(2010) 04 JH CK 0020

In the Jharkhand High Court

Durga Oraon and Aman Munda APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0020

Hon'ble Judges : Gyan Sudha, C.J;R.R. Prasad, J

Bench : Division Bench

Judgement

1. Counsel for the parties have advanced further arguments on this Public Interest Litigation.

2. The counsel for the Income Tax Department, in a sealed cover, has submitted materials which include the findings recorded by the Income Tax Department regarding disproportionate assets, and the same are against Respondent Nos. 21 and 22 as also their associates.

3. Keeping in view the ratio of the judgment delivered in the matter of Kunga Nima Lepcha and Ors. v. State of Sikkim and Ors. (Writ Petition (Civil) No. (s) 353 of 2006), wherein the learned Judges of the Apex Court have been pleased to hold that any one including the petitioners (in the aforesaid matter) seeking investigation by the C.B.I., the State Police or the Central Vigilance Commission, may avail the remedy by relying on the investigation conducted in a criminal case and take assistance of the agencies to decide the further course of action. The Court further observed that the petitioners in the said case were forced to first of all exhaust the original remedy to the effect that the proceeding could have been brought before the High Court which was held to be a far more appropriate forum for examining the allegation made in the petition. Learned Counsels for the contesting parties have been trying to take assistance from the ratio of this judgment and while the counsel for the Respondent No. 22 stated that the Court should not straightway order for C.B.I. investigation or order for any other investigative agencies, the counsel for the petitioner stated that the learned Judges of the Supreme Court in the aforesaid matter has in fact granted

liberty to the petitioner to approach the High Court for considering the allegation and, therefore, as per the submission advanced on behalf of the petitioner''s by the counsel Mrs. Ritu Kumar, ''this Court'' being the High Court should consider the seriousness of the allegations in order to arrive at a conclusion, whether the cases are fit to be enquired into by the C.B.I.

4. In this context, it may be recollected that this Court has already passed an order on 22.4.2010, wherein we have observed that since the Enforcement Directorate and the Income Tax Department are already conducting the investigation in regard to some of the respondents, who are Hari Narain Rai, Enos Ekka, Kamlesh Singh, Bhanu Pratap Shahi, Bandhu Tirkey and Madhu Kora, the matter, for the time being, is not required to be handed over to the C.B.I. leaving the liberty to the petitioner to approach this Court by a fresh application to order for the C.B.I. investigation, if for any reason, the State -Vigilance case and the investigation conducted by the Income Tax Department and the Enforcement Directorate are not considered sufficient or the State-Vigilance shirks from proceeding with the investigation or prosecuting the matter in any manner. Only a week thereafter, the request has been renewed on behalf of the petitioner to the effect that the matter should be handed over to the C.B.I. for investigation relying upon the Constitution Bench judgment delivered in the mater of Nirmal Singh Kahlon Vs. State of Punjab and Others, , Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, and Rubabbuddin Sheikh Vs. State of Gujarat and Others, , wherein the Constitution Bench has been pleased to hold that the Courts may order for the C.B.I. enquiry and it is not necessary to seek the consent of the concerned State in the affirmation before ordering for such investigation. Thus, the counsel has submitted that this Court is fully competent to order for the C.B.I. investigation as the State-Vigilance is not well equipped to conduct the investigation against the accused-respondents whose area of nefarious activities are spread in several countries and the State-Vigilance is not sufficiently equipped to proceed with the investigation in regard to those accused persons.

5. We have already noted that the Enforcement Directorate and the Income Tax Department are already conducting investigation at least in regard to four respondents who are Respondent Nos. 14, 15, 16, 21 namely, Hari Narayan Rai, Enos Ekka, Kamlesh Singh and Madhu kora, we see no reason at this stage to accede to the request.

6. However, the counsel has submitted that rest of the accused respondents or at least in regard to Respondent Nos. 17, 18 namely Chandra Prakash Choudhary, Dulai Bhuiyan, as also against Respondent. Nos. 22 and 23 who are Binod Sinha and Sanjay Choudhary, no formal case has been registered and it is submitted that Sanjay Choudhary is residing out side India in Dubai although his passport has been seized on request of the Enforcement Directorate and insofar as Binod Sinha is concerned, he is also absconding although the Vigilance and Income Tax Department authorities might be making some effort to chase these accused

persons.

7. The counsel for the Respondent No. 22, Sri Binod Sinha however submitted, that Sri Binod Sinha is already being questioned by the State-Vigilance, Income Tax Deptt. and the Enforcement Directorate and hence investigation is proceeding against them. However, we have noticed that no formal case has been registered against them.

8. Under the aforesaid facts and circumstances, we are anxious to elicit the views and response of the Respondent-State on the question as to why the matter should not be handed over to the C.B.I. at least in regard to those persons which include Respondent Nos. 17, 18, 22 and 23 against whom there is no formal vigilance case, although they might have been interrogated by the Income Tax Department and the State-Vigilance. The Advocate General is also directed to state as to why the matter should not be handed over to the C.B.I. for investigation, if the State Vigilance is neither equipped to cross the boundary of this country and conduct the investigation against these Respondents as neither the Enforcement Directorate nor the I.T. Deptt. is proceeding with any enquiry against these respondents in spite of the offence alleged against them also. In view of the ratio of the Supreme Court Judgment delivered in Kunga Nima Lepcha and Ors. v. State of Sikkim and Ors. (Supra), it is essential to have the response of the State as to why the petitioner''s prayer be not considered by the Respondent-State for handing over the investigation to the C.B.I. at least insofar as the persons against whom no case at all is pending, in view of which, the offence alleged against them should be investigated by the C.B.I. or not.

9. For the aforesaid purpose, the Advocate General has sought time to receive instruction, which we are permitting and, therefore, the matter be listed again on 11.5.2010 for further consideration.

