
(2002) 08 JH CK 0065
In the Jharkhand High Court
Case No : Writ Petition (Cr) No. 87 of 2002

Sanjay Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Law (Amendment) Act, 1932 — Section 17, 18
Prevention of Terrorism Act, 2002 — Section 21, 22, 3, 30(1), 4

Citation : (2002) 08 JH CK 0065

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : B.M. Tripathi and Kripa Shankar, for the Appellant; Pradeep Modi, GPI, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This application has been filed under article 226 of the Constitution of India for issuance of an appropriate writ, order or direction or a writ in the nature of certiorari for quashing the entire criminal proceedings in connection with Palkot PS Case No. 5 of 2002 which was registered under Sections 17 and 18 of the Criminal Law (Amendment) Act and under Sections 3, 4, 30(1), 21 and 22 of the Prevention of Terrorism Act, 2002 (hereinafter referred to as the Act"), and further prayed for issuance of an appropriate writ in the nature of mandamus directing the respondents not to proceed with the investigation as against the petitioner in the said case.

2. The prosecution case in brief as stated is that the Officer-in-Charge of Palkot Police Station received a telephonic message on 11.2.2002 that active members of M.C.C. (a banned organization) wearing Red T Shirt have been collecting money (Levy) from the people of Palkot Market for the last few days and on that day also, he had come to Palkot Market for the above purpose. But the person who gave message on telephone did not disclose his identity. Accordingly, the

respondent No. 2 (Officer-in-Charge of Palkot Police Station) recorded the said information in the station diary and proceeded to Palkot Market with Police party for verification and noticed that a boy wearing red T Shirt became restless by seeing the police party and after chase he was apprehended. In presence of two independent witnesses, the apprehended person disclosed the name as Tilakman Sahu. He confessed that he was a member of M.C.C. Organisation. On search, a letter written by M.C.C. Area Commander, namely, Praveen Jee was recovered from his pocket. In the said letter, 10% levy was demanded from the contractor of anganbari, namely, Sudhir of Palkot and there was also threatening of committing his if the levy was not paid. A hand written poster of MCC was also found there. The said documents were seized in presence of the independent witnesses. The arrested persons also disclosed that the money collected was kept in the house of Govind Baraik. The respondent No. 2 along with the police party also proceeded to Village Murmkela. One person could be arrested on chase who disclosed his name as Shankar Lohra and he disclosed that for the last two days, the Area Commanders namely Praveen Jee, Sanjay Jee, Ajay Jee, Ranjan Jee and their group members, all armed with weapons were conducting meeting in the matter of realizing levy from the people.

3. On the basis of the disclosure of Tilakman Sahu/accused, the house of Govind Baraik was searched but he was found absent from the house. Shankar Lohra claimed that he used to give information to MCC about the activity of the police. They have also disclosed the name of other persons who are indulged in the activity of the MCC. As the MCC and its activities have been banned by the Government, as such the said two persons were arrested and the First Information Report was lodged against those two persons and other 18 unknown persons.

4. It is stated that the confessional statement of Tilakman Sahu was recorded on 12.2.2002 in presence of the Superintendent of Police, Gumla but the allegation against the petitioner is of sweeping nature. No specific act or instance has been given showing the complicity of the petitioner in any activity of MCC.

5. On the other hand, counter-affidavit has been filed on behalf of respondent No. 3 stating therein that the writ application filed by the petitioner is absolutely misconceived as the matter is still under investigation. Whether the petitioner has got links with MCC or not is a matter of investigation by the police itself and the police has already submitted charge-sheet on 12.5.2002 against Tilakman Sahu and others under various Sections of the Act. But so far the petitioner is concerned, the investigation is still going on and no charge-sheet has been submitted as yet, so this application is prematured one. It is further stated that Tilakman Manjhi who was arrested made the confessional statement voluntarily before the Superintendent of Police, Gumla (Annexure 2) and as such the writ application is fit to be dismissed.

6. Mr. B,M. Tripathy, learned counsel appearing on behalf of the petitioner mainly assailed the criminal proceedings only on the ground that the petitioner who is

no where in the picture for the alleged offence has been dragged on the basis of the confessional statement of one Tilakman Sahu, said to have been recorded in presence of the Superintendent of Police, Gumla and the said Tilakman Sahu in course of his statement also named other persons Including the petitioner but the said statement has not been recorded as provided under Clause 2 of Section 32 of the Act and, as such, the statement of the co-accused cannot be taken into account against the petitioner. It is further argued that there is no endorsement of the Superintendent of police over the said confessional statement of Tilakman Sahu giving any warning to the persons who made confession that he is not bound to make a confession and that if he does so, it may be used against him and such warning is mandatory before recording the statement and only due to non-compliance of the said mandatory provision, the confession recorded in presence of the Superintendent of Police will not be used against the petitioner. It is further argued that the Superintendent of Police did not make any endorsement except he put his initial over the said statement which is illegal and cannot be taken into account for getting the petitioner dragged in this case.

7. On the other hand, Mr. Pradeep Modi, learned Government pleader No. 1 contended before me that the case is at the very initial stage of investigation and whether the petitioner has got any link with the MCC, a banned Organization or not, is a matter of investigation by the police. But it is apparent that Tilakman Sahu who confessed his guilt to be indulged in criminal activity and had a nexus with the orgnaization like MCC and the petitioner was also participating in collection of levy but the matter is still under investigation and, as such, this petition is premature which is fit to be dismissed.

8. The petitioner's name came in picture only on the basis of the confessional statement of accused Tilakman Sahu who made confession in presence of the Superintendent of Police who actually did not make any endorsement rather he put his initial over the said confessional statement showing simply that the said confession was recorded in his presence.

9. Section 32 of the Act deals with about the confession made before a police officer not lower in rank than the Superintendent of Police and the said confessional statement shall be admissible in trial, whereas Sub-clause (2) of Section 32 reads as under :--

"(2) A Police officer shall, before recording any confession made by a person under Sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him :

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession."

10. Thus this much is very clear by bare reading of Sub-section (2) of Section 32 of the Act that the person who is ready to confess is to be warned or to make understood that he is not bound to make a confession and, if he does so, it may be used against him and this endorsement shall be in writing. It is true that

there is no such endorsement made by the Superintendent of Police in the confessional statement of Tilakman Sahu but it is also apparent that the matter is under investigation which is at the initial stage and no conclusion has yet been arrived at by the Investigating Officer in this respect. Moreover this lacuna or lapses, if any, can be taken at the time of trial itself when the matter will be decided finally. The First Information Report has also been registered for the offences under Sections 17 and 18 of the Criminal Law (Amendment) Act which does not provide such impediment. Since the matter is at the very initial stage of investigation and no conclusion has yet been arrived at, it is not desirable to interfere with the investigation at this initial stage.

11. For the aforementioned reasons and discussions, I do not find any merit in this application which is accordingly dismissed.