

(1997) 02 PAT CK 0061

In the Patna High Court

Case No : Criminal Miscellaneous No"s. 18762, 18776, 21177 and 22524 of 1996

Chotanagpur Cattle Feed Supply Co.

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 167, 2, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13

Citation : (1997) 2 BLJR 974

Hon'ble Judges : B.N. Agrawal, J;A.K. Ganguly, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—All these cases were heard simultaneously one after another as they involve common questions and they are therefore decided by one judgment.

2. All these four applications u/s 482 of the Code of Criminal Procedure were filed by the petitioners who are accused in connection with a criminal cases which are known as Animal Husbandary Fodder Scam"s case in this State.

3. The main allegation in this case is that the officers of the Animal Husbandary Department, Government of Bihar, both at the district and Secretariat level acting in collusion with Treasury Officers and officers of the Finance Department at the Secretariat level withdraw huge sums of money in excess of the financial sanction against fake allotment orders and vouchers. In connection with the investigation of this case various suppliers, traders and businessman are also involved and have been shown as accused.

4. On the basis of the order passed by a Division Bench of this Court dated 11th March, 1996 Reported in Sushil Kumar Modi and Others Vs. State of Bihar and Others, , the Central Bureau of Investigation has been directed to enquire and scrutinise all the cases of excess withdrawal and expenditure of the department

of Animal Husbandary in the State of Bihar during the period between 1977-78 to 1995-96, and lodge cases where withdrawal are found to have been done fraudulently. By the said judgment the Division Bench it was directed that the investigation by the State police shall remain suspended and the State Government was directed to extend all the facilities to both C.B.I. and the Income Tax Department to the discharge of their duties.

5. Challenging the directions contained in the said judgment, a SLP was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court by its judgment dated 19th March 1996 reported in State of Bihar and another Vs. Ranchi Zila Samta Party and another, held that the direction given by the High Court appears to be "just and proper and calls for no interference", and in the said judgment of the Supreme Court in the case of State of Bihar v. Ranchi Zilla samiti Party it has been recorded that prior to the investigation of C.B.I., the State Police instituted 40 first information reports against different persons and they were arrested and properties of 239 persons were attached. This shows that the investigation has to be carried out on an enormous scale which will be quite wide spread and time consuming. In State of Bihar (supra), the Supreme Court further made it clear that the Investigation by the C.B.I. will be under the overall control and supervision of the Chief Justice of the Patna High Court. It was also made clear that the C.B.I. Officers entrusted with the investigation shall, apart from the concerned Criminal Court, inform the Chief Justice from time to time of the progress made in the investigation and only, if they need any direction they may obtain the same from the Hon'ble Chief. In the penultimate paragraph of the said judgment in case of State of Bihar (supra), the Supreme Court directed to C.B.I. to take over the entire investigation including the investigation done by the State police. Subsequently, also the matter went before the Supreme Court at the instance of Union of India and the judgment which was delivered is reported in 1996 (2) PLJR 208. The matter was even thereafter taken to the Hon'ble Supreme Court and some directions were given but they are not strictly relevant for the decision of this case.

6. From the aforesaid narration of facts it appears that the criminal investigation of the cases in question is on an enormous scale and having regard to the question of public interest involved in this case the same is monitored from time to time by a Division Bench of this Hon'ble Court.

7. In Cr. Misc. No. 18776/96 Md. Sayeed claiming himself the proprietor of M/s Chhota Nagpur Cattle Field Supply and Company and M/s Saad and Company filed the petitioner u/s 482 of Criminal Procedure Code. The petitioner stated that as he came to know that his name transpired in connection with the said criminal investigation he surrendered in various cases lodged by the C.B.I. at New Delhi, some time in the month of May, 1996.

8. The petitioner's case is that C.B.I. has taken up investigation of all the cases and the accused person arrested in connection with the said cases are placed before the Special Judge, C.B.I. Patna in all those cases.

9. The main grievance of the petitioner is that his right u/s 167 of the Cr. P.C. to get bail after completion of 90 days of his custody is being defeated by the C.B.I. by implicating him in several cases. The petitioner's case is that he was interrogated in respect of various cases including nine special cases, and subsequently some other cases also. The cases of the *** is that the C.B.I. has not filed charge-sheet in all those cases and as such by virtue of operation of law u/s 167 of the Code of Criminal Procedure, the petitioner is entitled to get bail but in order to defeat the said right a requisition was filed by the C.B.I. on 15.11.1996 in the Court of the Special Judge, Patna, praying therein that Vijoy Kumar Mallik, Md. Sayeed, Sri Rajan Mehta, Sri Mohiuddin and Mahendra Singh Bedi may also be remanded in the said case and the Investigating Officer may be allowed to interrogate those accused persons. The said case was numbered as Special Case No. 68 of 1996. On such petition being filed, an objection was raised on behalf of the petitioner against the said prayer of the C.B.I. but the said prayer of the C.B.I. was allowed, and the special Judge by the order, dated 19.11.1996 held on a consideration of materials on records that there is a well-founded accusation against the aforesaid accused persons namely, Vijoy Kumar Mallik, Md. Sayeed, Mahendra Singh Bedi and Rajan Mehta.

10. The said order has been challenged before this Court by the petitioner by filing this petition u/s 482 of the Code of Criminal Procedure. Similarly, another petition on similar facts was submitted by Vijoy Kumar Mallik on identical contentions and the order of the Special Judge, C.B.I. dated 19.11.1996 has been challenged in Cr. Miscellaneous case No. 18762 of 1996.

11. The main contention of the Counsel appearing for the petitioner is that the dominant purpose of the C.B.I. authorities is to defeat the right of the petitioners to obtain bail u/s 167 of the Code of Criminal Procedure. On the expiry of 90 days by praying his remand in connection with another case. It is further alleged that the action on the part of the C.B.I. authorities is wholly motivated by extraneous consideration and vitiated by malice in law. learned Counsel for the petitioner also submitted that even though the C.B.I. has prayed for his remand in connection with the said case, but they have not interrogated the petitioner even though he is in custody in connection with the said case from the middle of the month of November, 1996. This, according to the petitioner's Counsel, shows the extraneous consideration for which the C.B.I. is seeking his remand. It has also been contended that the C.B.I. has deliberately sought the remand of four persons whose right to get the bail u/s 167 of the Cr. P.C. has matured after the expiry of ninety days. It is further alleged that the C.B.I. was aware of the alleged involvement of the petitioner from the month of August, 1996 as the petitioner wanted to surrender in connection with all the cases lodged against him by the C.B.I. so if the C.B.I. authorities are allowed to defeat their right u/s 167 of the Cr. P.C. and in that case the petitioners may have to remain behind the bar at the investigation stage for years together, even before any charge-sheet is filed. It was contended by the petitioner that this detention is unfair and in violation of Articles 14 and 21 of the Constitution of India.

12. learned Counsel for the petitioner has, however, not disputed the fact that the case in which his remand has been prayed for by the C.B.I. is on the basis of a first information report relating to a separate prosecution and a separate case. The petitioner has, however, admitted that the case in which the C.B.I. has sought for his remand is not the self-same case for which he is in custody.

13. From the F.I.R. of the case on the basis of which his remand in question has been prayed for by the C.B.I. it appears that the allegations are that on scrutiny of the records of the District Treasury Office, Chaibasa, Regional Director, South Chhotanagpur, Ranchi in the financial year 1992-93 it transpires that the then District Animal Husbandary Officer, Chaibasa in the conspiracy with supplier firms withdrew Rs. 37,62,79,883/- fraudulently from the District Treasury Officer, Chaibasa for wrongful gains to them. In the said F.I.R. lodged by the C.B.I. the petitioner in Cr. Misc. No. 18776 of 1996 was not named in the F.I.R. and the petitioner of Cr. Misc. No. 18762 of 1996, namely, Vijoy Mallik was named in the F.I.R.

14. In this proceeding C.B.I. has filed an affidavit. From a perusal of the affidavit filed by the C.B.I. it appears that a fresh case being case No. 68/96 was instituted and from the affidavit filed by the C.B.I. it further appears that before institution of the said case payment schedule of 2403 Chaibasa Treasury in the year, 1992-93 was seized along with the case records of R.C. No. 51-A/96 Patna and R.C. No. 49-A/96 Patna at Chaibasa vide seizure memo dated 20th July, 1996. Thereafter, contingency register of the District Animal Husbandary office, Chaibasa, was collected and photo copy of the District Animal Husbandary office bill were collected on 8th August, 1996 and the matter was reported to the C.B.I. Patna for registering of the case on 27th August, 1996. Sri A.K. Jha, Inspector of Police C.B.I. who was the investigation officer of two other regular cases after scrutinising the payment schedule for the period 1992-93 submitted proposal for instituting a separate case. It also appears from the affidavit that after the F.I.R. was lodged in connection with the aforesaid financial irregularities of the alleged commission of offences under Sections 120B, 420, 467, 468, 471, 477A, I.P.C., read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, the investigation started and during the course of investigation office copies of the District Animal Husbandary office bill supply orders stock book of food, Medicine and Instruments were seized from the various offices of the Animal Husbandary of Chaibasa for the relevant period on 4th September, 1996 and again on 9th September, 1996. It has also been stated in the affidavit that after registration of the said case on 30th August, 1996 requisition for treasury voucher No. 2403 Chaibasa for the year 1992-93 was sent to the Principal A.G. (A & E Ranchi, Bihar) on 30th August, 1996, and photo copy of the same was sent to the State Bank of India, Patna for furnishing the details of draft purchase and the orders issued against such bills. Copies of the said requisition has been disclosed in the said affidavit. It is also stated that the investigation of the case was transferred from Sri A.K. Jha to one Sri Ramchandra the Deputy Superintendent of Police (C.B.I.), New Delhi vide order dated-1st October, 1996 by the D.I.G. C.B.I. Patna,

but the said Sri Ranchandra the Deputy Superintendent C.B.I. New Delhi took charge of the case on 5.11.1996, but could not take any step in the matter from 5.11.1996. Then Sri M.K. Sharma, the Inspector of C.B.I. Dhanbad took charge of the investigation. It is also stated in the affidavit that immediately after Sri M.K. Sharma took charge of the case a detailed chart was prepared disclosing the name of each of the suppliers including the petitioners of the said case and after scrutiny of the records, the petitioner's involvement in the withdrawal of a sum of Rs. 37,45,53,400 transpired and then the I.O. decided to interrogate the accused persons who were in the judicial custody in connection with other cases. As such a prayer was made for remand by the I.O. before the Special Judge, in the present case.

15. From a perusal of the affidavit it also appears that it took the investigating agency some time to collect the materials and it came to a prima facie opinion that there is some basis for the allegations against the petitioners.

16. Criminal Misc. No. 22524 of 1996 has been filed by the Mahendra Singh Bedi, another accused whose remand has been prayed for in R.C. Case No. 68/96. learned Counsel for the petitioner in this case has submitted that his client had filed an application for surrender on 18.9.1996 in Special Case No. 68/96 and a copy of the said application has also been annexed to a supplementary affidavit filed in connection with the said case. In the said petition which was filed before the Learned Special Judge, C.B.I. (Animal Husbandary), Patna in Special Case No. 68/96 it has been prayed that Sri Mahendra Singh Bedi may be produced before the Court and production warrant may be issued and thereafter the petitioner may be remanded in this case. It also appears that along with the said supplementary affidavit, an order dated 2.9.1996, passed by the learned Special Judge, C.B.I. in Spl. Case No. 25/96 has been annexed. From the said order, it is clear that the prayer for remand was rejected by the Learned Special Judge, C.B.I. Patna, inter alia, on the ground that from the F.I.R. itself sufficient accusation against the petitioner did not appear and it was also stated that the investigation agency could not produce any material to show that the petitioners are accused in the said case.

17. learned Counsel for the petitioner submits that when an accused wants to surrender in connection with a criminal case in which he is apprehending arrest, the Court may either by an order allow him to surrender and take him into custody or the Court may after allowing him to surrender and taking him into custody release him on bail but the court cannot just refuse to take him in custody. As such it has been stated that the Learned Court by refusing to take him into custody by an order dated 2.9.1996 has taken a stand which is not correct in the eye of law. It has also been stated by the learned Counsel for the petitioner that the entire action of the C.B.I. in the instant case was part of their game plan to keep the petitioners in custody by praying for their remand in various cases when the period of detention in connection with any one of the case is about to exceed 90 days.

18. learned Counsel for the petitioner who appears for Dr. B.N. Sharma who has filed Criminal Misc. No. 21177 of 1996 raised almost identical questions. learned Counsel stated that his client is already in custody in connection with four cases, namely, Special Case Nos. 22 of 1996, 50 of 1996, 54 of 1996 and 56 of 1996 but in connection with Special Case No. 33 of 1996. on the basis of a petition filed by the C.B.I. on 6.11.1996, the petitioner has been remanded on 8.11.1996 and the learned Counsel for the petitioner states that in the said case, namely, Special Case No. 33 of 1996 statement of accused Shyam Bihari Sinha, who is alleged to be the kingpin in the case was recorded between 20.5.1996 and 28.5.1996 and the allegation in the F.I.R. is that the said Shyam Bihari Sinha had a coterie of officer who used to manipulate the official procedure in the matter of fraudulent withdrawal of public funds. The other allegation against the petitioner is that on Md. Sayeed had made statement on 22.5.1996 that he has allegedly paid rupees 48 lacs to the petitioner by way of illegal gratification. Relying on those facts, learned Counsel stated that if the investigating agency wanted to arrest the petitioner, they could have done so long before and should not have waited till the month of November, 1996. The fact that the investigating agency wanted remand of the petitioner in the month of November, 1996 makes it clear that they wanted it for a collateral purposes, namely, they wanted to prolong the detention of the petitioner by detaining him in another case, namely, Special Case No. 33 of 1996 when the period of 90 days of detention of the petitioner was coming to an end in connection with other cases. learned Counsel for the petitioner stated that in connection with the aforesaid four cases, namely, Special Case No. 22 of 1996 the petitioner was granted bail on 28.10.1996, in Special Case No. 50 of 1996, the petitioner was granted bail on 8.11.1996, in Special Case No. 54 of 1996, the petitioner was granted bail on 13.11.1996 and in Special Case No. 56 of 1996 the petitioner was granted bail on 7.11.1996. learned Counsel submitted that the petitioner Dr. B.N. Sharma was never posted in Hotwar Cattle Farm, Ranchi so the Investigating agency cannot seek his remand in connection with Special Case No. 33 of 1996. This argument is wholly mis-conceived and is also pre-mature at the stage of remand.

19. In the affidavit filed in this case (Cr. Misc. No. 21177/96) the C.B.I. has stated that the involvement of the petitioner from the conspiracy angle cannot be ruled out. It has also been stated that even though materials against he petitioner were collected in May, 1996, the investigating officers interrogated several other accused persons and collect material and then prayed for his remand.

20. In the background of these facts the main question which falls for determination before this Court is the ambit of the petitioner's right u/s 167 of the Criminal Procedure Code and the right of the investigating agency to seek the remand of the petitioners in different cases.

21. A question of similar nature came up for consideration before the Supreme Court in the case of Central Bureau of Investigation, Special Investigation Cell-I,

New Delhi Vs. Anupam J. Kulkarni, . In paragraph 11 of Central Bureau of Investigation (supra), the Hon"ble Supreme Court approved the observation of the Division Bench of Punjab and Haryana High Court in S. Harsimran Singh Vs. State of Punjab, . Those observations are set out below:

We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate u/s 167(2) of the Code for investigating another offence. Therefore, a re-arrest or second arrest in a different case is not necessarily beyond the ken of law.

22. Therefore, there is no legal bar to seek remand or re-arrest of the petitioners in connection with different cases what the petitioners are in custody in connection with some other cases.

23. The learned Counsel appearing for different petitioners have not even challenged the existence of such power of the investigating agency in the context of Section 167 of the Criminal Procedure Code. What they have challenged is the exercise of such power by saying that the dominant purpose behind the exercise of such power is an extraneous consideration, namely, to defeat the petitioner's right to get bail u/s 167 of the Code of Criminal Procedure after the lapse of the statutory period of ninety days.

24. In support of such submission, Counsel for the petitioner relied on various decisions, namely, Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., in order to highlight to requirement of a speedy trial. Reliance was also placed on the earlier A.R. Antulay Vs. R.S. Nayak and Another, on an observation at 1560 of the report in order to contend that no man is to be denied the rights under the constitution and the laws.

25. On the modality of exercise of power by the administrative authorities reliance was so placed on the decision of the Supreme Court in the case S. Pratap Singh Vs. The State of Punjab, and particular emphasis was placed on paragraphs 6,7,8, and 9. A later judgment of the Apex Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, was also referred to in order to show that the dictum in Pratap Singh (supra) has been reiterated and expanded in Express Newspaper (supra). All the principles of exercise of power by administrative authorities in good faith and the resultant failure in the exercise of such power where bad faith vitiates such an exercise are well known and cannot be disputed. But in the facts of the present case those principles are not of much relevance.

26. Here we are not concerned with the exercise of power by the administrative authority. In carrying on the investigation the C.B.I. may be discharging an administrative function. "Investigation" as has been defined u/s 2(h) of the Criminal Procedure Code includes all proceedings under this Code for "collection

of evidence". In the process of such collection of evidence, the investigating agency is with its right to produce an accused and ask for his/her remand to police custody u/s 167 of the Code. But here the power of the investigating agency is not unfettered. Such a prayer of the investigating agency for remand can only be granted by a court by passing an order where reasons are to be recorded. So remand is possible only after the prayer of the investigating agency is accepted after the exercise of discretion by a court which decides the legitimacy of such a prayer for a remand. That is why the Supreme Court in the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., has held that the provisions of the Code properly reflects the guarantee of Article 21.

27. Therefore, this exercise of discretion by a Court of competent jurisdiction under the Code cannot be equated with the exercise of power by an officer in the discharge of his administrative duty which is often not controlled by any statute. So this plea of bad faith, presence of extraneous consideration and malice in law which are so frequently alleged against an officer acting in his administrative capacity are not normally available against the exercise of discretion by court of competent jurisdiction. No such extreme case of the Court acting with bias and malice against the petitioners has been made out and in fact it cannot be made out in the facts and circumstances of this case.

28. Here on a scrutiny of the order dated 19th November, 1996 passed by the Special Judge, C.B.I. this Court finds that the Court considered the relevant materials in passing the order allowing the prayer of remand. The excerpts from the said order showing relevant considerations made by the Court are set out:

Perused the record and the case diary I find that the F.I.R. has been registered on 29.08.96 for fraudulent withdrawal of Rs. 37,62,79,883 on perusal of the case diary I find that on 15.11.1996 the I.O. has made entries in the case diary about the payments received by the various firms including the firms of the aforesaid accused person. There is allegation that the accused persons received payment without making any supply. On perusal of record I also find that a petition has been filed on behalf of M.S. Bedi on 18.09.96 for his production in Court and his remand in this case, but the Learned Spl. P.P. for the C.B.I. took adjournment on the ground that they have challenged the order of the Court remanding the accused in custody on their own prayer and thus the matter was adjourned on 19.11.1996 as prayed for by the C.B.I. awaiting the order of the Hon"ble Court on the petition of the C.B.I. "Considering all aspects of the matter, I find that there is well-funded accusation against the accused persons-namely Vijay Kumar Mallik, son of Inder Lal Mallik 26 ground floor engineers, Enclave Delhi, Md. Sayeed, son of late Abdul Rauf, Madhuban market, main Road, Ranchi, Rajan Mehta son of N.R. Mehta, 11/364 Susder, Bihar, New Delhi, and Mohindra Singh Bedi, son of Ujagah Singh Bedi, 16 Koltar Enclave Paitampura Delhi and thus I am authorised their detention in judicial custody in this case till 02.12.96.

29. This Court cannot hold that the aforesaid order has been passed on the basis of any perverse consideration. While exercising its power u/s 482 of the Code,

the anxiety of this Court is to prevent an abuse of the process and to secure the ends of justice. In this case, this Court does not find that there is any abuse of judicial power in the passing of the aforesaid order. It is well known that the power u/s 482 is to be sparingly used by this Court and while exercising such power the Court is not to even substitute its own view of the matter with the view taken by the Court below unless the only irresistible conclusion from the facts and law dictates that the view taken by the Court below is patently perverse. Going by those parameters this Court cannot hold that the orders passed by the Court below on the prayer of the investigating agency in granting remand call for any interference by this Court.

30. One thing in this connection is to be kept in mind. The investigation in this case is spread over allegations of a great magnitude relating to cheating, forgery, fraud and conspiracy spread over decades and naturally in such cases, investigation is time consuming.

31. Therefore, taking an overall view of the matter, this Court is of the opinion that the right of the accused u/s 167 of the Code cannot be said to have been defeated by the orders impugned by which the Court below has granted the prayer made by the investigating agency for the remand of the accused petitioners.

32. For the reasons aforesaid all the four applications fail and are dismissed. But there will be no order as to costs.