
(2016) 02 JH CK 0040
In the Jharkhand High Court
Case No : Cr. M.P. No. 1332 of 2013

Ram Binod Prasad Sinha

APPELLANT

Vs

State of Jharkhand though Vigilance Department and others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 161, 34, 406, 409, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1-d), 7

Citation : (2016) 2 ECRC 361 : (2017) 1 JLJR 543

Hon'ble Judges : R.R. Prasad, J.

Bench : Single Bench

Advocate : Shailesh Kr. Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J. - This application has been filed for quashing of the entire criminal proceedings including the first information report of Special Case No. 59 of 2010 arising out of Khunti P.S. Case No. 112 of 2010, instituted under Sections 161, 406, 409, 420, 467, 468, 471/34 of the Indian Penal Code read with Section 7/13 (1-d) of the Prevention of Corruption Act.

2. Mr. Pandey Neeraj Rai, learned counsel appearing for the petitioner submits that Ranchi-Kotwali P.S. Case No. 411 of 2010, was lodged against the petitioner on the allegation that the petitioner did receive Rs. 3-4 crore for executing the work relating to NREP-II, Ranchi and Khunti. Subsequently, Khunti P.S. Case No. 112 of 2010, was lodged against the petitioner on the allegation that the petitioner did receive Rs. 50 lakhs for constructing the Stadium at Torpa-Khunti but he did work worth Rs. 1.05 lakhs and rest of the amount, i.e. Rs. 48.95 lakhs remained unadjusted. In other words, the said amount was alleged to have been misappropriated by the petitioner. On that fact, submission was advanced that when the same allegation was there in the Ranchi Kotwali P.S. Case No. 411 of 2010, which also includes the allegation relating to misappropriation of Rs. 50

lakhs which had been allegedly received by the petitioner for constructing the Stadium at Torpa-Khunti, the petitioner cannot be prosecuted in Khunti P.S. Case No. 112 of 2010, on the same allegation in view of the ratio laid down by the Hon"ble Supreme Court in a cases of "T.T.Antony v. State of Kerala and Others [(2001) 6 SCC 181]" and "Babubhai v. State of Gujarat and others [(2010) 12 SCC 254]".

Further, it was submitted that taking into account the said principle as laid down by the Hon"ble Supreme Court, this Court has already quashed the first information report of the aforesaid case in respect of another accused Vijay Kumar Rastogi in Cr.M.P. No. 1031 of 2012.

3. As against this, Mr. Shailesh, learned counsel appearing for the Vigilance submits that earlier the case had been lodged by one of the accused being the informant in order to safeguard himself from being prosecuted and, thereby, the Deputy Commissioner, Khunti, being actually aggrieved, cannot be stopped from launching prosecution against the accused persons, who have been found to have misappropriated a huge money. In such event, ratio laid down by the Hon"ble Supreme Court in the cases, referred to on behalf of the petitioner would not be applicable, rather the ratio laid down by the Hon"ble Supreme Court in the cases of "Kari Choudhary v. Most. Sita Devi and Others [(2002) 1 SCC 714]", "Ram Lal Narang v. State (Delhi Administration), [(1979) 2 SCC 322]" and also in the case of "Upkar Singh v. Ved Prakash and Others [(2004) 13 SCC 292]", shall be applicable where it has been held that in all the cases principle laid down in "T.T.Antony" (supra) case would not be applicable. Further it was submitted that earlier this Court though quashed the first information report but aforesaid decisions had never been placed before the Court and, thereby, any decision made by this Court would not be binding.

4. The facts, stated above, need not to be repeated except that as has been indicated by the Counsel appearing for the Vigilance that it was one of the accused, who had lodged the case earlier as an informant, whereas the second case, in which the petitioner has also been made accused, has been lodged at the instance of the D.C., Khunti or aggrieved persons and, thereby, if the submissions of the counsel appearing for the petitioner is accepted, object of the investigation would be frustrated as to who has committed offence. In this regard, I may refer to a decision rendered in a case of "Kari Choudhary" (supra), wherein it has been observed as follows:-

"Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be

considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offence alleged have been committed and, if so, who have committed it."

5. It would be pertinent to refer to a decision rendered in the case of "Ram Lal Narang" (supra), wherein it has been held as under:-

"Even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a large conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible".

6. Again, in the case of "Upkar Singh" (supra), it has been held by the Hon"ble Supreme as under:-

"Be that as it may, if the law laid down by this Court in T.T. Antony's case, is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code the, in our opinion, such conclusion would lead to serious consequence. This will be clear from the hypothetical example given herein below, i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code."

7. Thus, keeping in view the ratio laid down in the aforesaid cases, ratio laid down in the case of T.T. Antony's case in the facts and circumstances, would not be attracted and, thereby, the first information report of Special Case No. 59 of 2010, arising out of Khunti P.S. Case No. 112 of 2010, never warrants to be quashed. Accordingly, this application stands dismissed.