

(2015) 01 GAU CK 0033
In the Gauhati High Court
Case No : Criminal Pet. No. 515 of 2014

Sanjeev Kumar Kansal

APPELLANT

Vs

Central Bureau of Investigation (CBI) and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401, 482
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 19(1)(c), 7

Citation : (2015) 1 GLT 419

Hon'ble Judges : C.R. Sarma, J

Bench : Single Bench

Advocate : A. Chamuah, Learned Counsel, for the Appellant; P.N. Coudhury, Learned SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—Heard Mr. A. Chamuah, learned Counsel, appearing for the petitioner. Also heard Mr. P.N. Choudhury, learned Standing Counsel, CBI. By this application, filed under Section 482 read with Section 397 and Section 401 Cr.P.C. the petitioner, who is the accused person in Special Case No. 05/2008, under sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, has challenged the proceeding aforesaid.

2. The complainant i.e. PW No. -2, lodged an FIR with the Superintendent of Police, CBI, alleging that the accused person, in his capacity, as Superintending Engineer, Silchar, demanded from him 4.5% of the work value against the contract work in respect of which the complainant submitted his tender papers.

3. On receipt of the said complaint, CBI registered a case, being East Khasi Hills CBI/SPE 2008 RC SHG2008(A) 0002 dated 28.01.2008, Shillong and initiated investigation into the matter.

4. Mr. T.L. Zamang, Inspector of CBI, Shillong, conducted a secret investigation in respect of the complaint, lodged by the informant During the investigation, the

investigating agency laid a trap and recovered an amount of Rs. 1,00,000/- (Rupees one lakh) from the drawer of the official chamber of the accused person, in presence of the witnesses i.e. P.Ws. 3 and 7 and apprehended the accused petitioner.

5. At the close of the investigation, CBI submitted charge-sheet for the said offences against the petitioner.

6. In order to prove its case, the prosecution has examined as many as 14 (fourteen) witnesses including the I.O. At the close of the investigation, the learned trial court examined the accused person, under Section 313 Cr.P.C. The accused person i.e. petitioner, while denying the allegations, brought against him, prayed for time to examine defence witnesses and accordingly case has been posted for examination of defence witnesses on 27th and 28th January, 2015.

7. Thereafter, the accused person, as petitioner, has come up with this application under section 482 read with Sections 397 and 401 Cr.P.C. 1973, for quashing the said proceeding.

8. Mr. A. Chamuah, learned Counsel, appearing for the petitioner, producing the copies of the depositions, made by the prosecution witnesses, has submitted that the prosecution failed to establish the case against the petitioner and that, the verification, as required by the CBI Manual, was not made by the appropriate authority. It has also been contended by Mr. Chamuah that the sanction, as required by Section 19 of the P.C. Act, has not been given by the appropriate authority.

9. Another contention, raised by the learned Counsel for the petitioner, is that the case was registered before receipt of the FIR.

10. In support of his contention, the learned Counsel for the petitioner, has relied on the following decisions:

"(1) Satish Mehra Vs. State of N.C.T. of Delhi and Another, AIR 2013 SC 506 : (2013) CriLJ 411 : (2013) 1 Crimes 59 : (2013) 2 RCR(Criminal) 883 : (2012) 11 SCALE 193 .

(2) Pabitar Singh Vs. State of Bihar, AIR 1972 SC 1899 : (1972) CriLJ 1172 : (1972) 3 SCC 354 : (1972) SCC(Cri) 524 : (1972) 3 SCR 948 "

11. Refuting the said argument, advanced by the learned Counsel for the petitioner, Mr. RN. Choudhury, learned Standing Counsel, CBI, referring to the evidence given by the complainant and the witnesses has submitted that there is materials, on record, to show that the petitioner had demanded and received money for favouring the complainant on getting the work.

12. From the copies of the depositions, furnished by the petitioner's side, it transpires that the complainant (PW-2), the first trapped witness, namely, Sh. M. Ramo Singh (PW-3) and Sh. Natum Singh (PW-7) clearly that the accused

petitioner had demanded the money and accordingly, on being trapped, the petitioner had received the money from the complainant, in his office chamber, in presence of PW No. -7. Both PW-3 and PW-7 clearly stated that the money was given in their presence and that the same was recovered and seized from the drawer of the table of the petitioner.

13. As revealed from the record, Mr. Kuldeep Goyal, Chairman and Managing Director, BSNL, New Delhi, accorded sanction for prosecution. He stated that he, being the Chairman and Managing Director of BSNL, was the appropriate authority to remove the accused petitioner from service and as such, he was the authorized person to grant sanction under section 19(1)(c) of the P.C. Act.

14. The law, regarding maintainability of a petition under Section 482 Cr.P.C. has been laid down in a catena of decisions.

15. In the case of Satish Mehra (supra), the Supreme Court, while dealing with an application under Section 482 Cr.P.C. observed as follows:--

"14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations leveled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

16. As referred to by the Hon'ble supreme Court in the case of Satish Mehra (supra), the Supreme Court in the case of Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, (2011) 3 Crimes 161 : (2011) 8 JT 646 : (2011) 8 SCALE 128 : (2011) 12 SCC 437 : (2011) 9 SCR 623 , observed that when exercising jurisdiction under Section 482 Cr.P.C. the High Court would

not ordinarily embark upon an enquiry whether the evidence is reliable or not or whether on reasonable appreciation of it accusation would not be sustained and that this is the function of the trial Judge.

17. As held by the Hon''ble Supreme Court, in the case of Pabitar Singh (supra), the object of exercising jurisdiction under section 482 Cr.P.C. is to prevent miscarriage of justice.

18. Having heard the learned Counsel, appearing for both the parties and considering the entire aspect of the matter, I find no difficulty in holding that a prima-facie case has been established against the petitioner.

19. In view of the above referred principles, laid down by the Apex Court, this court in exercise of jurisdiction under Section 482 Cr.P.C. is not required to make a roving enquiry and scrutinize the evidence, on record, to find out whether the allegations are true or false. This is a question to be decided by the trial court, at the time of finally deciding the case.

20. The existence of a prima facie case negates the scope of exercising jurisdiction under Section 482 Cr.P.C.

21. Therefore, I find no sufficient reason to interfere in exercise of jurisdiction under Section 482 Cr.P.C. That apart, as the case is pending at the final stage i.e. at the stage of recording evidence of the defence witnesses and hearing the argument, I find it to be a fit case to leave the matter to the learned trial Court for decision on its merit.

22. In the light of the above discussion, I find no merit in this criminal petition. Accordingly, the criminal petition stands dismissed. It is made clear that the observations made in this order shall not influence the trial Court, in any manner, in disposing the matter on its merit.