
(2012) 08 JH CK 0166

In the Jharkhand High Court

Case No : Criminal M.P. No. 231 of 2011

Pradip Kumar Upadhyay

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 482
Penal Code, 1860 (IPC) — Section 109, 120B, 13(2), 406, 409
Police Act, 1861 — Section 3, 36
Prevention of Corruption Act, 1988 — Section 13(1)(c)(d), 13(2)

Citation : (2013) 1 AJR 187 : (2012) 4 JLJR 191

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Sujit Narayan Prasad, for the Appellant; Shailesh for the Vigilance, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application has been filed for quashing of the FIR of Vigilance P.S. Case No. 50 of 2010 (Special Case No. 67 of 2010) instituted under Sections 420, 120B, 467, 468, 471, 406, 409 and 109 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act. Mr. S.N. Prasad, learned counsel appearing for the petitioner submitted that notice inviting tender was issued by the office of the Executive Engineer, Rural Engineering Organization, Works Division, Lohardaga for construction of road from Fatehpur to Hium as well as Hessal Kurse Road on estimated cost of Rs. 3,51,91,063/-. The petitioner submitted its tender paper. On being found successful, the Department entered into an agreement with this petitioner with stipulation that the contractor will complete the work within a period of nine months. The petitioner proceeded with the work and payments were made on verification of the bills submitted by the petitioner. While the work was at the verge of its completion, the Executive Engineer got retired and when the new Executive Engineer joined, he made a complaint relating to irregularities being

committed in the construction of the road. On such complaint, Deputy Commissioner, Lohardaga constituted a committee to conduct an enquiry. Thereafter, three other committees were also constituted for making verification of the allegation relating to irregularities being committed in the construction of the road but only the committee which had been constituted by the Deputy Commissioner, submitted a report, on the basis of which, F.I.R. was lodged as Lohardaga P.S. Case No. 170 of 2008 alleging therein that the contractor has done work worth Rs. 56,19,524/- whereas payment was made of Rs. 1,82,71,699/- and in this manner, excess payment of Rs. 1,26,52,175/- has been made to the contractor and thereby it was alleged that the petitioner-contractor in connivance with the engineers misappropriated the aforesaid amount.

2. It was further submitted that while the matter was under investigation, a decision was taken by the Cabinet Vigilance, Jharkhand, Ranchi to hand over the entire case to the Vigilance Bureau, Jharkhand but without having any approval of His Excellency, the Governor of Jharkhand who on account of imposition of President Rule, was at the helm of affairs of the State. Pursuant to that decision, the Vigilance without getting the matter verified by any of the expert agencies as to whether any irregularities have been committed lodged the case as Vigilance P.S. Case No. 50 of 2010.

3. Learned counsel submitted that FIR of the Vigilance case is being sought to be quashed firstly, on the ground that any decision without having any approval by the then Governor for handing over the investigation of the case to the Vigilance Department is non est and secondly, lodging of the second FIR on the same allegations upon which First Information Report had already been lodged is not permissible.

4. As against this, learned counsel appearing for the Vigilance submitted that when it was detected that the contractor had done work worth Rs. 56,19,524/- but the payment was made to the extent of Rs. 1,82,71,699/-, a case was registered as Lohardaga P.S. Case No. 170 of 2008 under Sections 420, 406, 409 and 120B of the Indian Penal Code, investigation of which was going on very lethargically. Meanwhile, when the complaint was received by the Vigilance Bureau, a detailed enquiry was made and thereby it was found that the accused persons in connivance with others not only committed offence of misappropriation but also forgery as well as offence u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act and therefore, Vigilance case was registered.

5. It was further pointed out that since the investigation has been taken by the Vigilance, all the records of the police case have been transferred to the Vigilance Bureau for investigation and the matter has been reported to the Vigilance Court, Ranchi.

6. Thus, it was submitted that when the allegation made in the FIR does disclose the offence under which case has been registered, FIR never warrants to be

quashed.

7. Having heard learned counsel appearing for the parties, it does appear that initially a case was lodged for commission of the offence of misappropriation as Lohardaga P.S. Case No. 170 of 2008 under Sections 420, 406, 409 and 120B of the Indian Penal Code, when enquiry report revealed about the commission of offence. In spite of the offence being serious when the investigation was being not done with all seriousness, Vigilance took over the investigation after getting the case separately registered on the basis of enquiry done by the Department of Vigilance in great detail which discloses not only commission of the offence of misappropriation but also of forgery and also offence u/s 13(1)(c)(d) read with Section 13(2) of the Prevention of Corruption Act.

8. In such situation, there would be no illegality of lodging the second FIR, particularly when new discovery has been made by the Vigilance Bureau in its enquiry and further on account of the fact that police was not making investigation fairly. In such situation, even second FIR can be held to be maintainable.

9. At this stage, I may refer to a decision rendered in a case of Nirmal Singh Kahlon Vs. State of Punjab and Others, wherein it has been observed as follows:--

The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.

An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction u/s 36 thereof stands on a different footing.

The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction u/s 173(8) of the Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu vs. State of U.P. correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate.

10. In view of the observation made by the Hon''ble Supreme Court as noted above, there does not appear to be any illegality on the part of the Vigilance to institute a fresh case.

11. So far other submissions relating to lack of jurisdiction of the Vigilance on account of approval being not granted by the Governor that cannot be a valid ground for quashing of the FIR, in view of the decision rendered in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein their Lordships have set out in some details the ground on which High Court can exercise its power u/s 482 of the Code of Criminal Procedure to prevent abuse of process of any court or otherwise to secure ends of justice. One of such grounds is as follows:--

Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

12. Here in the instant case, the allegation made in the FIR prima facie does disclose commission of the offence under which case has been registered. Accordingly, first information report of Vigilance P.S. Case No. 50 of 2010 never warrants to be quashed. Hence, this application stands dismissed.