
(2013) 07 JH CK 0093

In the Jharkhand High Court

Case No : Criminal M.P. No. 1449 of 2013

Jag Narain Singh @ Jag Narayan Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 120B, 201, 420, 423
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 07 JH CK 0093

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : S.N. Prasad, for the Appellant; Shailesh, Advocate for Vigilance, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—This case has been filed for quashing of the entire criminal proceeding of Vigilance P.S. Case No. 26 of 2000 (Special Case No. 13 of 2000), including the order dated 20.11.2008, whereby and whereunder, cognizance of the offence punishable under Sections 420, 467, 468, 469, 471, 120B, 109, 201, 423, 424, 477A of the Indian Penal Code and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act has been taken against the petitioner. The case of the prosecution as it appears from the F.I.R. is that certain pieces of land measuring 113.5 acres, appertaining to Khata No. 140, Plot No. 1114, situated at Village:- Bargaine, P.S.-Bariyatu, Ranchi though has been recorded as Gairmajurwa khas land, jamabandi was opened with respect to 103.84 acres of land in the name of the twenty persons. Subsequently, Additional Collector cancelled the Jamabandi which was standing in the name of those persons vide its order passed in Misc. Case No. 19 of 1992-93.

2. Further case is that out of the said land measuring 113.5 acres, Krishnanachal

Lal Grih Nirman Shahyog Samittee purchased 7.5 acres of land through three sale deeds in the year 1984 from Md. Suleman who claimed his right, title and interest over it through Sada Hukumnama. After purchasing the land, an application was filed before the then S.D.O., Sri P.N. Rai, in the year 1985 for opening Jamabandi in its name, but that prayer was rejected after holding that Jamabandi can be created in the name of the applicant only when the Jamabandi is first created in the name of the vendor. Thereafter on 14.07.1986, the Secretary of the Grih Nirman Shahyog Samittee filed another application before the Circle Officer, Ranchi, wherein, same prayer was made for opening of Jamabandi in the name of the society. On such application, Case No. 16 of 1986-87 was registered and the Halqua Karamchari as well as the petitioner submitted a report recommending therein for opening of Jamabandi in the name of the society. Accordingly, Prafulla Kumar Singh who at the time was the S.D.O. Ranchi, passed an order on 20.10.1986, whereby Jamabandi was ordered to be opened in the name of the society.

3. Further case of the prosecution is that the S.D.O. when came to know about the illegality being committed by him by passing an order for opening of Jamabandi in the name of the society, he cancelled the earlier order vide its order dated 27.07.1988 on the basis of the report submitted by the petitioner and at the same time, direction was given to the L.R.D.C. to make enquiry in this regard. That enquiry was entrusted to then Circle Inspector, who after holding enquiry submitted its report to then Circle Officer-Naresh Kumar, who forwarded it to LRDC. He in turn, forwarded to then S.D.O. Rana Awadhesh, who had succeeded to earlier S.D.O. On receipt of the report, he passed an order that Jamabandi had rightly been opened. In such, situation, rent receipts were issued in the name of the Society after its name was mutated against the land.

4. On such allegation, case was registered as Vigilance P.S. Case No. 26 of 2000 (Special Case No. 13 of 2000) against a number of persons including this petitioner for an offence punishable under Sections 420, 467, 468, 469, 471, 120B, 109, 201, 423, 424, 477A of the Indian Penal Code and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act by the Vigilance. After completion of the offence, when charge-sheet was submitted, cognizance of the offences, as aforesaid was taken which is under-challenge, in this application.

5. Mr. S.N. Prasad, learned counsel appearing for the petitioner would submit that as per the case of the prosecution, Jamabandi was opened by the then S.D.O. on the recommendation made by this petitioner but as soon as it was realized by the then S.D.O. that has wrongly been ordered to be opened, he cancelled his earlier order. In spite of that, the then S.D.O. along with this petitioner and others were made accused. When cognizance of the offences was taken against the accused persons, said Prafulla Kumar Singh, filed a case bearing Cr.M.P. No. 1867 of 2011 challenging the order taking cognizance by this Court after holding that in the facts and circumstances of the case, no case of forgery, misappropriation or even under the Prevention of Corruption Act is made

out.

6. It was submitted that earlier the petitioner had moved to this court against the order taking cognizance, but that application was dismissed.

7. Being aggrieved with that order, the petitioner had moved before the Hon''ble Supreme Court in SLP. (Cr.) No. 1354 of 2012, which was permitted to be withdrawn, giving liberty to agitate his grievance before the appropriate Court of law.

8. In that view of the matter, second criminal miscellaneous petition for quashing of entire criminal proceeding including order taking cognizance has been filed on the ground that on similar allegation, case of similarly situated co-accused, has been quashed by this Court in Cr.M.P. No. 1867 of 2011.

9. However, Mr. Shailesh Kumar, learned counsel appearing for the Vigilance submits that earlier the petitioner had moved to this Court for quashing of the entire criminal proceeding as well as order taking cognizance, which was dismissed. As against that order, the petitioner had even moved to the Hon''ble Supreme Court, which was permitted to be withdrawn and in such situation, the petitioner cannot maintain second criminal miscellaneous petition for the same relief.

10. Thus, the first question does arise as to whether this application is maintainable?.

11. Admittedly, earlier application for quashing was dismissed. Against that order, the petitioner had moved to the Hon''ble Supreme Court where application was permitted to be withdrawn with a liberty to raise his grievance before an appropriate Court of law and when similar allegation, an order taking cognizance have been quashed of the co-accused, this appreciation has been filed, therefore, it can be said that in the changed circumstance this application has been filed, which in view of the decision rendered in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, is very much maintainable, as it has been held in that case that in a changed set of circumstances, the second application u/s 482 Cr.P.C. would be maintainable. Thus, this application is very much maintainable.

12. So far merit of the case is concerned, it does appear that at the first instance, this petitioner being the Circle Officer had made recommendation for opening of the Jamabandi but subsequently, on being asked by the then S.D.O., to submit report, the petitioner submitted report, recommending therein to cancel the Jamabandi opened earlier and accordingly, the then S.D.O. acted upon on that report and cancelled the Jamabandi and, thereby no criminality can be attached with this petitioner. It be stated that the S.D.O. on the aforesaid fact, had also been made accused, who challenged the order taking cognizance before this Court. The Court, having found that the act done by him does not make out a case of forgery, misappropriation or even under the Prevention of Corruption

Act, quashed the order taking cognizance.

13. Similar is the situation, with respect to this petitioner and, therefore, for the same reason assigned in the case of Prafulla Kumar Singh (supra), entire criminal proceeding of Vigilance P.S. Case No. 26 of 2000 (Special Case No. 13 of 2000), including the order dated 20.11.2008 taking cognizance is hereby quashed. In the result, this application stands allowed.