

(2022) 03 CHH CK 0001
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 643 Of 2020

National Investigation Agency

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

National Investigation Agency Act, 2008 — Section 2(1)(b), 2(1)(c), 2(1)(g), 2(1)(h), 6(4), 6(6), 8, 11, 16, 22

Code Of Criminal Procedure, 1973 — Section 156(3), 164, 167, 173(2), 173(8), 176, 190, 482

Indian Penal Code, 1860 — Section 120B, 302

Citation : (2022) 03 CHH CK 0001

Hon'ble Judges : Rajendra Chandra Singh Samant, J; Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Vikramjit Banerjee, Ramakant Mishra, Sunil Otwani, Sudeep Shrivastava

Final Decision : Dismissed

Judgement

Heard.

1. This Criminal Appeal is preferred against the order dated 10.08.2020 passed by learned N.I.A Special Court, Jagdalpur, C.G. in Case No.RC-06/2013/NIA/DLI.

2. The incident is dated 25.05.2013, in which a number of leaders of a Political Party, who were traveling in a carcade, were ambushed and shot dead by terrorist organization, which is a banned Communist Party of India (Maoist,) at Jheram Ghati, District- Bastar, C.G., 10 police personnel and 17 civilians were also killed in the same incident, whereas 33 persons were injured.

3. The Police Station- Darbha, District- Bastar lodged F.I.R. No.25/2013 on 25.05.2013 itself. The National Investigation Agency (in short "N.I.A.") was directed to register F.I.R. in this case by the Government of India vide order dated 27th of May, 2013. As a result of which, N.I.A. has also lodged the F.I.R. of

the same incident vide Annexure-A/4. The N.I.A. has completed the investigation and filed the charge-sheet, in which the trial has commenced and is pending.

4. One Jitendra Uday Mudliyar has lodged one F.I.R. on 26.05.2020, which is regarding the same incident that occurred on 25.05.2013, however, it is further alleged in this F.I.R. that the so-called incident was result of a huge conspiracy to murder the senior Congress Leaders, in which apart from the Naxal groups, there is involvement of other persons as well. Police Station- Darbha has registered the F.I.R. as Crime No.21/2020 (Annexure-A/5), in which the investigation procedure is going on. By office memorandum dated 05.06.2020 (Annexure-A/6), the Government of India has again directed the N.I.A. to make further investigation in the matter by invoking Section 08 of the N.I.A. Act, 2008 (in short "the Act, 2008"), on this basis that the F.I.R. No.21/2020 dated 26.05.2020 is connected with the F.I.R. No.25/2013 dated 25.05.2013. S.P./C.I.O., N.I.A. Branch of Raipur by communication dated 10.06.2020 (Annexure-A/7) requested S.P. Bastar to handover the investigation of the case in F.I.R. No.21/2020 dated 26.05.2020, which was not complied. The appellant/N.I.A. then moved an application before Special Court on 16.06.2020, in which prayer was made for issuance of direction against S.P. Bastar/Investigation Officer to not to proceed in the investigation of F.I.R. No.21/2020, dated 26.05.2020 registered at Police Station- Darbha and also for issuance of direction to transmit all the case property records and relevant documents etc. relating to the investigation made in F.I.R. No.21/2020. The learned trial Court has after hearing the parties concerned passed the order dated 10.08.2020 and rejected the application, hence, this appeal.

5. It is submitted by the learned counsel for the appellant/N.I.A. that the impugned order is erroneous, illegal and against the provisions of N.I.A. Act, 2008. It is submitted that the second F.I.R. is the extension of the previous F.I.R., in which the appellant had already taken charge, investigated the case and filed the charge-sheet. The Section 6(4) of the Act, 2008 is clear on this point, that with the order of the Central Government, the N.I.A. has entitlement to investigate the case and Section 6(6) of the Act, 2008 which further puts a bar on the State Government from making any further investigation in the case which has been transferred to N.I.A. It is submitted that in the second F.I.R., there is some additional information, which may be investigated regarding which power under Section 173(8) of Cr.P.C. and Section 8 of the Act, 2008 can be exercised by the appellant.

6. Reliance has been placed on the judgment of Supreme Court in the case of Kishan Lal Vs. Dharmendra Bafna and Another reported in (2009) 7 Supreme Court Cases 685. Relying on the judgment of Rama Chaudhary Vs. State of Bihar reported in (2009) 6 Supreme Court Cases 346, it is submitted that filing of charge-sheet does not preclude making further investigation. It is submitted that in the case of Pradeep Ram Vs. State of Jharkhand and Another reported in (2019) 17 Supreme Court Cases 326, the Supreme Court has held that Section 6(6) of the Act, 2008 prohibits the State Government or any Police Officer of the

State Government to proceed with the investigation after the same is handed over to National Investigation Agency and it is always open to the Police Authority to conduct further investigation and collect both documentary and oral evidence and submit a report under Section 173(8) of Cr.P.C. It was also held that the subsequent F.I.R. of the same incident cannot be regarded to be a second F.I.R., therefore, on the basis of the Registration of the F.I.R. of the same incident, the State Police have no authority to make any investigation in the same.

7. Learned counsel for the appellant has also placed reliance on the judgments of Supreme Court in the case of Ankush Maruti Shinde and Others Vs. State of Maharashtra reported in (2019) 15 Supreme Court Cases 470, Romila Thapar and Others Vs. Union of India and Others reported in (2018) 10 Supreme Court Cases 753, Divine Retreat Centre Vs. State of Kerala and Others reported in (2008) 3 Supreme Court Cases 542.

8. It is submitted that the impugned order is unsustainable, therefore, this appeal be allowed and relief be granted to the appellant.

9. Learned Addl. Advocate General for the State has replied to the arguments submitted by the learned counsel for the appellant and has submitted that the subsequent F.I.R. No.21/2020 has been registered for commission of offences of under Section 302 and 120-B of Indian Penal Code only and therefore, there is no registration of scheduled offences as prescribed in the schedule under Section 2(1)(g) of the Act, 2008. Therefore, in such a case, the provisions under Section 06(6) of the Act, 2008 shall not come into play, which is very specific regarding the investigation in the case of scheduled offences only. The Section 08 of the Act, 2008 is also clear on this point that the other offences which the N.I.A. is empowered to investigate must be connected with the scheduled offences. Hence, the F.I.R. No.21/2020 dated 26.05.2020 is a totally different F.I.R. which is outside the ambit of N.I.A. Act, 2008. Therefore, the appellant has no authority to take over the investigation on this F.I.R.

10. It is further submitted that the learned trial Court has not committed any error in passing the order of rejection on the application filed by the appellant as learned Special Court had no authority to grant relief as prayed in that application. It is clear from the perusal of the application filed by the appellant that the appellant requested for direction to stay the investigation by the State Police and also direction for transfer of investigation. There is no provision present in the Code of Criminal Procedure on the basis of which, the learned Special Court could have passed such order. Hence, the learned Special Court had no such power to entertain the application therefore, has not committed any error in passing the impugned order.

11. Relying on the judgment of Supreme Court in the case of State of Punjab Vs. Central Bureau of Investigation and Others reported in (2011) 9 Supreme Court Cases 182. It is submitted that the Sub-ordinate Courts do not have any inherent

powers, which is available only to the High Court under Section 482 of Cr.P.C.

12. The learned Addl. Advocate General for the State has further submitted that the F.I.R. in question has been registered against the unknown persons and there is different angle to be investigated in this case.

13. Relying on the judgment of Supreme Court in the case of Nirmal Singh Kahlon Vs. State of Punjab and Others reported in AIR 2009 Supreme Court 984, it is submitted that the Supreme Court has held that "the second F.I.R. would be maintainable in circumstances when new discovery is made on factual foundations at any subsequent stage. It was observed that discovery about a larger conspiracy can also surface in another proceeding". It is submitted that the second F.I.R. lodged has not been challenged by the appellant before any Court and secondly, there is no registration of scheduled offence in this F.I.R. and also that the prayer that has been made by the appellant in the application before the Special Court cannot be entertained by the Special Court under the authority vested in it in the Code of Criminal Procedure. Looking to the nature of the prayer made in the application, the appellant should have moved application under Section 482 of Cr.P.C. or a petition under Article 226 of Constitution of India before the High Court, therefore, the appeal is without any substance, which is liable to be dismissed.

14. Learned counsel for the objector- Shri Sudeep Shrivastava opposes the submissions of the learned counsel for the appellant and submits that in the investigation made by the appellant in the first F.I.R. No.25/2013 dated 25.05.2013, the conspiracy was not at all investigated. Charge-sheet has already been filed and the trial has also commenced. Investigation was focused only on the maoist cadres. Other factors were ignored in that investigation namely- the lack of security for the carcade of the political leaders and that such an incident could not have occurred without the external aid and information. It is also submitted that no scheduled offence has been registered in the subsequent stage and therefore, Section 6(4) and Section 6(6) of Act, 2008 are not applicable. It is also submitted that the learned trial Court was not empowered to grant relief as prayed for in the application.

15. Learned counsel for the objector has placed reliance on the following judgments:- Central Bureau of Investigating Vs. State of Rajasthan and others reported in (1996) 9 SCC 735, State of Jharkhand and Others Vs. Ambay Cements and Others reported in (2005) 1 SCC 368, Pragyasingh Chandrapal Singh Thakur Vs. State of Maharashtra and Others reported in 2013 SCC OnLine Bom 1354, Dipak Babaria and Another Vs. State of Gujarat and Others reported in (2014) 3 SCC 502, Chandra Babu Alia Moses Vs. State through Inspector of Police and Others reported in (2015) 8 Scc 774, Nirmal Singh Kahlon Vs. State of Punjab and Others reported in (2009) 1 SCC 441 and Opto Circuit India Ltd. Vs. Axis Bank and Others reported in (2021) 6 SCC 707.

16. In reply, it is submitted by the learned counsel for the appellant that in the

first F.I.R., schedule offences were registered against the offenders. The second F.I.R. is the extension of the first F.I.R. and connected to the same incident. The N.I.A. is ready and keen to investigate on the second F.I.R. as well and it has the power to do so under Section 173(8) of the Cr.P.C. It is submitted that in the case of Chief Executive Officer & Vice-Chairman Gujarat Maritime Board Vs. Haji Daud Haji Harun Abu reported in (1996) 11 Supreme Court Cases 23, the Supreme Court observed that in the case of plurality of persons claiming the same relief, the National Consumer Disputes Redressal Commission has power to adjudicate the rival claims. Similarly, in this case also, it is National Investigation Agency which has the power to investigate the new fact regarding which, the information has been given in the subsequent F.I.R. It is also submitted that in the case of Pradeep Ram (Supra), it has been very clearly held by the Supreme Court that the re-registration of the F.I.R. does not amount to making it a second F.I.R.

17. Reliance has also been placed on the judgment of the Supreme Court in the case of Bangaru Laxman Vs. State (Through C.B.I) and Another reported in (2012) 1 Supreme Court Cases 500.

18. Heard the learned counsels and perused the documents present on record.

19. Section 2(1)(c) of the Act, 2008 defines High Court which means "the High Court within whose jurisdiction the Special Court is situated" and Section 2(1)(h) of the Act, 2008 defines Special Court which means "a Special Court constituted under Section 11 of the Act, 2008 or, as the case may be, under Section 22 of the Act, 2008". The procedure and powers of Special Court are provided in Section 16 of the Act, 2008, which are as follows:-

"16.Procedure and powers of Special Courts. -

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial: Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate: Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of

imprisonment for a term not exceeding one year and with fine which may extend to five lakh rupees.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section (2) of section 13 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination."

20. As there is reference of "Code" in Section 16 of the Act, 2008, according to Section 2(1)(b) of the Act, 2008 "Code" means Code of Criminal Procedure. Therefore, apart from the procedure and powers as prescribed under Section 16 of the Act, 2008, the Special Court is empowered to invoke the provisions of the Code of Criminal Procedure.

21. The prayer in the application filed by the appellant before the Special Court is relevant, which is reproduced as under:-

"In view of the above facts and circumstances, it is humbly prayed before this Hon'ble Court that necessary directions/Order may please be passed to SP Bastar/Investigation Officer not to proceed further in the investigation of FIR 21/2020, dated 26.05.2020, PS Darbha case and direct them to submit/transmit all the case property records and relevant documents of the F.I.R. No.21/2020 of PS- Darbha to N.I.A. Raipur as envisaged u/s. 6(6) of the NIA Act, in the interest of justice."

22. The prayer in the application was specific firstly to restrain the Investigating Officer of the State Police from making investigation of F.I.R. No.21/2020 and secondly directing transfer of the investigation of the case to N.I.A., Raipur.

23. Chapter 12 of the Code of Criminal Procedure contains the provisions regarding Information to the police and their powers to investigate, the provisions in this Chapter do not give any direct authority to the Criminal Court in the matter of the investigation of the case excepting that the Magistrate empowered under Section 190 of Cr.P.C. to take cognizance of offence may order for investigation of any case under Section 156 (3) of the Cr.P.C., record a confessional statement of accused or statement of witness under Section 164 of Cr.P.C., grant the judicial remand or police remand as the case may be under Section 167 of the Cr.P.C. and inquire into the cause of custodial death under

Section 176 of the Cr.P.C., hence, there is no such provision present in this chapter by which the Criminal Court can exercise any power interfere with the investigation to be made by the police.

24. There is no other provisions present in the Code according to which the Subordinate Court is empowered to pass orders to interfere in the investigation to be made by the police or give any directions regarding transfer of the same. As there is no such specific provision present in the Cr.P.C. empowering the Subordinate Courts, therefore, in case, there is justification of making any such prayer than the same can be entertained only under Section 482 of the Cr.P.C. which is a power vested with the High Court only.

25. In the case of State of Punjab (Supra), the Supreme Court has observed in paragraph 23 and 24 as follows:-

" 23. We find support for this conclusion in the following observations of this Court in Mithabhai Pashabhai Patel v. State of Gujarat (supra) cited by Mr. Dhawan:

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar[(2008) 5 SCC 413] opined as under: (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation." A distinction, therefore, exists between a reinvestigation and further investigation."

"15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

24. It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C.

and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.”

26. After having considered on all the submissions and examined the questions present in the case regarding the authority of the Special Court to entertain and pass orders granting relief as prayed to the appellant, we are of the considered view that the provisions in law is very clear. The prayer made by the appellant before the learned Special Court was not fit to be entertained being beyond the powers conferred upon the said Court by the Code of Criminal Procedure and Section 16 of the Act, 2008. The inherent powers under Section 482 of Cr.P.C. or the Constitutional power under Article 226 Constitution of India can be exercised only by the High Court, hence, we do not find any reason to interfere with the impugned order, as this Court is sitting as appellate Court and exercising the appellate jurisdiction. Hence, this Criminal Appeal is dismissed.

27. Accordingly, this Criminal Appeal stands disposed off.