
(2012) 04 JH CK 0168

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 407 of 2011

Ramji Prasad and Others

APPELLANT

Vs

State of Jharkhand and Other

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 173, 173(2), 173(8)
Penal Code, 1860 (IPC) — Section 120B, 120N, 409, 420, 477A
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2012) 2 JLJR 335

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Chittaranjan Prasad Sinha, P.K. Prasad, Jai Prakash and Pandey Neeraj Rai, Rohit Ranjan Sinha, Kumar Amit and Rahul Kumar Das, for the Appellant; M. Khan, for the Respondent

Judgement

R.R. Prasad

1. Since the issues involved in the aforesaid six cases are common, it were heard together and are being disposed of with the common order. The facts leading to filing these cases are that when an information was received in the office of the S.P, C.B.I, ACB, Ranchi that there has been huge shortage of coal at Urimari Open Cast Project, Central Coalfields Limited, Barka Sayal Area, a joint surprise check was conducted in between 23.1.2010 to 14.2.2010 by a team of C.B.I Officers, Officers from the Vigilance Department of Central Coalfields Limited and Surveyors from the Central Coalfields Limited and Central Mine Planning and Design Institute, Ranchi (in short "CMPDI") in presence of Project Officers and the Manager to ascertain the actual stock of different grades of coal at Heap No. 1(a), 1(B & C), 2, 7, 9 and 11. Upon measurements of different grades of coal was found to the extent of 260607.61 M.T. whereas Book Stock was found to have been shown as 5,16,136.65 M.T. Thus, shortage of 2,55,529.04 M.T of coal was found. In terms of money, shortage was found to the extent of Rs.

20,18,67,942/-.

2. On preliminary enquiry, Satya Narayan Singh, General Manager, B.C. Bhatti, Project Office and, P.K. Jha, Manager were found responsible for the said misappropriation. Accordingly, a case was registered as R.C. No. 11(A) of 2010(R) on 8.4.2010 against the aforesaid officers under Sections 420, 409, 477A and 120(N) of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c) (d) of the Prevention of Corruption Act.

3. Thereupon, the matter was taken up for investigation. During investigation, the matter relating to shortage of coal at Heap No. 11 at Saunda Siding of Urimari Open Cast Project was separated, for which separate case R.C No. 13(A) of 2010(R) was registered against the same accused persons putting allegation that on 29.4.2009, Railway siding of Saunda colliery was transferred to Urimari Open Cast Project along with coal stock and the stock of Grade B coal was shown as 21014 M.T. From the date of transfer of the aforesaid quantity of coal to Urimari Open Cast Project, no dispatch of Grade B coal had been made from the siding still on measurement being taken by a team during joint surprise check, only 4960.16 M.T was found from the siding. Thus, there was a shortage of 16054 M.T of Grade B coal, misappropriation in terms of money was assessed as Rs. 86,30,678/-.

4. In course of investigation, C.B.I instead of confining to B Grade coal at Heap No. 11, preferred to conduct investigation with respect to stock of other grades of coal also.

5. During investigation, quantity of coal was found at Heap No. 11 at 52542.36 M.T. whereas books stock had been shown as 176084.18 M.T and thereby shortage was found to the extent of 123541.82 M.T. In terms of money, shortage/misappropriation was assessed as Rs. 97,59,8,037.80 for which C.B.I found General Manager, Sri Satya Narayan Singh, Project Officer, G.S.Bhatti and the Manager, Sri P.K. Jha, Urimari Open Cast Project and the Assistant Survey Officer, Urimari Open Cast Project, Sri Ramji Prasad responsible for misappropriation. On such accusation, charge sheet was submitted in R.C. No. 13(A) of 2010(R).

6. After bifurcation of the case of Heap No. 11, R.C. No. 11(A) pf 2010 (R) remained confined to Heap No. 1(a), 1(b & c), 2, 7 and 9. During investigation, measurement taken during joint surprise check by the team was taken into account whereby total stock of coal was found to be 208066 M.T. whereas stock shown in the book was 341860 M.T and thereby shortage was found to the extent of 133794 M.T. In terms of money, shortage was assessed to the extent of Rs. 10,56,97,260/- for which Project Officer Sri Bhatti, Manager, Sri P.K. Jha, Urimari Open Cast Project and Assistant Survey Officer were found responsible and accordingly, charge sheet was submitted along with the order sanctioning prosecution by the competent authority. Thereupon the court took cognizance of the offences on 19.10.2011 punishable under Sections 120(B) and 409 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the

Prevention of Corruption Act.

7. Being aggrieved with the said order taking cognizance, Sri P.K.Jha, Sri Ghewar Singh Bhatti and Ramji Prasad preferred writ application bearing W.P. (Cr.) No. 13 of 2012, W.P. (Cr.) No. 11 of 2012 and W.P. (Cr.) No. 12 of 2012 respectively.

8. Likewise, when charge sheet was submitted in R.C. No 13(A) of 2010(R) along with the order sanctioning prosecution, cognizance was taken on 2.7.2011 of the offences punishable under Sections 120(B) and 409 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act against Ramji Prasad, Satya Narayan Singh, Ghewar Singh Bhatti and P.K. Jha, who had preferred writ application bearing W.P. (Cr.) No. 407 of 2011, W.P. (Cr.) No. 405 of 2011 and W.P. (Cr.) No. 408 of 2011.

9. Before adverting to the submissions advanced on behalf of the parties, it would be recorded that the grounds of challenge of order taking cognizance in both the cases are same except one additional ground taken in R.C. No. 13(A) of 2010(R) and hence, both R.C. No. 11(A) of 2010(R) and R.C. No. 13(A) of 2010(R) need not to be dealt with separately.

10. Learned counsel appearing for the petitioners in different cases would submit that the petitioners have been charged for misappropriation and also misconduct as according to the C.B.I, shortage of coal on measurement being taken by the joint team was found in Heap No. 11 as well as Heap No. 1(a), 1(b & c), 2, 7 and 9 but the method which was adopted for taking measurements was quite erroneous as the joint team never adhered to yardstick, parameters, norms and criteria laid down in "Yellow Book" which speaks about adoption of volumetric method for converting it into weight (tonnage) but the joint team had adopted tape measurement instead of auto level measurement invariably used by Coal India Limited and Central Coalfields Limited which would always be inaccurate. Further in order to get exact volume of the coal stack, pits need to be dug upto the ground level shown in the "floor contour" but this was not done and that apart, some of the heaps of the coal, according to the joint check memorandum had never been measured and that measurement would always be variable as it is quite normal that volumetric content of one ton of coal in different stacking may vary depending upon the degree of compaction. The age, size and modes of stacking makes a lot of difference.

11. Since faulty methods were adopted, petitioners who were present during joint check refused to sign over the joint check memorandum and immediately wrote to the D.I.G, C.B.I intimating therein that in spite of repeated request to go for measurement by scientific method as prescribed under "Yellow Book" it always remained unheeded.

12. It was further pointed out that had the measurement being done scientifically as it is being done by the Coal India Limited and the Central Coalfields Limited, no discrepancy would have been found and, in fact, whenever measurements were taken of the stock, it never varied with permissible limit of + 5% which is

permissible under the "Yellow Book".

13. In this respect, learned counsel referred to documents relating to Coal India Limited Annual Measurement of coal stock conducted in April, 2010 just after a month when measurement was taken by joint team also Coal India Limited subsequent annual measurement in April, 2011, Coal India Limited annual report and accounts for the year 2009-10 and 2010-11, Coal India Limited half-yearly Measurement conducted in October, 2010, October, 2011, Coal India Limited Annual Report and Accounts for the year 2009-10 and 2010-11 whereby variance exceeding $\pm 5\%$ was never found though wherever variation exceeding or decreasing 5% have been found, in case of other colliery. It has been noted in the said reports but in case of Urimari Project, none of the document referred to above shows variance of the stock $\pm 5\%$. Further that at the time of taking over/handing over the charge of the office of the General Manager, no discrepancy with respect to stock of coal was found when measurements were taken.

14. Further it was pointed out that when wrong imputation was made by the C.B.I, information was sought under the R.T.I Act by the petitioners from the Central Coalfields Limited with respect to quantity available for dispatch after 14.2.2010 till 31.8.2011. On such information it was informed that after 15.2.2010 till 31.8.2011 production was shown as 2699.58 M.T whereas on 14.2.2010 the stock which was found by the C.B.I was 208.07 M.T and thus, quantity which was available from 14.2.2010 to 31.8.2011 is $2699.58 + 208.07$ thousand tonnes = 2907.65 thousand tonnes whereas quantity which was despatched during 15.2.2010 to 31.8.2011 was shown as 3032.22 thousand tonnes which falsifies the measurement taken by the C.B.I as dispatch can never be more than the stock.

15. With respect to R.C No. 13(A) of 2010(R), also an information was also sought under the R.T.I about the stock position for the period from 14.2.2010 to August, 2010 whereby it was informed that 52542.36 M.T. of coal was there on 14.2.2010. Subsequently 1926938.98 M.T coal was received and thereby total quantity comes to 1979481.39 M.T. whereas quantity dispatched was shown as 2071254.74 M.T. Again this factual position falsifies the measurement which has been taken by the C.B.I as dispatch cannot be more than the stock. Thus, only conclusion which can be drawn is that there existed more quantity of coal than what was found by C.B.I and therefore, coal to the extent of 91773 had been sold and the payment had been received by the Central Coalfields Limited and that the Central Coalfields Limited in his counter affidavit has also accepted that no such shortage as has been shown by the C.B.I.

16. Thus, it was submitted that neither there has been shortage in Heap No. 11 subject matter of R.C. No. 13(A) of 2010(R) nor there has been shortage in other Heap subject matter of R.C No. 11(A) of 2010 (R).

17. Further it was pleaded that case of C.B.I gets falsified from the documents referred to above which are impeachable in character and can be relied upon by

this Court in view of the decision rendered in a case of Harshendra Kumar D. Vs. Rebatilata Koley Etc., .

18. Other point which was canvassed is that once the case R.C. No. 11(A) of 2010(R) was lodged with respect to all the Heaps, i.e. Heap No. 1(a), 1(b & c), 2.7 and 9 and also Heap No. 11, it was not permissible in law to bifurcate the case and to register different case R.C. No. 13(A) of 2010(R) with respect to Heap No. 11 when alleged criminal action pertains to same transaction in view of the decision rendered in a case of Babubhai Vs. State of Gujarat and Others, and T.T. Antony Vs. State of Kerala and Others, and therefore, on this ground alone the case R.C. No. 13(A) of 2010(R) registered subsequent to R.C. No. 11(A) of 2010 (R) cannot be allowed to be continued and is fit to be quashed.

19. As against this, Mr. Khan, learned counsel appearing for the C.B.I submitted that during joint surprise check (JSC) conducted by a team of C.B.I Officers, Officers from Vigilance Department from Central Coalfields Limited and Coal Surveyor from Central Coalfields Limited and Central Mine Planning and Design Institute, Ranchi, measurements were taken at Urimari Open Cast Project in presence of Project Officer, Manager, Assistant Survey Officer to ascertain actual stock of different grade of coal. On measurement coal stock at Heap No. 11 was found as 52542.36 M.T. whereas book stock was 176084.18 M.T. and as such, shortage was found as that of 12354.82 M.T. which is related to R.C. No. 13(A) of 2010(R). Similarly, shortage of 13379 M.T. was found in other heaps subject matter of R.C. No. 11(A) of 2010(R) and that the petitioners who happen to be the Project Officer, Manager, Assistant Survey Officer remained present throughout the measurement during joint surprise check, who put their signatures over level book prepared during joint survey check which is indicative of the fact that they accepted the measurement and the measurements were done to their satisfaction and therefore, now they cannot turn their back around to say that measurements were not scientific.

20. It was further submitted that competent/qualified surveyor of Central Coalfields Limited and Central Mine Planning and Design Institute, Ranchi carried out the measurement of coal by cross sectional method using auto level after following all guidelines of Coal India Limited. After measurements were taken, officers of the Central Coalfields Limited from Vigilance Department and Surveyor of Central Coalfields Limited and Central Mine Planning and Design Institute, Ranchi signed over the joint survey check memorandum as a token of correctness of its contents.

21. It was also submitted that the correctness of the measurement of the stock of coal cannot be questioned at this stage, rather it is to be adjudicated upon at the stage of trial and hence, on this ground, the prosecution never warrants to be quashed and hence, the writ applications filed on behalf of the petitioners are fit to be dismissed.

22. Having heard learned counsel appearing for the parties, it does appear that

during joint surprise check made by a team of C.B.I Officers, Officers from the Vigilance Department of the Central Coalfields Limited and Surveyors from the Central Coalfields Limited as well as Central Mine Planning and Design Institute, Ranchi, measurement of the stock of coal at Heap No. 1(a), 1(b & c), 2.7.9 and 11 were taken in presence of the petitioners, whereby coal was not found to the extent which was recorded in the records of the Company, rather there was much difference in between stock recorded in the book and stock found on physical verification. Therefore, the case was registered as R.C. No. 11A of 2010(R) against the accused persons. Subsequently, a separate case R.C. No. 13(A) of 2010(R) was lodged with respect to shortage of coal found at Heap No. 11 of Urimari Open Cast Project. After investigation, shortage of coal to the extent of 133794 M.T was found at Heap No. 1(a), 1(b & c), 2 7 and 9 subject matter of R.C. No. 11(A) of 2010(R) whereas shortage to the extent of 123541.82 M.T was found in Heap No. 11 subject matter of R.C. No. 13(A) of 2010(R) for which all the petitioners were found responsible in both the cases for misappropriation of huge amount. However, prosecution are being sought to be quashed on the ground that there has been absolutely no shortage of coal either at Heap No. 11 or any other Heaps though the C.B.I has recorded about shortage of coal on the basis of measurements taken by a team of joint surprise check. But that measurements were never taken scientifically nor it adhered to yardstick, parameters, norms and criteria laid down in "Yellow Book" and as such, any prosecution on the premise of shortage of coal recorded on the basis of wrong measurement would be quite illegal particularly when number of documents show the stock different than what has been found by the C.B.I. According to the petitioners, none of the documents relating to Coal India Limited, Coal Stock Measurement of different years, Coal India Limited Annual Report of different year audited by the Controller and Auditor General of India shows any variation more than + 5% of the stock and hence, those documents being impeachable in character demolishes the case of the C.B.I of shortage of coal.

24. Thus, it was pleaded that one can easily come to the conclusion that whatever stock of coal upon its verificatin has been determined by the C.B.I is quite wrong and in this situation, the prosecution in both the cases are fit to be quashed.

25. The aforesaid submission never appears to be tenable in view of the settled principle of law regarding quashment of proceeding by the Court in exercise of inherent power u/s 482 of the Code. In this respect, I may refer to a case of R.S. Raghunath Vs. State of Karnataka and another, wherein their Lordships have laid down certain categories of the cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. One of the criterias is as follows:

Where the allegations made in the first information report or 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.

26. In that view of the matter, the Court in exercise of power u/s 482 of the Code of Criminal Procedure can quash the proceeding, if it comes to the conclusion that the allegation made in the first information report or the complaint do not prima facie constitute any offence, even if those allegations are taken to be true on their face value. Therefore, when the C.B.I has come forward with the case that there has been shortage of coal, it has to be accepted as true and if it is accepted to be true, one can hardly come to the conclusion that no offence as alleged is made out. However, accusation is being sought to be demolished on the basis of documents said to be unimpeachable in character showing no variation in the stock at Urimari Open Cast Project and thereby on the face of the documents which are beyond suspicion of doubt, accusation cannot stand. There has been no dispute with respect to the proposition which has been laid down by the Hon'ble Court in number of cases including in a case of Harshendra Kumar D vs. Rebatilata Koley and others (supra) but the instant case, never appears to be within the parameter of the law laid down by the Hon'ble Supreme Court.

27. In the instant case, entry made in those documents itself becomes questionable, when the C.B.I has found the stock on its physical verification different than the entry made in the books of the Company. In other words, when it has fallen for determination as to whether stock recorded in books or the stock found on physical verification is correct, those documents can not be determining factor. Therefore, in the face of allegation, those documents upon which reliance has been placed cannot be said to be an independent of the charges on which accused persons are being sought to be prosecuted. Thus, the submission advanced in this respect is not acceptable.

28. Further it does appear that the measurements which have been taken by the C.B.I for determining the stock of the coal has been challenged on several grounds but that cannot be subject matter of adjudication at this stage, rather that may be raised at an appropriate stage as defence. Thus, the prosecution never warrants to be quashed on the aforesaid ground.

29. Coming to the other point on which one of the cases R.C. No. 13(A) of 2010 (R) has been sought to be quashed is that in respect to same transaction firstly, a case R.C No. 11(A) of 2010(R) was lodged but subsequently, for the same transaction another case R.C. No. 13(A) of 2010(R) was lodged which is fit to be quashed, in view of the decision rendered in a case of T.T. Antony vs. State of Kerala (supra) and in a case of Babubhai vs. State of Gujarat and others (supra).

30. It be stated that under joint surprise check, physical verification of stock of coal in all heaps, i.e. Heap No. 1(a), 1(b & c), 2, 7,9 and 11 was undertaken and even a case was lodged as R.C. No. 11(A) of 2010(R), while the matter was being investigated upon, the case with respect to Heap No. 11 was bifurcated and it was registered as R.C. No. 13(A) of 2010(R) for what reason, it is better known to the C.B.I as it is never permissible under the law when both the cases, in the circumstances stated above, can be said to have arisen out of same transaction. It has been well settled that if two or more cognizable offences are

alleged to have been committed in the same transaction, one cannot be allowed to institute more than one F.I.R. Reference maybe made of a case of T.T. Antony vs. State of Kerala (supra) wherein it has been held as under:

A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 of the Code of Criminal Procedure empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report u/s 173(2) of the Code of Criminal Procedure. It would clearly be beyond the purview of Sections 154 and 156 of the Code of Criminal Procedure, may, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482 of the Code of Criminal Procedure or under Articles 226/227 of the Constitution.

31. In this connection I may further refer to a case of Babubhai vs. State of Gujarat and others (supra) wherein their Lordships have laid down the same proposition which is hereunder:

In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/ crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

32. Undoubtedly, both the FIRs relate to the same transaction. Moreover, at the first instance, as I have stated earlier that the case was lodged with respect to all the Heaps including Heap No. 11 but subsequently, a separate case as R.C. No. 13(A) of 2010(R) was lodged with respect to Heap No. 11 without there being any justification as it was part of the same transaction for which R.C. No. 11(A)

of 2010(R) was lodged.

33. Accordingly, the entire criminal proceeding of R.C. No. 13(A) of 2010(R) including the order taking cognizance which is subject matter of W.P. (Cr.) No. 407 of 2011, W.P. (Cr.) No. 408 of 2011 and W.P. (Cr.) No. 405 of 2011 is hereby quashed so far the petitioners are concerned.

34. Notwithstanding the fact that order taking cognizance as also entire criminal proceeding of R.C. No. 13(A) of 2010(R) has been quashed, the investigating agency would be at liberty to seek leave of the court in R.C. No. 11(A) of 2010 (R) for making further investigation for filing further report/reports u/s 173(8) of the Code of Criminal Procedure. Consequently, W.P. (Cr.) No. 11 of 2012, W.P. (Cr.) No. 12 of 2012 and W.P. (Cr.) No. 13 of 2012 stand dismissed whereas W.P. (Cr.) 407 of 2011, W.P. (Cr.) No. 408 of 2011 and W.P. (Cr.) No. 405 of 2011 stand allowed.