

**(2012) 09 JH CK 0033**

**In the Jharkhand High Court**

**Case No : Writ Petition (PIL) No. 858 of 2009**

Citizens Cause, Ranchi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 18-09-2012**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)  
Penal Code, 1860 (IPC) — Section 409

**Citation : (2012) 4 JLJR 537**

**Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J**

**Bench : Division Bench**

**Advocate : M.S. Anwar, for the Appellant; R.R. Mishra, for the Respondent**

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## **Judgement**

1. Heard learned counsel for the parties. Learned counsel for the State submitted that this "Public Interest Litigation" was filed to raise the grievance for non-grant of prosecution sanction by the State Government obviously for the prosecution of the public servant, for which the sanction was required from the State Government. It is submitted that now the scope is enlarged in view of several orders.

2. Learned counsel for the petitioner submitted that the issues now involved are; the issue of non-supply of police papers to the accused persons by the police when they submit the charge-sheet; non-disclosure of the properties by the Government Servants, which is mandatorily required u/s 34 of the Bihar Prevention of Specified Corrupt Practices Act, 1983 as adopted by the State Government. It is submitted that now another issue which is required to be considered having relevance with the present petition is with respect to the creation of more Courts, looking to the pendency of large number of criminal cases.

3. So far as the issue of supply of police papers to the accused persons are concerned, this Court has passed detailed order on 18th January, 2012 in this petition and also detailed order has been passed in other matters. After order

dated 18th January, 2012 and orders passed in other matters, copy of which has been sent to the Government, direction has been issued to the Investigation Officer and to the trial courts by the High Court with respect to supply and obtaining requisite number of police papers from the police and then supply to the accused, the position is improved a lot.

4. So far as the issue of creation of more courts are concerned, the State Government may look into this matter and process the recommendation sent by the High Court for creation of the new courts expeditiously and particularly for creation of those courts which will be financed under the 13th Finance Commission recommendations. Non-creation of the courts, which are to be financed from the fund of 13th Finance Commission recommendation is loss to the State public as they will not get benefit of the fund provided by the Central Government.

5. So far as the issue of disclosure of properties are concerned after order passed by this court in this Public Interest Litigation, the present status of the disclosure of properties as has been mentioned in the affidavit dated 17th September, 2012, is as under:

6. It is submitted that one officer of the Jharkhand Administrative Service, Sri Birendra Soy is absconder and it is stated that he can only be discharged from the Government service, if he does not turn out in the service within five years as per Rule 76 of the Service Code. The State authorities may re-examine the issue and find out whether Rule 76 of the Service Code is the only course available with the State Government in the Service Code for taking action against the absconding officers/employees ?

7. Remaining absent from duty without prior permission or without obtaining the leave is a misconduct, which is mentioned normally in every Service Code. Even for remaining absent from duty for a shorter period without sanction or leave results into disciplinary action against the employees/officers and we have seen the order of dismissal from service on this count alone. Rule 76 of the Service Code may be a special provision which provides for the employee who remained absent from duty/service for five years or more than five years but it does not mean that it is the only course available with the State Government for dealing with absconding officers/employees. We do not find any reason for not taking departmental proceedings against such absconding officer who is holding the post in the cadre of "Jharkhand Administrative Service".

8. Such state of affairs cannot be appreciated, if it is true even an employee or officer of the Government absent himself from duty and is absconder, then departmental proceeding can be initiated and can be concluded by servicing notice upon such employee/officer by making serious effort for his service directly or by substituted service. Therefore, such lame excuse cannot be accepted that the State Government will have to wait for five years before taking action and the only recourse available is Rule 76 of the Service Code.

9. It has further been stated in the affidavit dated 17th September, 2012 that two officers, namely, Parmanand Vasis and Smt. Namita Nalini Baxla, who have not disclosed their disclosure of property, are under suspension.

10. If they are under suspension even then also they are in service and, therefore, if they have not furnished the requisite information of their properties then the action can be taken against these persons without waiting for the departmental proceeding or revocation of the suspension order. They can be proceeded u/s 34 of the Act of 1983 without further delay.

11. In the affidavit it has been submitted that the Government Servants, who have not submitted the property details, against them show cause notice has been issued as to why they should not be awarded punishment for "censure" for their misconduct.

12. We do not find any justification for issuing show cause notice which contains virtually no actual punishment as censure is hardly any adequate punishment. For such misconduct the Government should have proceeded u/s 34 of the said Act in addition to taking a disciplinary action for appropriate punishment not like "censure".

13. So far as prosecution of sanction is concerned, it has been stated in the affidavit dated 17th September, 2012 that 24 special cases related with different police station of different district of the State where the requirement of prosecution sanction was there. Out of 24 special cases, 19 cases are disposed of by the concerned district police and only five special cases are pending for prosecution sanction. Out of these five cases, two are of the year 1983. In the case of Namkum P.S. Case No. 79 of 1983 (Special Case No. 04 of 1983), the investigation has been completed and charge-sheet has been filed. However, in Angara P.S. Case No. 391 of 1983, it is stated that even "Case File" is not available with the investigating agency and this case was registered u/s 409 of the Indian Penal Code. Such thing bound to happen in such sorry state of affairs where the investigation is not completed 30 years. For this, it has been stated that the State is now searching whether such cases are pending or disposed of. How such stand can be taken by the State in a case filed u/s 409 of the Indian Penal Code. The reason is obvious that when an F.I.R. is filed u/s 409 of the Indian Penal Code and in case is registered, in that situation, the case can be disposed of only by order of the Court obviously after filing of challan in the Court resulting into acquittal or conviction of the accused or by filing of final form stating no case is made out, provided such final form is accepted by the Court. Therefore, the State may look into the matter and find out the stage of the said case i.e., Angara P.S. Case No. 391 of 1983. In Khunti P.S. Case No. 57 of 1989 corresponding to Special Case No. 28 of 1989 charge-sheet has been filed on 31st July, 2012. For Chatarpur P.S. case No. 01 of 1993 corresponding to Special Case No. 1 of 1993, the stand of the State is that the papers are not traceable. It is stated that all seven accused persons are on bail in the said Chatarpur P.S. Case No. 1 of 1993. Now the papers have been procured from Special Vigilance

Court and a new investigating team has been constituted to investigate the case. Now the investigation is over and charge-sheet has been filed on 29th February, 2012. In Sadar (T) Daltonganj P.S. Case No. 270 of 1999 corresponding to Special Case No. 03 of 1999, charge-sheet was filed on 31st December, 2011 and in this case one Kashinath Prasad is absconder and against this very person prosecution sanction has been granted by the State Government. From the above details, it is apparent that this "Public Interest Litigation" and the issues raised by learned counsel for the writ petitioner were essential in aid to the access to the criminal justice to the public in the State of Jharkhand.

14. In addition to above, one more affidavit has been filed by the State Government with respect to prosecution sanction. However, at present we are not dealing with the said affidavit.

15. Now we are making it clear that the State Government should proceed according to Section 34 of the Act of 1983 and may prescribe the proforma for property disclosure of the Government Servants. This exercise may be done without any delay and such information be given by the Government servants covered u/s 34 of the Act so that from next year, the Government servant may submit requisite information in prescribed proforma given by the State Government. The State Government may indicate in the prescribed proforma as well as in the separate order in case of non-disclosure of the property, the proceeding as prescribed in Section 34 of the Act will be initiated.

16. The State Government since started working Hi-tech, therefore, we are expecting that the State Government will now give the facilities to all police stations of the State of Jharkhand, who in turn may provide requisite information to the centralized wing in the appropriate department of the Government with respect to some essential initial information like; filing of the First Information Report with particulars of offence under which the F.I.R. has been registered with information with respect to filing of the challan or final form so that the State Government's competent officers may monitor the progress in the investigation and timely filing of the challan, police papers, final form etc. We are making it clear that we are not observing that wherever investigation requires in time, those investigation may be hushed up because such investigation are being monitored by the higher authorities. However, the Investigating Officer as well as the State Government must know the reasons for non-completion of the investigation in time, so as to give reliefs to the public in those matter where First Information Report has been sent to the Court. We are making it clear that the public has grievance that after lodging First information Report or after receipt of the complaint from Court u/s 156(3) of the Code of Criminal Procedure, the Investigating Officers are not expeditiously investigating into the offence and it is also noticed that because of that reason only the courts may be burdened ultimately with allegation that the investigation is not being completed even after sending complaint by the Court.

17. At this juncture, it will be appropriate to take notice of the contention of the

learned counsel for the petitioner that some Courts are urgently needed in the State of Jharkhand. For this, we are of the considered view that the State Government should give the highest priority to this issue and proceed to provide more Courts in consultation with the High Court immediately.

18. Learned counsel for the State submitted that because of interim orders in number of cases only the prosecution cannot file the challan and such type of orders may include the orders wherein interim orders have been passed not to take coercive steps against the accused persons. This issue can be well addressed by the State by submitting appropriate application before the Court ceased with the matter and there cannot be any comment on any judicial order as whenever such orders are passed they are passed by application of mind. The same may be modified or set aside only if the Court is satisfied that the orders are required to be modified or set aside. We are making it again clear that the State through its counsel may move appropriate application before the Bench concerned and may bring on record the subsequent facts for the purpose of seeking any modification of the order which can be considered by the Court in accordance with law. It is also made clear to the State that wherever any investigation is stayed by any Court, they have right to move for appropriate application for listing such matters at the top priority in view of the administrative order already passed by the High Court for taking those matters on priority basis. A copy of this order may be given to learned counsel for the petitioner as well as to the learned counsel for the State and State may submit status report with also the decision for opening of the Court in the light of this order as well as in the matter of issuance of proper guidelines and circulars for implementation of Section 34 of the Act of 1983.

List this matter before this Court on 4th December, 2012.