
(2013) 01 JH CK 0015

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 2002 of 2012

Jharkhand Against Corruption

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 3 AJR 328 : (2013) 1 JLJR 541

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Rajeev Kumar, for the Appellant; A.K. Sinha, Advocate General for the State and Md. Mokhtar Khan for the C.B.I., for the Respondent

Judgement

1. Sri Niraj Sinha, A.D.G, Vigilance Bureau, Jharkhand with Sri Raj Kumar Lakra, Superintendent Vigilance Bureau, the Investigating Officer of Vigilance P.S. Case No. 31 of 2010, are present in Court along with learned Advocate General. In a matter of serious allegation of horse trading in Rajya Sabha Election, 2010 in the State of Jharkhand, a sting operation was conducted by a National News Channel, IBN7, New Delhi, wherein six MLAs have been shown saying that they have been approached by candidates, who fought Rajya Sabha Election held in the year 2010. This sting operation was broadcasted on 2nd August, 2010. It appears that in view of above exposure as well as may be for more reasons an F.I.R. was lodged upon which a Vigilance P.S. Case No. 31 of 2010 was registered on 4th August, 2010. Till the end of January, 2013 investigation has not been completed by the State Vigilance Department rather to say the fact will reveal that there was no progress in investigation in spite of the vehement statement made by the learned Advocate General that now the progress can be seen and the investigation may be completed in couple of months only in view of the fact that the State Vigilance Department has received the report from Forensic Laboratory about the "Compact Disk" (C.D.) in which the said conversations of money transaction for the purpose of casting of votes in Rajya Sabha Election of 2010 was recorded.

2. Finding the situation of no progress in investigation by the Vigilance Department of the State, this petition in the form of "Public Interest Litigation" has been filed by the petitioner praying that matter may be handed over to the C.B.I. as was done by this Court in the matter of Rajya Sabha Election as ordered on 5th April, 2012 in W.P. (PIL) 1801 of 2012 with W.P.(C) No. 1802 of 2012.

3. We may recapitulate here that F.I.R. was lodged on 4th August, 2010 in view of the allegation of horse trading in Rajya Sabha election of 2010 and as per the learned Advocate General, in the presence of the ADG Vigilance and Investigating Officer, the News Channel-IBN7 during investigation gave C.D. to the Vigilance Department on 25th September, 2010. This C.D. was sent to the Forensic Science Laboratory, Gandhinagar, Gujrat only on 26th April, 2012 i.e., after one and half year from the date of receipt of C.D. The Forensic Science Laboratory, Gandhinagar, Gujrat said to have taken time from 26th April, 2012 to 24th January, 2013 i.e., about nine months in giving it's report to Vigilance Department. Learned Advocate General submitted that some letters were given to the Forensic Science Laboratory, Gandhinagar, Gujrat for sending the report expeditiously but that report was not given by the said laboratory. It is also submitted that even personal messenger was sent to the Forensic Science Laboratory, Gandhinagar, Gujrat but even then also they could not get any report till 24th January, 2013. Now on 24th January, 2013 the Forensic Science Laboratory, Gandhinagar, Gujrat has given report. We need not to go into the report but according to learned Advocate General now the matter will be proceeded in view of the report given by the Forensic Science Laboratory, Gandhinagar, Gujrat and now they are going to have the voice test of the relevant persons for the purpose of investigation. During this period the statement of accused MLA Sri Simon Marandi, Sri Rajesh Ranjan, Sri Uma Shankar Akela has been recorded. Accused Teklal Mahto has died. Statement of one more accused-MLA Sri Sawna Lakra, who is in judicial custody, has been recorded. The statements of Sri Sachin Dev, DGM Corporate Affairs, IBN 18 Broadcast Ltd., and Sri Ashish Kumar, Team Leader of concerned sting operation have been recorded. It is also submitted that call details of mobile numbers belonging to the accused MLA also have been obtained.

4. Therefore, in this way this is a total progress in the case i.e., on one side recording of statement of the accused persons and recording of statement of two of the witnesses and obtaining of call details of the accused persons and parallel to it obtaining the C.D. from the News Channel, IBN7 and sending it to the Forensic Science Laboratory, Gandhinagar, Gujrat for testing after inordinate unexplained delay for the reason best known to the investigating officers in the vigilance department. This is the progress in such a serious matter attacking the root of the democracy itself.

5. During course of submission, it is also submitted that the Vigilance Department is over-burdened in the State of Jharkhand and several matters are

monitored by the High Court, therefore, all those matters are important for the Vigilance Department of the State of Jharkhand and therefore, this time has been consumed.

6. In view of the above statement and the stand taken by the Vigilance Department, we are of the considered opinion that it appears that yet the Vigilance Department is not knowing even with respect to the gravity of the offence and with respect to requirement of taking immediate steps for collecting and recording of evidence for the purpose of investigation to find out the truth in the allegation and probably therefore, left the evidence in the hands of the accused persons or may in the hands of the witnesses, who may or may not be knowing the importance of the evidence of criminal case. Our above observation is much relevant because of the reason that it has been stated in the affidavit submitted today i.e., on 28th January, 2013 by the Investigating Officer, Sri Raj Kumar Lakra, Superintendent, Vigilance Bureau that in a matter where the channel broadcasted the news on 2nd August, 2010 and a Vigilance Case was registered on 4th August, 2010, the C.D. could be obtained only on 25th September, 2010 and as per the affidavit there was non-cooperation of the said news channel who already provided C.D. to the Vigilance Department on 25th September, 2010 in investigation initiated by lodging F.I.R. on 4th August, 2010. If a person having the relevant material evidence with respect to the serious criminal offence is not co-operating then what steps could have been taken probably was not in the knowledge of the State Vigilance Department.

7. Be that as it may be, we have serious doubt with respect to the alleged non-cooperation of the said news channel and, therefore, we are observing only on the basis of the statement given in the affidavit that the said News Channel did not cooperate the Vigilance Department of the State.

8. Learned Advocate General submitted that the news channel-IBN7 did not disclose the names of the persons who conducted the sting operation in spite of the efforts made by the Vigilance Department because of that reason it has been stated that the news channel IBN7 did not cooperate in the investigation.

9. We have already observed that what could have been next step should have been known to the Vigilance Department in the case of non-cooperation of the witnesses.

10. Be that as it may be, we have already observed during this period a person, a well educated or acquainted with having some knowledge of criminal law or a person who has no knowledge of the criminal law inadvertently, deliberately or for any other reason may have destroyed the evidence. In this case, it has been stated that "entire unedited footage pertaining to the concerned sting operation that led to the case was captured by a spy camera and recorded on the chip from which, as per normal procedure, it was transferred to a computer system after which the chip was reused for further recording several times since then." On behalf of IBN 7, in addition to above in it's letter, it has also been conveyed that

" ---- that the entire unedited footage has been submitted to Vigilance Bureau on C.D. which is "suitable" for forensic examination". It has also been stated in the letter of IBN 7 that "his organization has an agreement with M/s. Shree Bhardwaj Media Pvt. Ltd.(Cobra post) for gathering news content and that the names and addresses of their sources could not be revealed as this could jeopardize their safety and security." Therefore, it is clear that as per the Vigilance Department the spy camera and the chip which were relevant evidence, whereby and whereunder this sting operation was recorded, during this period it has been alleged that said chip was reused for further recording several times since then. During investigation, we need not comment on this so as to have any effect on result of the investigation in any manner. But we have to record our serious displeasure.

11. The allegation in this sting operation was with respect to the horse trading for obtaining the votes in the Rajya Sabha Election of 2010. We are yet to know whether those were the only evidence with which the Vigilance could have proceeded further without waiting for said evidence or it was the money, if was offered, given and taken, then that was relevant for the purpose of investigation or not is the serious question. It is settled law that F.I.R. can be even oral and in investigation only, the evidence are collected for the purpose of finding out the truth in the allegation. Evidence may be oral, documentary or in the form of articles or other materials and may also be circumstantial evidence. Investigation includes recording of statement, recovery of documents as well as also recovery of the articles which includes the money. What happened to investigation of fact with respect to the actual money transaction is a serious question not addressed by the Vigilance Department of the State. We are again sorry to say that the conversation shown in the sting operation, if would not have been there and even if there would have been an F.I.R. or a report to the competent officer of a relevant department, then he would have investigated into the allegation to find out the criminality in the case shown by a vigilant person or vigilant citizen in cognizable offence and even if there would have been any recorded conversation in the form of video clipping, the vigilant investigating agency would have brought to the day of light the offence and would have brought to the courts the accused persons, therefore, we are of the considered opinion that the State Vigilance Bureau miserably failed to discharge its legal duties in investigating the serious matter of horse trading for which allegation has been made and made known to entire India by a vigilant news channel. The C.D. has reached to the Vigilance Department on 24.01.2013 and that appears to be because of the reason that we passed the order in this Public Interest Litigation on 09.01.2013 and 21.01.2013. We are of the considered opinion that even after filing of this writ petition as back as on 12.04.2012 and giving of copy of this petition to the respondent departments on 11.04.2012, before filing of the petition and in spite of our direction as back as on 18.04.2012 to submit the status report with respect to the progress in the Vigilance Case No. 31 of 2010, the report of C.D. could reach in the hands of the Vigilance Department on 24.01.2013.

12. At this juncture, we would like to refer to the very relevant fact and that is also with respect to the allegation of horse trading and that too, in the State of Jharkhand itself in the matter of Rajya Sabha Election itself which was scheduled to be held on 30.03.2012. In that case, this Court directed the State Government to handover the matter to the C.B.I. There was no sting operation nor any video footage. In that matter after this Court's order dated 05.04.2012, the CBI has completed the investigation by the month of January, 2013. So has been made clear by the CBI in another Public Interest Litigation filed by same petitioner being W.P.(PIL) No. 89 of 2013 which was filed to know the progress in the investigation conducted by the CBI in the matter of allegation of horse trading in Rajya Sabha Election of 2012 specifically which was scheduled to be held on 30.03.2012. It is well known that CBI takes much longer time in investigation probably and for the reasons that the CBI goes deep to investigate the matter as compared to other agencies. Therefore, it is clear that if there would have been competent officers to handle the matter, all things would not have been left to the accused for handling like handling of the evidences and serious incriminating material essential for the purpose of booking accused persons.

13. We are of the considered opinion that not only a case is made out for handing over the matter to the CBI by the writ petition but a serious case is made out of grave negligence in discharging of duties by the persons concerned in the Vigilance Department of the State of Jharkhand with further supervisory negligence by the higher and highest officers working during this period and, therefore, we are of the considered opinion that CBI, in addition to above, also may look into the issue whether there is element of any criminality of any of the officer in the Vigilance Department in the State of Jharkhand which includes permitting of destroying of the evidence or abetting in getting the evidence of criminal case destroyed and other issues which may be found out only after thorough investigation which may also include the criminal conspiracy with the accused persons or any other person having interest or may not have interest in the matter.

14. Furthermore, the department is under obligation to look into the conduct of all the persons concerned from 4th August, 2010 till date and to find out with respect to the misconduct of officers in discharge of their duties as well as of supervisory negligence in this matter.

15. Since it is stated that Vigilance Department of the State is over burdened with the work, we are of the considered opinion that this over burden over the Vigilance Department, if has crippled down the Vigilance Department of the State, then it is for the State to immediately take steps to give more officers to the Vigilance Department and not only more officers in number, but who are competent to do the work and who are not at the verge of retirement. The more number of vigilance cases in the State of Jharkhand is a fact of which we can take judicial notice and unfortunately unless the system is cleaned up, this burden may increase more on the Vigilance Department.

16. In addition to above, we are making it clear that the burden of the CBI, so far as work load is concerned, is also very heavy. We are further making it clear that in spite of heavy burden upon the CBI in the State of Jharkhand, yet we are getting Public Interest Petitions every day praying for sending the matter to the CBI which is not a very good sign for any State of self respect because it is the anguish of the public against the State officers as well as lack of faith in the State investigating officers but consequently to that is the heavy burden upon the CBI courts of the State working of which has been increased in number of courts and those courts are being monitored by the Hon"ble Supreme Court along with other CBI court of other States. CBI's one of the stands taken in one of the cases is that the matters in large number may not be referred to the CBI and that stand was taken before the Hon"ble Supreme Court pertaining to the Jharkhand State only.

17. Even if the State Vigilance Department was heavily burdened even then it was the duty of the State Vigilance Department to understand the seriousness of the allegations and the gravity of the offence and such a stand of heavy burden upon the Vigilance Department of the State which caused the delay in such serious matter is not only not appreciated but required to be deprecated seriously because of the reason, as we have observed, that if the allegations are true, then it is an attack on the roots of the democracy and thereby public would be denied the constitutional governance by permitting the wrong doers to be remain in not only governance but in the constitutional policy decisions organizations. We would not have mentioned all above as it is known to every citizen of India but to Vigilance Department of the State and, therefore, we are making the things obvious in our present order. This Court has dealt with the issue in detail with respect to the importance of the Rajya Sabha election and importance of fairness in the Rajya Sabha Election in the judgment of W.P.(PIL) No. 1801 of 2012 and connected writ petitions No. 1802 of 2012 decided on 5th April, 2012 and reported in Jay Shankar Pathak Vs. Election Commission of India and others, (in which one of us Hon"ble Justice Prakash Tatia, C.J was party) wherein, this Court has considered in detail the judgments of the Hon"ble Supreme Court delivered in the case of Kuldeep Nayar Vs. Union of India (UOI) and Others, , in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and also in the case of Union of India (UOI) Vs. Association for Democratic Reforms and Another, wherein we also considered the report of the Ethics Committee of the Parliament. Hon"ble Supreme Court in Kuldeep Nayar's case observed that Parliamentary democracy and multi party system are inherited part of basic structure of the Indian Constitution and also observed in para 451 that:

It cannot be forgotten that existence of political parties is an essential feature of our parliamentary democracy and that it cannot be a matter of concern for parliament, if it finds that electors were resorting cross voting under the garb of conscience voting, flouting party discipline in the name of secrecy of voting.

18. The Ethics Committee of the Parliament and the Parliament even had to take steps to control the horse trading in parliament election itself and amend the laws which has been considered by the Hon''ble Supreme Court in the case of the Kuldip Nayar in detail.

19. Therefore, plea of the respondents that because of non-cooperation of some of the persons or because of the delayed giving of the C.D. by the Forensic Science Laboratory, Gujarat or heavy burden of the Vigilance Department has delayed the investigation in such a serious matter is rejected.

20. In view of the above reasons, this writ petition is allowed and it is ordered that investigation of the Vigilance P.S. Case No. 31 of 2010 dated 4th August, 2010 be handed over to the CBI forthwith who may investigate and take steps accordingly. Looking to the gravity of the matter, we have to pass this detail order and this may not be confused as any of the finding of this Court with respect to holding anybody guilty in the criminal or even in the departmental proceeding which all should be very fair and should be in accordance with law and should not be a weapon to harass anybody. We are sure that CBI will look into the criminality of the officers of the Vigilance Department only in accordance with law and will not feel prejudiced by any of the observations made by this Court which has been made for the reason of handing over the matter to the CBI and this Court has not investigated the matter of criminality of anybody, is to be kept in mind.

A copy of this order may be given to the learned Counsel for the parties.