

(2012) 03 GAU CK 0064
In the Gauhati High Court
Case No : Writ Petition (C) No. 5118 of 2011

Mohd. Tazimuddin Ahmed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 162, 164, 173
Penal Code, 1860 (IPC) — Section 120(B), 409, 467, 471
Prevention of Corruption Act, 1988 — Section 13, 13(1)(c), 13(1)(d), 13(2), 3

Citation : (2012) 3 GLD 190

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B. Ahmed and J.H. Borbhuyan, for the Appellant; A.C. Buragohain, SC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—In this application under Article 226 /227 of the Constitution of India read with Section 482 of the Cr.P.C., following order passed by the learned Special Judge, CBI, Assam, Guwahati is under Challenge.

IN THE COURT OF SPECIAL JUDGE, CBI, ASSAM GUWAHATI

Spl. Case No. 2/2009

ORDER

Dtd. 30.09.2010

Record put up along with the petitioner No. 2138/10 filed by Sh. Rohit Kapoor, Addl. S.P., CBI, ACB, Guwahati. I.O. of the case with prayer for transferring the original FIR and the records of the case to the Court of 3rd Special Judge, Bhankshal, Kolkata for the purpose of trial. It is contended in the petition that the offence was committed in Kolkata and the accused persons received entire

defraud amount at Kolkata after debiting the account of N.F. Railway with RBI, Kolkata. Heard Mr. A. Bhattacharya, Ld. Asstt. P.P. in this original FIR of the case. Statements so recorded u/s 164, Cr.P.C. and the bail bond if available on records may be handed over to the petitioner with due acknowledgement. The petition is disposed of accordingly.

Special Judge, CBI Assam, Guwahati

Another prayer made in the writ petition is to issue direction to the respondents, particularly the respondent Nos. 2, 3 and 4 to resubmit the charge sheet of the Special Case (which has already been submitted in the CBI Court at Kolkata) in the competent Court at Guwahati, i.e. Special Judge, Assam, Guwahati for trial.

2. Shortly stated the facts leading to filing of the instant application are that one cheque book belonging to Railways containing 50 cheques got lost from Tinsukia Railway Division of N.F. Railways of which 9 cheques had already been issued out of which 7 cheques had already been encashed amount to Rs. 1,32,82,341/-. The beneficiary of the encashed cheques is one M/s. Sana Enterprises, Kolkata.

3. An FIR was lodged by the Chief Vigilance Officer, Maligaon N.F. Railways, Guwahati with the Superintendent of Police, CBI, Guwahati on receipt of which and upon disclosure of prima facie commission of an offence under Sections 120(B)/ 409/ 467/ 471, IPC and Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988, a regular case was registered and the investigation was entrusted to Addl. Superintendent of Police, CBI, ACB, Guwahati. In due course, CBI forwarded the said FIR to the learned Special Judge, Guwahati and accordingly the case was registered as Special Case No. 02/2009 under the aforesaid Sections of the IPC and the Prevention of Corruption Act.

4. That by Annexure-B application dated 04.09.2009, CBI prayed to the learned Special Judge, CBI, Assam for police custody of the petitioner on the ground of his identification on the basis of the source information that he had stayed with another accused in a hotel at Kolkata on 29/30.10.2009. The application disclosed his arrest in the office of the Superintendent of Police, CBI, ACB, Guwahati. The prayer made in the application was to grant police custody of the petitioner. The prayer appears to have been granted. However, the petitioner was enlarged on bail on the basis of the order dated 20.11.2009 passed by this Court in BA No. 4604/2009.

5. While the matter rested thus, the petitioner received summons dated 08.03.2011 from the Court of 3rd Special Judge, Kolkata directing him to appear before the said Court on or before 25.03.2011. On enquiry, the petitioner came to know that after completion of the investigation of the case, the CBI submitted charge sheet on 28.09.2010 in the Court of the 3rd Special Judge, CBI, Kolkata.. Presently, the Special case is pending at the stage of constitution of charge.

6. It appears that on 30.09.2010 the I.O. moved an application before the

learned Special Judge, CBI, Assam, Guwahati with the prayer for transfer of the original FIR and records of the case to the Court of the learned 3rd Special Judge, Kolkata for the purpose of trial. The prayer so made was on account of revelation through investigation that the bank account of Tinsukia Division of N.F. Railway was with RBI, Kolkata and that all the 7 (seven) cheques in question were deposited and encashed at Kolkata and therefore the substantive offence punishable u/s 13 (1)(d) of the Prevention of Corruption Act, 1988 was committed at Kolkata inasmuch the accused persons received the entire defrauded amount at Kolkata after debiting the account of N.F. Railway with RBI, Kolkata. The application also revealed that the charge sheet in the case was filed in the Court of 3rd Special Judge, Kolkata on 28.09.2010 alongwith the said application. Copies of the charge sheet and the acknowledgement of the Court of the 3rd Special Judge, Kolkata were also enclosed.

7. On the basis of the said application, learned Special Judge, CBI, Assam, Guwahati having passed the order dated 30.09.2010 allowing the prayer made in the application, the petitioner has filed the instant, application seeking interference with the same. For a ready reference, the impugned order dated 30.09.2010 is reproduced below:

IN THE COURT OF SPECIAL JUDGE, CBI, GUWAHATI

In the matter of CBI Case RC1(A)/2009/GWH/CBI

State through CBI, ACB, Guwahati

Vs.

Shri K.L. Roy, the then ADFM, Tinsukia, NF Railway and Ors.

It is submitted

1. That the FIR of case RC 1(A)/2009/GWH/CBI dated 20.01.2009 relating to encashment of fraudulent railway cheques is pending in this Hon''ble Court.
2. That during the course of investigation, it was revealed that the bank account of Tinsukia division of NF Railways was with RBI, Kolkata. All the 7 cheques in question were deposited and encashed at Kolkata. Therefore, substantive offence punishable u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 was committed at Kolkata in as much as accused persons received entire defrauded amount at Kolkata after debiting the account of NF Railway with RBI, Kolkata. Therefore, the Charge sheet in the case was filed in the Court of 3rd Special Judge, Bankshal, Kolkata on 28.09.2010. A copy of the Charge Sheet and acknowledgement of the Court of 3rd Special Judge, Bankshal, Kolkata are enclosed for ready reference.

PRAYER

It is therefore, prayed that this Hon''ble Court may kindly transfer the original FIR and records of the case to the Court of 3rd Special Judge, Bankshal, Kolkata

for the purpose of trial. It is further prayed that the said records may be handed over to CBI in person so that the same can be sent to the competent Court through special messenger.

Sd/- Addl. Supd. Of Police CBI, ACB, Guwahati Investigating Officer

8. Dr. B. Ahmed, learned counsel for the petitioner in his long and elaborate argument submitted that the CBI having registered a case vide CBI Case No. RC 1(A)/2009/GWH/CBI on the basis of the FIR dated 13.01.2009 lodged by the Chief Vigilance Officer, NF Railway, Maligaon, Guwahati on the basis of which the Special Case No. 2/2009 under the aforesaid provisions of IPC and PC Act was registered by the learned Special Judge, CBI, Assam, Guwahati, the charge sheet of the case ought to have been submitted in the said Court only for trial instead of submitting the same in the Court of the learned 3rd Special Judge, CBI Kolkata. He further submitted that the learned Special Judge, CBI, Assam has committed manifest error of law in allowing the prayer for transferring the FIR and records to the learned 3rd Special Judge, CBI, Kolkata. He also argued that there cannot be two different cases instituted on the basis of the same FIR. According to him, there being a competent Court at Guwahati to take cognizance of the offence, the investigating authority (CBI) could not have submitted its report/charge sheet in the Court at Kolkata.

9. In support of his aforesaid submissions, Dr. Ahmed, learned counsel for the petitioner has referred to number of decisions of the Apex Court and various High Courts including this Court. The decisions are as follows:

- (1) Avinash Singh and Another Vs. State of Chhattisgarh and Another,
- (2) Bhiaru Ram and Others Vs. Central Bureau of Investigation and Others,
- (3) Mrs. Geetha and Others Vs. Arunakumari,
- (4) Mina Patel Vs. State of West Bengal and Another,
- (5) Central Bureau of Investigation (C.B.I.) Vs. Hopeson Ningshen and Others,
- (6) Bank of Rajasthan Vs. Keshav Bangur and Another,
- (7) M.L. Sharma and Others Vs. Central Bureau of Investigation and Others,
- (8) V.K. Puri Vs. Central Bureau of Investigation,
- (9) Nahar Singh Yadav and Another Vs. Union of India (UOI) and Others,
- (10) Premkumar and Others Vs. State of Kerala,
- (11) C.B.I. Vs. Brijinder Rai @ B. RAI,
- (12) State of Karnataka Vs. Kuppuswamy Gownder and Others,
- (13) Ashok Kumar Prabhudasbhai Modi Vs. State of Gujarat,
- (14) Anurag Kumar Pandey Vs. State of U.P. and Others,

- (15) Hans Raj Parihar and Another Vs. State,
- (16) Damodar Lokhande and Liladhar Narkhede Vs. Central Bureau of Investigation, The State of Maharashtra and Smt. Rajani Vishram Patil,
- (17) Abdul Salam C.H. Vs. Sameera and Another,
- (18) Bhikhaji Chaturji Thakore and Others Vs. State of Gujarat and Another,
- (19) Azeem Vs. State of U.P. and Saddiq,
- (20) Premkumar and Others Vs. State of Kerala,
- (21) Babubhai Vs. State of Gujarat and Others,
- (22) Rama Devi Vs. State of Bihar and Others,

10. Countering the above argument, Mr. A.C. Buragohain, learned counsel for the CBI, submits that having regard to the provision of Section 4 of the Prevention of Corruption Act, 1988, it is only the CBI Court at Kolkata which has jurisdiction to try the case and accordingly the investigating agency (CBI) rightly submitted the charge sheet in the said Court and the said Court having taken cognizance of the matter, there is nothing wrong in handing over the FIR and the records which were pending in the CBI Court at Guwahati. In this connection, he has placed reliance on the decision of the Apex Court reported in 2001 Cri LJ 4683, R.K. Rana v. C.B.I. Patna and Ors.

11. During the course of hearing he has also produced the copies of the orders dated 19.11.2010, 20.12.2010, 17.02.2011, 18.02.2011 and 25.03.2011 passed by the CBI Court at Kolkata. By the said orders, Case Diary was directed to be produced and upon production of the same, the said Court at Kolkata took cognizance of the offence against the accused persons including the petitioner and accordingly issued direction for issuance of summons etc. By order dated 25.03.2011, the said Court granted bail to four accused persons who had appeared on the said date. In respect of the remaining three accused persons including the petitioner, entertaining their applications for time, granted the same fixing the matter on 10.06.2011. In the meantime, the instant application was filed on 20.09.2011. Be it stated here that there is no interim protection provided to the petitioner in respect of the prayer made in this application.

12. I have considered the rival submissions made by the learned counsel for the parties as well as the materials available on record. Upon giving my anxious consideration to the same, my findings are at follows.

13. The decisions on which Dr. Ahmed, learned counsel of the petitioner has placed reliance are basically on the question of transfer of cases as per the provisions of Cr. P.C. and the principles involved in such transfer. Some of the decisions are on procedure and power of Special Judge and applicability of the provisions of Cr.P.C. It has been held that in the matters not covered by the Prevention of Corruption Act, the provisions of Cr.P.C. would be applicable in view

of Section 5(3). In V.K. puri (supra), it was held that the accused having part of his known source of income at a particular place would confer jurisdiction upon the Court at the said place.

14. The decisions cited by the learned counsel for the petitioner also refer to Section 406, Cr.P.C. under which the Apex Court exercises its power to transfer cases. The said decisions are on the basis of the prayer made for transfer from one Court to another.

15. In Babubhai (supra), the Apex Court in reference to Sections 154, 161 and 162 of the Cr.P.C. dealing with the question of permissibility to lodge more than one FIR in the touchstone to test the sameness, held that in case of a subsequent FIR the Court has to examine the facts and circumstances of the case giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs related to the same incident in respect of the same occurrence or are in reference to the incident which are two or more parts of the same transaction. It has been held that if the answer is in the affirmative, the second FIR is liable to be quashed, however, in case a contrary is proved where the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible.

16. In the instant case, the admitted position is that the CBI Court at Kolkata had already taken cognizance of the offence under the aforesaid Sections of the IPC and Prevention of Corruption Act, against all the accused persons including the petitioner. The said order is not under challenge in this proceeding. In fact, the petitioner has also responded to the said proceeding by praying for time till 25.03.2011 as quoted above.

17. As reflected in the FIR, the cheque book belonging to the Railways disappeared from the office of the Divisional Railway Manager, Tinsukia and 9 (nine) cheques had already been issued fraudulently for encashment to outsiders under purported signatures of the cheque issuing authorities at Tinsukia Division. It has been alleged in the FIR that the cheques had not been issued by any officers of the Railways against any work or supply of materials. 7 (seven) out of 9 (nine) cheques had been encashed amounting to Rs. 1,32,82,341/-. The beneficiaries of the encashed cheques are located at Kolkata.

18. The FIR further disclosed that some other cheques were still to be verified from RBI, Kolkata, the date of issuance of which were 10.11.2008, 24.11.2008, 10.12.2008, 24.12.2008 and 26.12.2008. Four of those cheques were drawn in the name of M/s. Saha Enterprise, Kolkata with the particular Account number of ICICI Bank Ltd., Vivekananda Road, Kolkata; HDFC bank Ltd., Tobacco House Branch, Kolkata and RBI, Kolkata. It was disclosed in the FIR that unearthing the extent of fraud would require investigation of outsiders which is outside the purview of the Railway Vigilance. Accordingly, a request was made to investigate the matter towards apprehending the culprits to prevent further escalation of the fraud.

19. From the above, what is seen is that the acts were completed and the money had gone out to the hands of the persons involved at Kolkata. Undoubtedly, the finality to the transaction, i.e. the encashment of the cheques and for that matter the offence u/s 13(1)(d) and 13(2) of the Prevention of Corruption Act, took place at Kolkata and thus, it will be an unnecessary exercise to ponder over other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequence ensued.

20. Section 4 of the Prevention of Corruption Act relates to jurisdiction of the Court for trial of offence. Sub-section (1) declares that notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by Special Judge only. Under sub-section 2 of Section 4, it has been specified that every offence specified in sub-section (1) of Section 3 shall be tried but he special Judge for the area within which it was committed as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

21. Section 3(1) of the Act empowers the Govt. to appoint special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the Second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a Court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy attempt or abetment to commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried it is rather inconceivable that jurisdiction of the Court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to committed that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the Court of the Special Judge within whose area such as conspiracy etc. was committed could try the case. The Apex Court in C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, observes thus :

36. The above acts were completed in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences u/s 13(1)(c) and Section 13(1) (d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand States.

38. In this context, it is useful to refer to Section 181 of the Code which falls within Chapter XIII, comprising of provisions regarding jurisdiction of the criminal Courts in inquiries and trials. Section 181 pertains to "place of trial in

case of certain offences". Sub-section (4) thereof deals with the jurisdiction of the Courts if the offence committed is either criminal misappropriation or criminal breach of trust. At least four different Courts have been envisaged by the sub-section having jurisdiction for trial of the said offence any one of which can be chosen. They are (1) the Court within whose local jurisdiction the offence was committed; (2) the Court within whose local jurisdiction any part of the property, which is the subject of the offence was received; (3) the Court within whose local jurisdiction any part of the property which is the subject of the offence was retained; and (4) the Court within whose local jurisdiction any part of the property which is subject of the offence was required to be returned or accounted for, by the accused.

39. Now, observe the distinction between Section 181(4) of the Code and Section 4(2) of the PC Act. When the former provision envisaged at least four Courts having jurisdiction to try a case involving misappropriation the latter, provision of the PC Act has restricted it to one Court, i.e. the Court of the Special Judge for the area within which the offence was committed". No other Court is envisaged for trial of that offence. We pointed out above that when the charge contains the offence or offences punishable under the PC Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the Court within whose local jurisdiction the main offence was committed alone has jurisdiction.

40. Absence of a non obstante clause linked within Section 4(2) of the PC Act does not lead to conclusion that the sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not PC Act) gives the definite indication that the legal position is the other way round. Section 4 of the code is regarding trial of offences under the Indian Penal Code and other laws. Sub-section (1) of it relates only to offences under the Indian Penal Code. Sub-section (2) relates to "all offences under any other law". It is useful to read the said sub-section at this stage.

All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to an enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

42. Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is u/s 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the Court having jurisdiction is the place where the offence was committed.

22. In view of the above, the position of law declared by the Apex Court, the provision of Sections 173, 177, 178, 181, 218 and 220 of the Cr. P.C. which the learned counsel for the petitioner has referred to are of no consequence. Even Section 179 and 180 of the Code dealing with the offences triable where the act

is done for consequence ensures and place of trial where the act is an offence by reason of relation to other offence respectively cannot lead to a conclusion that Section 4(2) of the PC Act is subject to provision of the Code. The distinction between Section 181(4) of the Cr.P.C. and Section 4 of the PC Act has been clearly spelt out by the Apex Court in Brij Bhushan (supra) as noted above.

23. In the instant case, as the records have revealed, although the FIR was lodged with the CBI Court at Guwahati, but during the course of investigation, it was revealed that the bank account of Tinsukia Division, NF Railway was with RBI, Kolkata and that all the 7 (seven) cheques in question were deposited and encashed at Kolkata. Therefore, the substantive offence punishable u/s 13(2) read with Section 13(1)(d) of the PC Act, 1988 was committed at Kolkata inasmuch as the accused persons received the entire defrauded amount at Kolkata after debiting the account of NF Railway with RBI, Kolkata. Accordingly, the charge sheet in the case has been filed in the CBI Court at Kolkata.

24. The offence has been duly taken cognizance by the CBI Court at Kolkata to which there is no challenge in the present proceeding. It is in such a situation, the application dated 30.04.2010 was moved before the learned Special Judge, CBI, Guwahati for transferring the original FIR to the said Court at Kolkata. Pursuant to the said petition, the learned Special Judge, CBI, Assam has passed the impugned order dated 30.09.2010 issuing direction for handing over the original FIR and the statements as recorded u/s 164, Cr.P.C. and the bail bonds (if available) to the Addl. Superintendent of Police, CBI, ACB, Guwahati, i.e. the I.O. who had made the prayer in the petition dated 30.09.2010. This cannot be said to be transfer of case from one Court to another, rather it is a case of exercising jurisdiction to try the offence under PC Act which in the instant case is only with the CBI Court at Kolkata. When it is certain as to where the actual offence u/s 13 of the PC Act was committed, the allied activities such as conspiracy and preparation or incidental acts and the places thereof are of no consequence. Having regard to the nature of the offence and in view of the provisions of Section 4 and Section 13(2) read with Section 13(1)(d) of the PC Act, the sole determination factor regarding the Court having jurisdiction is the place where the offence has been committed which in the instant case is Kolkata. For all the aforesaid reasons, I do not find any merit in the writ petition, and accordingly it is dismissed. However, there shall be no order as to costs.