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(2014) 01 JH CK 0143

In the Jharkhand High Court

Case No : Writ Petition (Cri.) No. 160 of 2013

Narendra Kumar Jha — APPELLANT

Vs

State of Jharkhand and Another — RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B 420 467 468 471
Prevention of Corruption Act, 1988 — Section 13(1)(d) 13(2)

Citation : (2014) 1 AJR 564

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajiv Ranja, for the Appellant; Mokhtar Khan, for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—This writ application has been filed for quashing of the order sanctioning prosecution against the petitioner for the offence u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. Before adverting to the submission advanced on behalf of the petitioner, the case of the prosecution needs to be taken notice of.

2. A complaint was lodged by the then Joint Secretary, Ministry of Coal, Government of India, to the effect that A.K. Sinha, the then General Manager, Kathara Area, a Unit of CCL, Ranchi, entered into a conspiracy with some officials of Kathara Colliery and Kathara Washery and also with some private parties during 1989-91 and in furtherance thereof the accused persons dishonestly and fraudulently prepared/caused to be prepared false and forged documents, showing fictitious transfers of raw coal from Kathara Colliery to Kathara Washery to the tune of 7.33 lakh tonnes by abusing their official position and misappropriated the aforesaid quantity of coal worth Rs. 21 crores resulting in corresponding wrongful loss to CCL.

3. In course of investigation, it got transpired that this petitioner, the then Project Officer, Kathara Washery, CCL, had also conspired with A.K. Sinha for falsification of accounts, creating fake records and for wrong adjustments of

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slurry of Kathara Washery in the account of Kathara Colliery.

4. Further, it was found that the petitioner had created fake records in the form of some letters acknowledging the receipt of coal of 3,62,056 MT from 19.03.1991 to 31.03.1991 and that the petitioner had ordered the dealing persons who were maintaining Raw Coal Receipt and Consumption Register to show the transfers of 3,62,056 MT coal without any actual transfer on day to day basis and to falsely reflect the same in daily reports.

5. Upon investigation of the case, charge-sheet was submitted before the court and at the same time, the order granting sanction, as contained in Annexure-4 to this application, was also placed before the court on the basis of which the court took cognizance of the offences punishable under Sections 120B/420/467/468/471/477A of Indian Penal Code and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Subsequently, charges on being framed the petitioner was put to trial along with the other accused persons. The prosecution examined the sanctioning authority i.e. Chairman-cum-Managing Director, Coal India Limited as P.W. 2, wherein according to learned counsel for the petitioner, he in his cross-examination has stated that before granting sanction he had not seen the FIR and that he has also deposed that he does not remember about the material on the basis of which he accorded sanction, and that he has not recorded the ground of his satisfaction in the sanction order. Therefore, the petitioner has moved to this Court challenging the order granting sanction, as the sanctioning authority was supposed to record his satisfaction while granting sanction and should also look into the relevant documents before recording his satisfaction.

6. According to Mr. Rajiv Ranjan, learned counsel for the petitioner, since all these things are absent, order according sanction has been challenged in the midst of the trial, as the matter relating to sanction goes to the very root of the matter.

7. Learned counsel in support of his submission has referred to a decision in a case of State of Karnataka Vs. Ameer Jan, wherein it has been held that the order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

8. According to learned counsel for the petitioner, since no FIR or other documents according to P.W. 2 was there before granting sanction, he cannot be said to have applied his mind before granting sanction and thereby the order granting sanction is fit to be quashed.

9. As against this, Mr. Mokhtar Khan, learned counsel for the CBI, submits that from perusal of the order granting sanction, as contained in Annexure-4 to this application, it would appear that the sanctioning authority has taken into account all the facts relating to accusation upon which charge-sheet has been submitted and thereby it cannot be said that the sanctioning authority before according sanction had not applied his mind. It was further submitted that it is true that

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the witness has said that he is not remembering as to whether the documents had been placed before him and that he has not recorded the ground or satisfaction before granting sanction but from perusal of sanction order (Annexure-4) it would appear that after applying mind over the materials placed before him he accorded sanction and therefore, this issue pertaining to reliability of evidence of PW-2 becomes the subject-matter of trial which cannot be gone into at this stage and therefore, it would not be appropriate to go into the question of sanction, as has been raised on behalf of the petitioner.

10. I do find substance in the submission advanced on behalf of the CBI.

11. In the face of the documents, as contained in Annexure-4 to this application, the issue raised relates to appreciation of the evidence of P.W.-2 which cannot be gone into at this stage, when the trial is at progress.

12. Accordingly, I do not find any merit in this writ application. Hence, this writ application stands dismissed. However, the petitioner would be at liberty to raise the point, which has been raised hereinabove, during trial which would be decided without being prejudiced by the order of this Court.

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