

(2013) 02 JH CK 0120

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 9517 of 2000 (R)

Jitendra Prasad Shukla and Another

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 406, 409, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

Citation : (2013) 2 JLJR 606

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : B.M. Tripathi and G.C. Jha, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. This application has been filed for quashing of the order dated 22.8.1998 passed in Special Case No. 42 of 1989, whereby and where under cognizance of the offence punishable under Sections 120(B), 409, 406, 467, 468, 471, 477(A) of the Indian Penal Code and also u/s 13(2), read with Section 13(1)(c) & (1)(d) of the Prevention of Corruption Act 1988, has been taken against these two petitioners.

2. It is the case of the prosecution that in spite of sub-standard work being done by the Contractor, petitioner Nos. 1 and 2, who, at the relevant point of time, were posted as "Executive Engineer" and "Assistant Engineer" respectively as well as other co-accused persons, paid a sum of Rs. 5,411/- in excess to the Contractor.

3. The matter was taken up for investigation. While the matter was under investigation, the Investigating Officer in writing sought for an order of sanction for prosecution from the Secretary, Law and Justice, Govt. of Bihar, who having gone through the materials collected against these two petitioners, did not find

prima facie case being made out and hence, refused to grant sanction vide its order dated 22.3.1993 as contained in Annexure-3.

4. When the Authority refused to accord sanction for prosecution, the petitioner was exonerated from the departmental proceeding. Subsequently, when the Investigating Agency again asked for according sanction for prosecution from the Secretary, Law and Justice, Govt. of Bihar in the year 1997, the Sanctioning authority after going through the documents placed before him, accorded sanction for prosecution vide its order dated 10.12.1997 as contained in Annexure-6, not only against these two petitioners but also against Gopi Kant Choudhary.

5. The said Gopi Kant Choudhary moved an application before this Hon''ble Court for quashing of the order taking cognizance as the court has taken cognizance upon an order granting sanction, which was not legal. However, that application was dismissed.

6. Being aggrieved with that order, Gopi Kant Choudhary preferred criminal appeal being Criminal Appeal Nos. 7/8 of 2000 before the Hon''ble Supreme Court. The said appeal was allowed vide judgment dated 6.1.2000 and thereby sanction order dated 10.12.1997 which was under challenge was set aside, after holding that the Sanctioning Authority who had earlier refused to grant sanction against him accorded sanction for prosecution without having any fresh material which was quite illegal.

7. Mr. B.M. Tripathi, learned senior counsel, submits that the case of these two petitioners are squarely covered with that decision. In this case also,. earlier sanction had been refused but subsequently it was granted by the same order dated 10.12.1997 which has been quashed by the Hon''ble Supreme Court without there being any fresh material and, therefore, order granting sanction dated 10.12.1997 as contained in Annexure-6, is fit to be quashed and consequently, order taking cognizance is also fit to be quashed.

8. Having learned counsel appearing for the parties and on perusal of the record, it does appear that the same sanction order dated 10.12.1997 by which sanction for prosecution has been granted against these two petitioners and also against the person, who had moved before the Hon''ble Supreme Court has been quashed for the reason that earlier the Sanctioning Authority had refused to grant sanction but subsequently without there being any fresh material, sanction was accorded on the same material.

9. Accordingly, order dated 10.12.1997 under which sanction was granted against these two petitioners is not sustainable in law. Hence, it is set aside.

10. Consequently, the order taking cognizance dated 22.08.1998 is also set aside. In the result, this application stands allowed.