
(2014) 03 JH CK 0001
In the Jharkhand High Court
Case No : Cr. M.P. No. 2651 of 2013

Naresh Kumar Kejriwal

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 109
Penal Code, 1860 (IPC) — Section 109, 420
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2014) 3 JLJR 318

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajendra Krishna and Amit Sinha, Advocate for the Appellant;
Mokhtar Khan and Niranjana Kumar, Advocate for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioner and the learned counsel for the CBI. This application has been filed for quashing of the order dated 10.9.2013 passed in R.C. Case No. 01(A) of 2011-R whereby and whereunder, cognizance of the offence punishable under Section 109 of the Indian Penal Code and also under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, has been taken against the petitioner.

2. It appears that the CBI when found the assets of Dr. Pradeep Kumar, the then Secretary, Health and Family Welfare Department, Government of Jharkhand, disproportionate to his income, a case was registered as R.C. Case No. -01(A) of 2011-R against Dr. Pradeep Kumar. In course of investigation, when it was found that this petitioner, a Tax Consultant had advised two firms namely Hindustan Credit Corporation and Pathak Telecom Private Limited to transfer a sum of Rs. 5.95 Lakhs and Rs. 20 Lakhs respectively from their cash-credit accounts to the accounts of Nandlal HUF the petitioner was made accused but that amount of Rs. 25.95 Lakhs has never been accounted for as an income of Dr. Pradeep Kumar against whom a case has been registered under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. Still charge-sheet was

submitted against the petitioner upon which cognizance of the offence as aforesaid was taken vide order dated 10.9.2013. Being aggrieved with that order, this petitioner has preferred this application.

3. Mr. Rajendra Krishna, learned counsel appearing for the petitioner, submits that the Pathak Telecom Private Limited had transferred from its cash-credit account a sum of Rs. 20 Lakhs to the accounts of Nandlal HUF and similarly a sum of Rs. 5.95 Lakhs is said to have been transferred from the Cash Credit Account of Hindustan Credit Corporation to Nandlal HUF, which had been done at the advice given by the petitioner but those amounts of Rs. 25.95 Lakhs has never been accounted for as an income of Dr. Pradeep Kumar against whom a case has been registered under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 for having assets disproportionate to his income and, therefore, even if, the case of the CBI is accepted to be true that this petitioner being a Tax Consultant of Dr. Pradeep Kumar had advised those two companies and also Nandlal HUF to give and take loan, the petitioner cannot be said to have abetted Dr. Pradeep Kumar in any manner, in view of the decision rendered in a case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, and, therefore, the prosecution of this petitioner under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act with an aid of Section 109 Cr.P.C. is quite bad.

4. Further it was submitted that except the accusation which has been made against the petitioner of giving advice for taking and giving loan, no other role seems to have been played by this petitioner in the matter of abetting the main accused Dr. Pradeep Kumar to have assets disproportionate to his income.

5. When such submission had been advanced, earlier the C.B.I. was asked to file supplementary affidavit, which was filed upon which an order was passed on 5.3.2014, which reads as follows:--

"5.3.2014. It appears that in terms of the order dated 21.2.2014, the CBI was asked to file supplementary counter-affidavit. The said order reads as follows:--

"As prayed for, on behalf of the CBI, the matter be posted on 5.3.2014 for filing supplementary counter-affidavit with respect to fact as to whether the amount of Rs. 25.95 lakhs had ever been accounted for as an income of Dr. Pradeep Kumar against whom, a case has been lodged for disproportionate income.

Till then, interim order passed on 20.9.2013 shall continue."

Pursuant to that order supplementary counter-affidavit has been filed. Para-5 of the said counter-affidavit reads as under:--

"That with regard to the averment made in Para-3 of the application filed by the petitioner, the answering opposite party says and submits that calculation has been done with due care and based on calculation of income, expenditure and assets acquired by Dr. Pradeep Kumar, Rajendra Kumar and Nandlal HUF, overall DA was found to the extent of Rs. 1,16,61,219/-."

Other statements are also there, but that is not relevant for the purpose of what is being highlighted. From the perusal of the order dated 21.2.2014, it is evident that the CBI was asked to file counter-affidavit with respect to the fact as to whether the amount of Rs. 25.95 Lakhs had ever been accounted for, as income of Dr. Pradeep Kumar against whom a case has been lodged for disproportionate income. The statement what has been made in Para-5 of the supplementary counter-affidavit, it never happens to be in terms of the aforesaid order, However, statement has been made that is based on calculation of income, expenditure and asset acquired by Dr. Pradeep Kumar, Rajendra Kumar and Nandlal HUF, overall D.A. was found to the extent of Rs. 1,16,61,219/-.

Learned counsel appearing for the CBI submits that the said amount of Rs. 25.95 Lakhs is included in the said figure of Rs. 1,16,61,219/-.

When I asked learned counsel appearing for the CBI to demonstrate that.

Learned counsel submits that the matter be posted on next Wednesday i.e. 12.3.2014 so that on that day, he would be demonstrating as to in which amounts which are there in the charge-sheet the amount of Rs. 25.95 Lakhs has been incorporated.

Till then, interim order passed on 20.9.2013 shall continue.

Let a copy of this order be communicated to the learned counsel appearing for the CBI for needful."

6. Today, it was fairly submitted on behalf of CBI that the amount of Rs. 25.95 Lakhs has never been included in any of the amount taken to be disproportionate to known source of income of Dr. Pradeep Kumar. If that is so, the question of abetting in terms of Section 109 of the Cr.P.C. does not arise. Furthermore, in absence of any other material showing any conspiracy on the part of this petitioner, petitioner on account of giving advice would not be liable to be prosecuted. In this respect, I may refer the decision rendered in the case of Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (supra) wherein the Hon"ble Supreme Court at para 31 has observed as follows:--

"31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the

case of the respondent herein."

7. Admittedly, there has been no evidence that this petitioner had associated himself with Dr. Pradeep Kumar in abetting him to acquire the assets disproportionate to his income.

8. Accordingly, the order taking cognizance dated 10.9.2013 is, hereby, quashed, so far as this petitioner is concerned. In the result, this application stands allowed.