

(2017) 06 RAJ CK 0057
In the Rajasthan High Court
Case No : 723 of 2014

Shera Ram S/o Pusaram Jat

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 29-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court

Citation : (2017) 06 RAJ CK 0057

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Vinay Kothari, Manoj Bohra, Kuldeep Sharma, Ashok Upadhyaya, Zakir Akhtar, Mahesh Bora, M.S. Rathore

Judgement

1. The instant bunch of writ petitions as well as criminal misc. petitions involve common questions of facts and law and are thus being decided by a single order.
2. The petitioner Shera Ram was the then elected Sarpanch and the petitioner Shivdarshan was posted as Gram Sevak-cum-Secretary at the Gram Panchayat Datina, District Nagaur at the relevant point of time.
3. During the tenure of the petitioners, certain construction/development works were undertaken in the Gram Panchayat Datina under the MGNREGA Scheme. One Maan Singh lodged various complaints in the court of learned Special Judge, Anti Corruption Cases, Jodhpur alleging inter alia that the Sarpanch

Shera Ram and the Gram Sevak Shivdarshan, acting in connivance with various other officers of the Panchayat Samiti, Nagaur, carried out the disputed works in a substandard manner and, by making excessive valuation, got sanctioned the total estimated cost of the works thereby causing loss to the Government. The complaints were lodged for the following works:

1. Construction of Tanka in Aanganbari Kendra No.2 (FIR No.41/2011) Sanction order No.31265 dated 31.03.2008.
2. Construction of tanka (water tank) in Aanganbari Kendra No.3 (FIR No.42/2011) Sanction order No.31265 dated 31.03.2008.
3. Construction of gravel road from village Datina to Karnoo (FIR No.43/2011) Sanction order No.11194 dated 26.07.2008.
4. Construction of gravel road from the village Datina to Dairywala Rajput Dani (FIR No.44/2011) Sanction order No.21650 dated 13.04.2009.
5. Construction of Tharali Nadi in the village Datina (FIR No.45/2011) Sanction Order No.24396 dated 14.05.2009.
6. Construction of Nayi Nadi in the village Datina (FIR No.46/2011).
7. Digging of Khidolai Nadi (FIR No.47/2011) Sanction order No.3440 dated 20.05.2008 passed by District Collector- cum- District Project Coordinator.
8. Digging and Pakka construction of Khidolai Nadi in village Datina (FIR No.48/2011) Sanction order No.24396 dated 14.05.2009 passed by the District Collector- cum- District Project Coordinator.
9. Digging and Pakka construction of Kerolai Nadi in village Datina (FIR No.49/2011) Sanction order No.21680 dated 13.04.2009.

4. Writ petitions No.8773/2013, 10344/2013, 10345/2013, 10496/2013, 10497/2013, 10498/2013, 10507/2013, 10508/2013, 10509/2013 have been preferred by the petitioner Shivdarshan under Article 226 of the Constitution of India seeking to assail the orders whereby sanction to prosecute him was granted by the competent authority. At the same time, the misc. petitions No.267/2014, 268/2014, 372/2014, 373/2014, 393/2014, 394/2014, 395/2014 have been filed by the petitioner Shivdarshan under Section 482 Cr.P.C. seeking quashment of the

FIRs mentioned above. At the same time, Misc. Petitions No.723/2014, 655/2014, 721/2014, 724/2014, 725/2014, 899/2014, 900/2014, 902/2014 and 96/2014 have been preferred on behalf of the petitioner Shera Ram seeking quashing of the FIRs under challenge.

5. Sarva Shri Vinay Kothari and Shri Manoj Bohra, learned counsel representing the respective petitioners vehemently urged

that the entire proceedings sought to be undertaken against the petitioners including the FIRs under challenge and the sanction orders issued in the respective cases are arbitrary, perverse and suffer from gross abuse of process of law and thus deserve to be quashed and set aside. They urged that sanction to prosecute the Assistant Engineer Mirza Rehman, who was also intrinsically involved in the works, was sought by the investigating agency in relation to the FIRs No.42/2011 and 50/2011. In both these matters, the sanctioning authority turned down the proposal to issue prosecution sanction against Mirza Rehman assigning a reason that the evaluation of the disputed works was conducted after nearly three years from the execution of the works. Further, the two factual inquiries conducted by the Bureau resulted into divergent findings and thus, the sanctioning authority did not find it to be a fit case for granting sanction to prosecute the said A.En. They further urged that in the cases at hand, the reports of site inspection on the basis whereof the prosecuting agency proposes to proceed against the petitioners, were prepared after nearly three years of the actual execution of the works in question. By this time, the constructions dilapidated owing to efflux of time and by diminishing effects of elements. They further urged that the inspection of the works executed under the MGNREGA Scheme is required to be carried out in accordance with the standing

instructions issued by the Rural Development and Panchayati Raj Department, Government of Rajasthan whereas the inspection reports on the basis whereof, the prosecution agency has based its conclusions, were carried out by a committee consisting of two Engineers of the Public Works Department. They urged that no sanctity can be attached to such reports because the committee constituted by Engineers of the Public Works Department is not authorised to evaluate the works conducted under the MGNREGA Scheme. They further urged that the prosecution has adopted a different yardstick for prosecuting the petitioners. Whilst in the case of Mirza Rehman, sanction has been refused on the ground that the evaluation report of the committee was received after three years from the execution of the disputed works and possibility of the construction being diminished by efflux of time and exposure of elements could not be ruled out. On the other hand, the same reports are being utilized and relied upon for prosecuting the petitioners. They thus vehemently contended that the impugned FIRs and the impugned sanction orders are bad in eye of law and thus deserve to be quashed.

6. Per contra, learned Sr. Counsel Shri Mahesh Bora assisted by Shri M.S. Rathore, learned Public Prosecutor assisted by the investigating officer Shri Zakir Akhtar, Dy. S.P., ACB, Nagaur and Shri Manish Patel, AGC vehemently opposed the submissions advanced by the petitioners' counsel. They urged that upon site inspection being conducted by the duly authorised committee consisting of two senior officials of the Public Works Department, serious deficiencies were found in the works executed under the active supervision of the present petitioners. Relying on the inspection reports, the investigating officer has reached to a prima facie conclusion that the petitioners over-valued the works and

sanctioned excess payments thereby causing huge loss to the Government. They thus vehemently contended that the petitioners are not entitled to the relief as claimed for in these petitions while exercising the extraordinary/ inherent powers of the Court.

7. I have heard and considered the arguments advanced by the learned counsel representing the parties and have gone through the material available on record.

8. It is an admitted fact that the disputed works were undertaken under the MGNREGA Scheme at the Gram Panchayat Datina in active supervision of the petitioners herein in the years 2008/2009 respectively. Mirza Rehman and Buddhram were the Assistant Engineers during execution of two of the works in relation whereof, FIR Nos.43/2011 and 50/2011 have been registered. The State Government, by its orders dated 28.03.2013 and 26.07.2015 respectively, refused sanction to prosecute Mirza Rehman as well as Budh Ram in relation to the corresponding works with the following observations:

"VERNACULAR MATTER OMITTED"

9. Upon going through the case diaries, it emerges that the investigating officer has procured two sets of verification reports from the committee constituted by two officers of the PWD. The first valuation report dated 26.05.2011 was procured in relation to FIR Nos.41/2011, 42/2011, 43/2011, 44/2011 and 45/2011 whereas the second inspection report dated 02.06.2011 was procured regarding FIRs No.46/2011, 47/2011, 48/2011, 49/2011 and 50/2011. Evidently, the State Government did not consider these reports reliable so as to prosecute the Assistant Engineers Mirza Rehman and Budha Ram and the proposal to grant sanction to prosecute them was turned down vide orders dated 28.03.2013 and 26.07.2015. Though on a perusal of the entire sanction

refusal orders qua the Assistant Engineers, it would appear that one of the reasons of refusal of sanction was that the Engineers were not directly connected with the works in question but at the same time, the Court cannot overlook the fact that the sanctioning authority being the Secretary to the State Government has observed in the sanction refusal order that the inspection reports were questionable because the site inspection was carried out after nearly three years of actual execution of the disputed works.

10. This Court fails to understand that if the inspection reports were unreliable qua some of the officials involved in the same works, then how the same could be relied upon for the others. The action of the prosecution agency thus evidently suffers from gross arbitrariness.

11. Learned counsel representing the petitioners have brought to the notice of the Court, the specific orders issued by the Rural Development and Panchayati Raj Department, Government of Rajasthan as per which, the total life of a gravel road has been prescribed to be 5 years. Thus apparently, the works of the nature in relation where to the FIRs were registered are bound to get degenerated by wear and tear and with efflux of time. Since the inspection reports which form basis of the prosecution case were procured after nearly two to three years from the actual execution works, obviously the reliability thereof is questionable. Further, learned State counsel failed to satisfy the Court regarding the jurisdiction of the inspection committee which gave the two reports mentioned above to evaluate the works. Evidently, the works were carried out under the MGNREGA Schema and specific guidelines have been issued by the State Government for governing the evaluation of works carried out under the said scheme. Admittedly, the evaluation of the disputed works was not

conducted while adhering to those guidelines/ Rules. In these circumstances, this Court is of the opinion that allowing prosecution of the petitioners in these FIRs would amount to gross abuse of process of law.

12. Consequently, the miscellaneous petitions as well as writ petitions deserve acceptance. The impugned sanction orders issued against the petitioner Shera Ram and so also the FIRs pending under investigation against both the petitioners Shivdarshan and Shera Ram are hereby quashed and set aside.

13. The miscellaneous petitions as well as writ petitions are allowed in the above terms.