

(2012) 07 JH CK 0035
In the Jharkhand High Court
Case No : Criminal M.P. No. 460 of 2011

Sharad Akhouri

APPELLANT

Vs

The Central Bureau of Investigation

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120B, 197, 406, 409, 419
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2), 5(2)

Citation : (2012) 3 JCR 657

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : P.P.N. Roy and Prabhash Kumar, for the Appellant; Mokhtar Khan, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—Heard the Learned Counsel for the petitioner the Learned Counsel for the C.B.I. The petitioner has filed this application for quashing the Entire Criminal Proceeding including the order dated 10.07.2002 passed in R.C. Case No. 2A of. 1998-R by the Special Judge, CBI, Ranchi, whereby cognizance has been taken against the petitioner under Sections 409, 419, 420, 467, 468, 471, 477-A of the Indian Penal Code as well u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act 1988.

2. The Learned Counsel for the petitioner has submitted that the Court below has taken cognizance vide order dated 10.7.2002 against the petitioner without applying his Judicial mind as in the aforesaid order taking cognizance, the Court below has mentioned:--

The charge sheet is also accompanied by sanction order obtained from the competent Authority for the prosecution of the accused under the above referred sections of Law based on several grounds.

But admittedly in the charge sheet submitted by C.B.I. has very specifically mentioned that no sanction order for prosecution of the petitioner is required in this case as the petitioner namely Sharad Akhouri has already been dismissed from his service in the year 1998. This clearly shows that the Court below did not apply his judicial mind in to the contents of the charge sheet submitted by the C.B.I. against the petitioner. It is also contended that when there is no sanction order how the Court below has mentioned in his aforesaid order dated 10.07.2002 that the charge sheet Is also accompanied by the sanction order. Therefore, for non-application of the judicial mind, the order taking cognizance is wholly illegal and fit to be set aside.

3. The Learned Counsel for the petitioner has further submitted that from the charge sheet it is quite clear that no sanction has been taken for the prosecution from the authority concerned according to the allegation made in the F.I.R. against the petitioner for the commission of the offence u/s 409/420/467/468 read with 471 of the I.P.C. and admittedly the petitioner was a public servant, no Court shall take cognizance of such offence except with a previous sanction from the appropriate authority. Therefore, the order taking cognizance is absolutely bad in law and the same is fit to be set aside, To support his contention, the counsel of the petitioner has referred two decisions of the Hon"ble Apex Court which are:-

(i) State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew,

(ii) Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another,

It is submitted that the aforesaid cases the Hon"ble Apex Court has held that u/s 197 of the Cr. P. Code protection is available to the public servant even he has retired from the service and when the alleged Act done by the public servant is reasonably connected with the discharge of the official duty.

4. It is further contended that when the Corporation Bank after departmental enquiry held that there was loss of Rs. 11,19,400/- to the Bank, the petitioner has deposited the said amount in the Bank but in no way it should be considered as admission of commission of any criminal offence by the petitioner.

5. The prosecution case in brief is that the Inspector of Police C.B.I./SPE/Ranchi registered a F.I.R. which was numbered as RC 2(A) 98R on 09.01.1998 at Ranchi under Sections 409/419/420/468/467 read with 471 of I.P.C. of 1860 and Section 13(2) R/w 13(1)(c) and (d) of the P.C. Act of 1988 against the petitioner that they have received information through reliable source that the petitioner Mr. Sharad Akhouri while posted and functioning as the Branch manager of Corporation Bank. Ranchi i.e. during the period of May 1993 to July 1996 has abused his official position and cheated the Bank to the tune of Rs. 47,37,178.80 by forging various documents etc. It is also alleged that the petitioner has also misappropriated a sum of Rs. 50,000/- by granting a bogus loan against a Fixed Deposit held in the benami name by one customer of the bank, which was kept

in safe custody. The CBI filed a long written First Information Report of six pages which was forwarded to the Spl. Judge (CBI), Civil Court compound. Ranchi. The Bank did not initiate any criminal proceedings though the loss was allegedly caused to the Corporation Bank.

6. Mr. Khan, the Learned Counsel appearing for the C.B.I. has filed counter affidavit and also supplementary counter affidavit and annexing the entire charge sheet (filed in this case) as Annexure- A and submitted that in the charge sheet it is specifically mentioned that sanction is not all required in the present case. No doubt the Court below by bona fide mistake it has stated that the charge sheet is also accompanied by sanction order obtained from the competent authority for the prosecution of the present accused in this case. It is also contended that It is well settled principle that sanction is required u/s 197 of the Cr. P.C. when the offence alleged to have been committed by the accused in the course of his official duties. He has also referred a decision of the Hon"ble Apex Court reported In (2004) 2 SCC 349, State of H.P. v. M.P. Gupta in which it is held:-

21. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B IPC sanction u/s 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. this Court has stated the legal position in Shreekantiah Ramayya Munipalli case and also Amrik Singh Case that it is not every offence committed by a public servant which requires sanction for prosecution u/s 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad v. State of Bihar, as follows :(SCC p. 115, 66)

As far as the offence of Criminal conspiracy punishable u/s 120B, read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction u/s 197 of the Code of Criminal Procedure is, therefor, no bar.

22. Above views are reiterated in State of Karala v. V. Padmananbhan Nair. Both Amrik Singh and Shreekantiah were noted in that case. Section 467, 468 and 471, IPC relate to forgery of valuable security. Will etc; forgery for the purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction u/s 197 of the Code is, therefore, no bar.

7. Mr. Khan further contended that in the investigation it has come that when the accused petitioner was posted as Branch Manager in the Corporation Bank, Ranchi during the period of May 1993 to July 1996 abused his official position

cheated the Bank by forging Bank Transactions voucher, opening bogus and fictitious account to the tune of Rs. 47,37,178.80. It is also submitted that the fact and evidences which is come in the investigation prima-facie established the commission of the offence under Sections 409, 419, 420, 467, 468, 471, 477-A of the I.P.C. and 13(2) read with 13(1) (c) and (d) of the Prevention of corruption Act 1988. It is further contended that the Corporation Bank had conducted an enquiry in the matter and after completion of the enquiry dismissed the accused petitioner from the service of the Bank.

8. Mr. Khan has further submitted that though the petitioner has stated that he has returned the money but only by the return of the money, the offence committed by the accused petitioner cannot loose its force.

9. Considering the submissions made by the parties and materials on record and the decision cited by the parties, in my opinion the offence committed by the accused petitioner has no connection with the discharge of his official duties. Furthermore, if a public servant indulge in opening the fictitious account and thereafter withdraw the amount from the said fictitious account it cannot be said that he has done it in course of his discharging his official duty and than the Section 197 does not protect the accused person. The word "official duty" clearly shows the act or commission must have been done by the public servant in the course of his service and it should have been in discharge of his official duty. Thus, the Section does not protect the every act or omission done by the public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. Furthermore, the accused petitioner has been dismissed from his service by the Bank after an enquiry made by the Bank.

10. After perusing all these decision cited by the parties, I find the protection given u/s 197 Cr. P.C. to the public servant has certain limits and it is available only when the alleged act done by the public servant is reasonably connected with the discharge of the official duty and it is not a cloak for doing the objectionable act. The said Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of his official duty.

11. In the light of the above discussion, just by mere mentioning by bona fide mistake in the order of taking cognizance by the Court below that the charge sheet is also accompanied by the sanction order obtained from the competent authority, can not vitiate the said impugned order when the sanction is not at all required for prosecuting the petitioner in this case. Considering all these aspect as stated above and the gravity of the offence, I do not find any reason to interfere with the order taking cognizance dated 10.07.2002 and accordingly, this application is dismissed.

I.A. No. 1258 of 2011

Petitioner has tiled this interlocutory application to implead the "Corporation Bank" as O.P. No. 2.

Heard the counsel appearing for the petitioner and the counsel appearing for the C.B.I.

As the counsel appearing for the petitioner has raised the point in respect of sanction only.

I do not find any reason to implead the "Corporation Bank" as O.P. No. 2. Accordingly I.A. No. 1258 stands rejected.