
(2011) 03 JH CK 0129

In the Jharkhand High Court

Case No : Cont. (Civil) Case No. 478 of 2010

Jan Kalyan Morcha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 162, 169, 170
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 326, 420
Prevention of Corruption Act, 1988 — Section 13

Citation : (2011) 03 JH CK 0129

Hon'ble Judges : Bhagwati Prasad, C.J;D.N. Patel, J

Bench : Division Bench

Judgement

D.K. Sinha, J.—The Petitioner has invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for the quashment of the order dated 19.12.2006 passed by the Special Judge, C.B.I.-cum-Additional Sessions Judge, VII Ith, Dhanbad in R.C. Case No. 11(A)/2004(D) by which cognizance of the offence was taken against the Petitioner under Sections 120B/420/467/468/471 of the Indian Penal Code and u/s 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution story in short was that the informant reliably learnt to the effect that Shri S.K. Chauliya, Scientist-C of Central Mining Research Institute (C.M.R.I.), Dhanbad, D.C. Goswami, Store and Purchase Officer (C.M.R.I.), Dhanbad entered into conspiracy with M/s Allied Technology, 5/15, WEA, Karolbag, New Delhi and others unknown and in pursuance of the said criminal conspiracy and by using their official position, purchased soil and irrigation kit at exorbitant price causing wrongful loss to C.M.R.I., Dhanbad and wrongful gain to themselves. It was further alleged in the First Information Report that M/s Allied Technology, New Delhi in connivance with the above officers of C.M.R.I. and other unknown, supplied the said Soil Irrigation Kit Model DREL/2010 manufactured by M/s HACH Company, Loveland, Colorado, USA at an exorbitant cost of Rs. 13,78,000/-against the actual cost of Rs. 359316/-. It was further

alleged that on 16.05.2000 the accused S.K. Chauliya inspected and certified the said item received by D.C. Goswami causing wrongful loss to C.M.R.I. by their act. The C.M.R.I., Dhanbad in that manner was put to wrongful loss to the tune of Rs. 10,18,684.00/-and thereby gains to the accused which constituted offence under Sections 120B/420 of the Indian Penal Code and Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988 by Shri S.K. Chauliya, D.C. Goswami, M/s Allied Technology and other unknown, for that the instant case was registered giving rise to R.C. 11(A)/2004 (D) for the investigation under the orders of S.P., C.B.I., Dhanbad. After investigation, the C.B.I. submitted charge-sheet against Shri Swadesh Kumar Chauliya @ S.K. Chauliya, Shri Dulal Chandra Goswami @ D.C. Goswami, M/s Allied Technology, New Delhi through its Chief Executive Officer and Proprietor Shri Gurdev Singh @ G.S. Dang, the Petitioner Shri Mrinal Kanti Chakraborty @ M.K. Chakraborty, Shri Jyotish Chandra Saha, Shri Gurdev Singh @ G.S. Dang and Shri Ajay Kumar Singh @ A.K. Singh.

3. The final report submitted by the C.B.I. u/s 173 Code of Criminal Procedure indicated that Shri S.K. Chauliya the then Scientist "B", Environmental Impact Assessment & Environmental Management Plan (EIA/EMP) and the Petitioner Dr. Mrinal Kanti Chakraborty the then Scientist "E-I"/HOD, Environmental Impact Assessment & Environmental Management Plan while posted and functioning at Central Mining Research Institute (CMRI), Dhanbad, a constituent lab of CSIR, New Delhi, raised indent No. 1 dt. 5.4.99 for Soil & Irrigation Kit of certain specification. The investigation of the case established that the aforesaid Scientist in pursuance of criminal conspiracy suggested the names and addresses of eight supplier firms but none of the said firms used to manufacture or deal in the Soil and Irrigation Kit of the required specification. It was stated that M/s HACH Company, U.S.A. was the only distributor in India under the name and style M/s Orbit Technologies Pvt. Ltd., Hyderabad but the name of M/s Orbit Technologies was deliberately not given. Besides, sets of charges and allegation made in the final report, it was transpired during investigation that M/s Allied Technology, New Delhi did not supply materials till May, 2000 thereafter M/s Allied Technology procured Soil and Irrigation Kit from M/s Orbit Technology Pvt. Ltd., Hyderabad vide invoice No. 42 dated 15.05.2000 at a cost of Rs. 3,65,930/- and supplied the same to C.M.R.I. Dhanbad on 16.05.2000 at the higher price. Shri S.K. Chauliya and Dr. Mrinal Kanti Chakraborty i.e the Petitioner herein issued inspection certificate on the basis of which payment was released to M/s Allied Technology vide cheque amounting to Rs. 13,78,000/-and thereby caused wrongful loss to the C.M.R.I. and corresponding gains to themselves. The I.O. commented that alleged facts constituted offence against the accused persons including the Petitioner Shri Mrinal Kanti Chakraborty u/s 120B I.P.C. r/w Sections 420/467/468 & 471 of the Indian Penal Code and u/s 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988. On the basis of the police report submitted by the C.B.I., cognizance of the offence was taken on 19.12.2006 by the Special Judge, C.B.I.-cum-Additional Sessions Judge, VIII, Dhanbad in R.C. 11(A)/2004 (D) under alleged Sections of the charge-sheet as sanctions were obtained for the

prosecution of the public servant S.K. Chauliya and the Petitioner Mrinal Kanti Chakraborty, by the Director General, CSIR, New Delhi, a competent authority to grant sanction for prosecution in this regard.

4. Learned Counsel Mr. K.P. Deo appearing for the Petitioner assailed the impugned cognizance order dated 19.12.2006 on the sole ground that it was barred u/s 162 Code of Criminal Procedure.

5. Advancing his argument Mr. Deo submitted that earlier a case R.C. 1(A)/2003 (D) was registered which was related to indent No. 1 dated 5.4.1999 as against procurement of Soil and Irrigation Kit to the lab of CMRI whereas the instant case was also for the same period, which was registered on 5.8.2004 when the earlier case was under investigation and that the source of the information of the instant case vide R.C. Case No. 11(A)/2004(D) were only the statements of the witnesses recorded u/s 161 Code of Criminal Procedure and for that two sets of FIR cannot be held maintainable.

6. Mr. Deo further submitted that when cognizable offence is reported, giving rise to institution of an F.I.R., the Investigating Officer not only investigate about a particular offence but also investigates the offshoot of the alleged offence committed in course of same transaction and was permitted to file supplementary charge-sheet/ police report u/s 173 Code of Criminal Procedure. Similarly, the allegations as levelled against the accused persons including the Petitioner in R.C. Case No. 1(A)/2003(D) that in pursuance of criminal conspiracy they bye-passed the set norms of purchase procedure and favoured the supplier by placing order for purchase in order to put C.M.R.I. to wrongful loss and thereby wrongful gains to themselves which was common in both the cases. The instant case vide R.C. Case No. 11(A)/2004 (D) was filed intentionally and maliciously only in order to harass the accused persons, who were arrayed as accused in earlier case and the source of information of the subsequent case was the statement of the witnesses recorded u/s 161 Code of Criminal Procedure and thereby, the Investigating Officer of the earlier case was not precluded to investigate any irregularities or illegality committed in relation to purchase order No. CMRI/PER/F21(2) 1999/190/1030 dated 15.10.1999 for the supply of Soil Irrigation Kit to the lab of C.M.R.I.

7. The Hon''ble Supreme Court of India In T.T. Antony Vs. State of Kerala and Others, held,

An information given under Sub-section(1) of Section 154 Code of Criminal Procedure is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion u/s 169 or 170 Code of Criminal Procedure as the case may be and forwarding of a police report u/s 173 Code of Criminal Procedure It is

quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Code of Criminal Procedure Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report-FIR postulated by Section 154 Code of Criminal Procedure All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling u/s 162 Code of Criminal Procedure No such information/statement can properly be treated as an FIR and entered in the station diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure Take a case where an FIR mentions cognizable offence u/s 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR u/s 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt.

8. The Opposite Party-State of Jharkhand through C.B.I. entered appearance in this Misc. Petition and filed counter-affiavit stating therein that the present case was registered on 5.8.2004 on the basis of source information as against S.K. Chauliya, D.C. Goswami and M/s Allied Technology and other unknown persons for putting wrongful loss to C.M.R.I. to the tune of Rs. 1018684/-and thereby wrongful gains to themselves. Whereas R.C. 1(A)/2003 (D) was registered on 28.01.2003 on the complaint made by CVO, CSIR, New Delhi against several accused persons named including the Petitioner Mrinal Kanti Chakraborty wherein it was alleged that from April, 1999 to June, 1999 the accused officials of C.M.R.I. in connivance with some general order supplier firms caused purchase of various scientific equipments at highly inflated rates on the limited tender basis either by splitting the requirement or by keeping the estimated cost low to the extent of Rs. 2 lakh and thereby caused wrongful loss to the extent of Rs. 50 lakh to the CMRI. A supplementary counter-affidavit was filed on behalf of the Opposite Party State of Jharkhand through C.B.I. mentioning that during course of investigation of R.C. 1(A)/2003(D) registered on 28.01.2003 when it could be gathered that distinct offence was committed in different transaction, another case RC11(A)2004-D was registered on 5.08.2004 on the basis of source information against S.K. Chauliya, D.C. Goswami and M/s Allied Technology u/s 120B/420 of the Indian Penal Code and u/s 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988. The nature of offence of both the cases were quite different, though some of the accused were common. The period of offence in R.C.1A/2003(D)/ in which Charge-sheet was submitted earlier was from April,

1999 to June, 1999 whereas the FIR of RC 11(A)/2004 (D) was for the offence between the period from April, 1999 to 2000 and hence a separate FIR for different offence and these facts were orally substantiated by Mr. Md. Mokhtar Khan, the Counsel for the C.B.I.-O.P.

9. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, though I find that the occurrence alleged against the accused persons including the Petitioner was for the overlapping period beginning from April, 1999 to 2000 but I find that the nature of the allegations were different. The C.B.I. concentrated its investigation on the issue involved in RC 1(A)/2003(D) wherein purchase of equipments, filter paper, digital burettes and other chemicals were involved by ignoring the set norms of purchase and without observing a competitive bid it was alleged that the purchase of the above items were made at highly inflated price and that handful of firms were picked up by the indenters whereas the subsequent FIR viz. RC 11(A)/2004 (D) registered on the "sources information" in relation to purchase of Soil Irrigation Kit from a favoured supplier who acted as middleman at inflated rate causing wrongful loss to CMRI which could be assessed during trial. To my view issues involved in the different sets of FIR are quite distinct for different period, not connected to each other and the charge-sheet submitted in the RC 1(A)/2003 (D) did neither speak about the commission of the subsequent offence against the Petitioner and other accused by which the C.M.R.I. was put to heavy wrongful loss and thereby wrongful gains to them. There appears prima facie case, for lodging of 2nd F.I.R. under given facts and circumstances of the case. The illustration given in the T.T. Antony's case (supra) referred to hereinbefore did not bar the subsequent FIR for the different offence unconnected with the earlier offence (FIR) and therefore, to my view the decision of the Apex Court is of no help to the Petitioner. I do not find merit in this petition and the learned Counsel appearing on behalf of the Petitioner failed to convince the Court so as to call for interference in the cognizance order dated 19.12.2006 in R.C. Case No. 11A/2004(D) pending before the Special Judge, C.B.I., Dhanbad

10. There being no merit, this petition is dismissed.