
(2014) 02 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : C.R.M.M.O. No. 46 of 2013-G, Cr. R. Nos. 50, 51 of 2013, C.R.M.M.O. No. 51 of 2013, Cr. R. No. 52 of 2013, C.R.M.M.O. No. 52 of 2013, Cr. R. No. 53 of 2013, Cr. R. No. 54 of 2013, C.R.M.M.O. No. 55 of 2013, C.R.M.M.O. Nos. 57, 58, 59, 60 of 2013, Cr. R. N

Rajesh Thakur and Others

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 220, 409, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 02 SHI CK 0014

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Sandeep Sharma, Assistant Solicitor General of India, Advocates for the Respondent

Judgement

Sanjay Karol, J.—The point involved in these cases, is similar, hence are being disposed of by a common judgment.

2. In all these petitions, petitioners have assailed separate orders of framing of charges by the Sessions Judge, Shimla, operative portion of which reads as under:--

"10. In view of my findings on point No. 1 above after consideration of record of entire case and documents submitted therewith and after hearing submission of accused persons and prosecution it is held that there are grounds for presuming that all accused persons have committed offences under Sections 120-B, 420, 467, 468, 471, 477-A Indian Penal Code and it is held that there are grounds for presuming that co-accused R.K. Khanoria had committed additional offence under Section 13(2) read with 13(1)(d) PC act 1988 and 409 IPC. Hence Court order that charge be framed against all accused under Sections 120-B, 420, 467, 468, 471, 477-A IPC. Court also order that additional charge be framed against

co-accused R.K. Khanoria under Section 13(2) read with 13(1)(d) PC act and 409 IPC."

3. The challenge is on the ground that in relation to a single FIR, eight separate challans could not have been filed by the prosecution agency. Further pronouncement of judgments at different times, in each case, would result into serious prejudice to the accused.

4. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the impugned order does not require any interference.

5. Petitioner-accused R.K. Khanoria was posted as a Branch Manager of UCO Bank. Allegedly, in connivance with the other accused persons, i.e. petitioners Rajesh Thakur and Rakesh Thakur (private persons), without charging any commission, he issued bank guarantee(s) for and on their behalf. No adequate security was also taken, thus jeopardizing the interest of the Bank. According to the prosecution, eight different bank guarantees were issued, in relation to different projects. Significantly these guarantees were issued over different period of time and from different Branches where R.K. Khanoria was posted at different times. It is only when bank guarantee in relation to one project was invoked, did the authorities discover about the illegality committed by the accused persons. The matter was reported to the Central Bureau of Investigation.

6. Single FIR was registered against all the accused persons, i.e. petitioners herein, on 11.8.2008. During investigation of this FIR it was unearthed that accused persons had illegally committed series of offences at different places. It was under these circumstances, eight separate challans were filed by the investigating agency. There is nothing illegal about the same. While taking this view, I am supported by the decisions rendered by Hon"ble the apex Court in Anju Chaudhary Vs. State of U.P. and Another, ; and High Court of Karnataka reported in Motisham Mohammed Ismail Vs. Central Bureau of Investigation, .

7. In Anju Chaudhary (supra), the apex Court has held as under:

"43. It is true that law recognises common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in Mohan Baitha and Others Vs. State of Bihar and Another, , para 4), held that the expression "same transaction" from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given

case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial."

8. It is the petitioners' apprehension that if trial is conducted separately by different Courts, it would result into serious prejudice, inasmuch as in the event of charges being proved and established against them, they would have to separately and independently undergo and serve the sentences of imprisonment, if any, imposed by the trial Court. Considering this submission, it is directed that judgment in all the cases shall be pronounced together, though trial in each case can go on separately.

9. With the aforesaid observations, present petitions stand disposed of.

Record be sent back. Parties are directed to appear before the trial Court on 21st March, 2014.