields Limited and Surveyors from the Central Coalfields Limited and the measurements were taken in presence of some of the petitioners who put their signatures over the memorandum of measurement. Moreover, it would always be the case of the

petitioners even during trial that there never happened variation in between physical stock and book stock more than ? 5%.

18. Under the circumstances, I do not find any justification in the prayer made for further investigation in terms of Section 173(8) of the Code of Criminal Procedure.

19. Accordingly, all these four applications stand dismissed. Before parting with this order it be recorded that any finding given for the purpose of disposal of this case may not be prejudicial to the case of the parties.