
(2012) 05 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 432 of 2009

M.S.A. Mahalinga Shiva

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Penal Code, 1860 (IPC) — Section 406, 409, 420

Prevention of Corruption Act, 1988 — Section 13(1)(d), 17, 7

Citation : (2012) 3 JCR 556

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Lalan Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard Learned Counsel for the petitioner and Learned Counsel for the State. This writ application has been filed by the petitioner, being the then Block Development Officer. Seraikella Block, for quashing the entire proceeding against him, pending in the Court of Spl. Judge Vigilance. Ranchi, in S.R. No. 33 of 2001 arising out of Seraikella P.S. case No. 65 of 2001 corresponding to G.R. No. 367 of 2001, which was instituted for the offence under Sections 406/409 of the I.P.C. and Section 7/13(1) (d) of the Prevention of Corruption Act.

2. The facts of the case lie in a short compass. The petitioner at the relevant time was posted as Block Development Officer, Seraikella and there is direct allegation against him to have taken as bribe Rs. 3,000/- each from some persons and Rs. 2,000/- each from others, who were the beneficiaries of Indira Awas Yojna. On the basis of the written information given by the beneficiaries, Seraikella P.S. Case No. 65 of 2001 was instituted against the petitioner and the other accused persons and investigation was taken up. It appears that the investigation of this case was made by a police officer below the rank of Deputy Superintendent of Police. After investigation, charge-sheet was filed against the

accused persons, including the petitioner, for the offence under Sections 406, 409, 420 of the I.P.C. and under the provisions of the Prevention of Corruption Act.

3. Learned Counsel for the petitioner has challenged the criminal proceeding, pending against the petitioner on three grounds. The first ground taken by the Learned Counsel for the petitioner is that the Sanction Order passed by the State Government for prosecution of the petitioner was not issued by the competent authority, as It was issued by the Secretary of the Law Department. Government of Jharkhand, Ranchi. The next ground taken by the Learned Counsel is that the institution of the case against the petitioner was in teeth of the circular of the State Government as contained in Memo No. 1075 dated 17th November, 1986 which was issued by the erstwhile State of Bihar in its Department of Home. The last ground taken for challenge of the criminal proceedings against the petitioner is that Investigating Officer in the case was; below the rank of Deputy Superintendent of Police and accordingly, the Investigation made under the Prevention of Corruption Act was absolutely illegal, in view of Section 17 of the Prevention of Corruption Act, which clearly provides that no officer below the rank of the Deputy Superintendent of Police shall investigate the case under this Act.

4. So far as the first ground taken by the Learned Counsel for the petitioner is concerned. I find that though in this case the petitioner has challenged the Sanction Order issued by the State Government, as contained in Annexure 5 to this application, but in view of the allegation made against the petitioner, no sanction at all is required for prosecution of the petitioner. Section 197 of the Cr. P.C. reads as follows:

197. Prosecution of Judges and public servants.--(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction--

(a) ...

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

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5. Thus, from the plain reading of Section 197 of the Cr. P.C., it is apparent that the sanction of the State Government is required only when the alleged offence is committed by the public servant while acting or purporting to act in discharge of his official duty. If the offence committed by a public servant cannot be said to be connected with discharge of his official duty, the protection of Section 197 of

the Cr. P.C. is not at all available to such public servant.

6. In the present case, it is apparent that the allegation against the petitioner is of taking bribe from the beneficiaries of the Indira Awas Yojna and this action cannot be said to be done while acting or purporting to act in discharge of his official duty. Accordingly. I am of the considered view that the stand taken by the Learned Counsel for the petitioner that the Sanction Order issued by the State Government, was not issued in accordance with law, is not at all required to be answered, because in the facts of this case, the sanction itself is not at all required for prosecution of the petitioner.

7. So far as the next ground taken by the Learned Counsel for the petitioner, that the prosecution of the petitioner is barred in view of the notification issued by the erstwhile State of Bihar in its Department of Home, as contained in Memo No. 1075 dated 17.11.1986, I find that the submission of the Learned Counsel for the petitioner is absolutely misconceived. There cannot be a situation that an officer or employee of the State Government shall demand or take bribe from the general public and no action will be taken against such officer without the previous sanction of the controlling department, as provided in the said circular. Any such order or circular cannot be acted upon, as any such provision can be made only by proper enactment by the Legislature and not by merely issuing an executive fiat. Accordingly. I do not find any illegality in initiating the prosecution against the petitioner on these grounds taken by the Learned Counsel for the petitioner.

8. This takes us to the last ground taken by the Learned Counsel for the petitioner that the cases under the Prevention of Corruption Act are required to be investigated by the police officer not below the rank of the Deputy Superintendent of Police. Section 17 of the Prevention of Corruption Act provides that an offence under the said Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police, unless an officer not below the rank of Inspector of Police is authorized by the State Government by any general or special order in this respect. Learned Counsel for the State, has drawn the attention of this Court towards paragraph 5 of the supplementary counter-affidavit filed on behalf of the respondents State, wherein, it is conceded that only the Deputy Superintendent of Police is empowered to investigate the case under the Prevention of Corruption Act.

9. After having heard the Learned Counsels for both sides on this point, I find that since the case was investigated by the police officer below the rank of Deputy Superintendent of Police, charge-sheet submitted in this case, so far as it relates to the offences under the Prevention of Corruption Act, is absolutely illegal and wholly without jurisdiction and the same cannot be sustained in the eyes of law. As such the proceeding against the petitioner for the offence under the Prevention of Corruption Act is fit to be quashed.

10. However, so far the offences under the Indian Penal Code are concerned, I

find that the investigation was made by the competent police officer and there is no illegality in charge-sheet submitted against the petitioner for the offences under the Indian Penal Code. As such the proceedings qua the offences under the Indian Penal Code cannot be interfered with and the same shall continue in the Court of competent jurisdiction.

11. In view of the aforementioned discussions, the proceedings against the petitioner pending in the Court of Spl. Judge Vigilance, Ranchi, in Seraikella P.S. case No. 65 of 2001 corresponding to G.R. No. 367 of 2001, S.R. No. 33 of 2001, so far as it relates to the offence under the Prevention of Corruption Act, is, hereby, quashed. It is made clear that the proceeding against the petitioner, so far as it relates to the offence under the Indian Penal Code shall continue in the competent Court, as the investigation was made by the competent police officer and there is no illegality In the charge-sheet submitted for the offence under the Indian Penal Code. As the proceedings against the petitioner was stayed by the interim order dated 8.9.2010 passed in this case, let this order be communicated to the Court of Spl, Judge Vigilance, Ranchi, forthwith for the needful. This application is accordingly, allowed in part with the directions as above.