
(2013) 04 JH CK 0119
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 159 of 2012

Bir Bahadur Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 201, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 3 JLJR 362

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : V.P. Singh and Ashok Kumar Sinha, for the Appellant; Nilesh Kumar, Advocate for the Vigilance, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the entire criminal proceeding of Special Case No. 30 of 2003 (Vigilance P.S. case no. 20 of 1993) including the order dated 16.11.2011 whereby and whereunder cognizance of the offences punishable under Sections 109, 120(B), 201, 409, 420, 467, 468, 471, 477A of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act has been taken against the petitioner. In the year 1985, a notice inviting tender was issued by the then Chief Engineer for construction of a canal stretching from 4.56 to 6.03 K.M. part of the Icha Right Main Canal. Upon an execution of an agreement in between the then Executive Engineer and one of the partners of M/s. Ajanta Construction Company, Patna on 18.3.1985, work order was issued to M/s. Ajanta Construction Company. The work got started on 18.3.1985. During which Nawal Kishore Singh and Kamta Prasad Sinha were posted as Executive Engineer and Sub-divisional Officer (Assistant Engineer) respectively in Kharkai Canal Division, Chaibasa. During excavation, as per the case of the petitioner, soft rock was found which cannot be excavated without blasting and therefore, the then Executive Engineer, Superintending Engineer as well as Chief Engineer visited the

site in April, 1986 and permitted to go for excavation of soft rock with blasting and this item, according to them, should be treated under the extra item of the agreement. Accordingly, work was done and it was done at the time when petitioner's predecessor, namely, Kamta Prasad Sinha was posted as Sub-divisional Officer but at the time payment under the said head "soft rock with blasting" was not made for the reason that schedule rate of payment had not been prescribed by that time. However, as per case of the petitioner, payment for the said work, mentioned in the M.B. book, was made at the rate subsequently prescribed. While the work was in progress, a complaint was filed by Awadhesh Kumar Singh, the then Junior Engineer, Kharkai Canal Division, Chaibasa against the then Executive Engineer and Assistant Engineer and not against this petitioner with respect to their indulgences in corrupt practices particularly in the matter relating to excavation of soft rock with blasting.

2. On receiving the complaint, Government of Bihar constituted a Flying Squad for making enquiry over the allegation. On holding enquiry, a report was submitted to the Superintending Engineer wherein it was reported that gross irregularities have been committed in making payment towards soft rock with blasting. That report was forwarded to the Secretary, Water Resources Department. Thereupon notices were issued to this petitioner as well as one Assistant Engineer, four Junior Engineers and two Research Officers for showing cause as to under what circumstances excess payment of a sum of Rs. 2.45 crores have been made to the contractor towards soft rock with blasting as well as disposal of the same. Show cause was filed by the petitioner stating therein that blasting was started prior to joining of the petitioner but at the time payments were not made since the rates were not approved and that he had no role to play in the matter of rate fixation and classification of rocks and payments thereof to the contractor. Thereupon Fact Finding Committee consisting of three members was constituted to verify as to whether in the said project payments of Rs. 2.45 crores have been made showing soft rock with blasting though in fact the said work had never been undertaken. Thereupon, according to the case of the petitioner, the committee could not come to a definite conclusion as to whether excavation was performed either by soft rock with blasting or by manually. In spite of that, petitioner was charged by the Department to have made recommendation for payment of Rs. 1.82 crores covered under 28th to 29th account bills, though no such work had been undertaken. Thereafter the petitioner was suspended on the charge of being instrumental in making payments showing excavation of soft rock with blasting in place of ordinary rock and further for making payment towards extra lead of soil. While the petitioner was under suspension, an FIR was lodged against the petitioner and others putting the same allegation, upon which petitioner had been suspended that the petitioner and other accused persons were instrumental in making payment by showing excavation of soft rock with blasting in place of ordinary rock and also towards extra lead of soil.

3. On such allegation, FIR was lodged as Vigilance P.S. case no. 20 of 1993 under

Sections 109, 120B, 201, 409, 420, 467, 468, 471, 477A of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act on 10.7.1993.

4. According to the petitioner, upon the same charges on which FIR was lodged, a departmental proceeding was initiated against the petitioner wherein imputation of charges in detail were that under the pre-plan conspiracy, M/s. Ajanta Construction Company was paid more than Rs. 2.54 crores. This payment was made towards the item "soft rock with blasting" which had never been undertaken rather the process had been taken without blasting. This mode was resorted to after imaginary invention of new items, the disposal of which was approved after increasing lead to the extent of 56%. No proof showing blasting was found at the spot. Nothing indicated in the entire working territory showing drilling, use of explosives, purchase of explosives and its storage. The enquiry officer conducted the enquiry in detail. After holding enquiry, it was found that none of the charges levelled against the petitioner got proved. Accordingly, report was submitted in the year 1986 whereby recommendation was made for exoneration of the petitioner and other persons. On receipt of the said report, the disciplinary authority (Special Secretary) did differ with the finding recorded by the enquiry officer and after recording the point of difference, second show cause was issued to the petitioner asking him to show cause as to why not he be dismissed from service. Second show cause was submitted, upon which an order was passed for dismissal of the petitioner from the service. That order was affirmed by the appellate court. Both the orders passed by the disciplinary authority as well as appellate authority were challenged before the Patna High Court in C.W.J.C. No. 16528 of 2004 which was allowed, vide its order dated 24.4.2007 whereby the order of punishment passed by the disciplinary authority as well as appellate authority were set aside. Upon such exoneration from the charges which were the same as are there in the FIR, this application has been filed for quashing of the entire criminal proceeding as well as order taking cognizance.

5. Mr. V.P. Singh, learned Sr. counsel appearing for the petitioner submitted that when the court having found charges to be baseless in the context of the petitioner has set aside the order of punishment, any continuation of the proceeding against the petitioner would amount to abuse of the process of the court, in view of the decision rendered in a case of P.S. Rajya Vs. State of Bihar, and Radheshyam Kejriwal Vs. State of West Bengal and Another, .

6. In this regard it was submitted that gravamen of the charges, which were there in the departmental proceeding and are also there in the FIR, are that the payments were made towards soft rock with blasting in place of ordinary rock excavation and disposal of the material but the court did not find the petitioner responsible for it and therefore, set aside the order of dismissal and in this event, the order taking cognizance is fit to be set aside.

7. As against this Mr. Nilesh Kumar, learned counsel appearing for the Vigilance

submitted that notwithstanding the fact that the petitioner in view of the order passed by this Court can be said to have been exonerated from the imputation of the charges levelled in the departmental proceeding but that finding will have no bearing on the criminal case as the criminal case gets decided on the basis of the materials collected during investigation and the said proposition has been laid down by the Hon'ble Supreme Court recently in a case of State of N.C.T. of Delhi Vs. Ajay Kumar Tyagi, .

8. Thus, on going through the decisions referred to above cursorily decision rendered in case of State (NCT of Delhi) Vs. Ajay Kumar Tyagi (supra) seems to be contrary to the decisions rendered in a case of R.P. Rajya vs. State of Bihar (supra) and Radheshyam Kejriwal vs. State of West Bengal and another (supra).

9. But on going through those decisions carefully, I may respectfully say that in none of those cases, referred to above on behalf of the petitioner, it has been held that exoneration in the departmental proceeding ipso facto would lead to exoneration or acquittal in criminal case. I may point it out that the Hon'ble Supreme Court when did find that two contrary views are there on the point as to whether exoneration in the departmental proceeding would lead to acquittal in a criminal case in a case of P.S. Rajya vs. State of Bihar (supra) and on the other hand, in a case of Kishan Singh (D) through LRs. Vs. Gural Singh and Others, , referred the matter to a Larger Bench in a case of State (NCT of Delhi) vs. Ajay Kumar Tyagi (supra) where following issue fell for consideration.

whether the prosecution against an accused outstanding his exoneration on the identical charge in the departmental proceeding could continue or not?

10. One of the parties heavily relied upon a decision rendered in a case of P.S. Rajya vs. State of Bihar (supra). However, Their Lordships after taking notice of the fact of the case of P.S. Rajya vs. State of Bihar (supra) did find that Their Lordships in a case of P.S. Rajya vs. State of Bihar (supra) has never laid down any proposition that on exoneration of an employee in the departmental proceeding, criminal prosecution on the identical charge or the evidence has to be quashed, rather on the peculiar facts appearing in that case, criminal case was quashed upon exoneration in the departmental proceeding which, according to their Lordships, was evident from the observation made in paragraph 23 of the decision rendered in a case of P.S. Rajya's case which reads as follows:

Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant can not be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for

our order dated 27.3.1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.

11. Thereupon, it was held that it was well settled that the standard of proof in a departmental proceeding is lower than that of criminal prosecution. But at the same time, it is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case cannot be rejected on the basis of evidence in the departmental proceeding or the report of the enquiry officer based on those evidences. Thereupon Their Lordships came to conclusion that exoneration in the departmental proceeding ipso facto would not result in quashing of the criminal prosecution.

12. Similar view seems to have also been taken earlier by the Hon''ble Supreme Court in a case of State vs. Krishna Mohan [(2007) 14 SCC 667].

13. Coming to the instant case, it is the case of the prosecution, that without undertaking the work "soft rock with blasting", the payment was made to the contractor by the accused persons including the petitioner, who were in league with each other.

14. It has been stated that during investigation, it was found that the petitioner was instrumental in showing addition of extra work of "soft rock with blasting" for the benefit of the contractor. It was also found that under the conspiracy fake soft rock cutting was shown which could not have been in a situation as the contractor was not holding any licence for the explosive and therefore, exoneration in the departmental proceeding will have hardly any bearing on a criminal case as criminality or no criminality is to be found by the court in a criminal case on the basis of evidence collected by the investigating agency during investigation as has been held by the Hon''ble Supreme Court in the cases including the case of State (NCT of Delhi) vs. Ajay Kumar Tyagi (supra).

15. Therefore, exoneration of the petitioner from the departmental proceeding cannot be a ground for quashing of the criminal proceeding when the vigilance after investigation has submitted charge sheet, upon which cognizance has been taken. Thus, I do not find any merit in this application. Hence, it is dismissed.