

(2018) 10 DEL CK 0197

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.1180 OF 2015 & CrI.M.A. 4325 OF 2015

Central Bureau Of Investigation

APPELLANT

Vs

Earth Enterprises Ltd. & Ors

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 223, 223(d), 482

Indian Penal Code, 1860 — Section 120B, 405, 408, 420, 467, 468, 471

Citation : (2018) 10 DEL CK 0197

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.The petitioner â?" Central Bureau of Investigation (CBI) â?" had registered two cases on the complaint of the fourth respondent who was working

at the relevant point of time as Managing Director of National Agricultural Cooperative Marketing Federation of India (NAFED), they being RC

No.BD1/2006/E/0009 and RC No. EOU-I2007/E-0002. The investigation of the two cases was carried out, almost parallely and upon conclusion of

the said exercise, reports (charge-sheets) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) were submitted almost simultaneously

in the court of Additional Chief Metropolitan Magistrate (ACMM), Delhi. Cognizance on the said two charge-sheets was taken and processes were

issued against the persons who had been sent up for trial. In the case arising out of the first said case, thirteen persons were summoned as accused

and in the second said case, four persons were summoned as accused, the second and third respondents herein being common to both the cases, the

first and fourth respondents herein were shown in the array in the second case as accused while the other respondents are the remaining accused in the first case.

2. Before proceeding further, it may be mentioned that the fourth respondent, who is the complainant in both the cases was also arraigned as the accused in the second case, he not being cited as a witness even in the first case. It was submitted on behalf of the respondents, and conceded by the counsel representing the petitioner at the hearing, that the case against the said fourth respondent has since been quashed, his prosecution in the second case having come to an end.

3. The second respondent (company accused) which was common to both the cases and first respondent (accused in the second case) had moved applications before the ACMM praying for the two cases to be clubbed, reliance in this context being made to the enabling provision under Section 223 Cr.P.C. The trial Magistrate, by his order dated 16.11.2012, declined the said request dismissing the applications. The said order was challenged before the court of sessions by Crl. Rev. Nos. 54 and 55 of 2014. The revisional court, by its order dated 15.11.2014, accepted the contention raised and directed the two cases to be tried jointly.

4. Feeling aggrieved with the said order, the CBI has come up to this Court under Section 482 Cr.P.C. arguing that the joinder of the trial in the two cases in terms of Section 223 Cr.P.C. is likely to entail confusion, each case having arisen out of different transactions based on different acts of commission or omission, there being no commonality of the accused, reference being made in this regard particularly to the involvement of the fifth to fourteenth respondents who are arraigned as accused only in the first mentioned case.

5. Though it was also the argument of the CBI while resisting the above-mentioned prayer before the two courts below that the fourth respondent being the complainant, joinder of the two cases would render him an accused in the first case as well, despite he not being sent up for trial and this consequently resulting in the prosecuting agency being deprived of his evidence in the context of the obligation to prove complaint leading to the registration of the FIR, this argument is no longer valid and so not pressed inasmuch as the proceedings against fourth respondent in the second case

have since come to an end.

6. The revisional court, it is noted, has examined the issues raised at great length in the impugned order. The accusations of the first case relate to

offences punishable under Sections 120B, 409, 420, 467, 468, 471 of Indian Penal code, 1860 (IPC). The second case also involves more or less similar

offences, the charges sought to be brought being for offences under Sections 120 B, 405, 408, 420, 467, 468 and 471 IPC. A perusal of the charge-

sheets in the two cases clearly brings out that the acts of commission or omission constituting the aforementioned offences are stated to have been

indulged in by the respondents pursuant to two contracts that had been entered into by NAFED with the company accused M/s Earthtech Enterprises

Ltd., such contracts forming part of memorandum of understanding (MOU) dated 16.10.2003 followed by another MOU (also referred to as

â??Addendumâ?) dated 12.02.2014. In terms of the arrangement under the said MOUs certain products were to be imported, they including Superior

Kerosene Oil (SKO) and Heavy Melting Scrap (HMS). The learned counsel for the respondents, while defending the impugned order referred to the

cases set up by CBI in the two charge-sheets and pointed out that in each case the prosecution alleges a larger criminal conspiracy, punishable under

Section 120B IPC, having been hatched by the accused persons during the period October, 2003 to February, 2004 with the signing of the first MOU

and its addendum, the second MOU.

7. It is against the above backdrop that the revisional court has made the following observations in the impugned order:-

â??Having gone through both the charge-sheets, it is apparent that the offences alleged to have been committed stem out of one and single conspiracy

and thus were committed in the course of the same transaction. Opening of different LCs does not lead to conclusion that were different transactions.

Various persons came and joined the said conspiracy and left after playing their part. But it was one and single conspiracy. It makes no difference

whether material purchased was SKO or HMS or any other product. It further makes no difference whether goods were purchased in India or out of

India. It is irrelevant whether goods were purchased through MTT mode or otherwise. What is relevant is that conspiracy was one and single and it

was for defrauding NAFED for which various acts were done by various people.â??

8. In the considered view of this Court, the above conclusions reached by the revisional court are well-founded and appropriately expressed as the reasons to grant the request for joinder of charges under Section 223 (d) Cr.P.C. The larger conspiracy as can be gleaned from the evidence that has been presented in the two cases is what binds both the cases together and supports the conclusion that the offences which have been committed pursuant to such criminal conspiracy arise out of the same transaction [State vs. Ramesh Chand Kapoor 2012 (4) JCC 2709 and Kadiri Kunhahammad vs. The State of Madras AIR 1960 Supreme Court 661].

9. In above view, this court finds no error or infirmity in the directions given by the revisional court in the impugned order.

10. The petition and pending application are dismissed.