
(2003) 11 JH CK 0019
In the Jharkhand High Court
Case No : Writ Petition (Cr) No. 49 of 2003

Dr. Devendra Nath Sinhku

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 34, 89(1)
Constitution of India, 1950 — Article 226
Prevention of Corruption Act, 1988 — Section 19, 3(1), 4

Citation : (2004) 3 JCR 183

Hon'ble Judges : Lakshman Uraon, J

Bench : Single Bench

Advocate : Dilip Jerath, S.N. Prasad and Manoj Tondon, for the Appellant; B.P. Pandey, Sadhna Kumar, A. Allam and R.R. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Uraon, J.

1 .In this writ application, the petitioner has prayed for issuance of an appropriate writ/order/direction for quashing the entire criminal proceeding against him in Vigilance PS Case No. 28 of 1990 arising out of an occurrence dated 16.10.1988 in which sanction has not been granted to prosecute this petitioner till date.

2. Petitioner has stated that he joined services in the Commercial Taxes Department in the State of Bihar on 14.6.1972 and thereafter was posted at different posts in different places. The FIR was lodged by the Officer-in-Charge, Vigilance Police Station, Bihar, Patna on 2.7.1990 bearing Vigilance PS Case No. 28 of 1990, regarding certain irregularities have been committed by the Purchase Committee of Operation Black Board Scheme of 16.10.1988, 22.10.1988 and 28.11.1988. Petitioner was posted as Director of Cultural Affairs, Art, Culture and Youth Affairs Department, Ministry of Human Resources Development, Govt. of Bihar, Patna on 7.10.1987 and continued in the said post till 2.3.1989, though he

was promoted to the post of Joint Commissioner, Commercial Taxes under Notification No. 466, Patna dated 12.4.1988. He was transferred thereafter on 1.3.1989 and joined as Joint Commissioner, Commercial Taxes (Head Quarters) at Patna on 1.3.1989. The Directorate of Primary Education, Government of Bihar under Notification No. B.Sell-7/98 Shi. 22, Patna dated 17.9.1988; named nine permanent members for the Purchase Committee under Operation Black Board Scheme as well as seven Special Invitees were notified. This petitioner claims that he was neither named as one Of the members nor was special invitee. Subsequently in the attendance register of the Purchase Committee meeting dated 16.10.1988, someone signed as "Devendra" at serial No. 7. Due to confusion, the alleged signature was thought to be the signature of this petitioner which he denies. He has not participated in the meeting held on 16.10.1988. The name of this petitioner was included in the supplementary Charge Sheet No. 1 of 1993 dated 4.1,1993 by the Vigilance Department, Government of Bihar, Patna. Inspite of the strong protest raised by this petitioner, no action was taken rather under Letter No. SR. 028-90 NIG. 2354 dated 28.5.1993 sanction to prosecute the petitioner under the provision of Section 19 of the Prevention of Corruption Act was sought for from the State through the Commissioner-cum-Secretary, Finance Commercial Tax Department, Government of Bihar, Patna.

3. Petitioner has further submitted that the Central Government has already refused sanction to prosecute Shri Ramashankar Tiwari, the then Secretary, Human Resources Department, Government of Bihar. Even though, he was the Chairman of the Purchase Committee of the Black Board Scheme Operation and whose signature figured in all the proceedings of the Meeting, the Attendance Register, etc on 16.10.1988, 22.10.1988 and 28.11.1988. It was further stated that at the time of re-organization of the State of Bihar and on 15th November, 2000, the petitioner was posted as Joint Commissioner, Commercial Taxes (Appeal), Hazaribagh Division, Hazaribagh and since then was working as Joint Commissioner, Commercial Taxes (Administration), Dhanbad and additional charges of Santhal Parganas Division, Dumka from 4.7.2001 till date. Inspite of sanction having been sought to prosecute this petitioner as far back as on 28.5.1993, no action has been taken by the respondents to prosecute him and as a result of which this petitioner is not getting promotion and other benefits. The respondents have adopted harassing attitude by victimizing this petitioner as he is not getting his salary since April, 2002 who is due to retire on 31.5.2003. On these grounds, it was prayed to allow this writ application and entire proceedings against him arising out of Vigilance PS Case No. 28 of 1990 dated 2nd July, 1990 be quashed.

4. Respondent No. 5, has filed counter-affidavit stating therein that this criminal, writ application is not maintainable before this Hon"ble Court in view of the fact that entire occurrence has taken place within the successor State of Bihar. In this case, investigation has already been completed and sanction to prosecute was sought for from the Chief Secretary, Government of Bihar on 4.1.1993 itself, but

due to delay in sanctioning prosecution, the matter could not be finalized and the proceeding also could not be concluded. After bifurcation of the State, the Government of Bihar has already requested the Government of Jharkhand to issue prosecution order/sanction order to prosecute in the changed situation because of the fact that the petitioner has now become the officer of the State of Jharkhand and also in view of the fact that as per the judgment of Hon''ble High Court in the case of "Arbind Vijay Billing and Anr., see 2001 (3) JCR 155 (Jhr) the Government of Jharkhand should issue the sanction order for prosecution, but the same was not done. This writ application is premature because until and unless prosecution is sanctioned, the petitioner has no right to seek any remedy against the expected apprehension of prosecution. This Hon''ble High Court has already held in Ashok Kumar Singh case (LPA No. 281 of 2001). that when the place of occurrence is located within the State of Bihar, the writ or any other interlocutory application is not maintainable before the High Court of Jharkhand. It was also mentioned that for the scheme namely Operation Black Board Plan for the year 1987-88, a sum of Rs. 9.12 crore was allotted to the Education Department by the H.R.D. Government of India for purchasing certain items. Without any advertisement, disclosing the details, only in National Herald published the advertisement. So outsiders sent the tenders in a very few number. Most of the bidders were neither the manufacturers nor the authorized dealers of the required items. The Selection Committee selected for the purchase of materials and notified on 17.9.1988 as Notification No. OB.O-7/88 (Shi) 22. The Committee held its meeting on 16.10.1988, 22.10.1988, 22.11.1988 and 28.11.1988 respectfully. In the said meeting itself on 16.10.1988, petitioner Devendra Prasad Sinhku, Director Culture, H.R.D., Bihar, Patna took part and signed in the proceeding who was present in the meeting. During investigation, the Vigilance Department collected evidence regarding criminal conspiracy hatched by the members of the Committee in order to fulfill the object that the supply orders were given to the firms which were not properly selected. After investigation, a proposal granting prosecution to the petitioner has also been sent to the Secretary, Bihar, Patna under Memo No. 1 dated 4.1.1993 in which the sanction is still awaited. On these grounds, it was submitted that this criminal writ application may be dismissed.

5. Learned Counsel for the petitioner has submitted that the alleged occurrence took place in the year 1988 and the case was registered in the year 1990. Even after 12 years, the sanction to prosecute the petitioner has not been obtained, hence the entire prosecution against this petitioner has to be quashed and has relied upon a case reported in Mahendra Lal Das Vs. State of Bihar and Others, . Learned counsel appearing for the respondents has vehemently submitted that this Hon''ble Court has got no jurisdiction to entertain this criminal writ petition filed by the petitioner Dr. Devendra Nath Sigh for quashing Vigilance Case which occurred within the State of Bihar in the year 1990 while he was posted within that State and has referred Sections 34 and 89(1) of the Bihar Reorganization Act, 2000. Section 34(2) of the said Act provides that, "such proceeding pending

in the High Court at Patna immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of the High Court, having regard to the places of accrual of the cause of action and other circumstances, to be proceedings which are ought to be heard and decided by the High Court of Jharkhand shall as soon as may be after such certification, be transferred to the High Court of Jharkhand- Sub-section (3) provides that, "notwithstanding anything contained in Sub-sections (1) and (2) of this section or in Section 27, but save here-in-after provided the High Court at Patna shall have, and the High Court of Jharkhand shall not have jurisdiction to entertain, hear or dispose of appeals, applications for leave the appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Patna before the appointed day; provided that if after such proceedings have been entertained by the High Court at Patna, it appears to the Chief Justice of the High Court that they ought to be transferred to the High Court of Jharkhand, he shall order that they shall be so transferred, and such proceeding shall thereupon be transferred accordingly. Section 89(1) of the said Act provides that :

"Every proceeding pending immediately before the appointed day before a Court (other than the High Court), Tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of the Jharkhand State, stand transferred to the corresponding Court, Tribunal, authority or Officer of that State."

6. The learned counsel for the respondents has further referred Section 177 of the Cr PC which provides that, "Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Learned Counsel for the respondents has also referred Section 4 of the Prevention of Corruption Act, 1988. Sub-section (2) of the said section provides that, "Every offence specified in Sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or where there are more Special Judges than one for such area, but such one by them as may be specified in this behalf by the Central Government." It was submitted that after bifurcation of the State, the Government of Bihar has wrongly requested to the Government of Jharkhand vide Annexure 4, dated 30.10.2003 annexed with the counter affidavit to issue the prosecution order in the changed situated because the petitioner has now become the officer of the State of Jharkhand. The learned counsel for the respondents has submitted that the State of Bihar should withdraw its request letter to issue prosecution order to prosecute this petitioner as when the alleged occurrence took place this petitioner was posted in the State of Bihar and the case was instituted in the State of Bihar where the offence was committed. Hence the authority relied by the learned counsel for the petitioner reported in "Arbind Vijay Billing 2001 (3) JCR 155 (Jhr)" which was upheld in LPA, No. 658 of 2001, has got no application as the points raised therein are different in Vigilance

PS Case No. 28 of 1990. The case has been registered under different sections of the IPC and also under sections of the Prevention of Corruption Act, 1947 and 1988 Ramashankar Tiwary, the then Secretary, Human Resources Development Department, Patna is the Officer of the Central Government. Hence, the prosecution under some sections of the IPC, no sanction to prosecute was accorded. On the other hand, this petitioner is the officer of the State Government and due to confusion, till date no sanction to prosecute this petitioner could be obtained. The sanction order to prosecute which has been issued by the State of Bihar where this petitioner was posted and the alleged offence was committed for which Vigilance Case was registered at Patna, hence the request of the Government of Bihar to the State of Jharkhand to issue sanction order to prosecute under the Prevention of Corruption Act, 1988 is a misconceived conception. On, the other hand, the sanction has to be issued by the State of Bihar. The case, no doubt, is pending in the State of Bihar without order of transfer of this case to be passed by Hon"ble High Court, Patna, this Court has got no jurisdiction to entertain this criminal writ application.

7. Considering all these facts, I find that this criminal writ petition is not maintainable as this Court has got no jurisdiction as the case has not been transferred by the Hon"ble High Court, Patna as provided under the Bihar Reorganization Act, 2000, referred to above. Moreover, the letter of the State of Bihar addressed to the State of Jharkhand to accord sanction to prosecute this petitioner is also a misconceived conception which should be with-drawn and the State of Bihar itself is competent to issue sanction" order to prosecute this petitioner as the place of occurrence is within the State of Bihar and the petitioner was also posted during that period within the State of Bihar.

8. With these observations, I do not find any merit in this criminal writ petition which is accordingly dismissed.