

(2015) 04 JH CK 0096

In the Jharkhand High Court

Case No : Criminal M.P. No. 1497 of 2014

Satyanand Bhokta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 197, 482

Penal Code, 1860 (IPC) — Section 109, 120B, 201, 406, 409

Prevention of Corruption Act, 1988 — Section 10, 11, 12, 13, 15

Citation : (2015) 04 JH CK 0096

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Shailesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the entire criminal proceeding of Special Case No. 15(B) of 2009 including the order dated 30.1.2014 passed by the Special Judge, Vigilance, Ranchi whereby and whereunder cognizance of the offences punishable under Sections 11, 12, 13, 15 of the Prevention of Corruption Act, 1988 and also under Sections 406, 409, 423, 424, 465, 467, 469, 471, 477A, 109, 201 and 120B of the Indian Penal Code has been taken against the petitioner.

2. Initially a complaint was lodged by the complainant against the Minister of Agriculture, Nalin Soren and Nistar Minj, the then Agriculture Director alleging therein that when the State of Jharkhand came into being, the Government came with various schemes for betterment of agriculture but the accused persons by misusing their offices did commit several acts whereby certain firms were favoured in the matter of supply of the seeds whereof accused persons caused loss to the State Government by misusing and misappropriating the amount.

3. It has also been alleged that in the year 2006 when "Saunkar Dhan Seed Kray Yajna" was introduced, the accused persons in violation of the norms of the

Government gave supply orders to M/s. Nafed and M/s. Neramake to supply seeds, who were not the seed producing company.

4. The aforesaid complaint was sent before the Vigilance Police Station for its institution and investigation. Upon which Vigilance case bearing No. 11 of 2009 was registered. When it was taken for investigation, the culpability was also found of this petitioner, who had succeeded to Mr. Nalim Soren to the office of Minister, Agriculture and Sugarcane in the matter of purchase of seeds wherein it was found that the petitioner in violation of the Government policy had made recommendation of purchasing seeds from M/s. Nafed and M/s. Neramake without resorting to the process of open tender. Earlier to that when the supply orders had been issued to them it had been issued with a stipulation that if the seeds supplied would be found not to have been procured from the legal source, they will have to refund the money. When the seeds were supplied, it was found that the same had not been procured from seed producing firm. When the petitioner took the office of Minister, a proposal was mooted to give supply order to them, it was brought to the notice of the petitioner by Agriculture Director through noting in the file that conduct of those two companies are quite suspicious, still the petitioner intended to give supply orders to them. Therefore, the Agriculture Director as per the wishes of the petitioner, subsequently made favourable note, upon which recommendation was made for giving supply orders to those two companies again, though the purchase committee having found S.F.C.I. to have quoted minimum rate and thereby proposal was given to have negotiation with him for lowering down the price so that the order be placed to other persons for supply of the seeds but ignoring this note, recommendation was made by the petitioner for giving supply orders to those two companies and on account of that a great loss was caused to the Government.

5. Further it was found that before the petitioner made recommendation for giving supply orders to M/s. Nafed and M/s. Neramake, those two firms had earlier been given supply orders on the basis of MOU executed between the parties which were applicable for that particular year. Subsequently, it came to the notice of the Department that those two companies were never happened to be the seed producing company, rather they had supplied after procuring seeds from other source which were against the Government policy. In spite of that the Department without going into the process of open tender, gave supply orders to the same companies at the instance of the petitioner and thereby the petitioner misused its official position to put those companies to benefit at the cost of the exchequer of the Government.

6. Further it was found that the amount received from the Department of Disaster Management meant to be deposited to the account of the farmers were diverted and were utilized for purchasing seeds without taking concurrence from the Department of Disaster Management for putting those companies to pecuniary advantage.

7. On account of those allegations it was alleged that the petitioner did commit

several offences under the Indian Penal Code and also under the Prevention of Corruption Act and thereby submitted charge sheet, upon which cognizance of the offence was taken, vide order dated 30.1.2014 which is under challenge.

8. Mr. Anil Kumar Sinha, learned Sr. counsel appearing for the petitioner submits that the petitioner has been made accused in the present case though the petitioner while functioning as Agriculture Minister had made recommendation for giving supply orders to those Government companies in terms with the police decision of the State Government and in the interest of public at large.

9. In this regard, it was submitted that the policy decision taken in good faith even if is found improper, still one cannot be prosecuted under the Prevention of Corruption Act in absence of any allegation that such policy was adopted to have monetary gain for himself or to put others to pecuniary advantage which allegation is absent in the case. Moreover, the policy decision taken to go for purchase of seeds from Government undertakings including from M/s. Nafed and M/s. Neramake was found absolutely justified by this Court, when the said policy decision had been challenged in a Public Interest Litigation bearing W.P (PIL) No. 2928 of 2009. If that has been found to be absolutely proper by this Court, the vigilance cannot be allowed to prosecute this petitioner on the plea that policy decision was against the Financial Rule as well as the policy of the Government.

10. In this regard, it was also stated that non-observance of the Financial Rule will not entail one with a criminal liability in absence of the ingredients which constitute offence under the Prevention of Corruption Act and that whatever recommendation had been made by the petitioner in the matter of purchase of the seeds, it had been made on account of exigency as the State at that time was under drought.

11. Further it was submitted that the allegation has also been imputed that the amount received from the Disaster Management Department has been utilized for purchasing seeds but by doing so, no illegality had been done as the Government of India had issued instruction earlier for distribution of seeds against agriculture import subsidy among the farmers affected with natural calamity. Subsequently also the Department of Disaster Management had come with the instruction in the year 2005 to provide more and more seeds to the farmers and under this situation, the decisions were taken to purchase seeds from the Government Institutions on the approved rate. Those undertakings M/s. Nafed and M/s. Neramake are under the control of Government of India from whom earlier also seeds had been purchased and that it is wrong on the part of the Vigilance to impute allegation that tenders were not invited as, in fact, letter of interest was invited through advertisement in the local newspaper calling upon the Government agencies, other registered societies for supply of different seeds on expression of interest.

12. Thus, it was submitted that whatever allegations are there in the charge sheet, some of them are not factually correct and some of the allegations do not

constitute any offence whatsoever and thereby the order taking cognizance is bad.

13. Further it was submitted that the order taking cognizance is also bad in absence of any sanction either in terms of Section 19 of the Prevention of Corruption Act or under Section 197 of the Code of Criminal Procedure as the petitioner allegedly did these acts while functioning as public servant being the Minister of Agriculture. In this regard, a reference was made of a case of R. Balakrishna Pillai Vs. State of Kerala, AIR 1996 SC 901 : AIR 1995 SC 901 : (1995) 4 Crimes 704 : (1995) 9 JT 580 : (1995) 7 SCALE 255 : (1996) 1 SCC 478 : (1996) 6 SCR 236 Supp .

14. Further learned Sr. counsel by placing reliance on a decision rendered in a case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, (2013) 6 ABR 895 : (2013) 10 AD 386 : (2014) CriLJ 1 : (2013) 13 JT 127 : (2013) 4 RCR(Criminal) 586 : (2013) 12 SCALE 283 : (2013) 10 SCC 705 submits that in absence of sanction being there in terms of Section 197 of the Code of Criminal Procedure or under Section 19 of the Prevention of Corruption Act, the court should not have entertained the complaint petition and thereby it committed illegality in sending the complaint before the vigilance police station for its institution and investigation and hence, if the very basis of the institution of the case is bad, the order taking cognizance can certainly be said to be bad and thereby it is fit to be set aside.

15. As against this, Mr. Shailesh, learned counsel appearing for the Vigilance submits that the petitioner happened to be the Agriculture and Sugarcane Development Minister and held such office from 19.4.2005 to 13.9.2006 during which he carried forward the illegal acts of his predecessor in office and thereby caused loss in crores to the State whereby sub-standard seeds were purchased from the firms/companies which were never seed producing company.

16. It was further submitted that earlier also seeds had been purchased from M/s. Nafed and M/s. Neramake but while giving supply orders to them the undertakings had been taken from them that if it would be found that seeds supplied had not been procured from valid source, they would be liable to refund the money. When seeds were supplied, it was found that seeds had never been procured from valid source and that those undertakings were never seed producing companies and therefore, when at the time of the petitioner the matter was moved for giving supply orders to them, an objection was taken by Agriculture Director in the file for not preferring those two undertakings for purchasing seeds but at the instance of the petitioner, Agriculture Director was made to give another note favourable to those undertakings. On such note being given, recommendation was made for purchasing seeds from those two undertakings, though it had earlier been found that neither they were the producers nor they had procured the seeds from the valid source which was against the Government policy, still those two undertakings were preferred. The supply orders were given earlier to them on the basis of MOU entered into

between the parties which was effective for only one year and that too when the purchase committee had put a note over the file that S.F.C.I is the lowest bidder with whom negotiation can be made over the rate and if on negotiation rates are lowered down, then other firm could be asked to supply the seeds on that rate but ignoring all these, the petitioner made recommendation for purchasing the seeds from those two firms on the basis of MOU executed earlier and thereby the Government was put a great loss.

17. Further it was submitted that the Ministry of Agriculture had received considerable amount from the Department of Disaster Management so as to the amount be deposited in the account of the farmers but at the instance of the petitioner, those amounts were diverted for purchasing seeds for that year, without taking any concurrence from the Department of Disaster Management, though at earlier occasion, the concurrence had been taken for diverting the fund and therefore, under these circumstances, ample materials were there before the court showing culpability of the petitioner and thereby the court did not commit any illegality in taking cognizance of the offence against the petitioner.

18. Further it was submitted that when the cognizance of the offence was taken, the petitioner was never holding the post of Minister of Agriculture and thereby the question of having prior sanction for prosecution from the competent authority does not arise.

19. Likewise the provision as contained in Section 197 does not contemplate of having sanction for prosecution if one commits offence of misappropriation under criminal conspiracy or offence of forgery as those acts never happen to be the part of the duty of the public servant and thereby no necessity was there for having sanction for prosecution at the time of taking cognizance of the offence and thus, it was submitted that the order taking cognizance is absolutely in accordance with law which never warrants to be interfered with.

20. Having heard learned counsel for the parties and on perusal of the record, I do find that when a complaint was filed, it was filed against the Minister of Agriculture, Nalin Soren, predecessor in office of this petitioner and also against the then Agriculture Director. However, during investigation, the Vigilance did find that certain acts have been done by the petitioner in the capacity of Minister of Agriculture whereby recommendation was made for giving supply orders to the aforesaid two companies, M/s. Nafed and M/s. Neramake which act, according to the petitioner, was never illegal nor anything was wrong with it but according to the Vigilance, those acts smacked some conspiracy or collusion with the aforesaid companies and thereby they were favoured by deviating settled norms and under the teeth of the objection taken by the officer of the Department whereby the Government was put to heavy loss.

21. Under the circumstances, this Court is never supposed in exercise of the power under Section 482 of the Code of Criminal Procedure to give finding as to whether the act of the petitioner was bona fide or it was otherwise to make

favour to those firms, for ulterior reason, rather it can be gone into during trial.

22. The submission was also advanced on behalf of the petitioner to the effect that the court committed illegality while exercising power under Section 156(3) in absence of any prior sanction being there in view of the decision rendered in a case of Maksud Saiyed Vs. State of Gujarat and Others, (2008) CLT 715 : (2008) 1 CTC 259 : (2007) 11 JT 276 : (2007) 11 SCALE 318 : (2008) 5 SCC 668 : (2007) 9 SCR 1113 as well as Anil Kumar v. M.K. Aiyappa (supra) holding therein that in absence of previous sanction, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) of the Code of Criminal Procedure but in my opinion, the said decision is not applicable in view of the facts and circumstances of this case whereby on the day when the complaint was lodged, the petitioner was never holding the said post of Minister of Agriculture and Sugarcane.

23. In this regard I may refer to Section 19 of the Prevention of Corruption Act which reads as under:

"19. Previous sanction necessary for prosecution-(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

24. From perusal of the aforesaid provision, it does appear that sanction clauses (a) and (b) of sub-section (1) specifically provided that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecution is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the

offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removal would not arise. Admittedly, when the alleged acts were done, the petitioner was the Minister of Agriculture but at the time of filing of the complaint or taking cognizance, he was never holding office of the Minister, Agriculture and thereby question of obtaining any sanction in terms of Section 19 does not arise.

25. The said proposition has been laid down in a case of Parkash Singh Badal and Another Vs. State of Punjab and Others, AIR 2007 SC 1274 : (2007) CLT 567 Supp : (2007) 1 JT 89 : (2006) 13 SCALE 54 : (2007) 1 SCC 1 : (2006) 10 SCR 197 Supp : (2007) AIRSCW 1415 : (2006) 8 Supreme 964 .

26. So far sanction in terms of Section 197 of the Code of Criminal Procedure is concerned, it be stated that sanction for prosecution is required to be had when a public servant in discharge of duties does an act. But here the allegations against the petitioner are that of misappropriation, cheating, forgery and conspiracy which acts can never be said to have been done in discharge of his duties and therefore, sanction was never required to be had.

27. Under the circumstances, I do not find any illegality with the order taking cognizance and hence, it needs no interference. Thus, this application stands dismissed.

28. Before parting with this order, it be recorded that any finding given for the purpose of disposal of this case shall not be prejudicial to the case of the parties.