

(2012) 07 JH CK 0008
In the Jharkhand High Court
Case No : Criminal MP. No. 111 of 2012

Krishna Kant Tiwary and Another	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 471

Citation : (2013) 1 JLJR 207

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Jai Prakash and Mohit Prakash, for the Appellant; Prabhat Kumar Sinha, for the Respondent

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 entire criminal proceeding of Koderma P.S. Case No. 409 of 2010 (G.R. No. 836 of 2010) including the order dated 7.12.2011 passed by the Chief Judicial Magistrate, Koderma whereby and whereunder cognizance of the offences punishable under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code has been taken against the petitioners and others.

2. It is the case of the prosecution that under "Mukhya Mantri Kisan Khushali Yojna" (MMKK Yojna), a firm known as "M/s. New Agritech" to which these two petitioners are the partners, was selected for supply of certain agricultural implement/apparatus on the rate approved by the District Level Purchase Committee. Thereupon, the petitioners' Company authorized M/s. J.K. Arun, Ranchi a local dealer to supply those materials supposed to be supplied under MMKK Yojna. On such authorization, 95% of the total amount i.e. 35,74,755.00 and further Rs. 2,25,000.00 in total 37,99,755.00 were advanced to M/s. J.K. Arun for supply of the materials. As against that, a said M/s. J.K. Arun supplied materials worth Rs. 24,51,900.00 so far it related to supply under National

Agricultural Development Scheme and also supplied materials worth Rs. 5,70,700/- against the scheme known as MMKK Yojna. In total materials were supplied worth Rs. 30,22,600.00 and thereby, there was short supply of worth Rs. 7,77,155.00.

3. It has further been alleged that M/s. J.K. Arun also committed offence of forgery as he shown to have supplied 3000 meters of pipes on the basis of original voucher but again on the basis of the photocopy of the same voucher, he claimed to have supplied further 3000 meters of pipes.

4. Thus, It has been alleged that the accused person by keeping the amount of Rs. 7,77,155.00 with him which would have earned interest to the extent of Rs. 93,259/- has put the department to loss to the extent of Rs. 8,70,414.00.

5. On such allegation, a case was registered as Koderma P.S. Case No. 409 of 2010 (G.R. No. 836 of 2010) under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code.

6. On submission of the charge-sheet, cognizance under the aforesaid offences was taken against the petitioners and others. That order is under challenge.

7. Mr. Jai Prakash, learned Senior Counsel appearing for the petitioners submits that the petitioners' firm-M/s. New Agritech having been selected for supply of the agricultural implement/apparatus under the scheme of Mukhya Mantri Kisan Khushali Yojna on the rate approved by the District Level Purchase Committee did authorize M/s. J.K. Arun to supply implement/apparatus which were supposed to be supplied under "Mukhya Mantri Kisan Khushali Yojna" (MMKK Yojna) whereas the petitioners had never been selected by the Purchase Committee to supply implement/apparatus under the scheme of "Rashtriya Krishi Vikash Yojna". Still M/s. J.K. Arun claimed himself to have been authorized by M/s. New Agritech to supply implement/apparatus under Rashtriya Krishi Vikash Yojna (RKVY). On such misrepresentation as per case of the prosecution itself whatever amount was given it was given to M/s. J.K. Arun and not to the petitioners' company and, therefore, if there is short supply, these two petitioners cannot be held responsible, rather for that if one can be held responsible, it would be M/s. J.K. Arun.

8. Further submission is that even if the entire allegations, which have been levelled in the first information report, are accepted to be true in its entirety, no offence either of forgery, misappropriation or cheating is made out, as the petitioners have never been alleged to have induced the informant dishonestly or fraudulently to part with the money and moreover, the money had never been advanced to the petitioners. Under these circumstances, the entire criminal case is fit to be quashed so far these two petitioners are concerned.

9. A counter affidavit has been filed wherein it has been stated that M/s. New Agritech submitted its tender on 20.7.2009 for "MMKK Yojna" and not for "RKV Yojna" and his tender for "MMKK Yojna" was accepted being the lowest tenderer

and under the terms and conditions, M/s. New Agritech authorized M/s. J.K. Arun as its local dealer to supply the material and to receive the payment.

10. Thus, the stand, which has been taken on behalf of the petitioners gets substantiated also from the statement made in the counter affidavit.

11. Further it does appear that the amount, as per the case of the prosecution, had been given in advance to M/s. J.K. Arun, who, did supply the materials but not to the extent of the value which had been given to it and in such situation, only M/s. J.K. Arun can be held responsible for the offence, as alleged.

12. Since, the petitioners have never been alleged to have defrauded the informant in any manner, the petitioners cannot be said to have committed offence either of forgery, cheating or misappropriation.

13. Accordingly, entire criminal case of Koderma P.S. Case No. 409 of 2010 (G.R. No. 836 of 2010) including the order dated 7.12.2011 is hereby quashed so far these two petitioners are concerned. In the result, this application is allowed.