
(2005) 06 OHC CK 0043
In the Orissa High Court
Case No : Criminal Revision No. 991 of 2003

Premraj Tripathy	Vs	APPELLANT
Republic of India		RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2005) CriLJ 3423

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Advocate : M. Mishra, P.K. Das and D. Mishra, for the Appellant; S.K. Padhi and G. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—This revision is directed against the order dated 13-11 -2003 passed by the Special Judge, C.B.I., Bhubaneswar in T.R. No. 2 of 2003 wherein he took cognizance of the offence under Sections 120-B/420/468/471, IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act against the petitioner along with others.

2. Succinctly stated the facts giving rise to this revision is that the petitioner and some others are charge sheeted for the aforesaid offences on the allegation that Shri Tushar Mishra, M.D., M/s. B. Engineers & Builders Limited took BEML Excavator No. G-10340 on lease basis from M/s. SREL International Finance Limited on 18-8-1997 and engaged the same in construction work at Bagh barrage work site, Sagada in the District of Boudh. On 17-3-1998 Sri K. K. Santhalia of M/s. SREI International Finance Ltd. made application before Sri B. R. Das, Senior Branch Manager Oriental Insurance Company Limited (hereinafter referred to as "OICL") on behalf of M/s. B. Engineer & Builders for insurance coverage of the said Excavator. On the same date a proposal form was submitted in the prescribed format by Shri Santhalia leaving the relevant column with

regard to physical condition of the machine blank. The Development Officer, of C.B.O.-II, issued cover note No. 1001415/88 dated 17-3-1998 to cover the Excavator under CMP Policy without physical verification. Shri B. R. Das, the then B. M. CBO-II, OICL, Bhubaneswar with ulterior motive accepted the above cover note and incomplete proposal form on 17-3-1998 itself and directly issued Policy No. 17/98 for a sum of Rs. 27 lakhs on receipt of premium of Rs. 31,270/- without referring the matter to D. M. OICL and inspecting the machine violating the underwriting rule of the OICL. The risk was covered from 17-3-1998 to 16-3-1999. Shri A.P.M. Sinha, the then Vice-President of M/s. SREI International Finance Company, Bhubaneswar sent a letter on 27-3-1998 to the Sri B. M. OICL, CBO-II, Bhubaneswar to enhance the premium amount in respect of the Excavator so as to get the replacement cost of it. As per the Miscellaneous (Engineering) Manual of the OICL and under acceptance limit and underwriting instruction, B. M. of a Branch has no power to issue policy under C.P.M. without referring the matter to the concerned Divisional Office.

3. On 20-4-1998 Shri B. C. Bai, Accountant, M/s. B. Engineers & Builders sent a letter to Shri B. R. Dash, Sr. B. N.. CBO-II, Bhubaneswar falsely intimating the damage of the Excavator at Bagh Barrage work-site due to accidental fire on 17-4-1998, even though in fact it got damaged due to fire on 15-3-1998. Mr. B. R. Dash appointed Shri A. P. Bisoyee, Surveyor to conduct preliminary survey of the damage caused to the Excavator, who without making any verification from BEML, Sambalpur submitted survey report declaring the damage to have been caused on 17-4-1998. On the basis of such fabricated fact, Shri B. R. Dash initiated the claim proceeding. On his transfer, his successor, Shri B. R. Tripathy, the present petitioner informed Shri Dilip Dhar, the then R. M. O.I.C.L., Bhubaneswar for appointment of final surveyor without referring the matter to the concerned Divisional Office. The claim Department of the Branch while scrutinizing the claim papers suggested to call for the maintenance agreement file of BEML to verify the actual date of accidental fire. The petitioner intentionally overlooked the suggestion of the claim department and recommended the claim on the basis of fabricated documents in order to show undue favour to the insured. The claim amount of Rs. 17,36,593/- was sanctioned in favour of the insured by A.G.A.M. H.O. New Delhi.

4. Investigation further reveals that BEML provides life-long service to its equipments. The maintenance file of the said company discloses that on 16-3-1998 Shri B. Behera, Project Manager of M/s. B. Engineers & Builders had intimated to BEML, Sambalpur that the Excavator was completely damaged due to fire accident on 15-3-1998 at early morning and requested them for inspection and necessary repairs. So, prima facie it appears that the fire accident occurred on 15-3-1998 and not 17-4-1998. On the basis of documents and the statement of witnesses, finding a prima facie case for the aforesaid offences against the petitioner and 9 others charge-sheet was submitted against them.

5. At the time of taking cognizance it was moved on behalf of the petitioner that

there was no material against the petitioner to prima facie show his complicity in any of the offences. But, the Special Judge, C.B.I., Bhubaneswar took cognizance of the aforesaid offence against the petitioner and the other accused persons vide order dated 13-11-2003 holding that there are materials against them to prima facie show their involvement in the crime in question.

6. Being aggrieved with the said order the petitioner has preferred this revision as mentioned earlier.

Learned counsel for the petitioner submitted that as per the charge-sheet the allegations raised against the petitioner are two folds :

(I) He informed Shri Dillip Dhar, the then Regional Manager for appointment of final surveyor without referring the matter to the concerned Divisional Office.

(II) He intentionally overlooked the suggestion of the claim department and recommended the claim on the basis of fabricated documents.

7. As per the submission of learned counsel for the petitioner, if the estimate of loss as ascertained from the insured or preliminary Survey Report is in excess of twice the financial limits of the D.O., the matter should be referred to R.O./H.O. for their instruction. Accordingly the petitioner forwarded the letter dated "17-3-1998 to R.O., Bhubaneswar with a copy to D.O. clearly stating therein that "since it is beyond our authority, we request you to appoint a final surveyor to asses the loss". So, there was no mens rea on the part of the petitioner.

8. With reference to the second allegation, learned counsel for the petitioner submitted that as per the prosecution case Shri Alekh Behera the claim Asst. while processing the claim of the insured had suggested to call for the Maintenance file of the Excavator from BEML. But in fact he did not suggest to call for the maintenance file. He had suggested to call for the Maintenance agreement of BEML, which does not contain the date of accident. Even if the petitioner had called for the maintenance agreement it could not have shed light, on the actual date of accident. So. he has no semblance of nexus with reference to the offence under Sections 420/468/471. IPC and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. So far as the offence u/s 120-B, IPC is concerned, learned counsel for the petitioner submitted that it requires clear and cogent proof of previous meeting of minds. But prosecution has no scrap of paper to show that the petitioner had even met with any of the co-accused persons with intention to cheat OICL. Under such circumstances, he prayed to allow the revision.

9. Learned Standing Counsel appearing for the C.B.I., in rebuttal submitted that the petitioner ought not have suggested Shri Dillip Dhar the then Regional Manager, OICL for appointment of final surveyor by merely sending a copy of the suggestion to the Divisional Officer. He admitted that the Sr. Asst. Alekh Behera in his scrutiny report had suggested to call for the maintenance agreement of M/ s. BEML for detail verification and finding out fault. Had it been called for, the

actual date of fire would have been known. But deliberately the petitioner overlooked the suggestion. As per the submission of learned Standing Counsel, C.B.I., since from the attending circumstances of the case, prima facie it appears that the petitioner is involved in the crime in question, the revision should be dismissed.

10. In the context of rival submissions of the counsel for the parties, now it is to be seen whether there are prima facie materials to take cognizance of the aforesaid offences against the accused-petitioner. As found from the Procedural Manual of Engineering Insurance Claims, if the estimate of loss as ascertained from the insured or preliminary survey report is in excess of twice the financial limit of the D.O. the matter should be referred to R.O./H.O. for their further instructions. In the case at hand admittedly the estimate of the loss as per the preliminary Survey report is in excess of twice the financial limit of the D.O. So reference of the matter to the R.O. with copy to D.O. prima facie appears to be in accordance with provisions contained in procedural Manual of Engineering Insurance Claims. As per the prosecution case had the Maintenance Agreement file been called for the actual date of accidental fire could have been known, but the petitioner deliberately did not call for it. When the concerned Assistant suggested to call for the same, the petitioner was expected not to ignore it. So at this stage it cannot be said that the petitioner had no mens rea.

11. Criminal conspiracy is an agreement between two or more persons to do or cause to be done an illegal act or a legal Act by illegal means. In a given case, there may not be direct evidence with regard to such agreement. In fact such evidence is seldom available. So such an agreement can either be proved by direct evidence or by circumstantial evidence or by both. In the case in hand, even if it is assumed that there is no direct material regarding meeting of the petitioner with any of the co-accused for making the alleged agreement, still then from the other attending circumstances it can be said that there is sufficient ground for proceeding against him for an offence u/s 120-B, IPC. To sum up, there are sufficient grounds to proceed against the accused-petitioner for the offence under Sections 120-B/420/468/471 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

12. Under such circumstances, I am not inclined to allow this revision and consequently the same stands dismissed. The Special Judge, C.B.I., Bhubaneswar shall dispose of T.R. No. 2 of 2003 expeditiously.