(2005) 08 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Revision No. 246 of 2004

Paras Nath Sahu @ Paras Nath Saw APPELLANT

Vs

State of Jharkhand RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(2), 7

Citation : (2006) CriLJ 328 : (2005) 3 JLJR 779 : (2005) 4 JCR 236 : (2005) 36 AllIndCas 219 : (2005) AIR Jhar HCR 2310

Hon'ble Judges : Amareshswar Sahay, J

Bench : Single Bench

Advocate : Shailesh, for the Appellant; D.K. Bharati, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Sahay, J.—Heard Mr. Shailesh, learned counsel appearing for the petitioner and Mr. D.K. Bharati, learned counsel appearing for the CBI.

2. In the present revision application the petitioner has challenged the order dated 24/12/2003 passed by the Special Judge, CBI, Dhanbad whereby the learned Special Judge has rejected the prayer of the petitioner for his discharge.

3. The facts in short are that one Narayan Mahto lodged a complaint before the Superintendent of Police, CBI, Dhanbad alleging therein that the petitioner a clerk in Keshalpur Colliery Area-IV, BCCL, Dhanbad and one Debu Lal Das also a clerk in the said Colliery were demanding illegal gratification for giving no dues certificate/ clearance which was required for payment of the gratuity as he had retired on 1.3.2001. On the basis of the said complaint a case was registered by the CBI u/s 7 of the Prevention of Corruption Act, 1988. Thereafter, on fulfilling the required formalities a trap was laid on 30.1.2001 by the CBI and the accused Debu Lal Das, Bill Clerk, was caught red handed while demanding and accepting illegal gratification of Rs. 100/- in his office room. It is said that the petitioner, Personnel Clerk, Keshalpur Colliery had also taken illegal gratification of Rs.

100/- from the said complainant on 30.10.2001 for giving no dues certificate/ clearance to him and the transaction of illegal gratification was seen and heard by the independent witness B.K. Sinha. It is further said that as soon as Sri B.K. Sinha the independent witness informed the CBI team about the illegal gratification taken by the accused P.N. Sahu @ P.N. Saw, the CBI team rushed to the office of the petitioner to nab him but it is said that the petitioner escaped from his office. The CBI requested the Officer. Incharge of the concerned Police Station to arrest the accused P.N. Saw as he had taken illegal gratification but he could not be arrested. The petitioner, who managed to escaped from his office on 30.10.2001, subsequently, remained absent on 31.10.2001 and 1.11.2001 also and ultimately he surrendered before the Special Judge, CBI, on 8.1.2002. After the investigation, the CBI submitted charge-sheet Section 7 and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against the petitioner as well as the other co-accused Debu Lal Das.

4. Mr. Shailesh, learned counsel appearing for the petitioner has mainly argued that admittedly the petitioner was not caught/apprehended on the spot nor any tainted money was recovered either from his office or from his residence or from his personal possession and, as such, there was no material at all what to speak of sufficient materials, for framing of charge against him for the offence u/s 7 of the Prevention of Corruption Act. Admittedly, there was no recovery of the money, which was said to have been paid by way of illegal gratification, and as such, if the money was not recovered, then no charge for the said offence can be framed.

5. From the impugned order it appears that the Special Judge, after perusal of the case records and the case diary, found that the independent witness Basant Kumar Sinha and the complainant N. Mahto stated that P.N. Sahu (this petitioner) had taken illegal gratification of Rs. 100/- from the complainant. The materials further revealed that when the CBI team tried to nab the petitioner in his office room, he managed to escape from the office and immediately thereafter the Officer Incharge of the concerned Police Station was requested to arrest the accused, who had escaped after taking illegal gratification from the complainant.

6. Mr. Bharati, learned counsel appearing for the CBI by referring Section 7 of the Prevention of Corruption Act submitted that if a public servant even attempts to obtain illegal gratification the charge u/s 7 of the Prevention of Corruption Act can be framed against him and on the basis he can be convicted also, therefore, recovery of the money or even acceptance of the money is not required for framing of charge u/s 7 of the Act. However, in the present case the materials are there against the petitioner that he not only demanded but also accepted the illegal gratification from the complainant and, thereafter, when the CBI team tried to nab him he managed to escape. Therefore, no recovery of the money in the present circumstances is or no consequence and it does not affect the prosecution case.

7. In order to test the rival contentions of the parties, it is necessary to examine the relevant portion of Section 7 of the Prevention of Corruption Act, which is quoted herein below :--

"7. Public servant taking gratification other than legal remuneration in respect of an official Act.--Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation :--(a) ...

(b) ...

(c) ...

(d) ...

(e) ..."

8. From perusal of the aforesaid provisions of the Act it is clear that the following requirements have to be satisfied in order to charge a person u/s 7 of the Prevention of Corruption Act :--

(i) the accused at the time of offence was, or expected to be, a public servant;

(ii) that he accepted, or obtained, or agreed to attempt or attempted to obtain from some person a gratification;

(iii) that such gratification was not illegal remuneration due to him; and

(iv) that he accepted the gratification in question as a motive or reward, for (a) doing or forbearing to do any official Act;

(b) showing or forbearing to show favour or disfavour to someone in the exercise of his official functions;

(c) rendering, or attempting to render, any service or disservice to someone, with the Central Government or any State Government or Parliament or the Legislature of any State or with any public servant.

9. The section speaks of "attempt to obtain a bribe as doing is itself an offence. A mere demand or solicitation by a public servant amounts to commission of an

offence under the Act".

10. In the present case, form the facts stated hereinabove, it is clear that the case of the prosecution and the statements of the independent witness and of the complainant are that the petitioner not only demanded the illegal gratification but he also accepted the same, and, thereafter, when the CBI Personnel tried to nab him he managed to escape. Which is my view, definitely comes under the purview of the offence u/s 7 of the Prevention of Corruption Act and such evidence collected during investigation are certainly sufficient for framing of charge against the petitioner.

11. In view of my discussions and findings above, I find that the learned Special Judge has rightly rejected the prayer for discharge of the petitioner because there was sufficient material against him for framing of the charge for the offence alleged.

12. Accordingly, I find that the impugned order is perfectly justified and needs no interference by this Court in its revisional jurisdiction and, as such, this revision application is dismissed.