

(2007) 09 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Rev. No. 628 of 2007

Pratik Sarkar, M.B. Suresh and Jitendra Laxman Thorve

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 84, 85
Criminal Law (Amendment) Act, 1908 — Section 15(2), 16, 17, 17(1)
Criminal Procedure Code, 1973 (CrPC) — Section 173, 239
Evidence Act, 1872 — Section 25, 26

Citation : (2008) 56 BLJR 660

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Ranjeet Kumar, for the Appellant; T.N. Verma and Md. Hatim, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Instant criminal revision is directed against the order impugned dated 12.6.2007, passed by Shri Vishal Srivastava, Judicial Magistrate, Hazaribagh, whereby and whereunder, discharge petition filed on behalf of the petitioners u/s 239 of Code of Criminal Procedure was rejected with a direction to the petitioners to stand charge u/s 17 of the Criminal Law Amendment Act, 1908.

2. Prosecution story, in short, was that the police party, on tip off, headed by a police officer of the rank of D.S.P. intercepted a Mahindra Jeep bearing No. JH 10B 7373 on 05.12.2003 and apprehended the petitioners (1) Pratik Sarkar (2) M.B. Suresh and (3) Jitendra Laxman Thorve. When called upon, all the three petitioners narrated that construction work of G.T. Road was undertaken by their Company H.C.C. and a few days ago, some employees of Hindustan Construction Company were abducted by the terrorist organization M.C.C.I. The abducted persons were rescued on the quick action of the police and only thereafter M.C.C.I. people started demanding levy from H.C.C. by extending threat that their employees otherwise would be killed. It was specifically alleged against the

Commander Nripendra Ganjhu of M.C.C.I. of demanding levy and when the Company refused to make good of their demand, construction work of road was stopped. There was no way out except to meet out their demands in view of the pressure of the Government to complete the work and pursuant to that it was alleged that the petitioners confessed having carried Rs. 20,00,000/- (Twenty lakhs) and with the help of the accused Duryodhan Mahto, a cadre of M.C.C.I. the amount was delivered to one Dilo Mahto of village Tutki for its onward transmission to the Commander Nripendra Ganjhu. It was further confessed that after delivery of the said amount they were intercepted by police while returning on jeep. Pursuant to the confession of the petitioners, on the self statement of the informant officer-in-charge of Hazaribagh (M) police station, Churchu P.S. Case No. 10 of 2003 was instituted against all the petitioners for the offence u/s 17 of the Criminal Law Amendment Act, 1908.

3. Heard Mr. Ranjeet Kumar, learned Sr. Counsel appearing on behalf of the petitioners and Mr. T.N. Verma, learned A.P.P., for the State-opposite party.

4. Mr. Ranjeet Kumar, learned Sr. Counsel, submitted that petitioners had preferred petition for their discharge on the ground that under given circumstances, no offence u/s 17 of the Criminal Law Amendment Act, 1908 was made out against any of them but their petition u/s 239 Cr.P.C. was rejected by the Court-below upon erroneous consideration and to quote,

I have perused the case diary and find that according to para 14, in Tulki jungle at Narkandu in an encounter Nripendra Ganjhu was killed by police and rupees twenty lakhs, arms and other articles were recovered. So the above facts and circumstances show that there is ground for presuming that accused has committed the offence and charge must not be considered to be groundless because petitioners disclosed that M.C.C.I. compelled the Company to stop the work and as such they had gone to give money and they went with one Duryodhan Mahto of M.C.C. and gave Rs. 20,00,000/- to one Dilo Mahto of village Tulki. From where money was supposed to be given to one Nripendra Ganjhu, while returning they were apprehended and in an encounter with police in Tulki jungle Nripendra Ganjhu was killed and twenty lakh rupees were recovered. So there is ground for presuming that petitioners have committed the offence.

5. Learned Sr. Counsel further submitted that observation made in the impugned order, as referred to above was against the facts of the case. The Counsel pointed out that on the self-statement of the officer-in-charge of Muffasil (Hazaribagh) police station, Churchu P.S. Case No. 10 of 2003 was instituted on 5.12.2003 at about 9:00 A.M. and the petitioners were arrested and produced before the Court on 7.12.2003 whereas the F.I.R. bears the endorsement of C.J.M. "Seen" with his signature and date 8.12.2003 without any explanation of such illegality and irregularity as also the cause of inordinate delay. The entire prosecution case was based upon confessional statement of the petitioners before the police admitting having delivered Rs. 20,00,000/- (Rupees Twenty

Lakhs) to Dilo Mahto with the help of Duryodhan Mahto both the cadres of M.C.C.I. and from there the amount was to be transmitted to Nripendra Ganjhu but no amount was recovered either from Duryodhan Mahto who had accompanied the petitioners nor from Dilo Mahto to whom the amount was allegedly delivered by the petitioners and, therefore, the statements of the petitioners before the police according to the learned Counsel, was not relevant under Sections 25/26 of the Evidence Act.

6. Attracting the attention the learned Sr. Counsel submitted that another case vide Churchu P.S. Case No. 11 of 2003 was instituted on 6.12.2003 at 6:00 A.M. after cross fire between the police: and the cadres of M.C.C.I. in which Nripendra Ganjhu was killed and it was alleged that a bag was recovered from the possession of Nripendra Ganjhu, which contained Rs. 20,00,000/- (Rupees Twenty Lakhs) and this fact connected the petitioners that the amount so recovered was given by them. Churchu P.S. Case No. 11 of 2003 was instituted against Duryodhan Mahto, Dilo Mahto, and 250 unknown persons but not against the petitioners. Yet, the recovery of the amount made in Churchu P.S. Case No. 11 of 2003 was illegally connected with the petitioners without their implication in that case.

7. The specific case of the prosecution was that the petitioners delivered Rs. 20,00,000/- (Twenty lakhs) to Dilo Mahto with the help of Duryodhan Mahto both M.C.C.I. party cadres for its onward transmission to the Commander Nripendra Ganjhu. Duryodhan Mahto and Dilo Mahto were arrested by the police and their statements were recorded as contained in paragraph 8 and 9 of the case diary. It was nowhere admitted by Dilo Mahto that he received any amount from the petitioners or that he transferred Rs. 20,00,000/- (Twenty lakhs) to Nripendra Ganjhu after receiving from them.

8. According to defence case, petitioner No. 1 was the Personnel Officer in the Company whereas petitioner No. 2 was an Engineer working as Works Manager and petitioner No. 3 was a Driver in H.C.C., temporarily posted by their Company in a project of road construction and, therefore, it could not be presumed that they had any linkage with the outlawed M.C.C.I. organization. On the other hand, their Company was subjected to extortion and threat by M.C.C.I. which abducted their several employees, made them hostages and placed demands of crores of rupees for their release, which was refused as could be evident from the fardbeyan of one Choukidar 2/6 Bansi Paswan delivered on 9.7.2003 in Barkatha P.S. Case No. 59 of 2003 stating therein that M.C.C.I. demanded rupees ten crores from the Company of the petitioners and the Company was not adamant to deliver the same whereas another Company Larson & Turbo had paid the levy. Learned Sr. Counsel presumed that had there been any nexus of the petitioner; with M.C.C.I. their employees could not have been made hostages and, therefore, there was no material on record to infer that the petitioners had in any manner contributed by monetary help the M.C.C.I., an outlawed organization. According to learned Sr. Counsel, M.C.C.I. could not be notified as the extremist

organization u/s 16 of the Criminal Law Amendment Act, 1908 by the Government of Jharkhand even after its bifurcation from Bihar so as to attract the offence against the petitioners punishable u/s 17 of the Criminal Law Amendment Act. The chargesheet submitted after investigation of the case u/s 173 of Code of Criminal Procedure did not contain that by any notification M.C.C.I. was declared an unlawful organization. Section 17 of the Criminal Law Amendment Act, 1908 reads as follows:

17. Penalties:

1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.

2) Whoever manages or assists in the management of an unlawful association or promotes or assists in promoting a meeting of any such association, or of any members, thereof as such members shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.

3) An offence under Sub-section (1) shall be cognizable by the Police, and notwithstanding anything contained in Code of Criminal Procedure, 1998 (5 of 1998), shall be non-bailable.

9. Counter-affidavit was filed on behalf of the State of Jharkhand in which it was stated that M.C.C.I. organization was banned by the Government of Bihar vide notification No. S.O.477 C dated 3.6.1987 as unlawful extremist organization u/s 16 of the Criminal Law Amendment Act, 1908 (Annexure-A) and according to the provisions of Sections 84 and 35 read with Section 2(f) of the Bihar Re-organisation Act, 2000, until and unless Jharkhand State either adopts or modifies any law by repeal or amendment the law which is applicable in the State of Bihar will continue to apply in the territories which are at present under the Jharkhand State.

10. The counter affidavit of the State shows that the M.C.C.I. organisation and its all committees, platforms were banned u/s 16 of the Criminal Law Amendment Act, 1908 by the notification of Home (Special), Government of Bihar, dated 3.6.1987 to associate with the party, giving donations and publishing literature supporting terrorist activities.

11. Section 85 of the Bihar Re-organisation Act, 2000 deals with the power to adapt laws which interprets that for the purpose of facilitating the relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made

until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.- In this Section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

12. According to learned Sr. Counsel, the notification of Government of Bihar dated 3.6.1987 imposing ban on M.C.C.I. organisation would apply to the State of Jharkhand in terms of Section 84 of the Bihar Re-organisation Act, 2000. The validity of such notification would be only for a period of two years from the appointed day of 15th November, 2000 in terms of Section 85 of the Bihar Re-organisation Act, 2000, inasmuch as, Section 85 prescribes that if any law that was made by the State of Bihar is to be continued to be made applicable to the State of Jharkhand, the Government of Jharkhand was required, before the expiration of two years from the appointed day i.e. 15.11.2000 (vide S.O. 829E dated September 14 2000) to make an order either adopting or modifying or repealing or amending the laws. But counter-affidavit filed on behalf of the opposite party-State failed to show any document or reference to any order having been passed by the State of Jharkhand within the period prescribed u/s 85 of the Bihar Re-organisation Act, 2000 to have adopted the notification issued by the undivided State of Bihar banning the M.C.C.I. organisation within the territory of State of Jharkhand u/s 16 of the Criminal Law Amendment Act, 1908 and for want of which, according to learned Sr. Counsel, criminal prosecution of the petitioners u/s 17 of the Criminal Law Amendment Act, 1908 was not maintainable.

13. Having regard to the facts and circumstances of the case and from perusal of the affidavits on record, it appears that the Churchu P.S. Case No. 10 of 2003 was instituted on the self statement of the officer-in-charge of Hazaribagh (M) police station on the basis of alleged confessional statement of the petitioners before the police but without discovery of any relevant fact and, therefore, even if there was confession of the petitioners before the police admitting having delivered a sum of Rs. 20,00,000/- (Twenty lakhs) to Dilo Mahto, such statement was hit under Sections 25 and 26 of the Evidence Act. In the other words no amount was discovered from the possession of Dilo Mahto pursuant to the confessional statements of the petitioners nor Dilo Mahto admitted that he received any amount from the petitioners as contribution to the M.C.C.I. On the contrary, Dilo Mahto in his statement recorded in paragraph-9 of the case diary admitted before the police that though he was expecting some amount through Duryodhan Mahto on 5.12.2003 for its onward transmission to the party (M.C.C.I.) but Duryodhan Mahto did not come rather arrested by the police. The statement of Dilo Mahto therefore, indicates that he did not receive any amount from the petitioners so as to attract offence u/s 17 of the Criminal Law Amendment Act, 1908.

14. There is substance in the argument that petitioners were not contributor or had not made any contribution in terms of Section 17 of the Criminal Law Amendment Act so as to attract penal provision and if at all any payment was made, though denied, I share the view of the learned Counsel that the alleged amount fell in the Category of extortion and ransom to ensure the safety of the lives of the employees of Hindustan Construct on Company when the machinery of the State of Jharkhand failed to provide safety to them in the construction work of roads in its territory and that the petitioners can be safely identified as the victims of extortion.

15. The opposite party State of Jharkhand failed to satisfy in the counter affidavit filed that any notification u/s 16 of the Criminal Law Amendment Act, 1908 was issued notifying the M.C.C.I. as unlawful association as defined in Section 15(2) of the Act. The petitioners have been chargesheeted by the prosecution for their monetary contribution to the M.C.C.I. organisation but no document has been produced to suggest that the State of Jharkhand notified the M.C.C.I. organisation as an unlawful association which is sine qua non for the purpose of prosecuting the petitioners u/s 17 of the Criminal Law Amendment Act, 1908.

16. Similarly, the validity of the notification of the Government of Bihar dated 3.6.1987 relating to banning M.C.C. or its other committees/platforms were relevant for the successor State of Jharkhand in terms of Section 84 of the Bihar Re-organisation Act, 2000 for a period of only two years from the appointed day on 15th of November, 2000 in terms of Section 85 of the said Act otherwise by an express order either adopting the laws or modifying the laws or repealing the laws or amending the laws and only thereafter such notification could have effect of operational law beyond the period of such limitation. I further find that the State of Jharkhand opposite party by way of evasive reply in the counter affidavit did not touch the core question posed in respect to any law for time being in force banning the M.C.C.I. organisation and to quote,

That as per the provisions of Sections 84 and 85 read with Section 2(f) of the Bihar Re-organisation Act, 2000, until and unless Jharkhand State either adopts or modifies any law by repeal or amendment, the laws/notifications which are applicable in the State of Bihar will continue to apply in the territories which are at present under the Jharkhand State.

The State of Jharkhand opposite party did not venture to enter into the domain of the period of limitation for two years for the applicability of law as defined u/s 2(f) of the Act.

17. It was held in Commissioner, Commercial Taxes and Another Vs. Swarn Rekha Cokes and Coal Pvt. Ltd. and Others that in view of the provisions of Sections 84 and 85 read with Section 2(f) of the Bihar Re-organisation Act until and unless Jharkhand State either adopts or modifies any law by repeal or amendment, the law which is applicable in the State of Bihar will continue to apply in the territories which are at present under the Jharkhand State for a

period of two years from the appointed day ie. 15.11.2000 during which the Jharkhand State may either adopt or modify the existing law of the State of Bihar but until that is done, the notifications, orders etc. issued by the State of Bihar will hold the field. The last part of the observation, in my view, is interpreted in relation to the period of limitation of two years during which the option was given to the Jharkhand State either to adopt or modify the existing law of the State of Bihar by repeal or amendment.

18. The State of Jharkhand opposite party failed to satisfy the legal aspect by producing any notification u/s 2(f) of the Criminal Law Amendment Act, 1908 so as to bring the petitioners in the purview of Section 17 and, therefore, their prosecution under the said Section of the Criminal Law Amendment Act, 1908 is unsustainable in the backdrop that the petitioners were arrested on 05.12.2003 for the offence u/s 17 of the Criminal Law Amendment Act, 1908 and the cognizance of the offence was taken under the said Section on 16.5.2006, both beyond the period of limitation of two years from the appointed day i.e. 15.11.2000.

19. In the result, in view of above discussions on facts as well as on law, order impugned dated 12.6.2007, passed by Shri Vishal Srivastava, Judicial Magistrate, Hazaribagh in G.R. No. 2895 of 2003, corresponding to Tr. No. 877 of 2007 on 12.6.2007 is set aside. Petitioners (1) Pratik Sarkar (2) M.B. Suresh and (3) Jitendra Laxman Thorve are discharged from their criminal liability in connection with Churchu P.S. Case No. 10 of 2003. Accordingly, this criminal revision is allowed.