(2004) 06 OHC CK 0010

In the Orissa High Court

Case No : Criminal Revision No''s. 381 and 505 of 2003

Dr. (Mrs.) Unmadini Mohanty APPELLANT

Vs

Republic of India RESPONDENT

Date of Decision : 25-06-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 227
Prevention of Corruption Act, 1988 — Section 19

Citation : (2004) 06 OHC CK 0010

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : N.C. Sahoo, S.P. Panda, D. Mohanty and P.K. Muduli, in Crlrev No. 381/03, B. Pujari and R. Mohanty, in Crlrev No. 505/03, for the Appellant; S.K. Padhi and G. Mishra, for the Respondent

Judgement

L. Mohapatra, J.—Both the criminal revisions arise out of the order dated 15.4.2003 passed by the Special Judge (C.B.I.), Bhubaneswar in T.R. No. 21 of 2002 (arising out of RC.01 (A)/99) rejecting the petitions filed by both the Petitioners u/s 227 at the Code of Criminal Procedure to discharge them from the alleged charges. Both the Petitioners are accused persons in the aforesaid case along with another co-accused Bhaskar Subudhi. Since both the revisions arise out of the same order, both the cases were heard together and are disposed of in this common judgment.

2. From the records appears that on 1.1.1999 the Inspector, C.B.I., Bhubaneswar drew up First Information Report on receipt of reliable information that the Petitioner Dr. Balakrishna Joshi entered into a criminal conspiracy with M/s Laxmi Drug House, Bhubaneswar and cheated the Government and caused wrongful loss to the Department and subsequently made wrongful gain for self and others. The prosecution allegation is that the bills submitted by the aforesaid firm were checked either by Dr. Balakrishna Joshi or Dr. (Mrs.) U. Mohanty who certified that medicines supplied were as per barest need and cost of each item had been checked at the time of receipt of the medicines and that mentioned in the bills

are found to be correct. Further allegation of the prosecution is that in spite of the fact that the said bills were faulty and inflated, endorsements were given by either of the Petitioners. In view of such endorsements given, payments were made to the firm resulting in loss to the State Exchequer.

3. Learned Counsel for both the Petitioners submitted that no duty has been cast with either of the Petitioners regarding checking of bills or passing of bills for payment. In absence of any such duty cast upon the Petitioners it cannot be said that the certificate given by them is the cause for excess payment to the firm. In support of such contention, it appears from the impugned order, the Petitioners relied upon the copy of the letter dated 26.7.1988 issued by the Ministry of Communication as well as copy of the letter of the office of the Chief Post Master General, Orissa Circle to the Proprietor M/s Laxmi Drug House. It also appears that the Petitioners had filed affidavits before the trial Court to discharge them not only on the above grounds but also on the ground that there was no sanction for prosecution. It further appears from the impugned order that the trial Court ignored the documents filed by the Petitioners as well as the affidavits solely on the ground that at the time of framing of charge, the Court is only required to see the case diary and the documents placed by the prosecution and the Court cannot look into the records that may be placed as defence by the accused persons and accordingly relying on the materials available in the case diary, the trial Court rejected the petitions. Challenging the aforesaid finding it was contended by me Learned Counsel for the Petitioners that at the time of framing of charge the Court should have also looked into the official letters which cannot be disputed with regard to the duties of the Petitioners and since it is clear that it is the duty of the dealing clerk to see whether prices of the medicines charged in the bills are in conformity with the contract or not, any M/stake done by the Dealing Clerk cannot be attributed to the Petitioners and the Petitioners cannot be held liable for the same. So far as the question of sanction is concerned, Learned Counsel for the Petitioners submitted that in view of Section 19 of the Prevention of Corruption Act, previous sanction is necessary for prosecution and in the present case sanction was not given by the competent authority and therefore there is no legal sanction in the eye of law.

4. Shri S.K. Pad hi, learned Senior Counsel appearing for the C.B.I., on the other hand, submitted that there are materials available on record to show that the firm had submitted inflated bills showing higher rate of medicines specially those pertaining to diabetes and life saving drugs. Said firm supplied medicines to the P & T Dispensary as many as on 331 occasions during the period of contract from October, 1997 to November, 1998 and the presentPetitioners issued "final certificate" putting their rubber impression with signature on the reverse of the medicine supply bills of the firm. The certificate indicates that the medicines supplied were on the basis of supply order issued and the quantities of medicines for which supply orders issued were for the barest need of the concerned patient and that the cost of each item has been checked at the time of receipt of the medicines and that mentioned in the bills are found to be correct. Referring to

such materials available on record, it was contended by the Learned Counsel for the C.B.I. that the documents clearly show that a strong prima facie case is made out against the Petitioners. So far as non-consideration of the documents placed by the Petitioners at the time of framing of charge is concerned, it was contended by the Learned Counsel for the C.B.I. that at the time of framing of charge the Court is only required to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before him by the investigating agency. There is no scope for the Court to give an opportunity to the accused to produce evidence or consider such evidence as defence may produce at that stage.

5. On perusal of the case diary produced by the Learned Counsel for the C.B.I., it appears that the case of the prosecution is that M/s Laxmi Drug House was awarded with a contract for supplying medicines to P & T Dispensary, Bhubaneswar between October, 1987 to September, 1998 by C.P.G., Orissa. The firm offered discount of 18% on M.R.P. including taxes on the medicines. After expiry of the first contract the firm was again awarded with the contract with effect from 1.11.98 for one year. In the second contract the firm offered discount of 24.2% on the M.R.P including taxes. Further prosecution case is that M/s Laxmi Drug House had submitted inflated bills showing higher rate of the medicines specially on diabetics and life saving drugs. The firm did not submit invoices of the stock with the bills, which it was required to do as per the terms of the contract. Investigation further reveals that during the contract period M/s Laxmi Drug House supplied medicines to the dispensary on 331 occasions. For getting payment to the medicines supplied, said firm submitted bills to the P & T Dispensary and the same were checked either by Dr. Balakrishna Joshi or by Dr. (Mrs.) U. Mohanty and they issued final certificate putting their rubber impression with signature on the reverse of the medicine supply bills of the firm. The certificate given by the doctors on the reverse of the medicine supply bills show that the medicines supplied were on the basis of supply order issued, quantities of medicines for which supply orders issued were for the barest need of the concerned patient and cost of each item has been checked at the time of receipt of the medicines and that mentioned in the bills are found to be correct. On further investigation it was also found that in respect of the medicines for diabetics and life saving drugs specifically inflated bills were submitted and were certified for payment. Accordingly, such payments having been made, there was huge loss to the State Exchequer.

6. As submitted by the Learned Counsel for the Petitioners and evident from the impugned order, the Petitioners submitted some documents and affidavits to state that neither of the Petitioners was conferred with the duty of certifying bills for payment and therefore no offence is made out against them. WhetherPetitioners were conferred with such duty or not is a matter to be decided after trial. But the fact remains that either of the Petitioners had given certificate on the reverse side of the bills submitted by the firm to the effect as aforesaid. Therefore, there is prima facie materials to show that both the

Petitioners were conferred with duty to give such certificate, otherwise there was no necessity on their part to give such certificate. I, therefore, do not find any merit in the first contention raised by the Learned Counsel for the Petitioners.

7. So far as the question of sanction is concerned, there is no dispute that sanction has been obtained but question raised is sanction has not been obtained from the competent authority. Section 19 of the Prevention of Corruption Act as well as Section 197 of the Code of Criminal Procedure make it clear that sanction has to be issued by the authority who is competent to remove public servant. the Petitioners are appointed by the Ministry of Health and Family Welfare and were sent on deputation to P & T Department and they can only be removed from their services only by the Ministry of Health and Family Welfare. Therefore the order of sanction issued by the parent department appears to be valid sanction though I am not expressing any final opinion on the matter and the same is left to be decided after conclusion of trial. The prosecution having been sanctioned from the parent department, I am of the view that prima facie there appears to be a valid sanction for prosecution against the Petitioners.

8. Learned Counsel for the Petitioners relied upon two decisions of the Apex Court and submitted that at the time of framing of charge the Court can also look into the documents produced by the accused persons. I have not referred to the two decisions since in the case of State of Orissa Vs. Debendra Nath Padhi, the Apex Court held that at the time of framing of charge all that the Court has to do is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the Court at that stage should either given an opportunity to the accused to produce evidence in defence or consider such evidence as defence may produce at that stage. In view of the above decision of the Apex Court, the documents and affidavits placed before the Court by the accused persons could not have been considered by the trial Court.

9. On perusal of the impugned order, it appears that the trial Court has taken into consideration both the points raised by the Learned Counsel for the Petitioners before this Court, dealt with the matter on merits extensively and rejected the petitions u/s 227 of the Code of Criminal Procedure

10. I, therefore, do not find any merit in the revisions and accordingly both the revisions are dismissed.

