(2015) 02 JH CK 0060

In the Jharkhand High Court

Case No : Cr.M.P. No. 2556 of 2013

Shiva Shankar Verma APPELLANT

Vs

State of Jharkhand RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 201, 420, 423
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 3 AJR 612

Hon'ble Judges : Rakesh Ranjan Prasad, J.

Bench : Single Bench

Advocate : Anoop Kumar Mehta, for the Appellant; Shailesh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the order dated 13.6.2013 passed by the Special Judge (Vigilance), Ranchi in Special Case No. 41 of 2002 (Vigilance P.S. case No. 35 of 2002) whereby and whereunder cognizance of the offences punishable under Sections 420, 423, 424, 467, 468, 469,471, 477 and 201 of the Indian Penal Code and also under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act has been taken against the petitioner.

2. Before proceeding further in the matter the order which was passed on 29.1.2015 needs to be reproduced which is hereunder:

"Mr. A.K. Mehta, learned counsel appearing for the petitioner, submits that it is the case of the prosecution that Plot No. 875 and 877, appertaining to Khata No. 191, situated at Mauza Kadru measuring 0.60 acres and 1.16 acres, recorded as Gair Mazarua Malik land, was belonging to the landlord A.T. Peppe. Similarly the land measuring 0.43 acres of Plot No. 878, appertaining to Khata No. 173 of Mauza Kadru, was recorded as Bakast Malik land. On 13.2.1939 ex-landlord-A.T. Peppe settled the lands to one O.J. Field and M.S. Isabel Jane Mildred by registered deed of perpetual lease. Subsequently, on 5.2.1947 Mr. O.J. Field transferred the lands to one Rev. R. Bossuyt, Director of Chhotanagpur Catholic Cooperative Credit Society by registered sale deed. Much thereafter, in the year 1983, the lands were transferred in the name of Jesus Mary and Joseph, registered Cooperative Society, by way of three registered deed of gift and also by way of registered sale deed. Thereupon, the transferees filed an application for mutating their name against the land transferred to them. On such application, Mutation Case Nos. 173, 174, 175 and 176 of the years 1987-88 were registered and the names of the transferees were mutated. When the names of those transferees were mutated against the land, which they had purchased, inquiry was held. During inquiry, the inquiry officer raised question over the propriety and authority of a foreign national to transfer the land and at the same time, it was recorded that any transfer of the land measuring about 90 Kathas in the name of one person would be under the teeth of the Urban Land Ceiling Act. Thus, it was opined by the inquiry officer that those transfers are illegal. Subsequently, in the year 1994, one person preferred an appeal before the Additional Collector against the order, under which the lands were mutated in the name of Jesus Mary and Joseph, Cooperative Society. The Additional Collector cancelled the mutation order.

Being aggrieved with that order, a revision application bearing Mutation Revision No. 292 of 1995 was preferred before the Commissioner, South Chhotanagpur Division, Ranchi, who set aside the order passed by the Additional Collector, Ranchi on the ground that long standing Jamabandi cannot be cancelled by the Revenue Authority though that can be challenged in a civil suit by the concerned person. Since that order was passed by the petitioner, he was also made accused in the case lodged under Sections 420/467/468/469/471/477/109/423/424/201/120B of the Indian Penal Code and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act simply for the reason that the order passed by the Additional Collector was set aside and the revision had been allowed though there is no allegation constituting offence relating to forgery and also with respect to the offence under Section 423 and 424 of Indian Penal Code. At the same time, no allegation is there that the order has been passed in corrupt or illegal means and by abusing of position of the public servant. The prosecuting agency is perhaps under the impression that since wrong order had been passed, it can be presumed to have been passed in corrupt or illegal means and by abusing his position of public servant but in absence of any material showing the order being passed in corrupt or illegal means, one cannot be prosecuted simply for the reason that wrong order had been passed though the petitioner cannot be said to have passed the wrong order, as the ground, on which the order passed by the Additional Collector has been set aside, is based on the well established principle that long standing jamabandi can not be cancelled, as has been held by the Hon''ble Patna High Court, and under the situation, the order taking cognizance is fit to be set aside.

As against this, Mr. Shailesh, learned counsel for the Vigilance, submits that since the order taking cognizance itself has been challenged, case diary would be necessary to find out as to whether any such allegation is there of having undue pecuniary advantage for passing the order in the revision application and therefore, the case be adjourned for two weeks so that he may get hold of the case diary. As prayed for, post this case on 13.02.2015."

3. Learned counsel appearing for the petitioner submits that none of the offences under which cognizance has been taken is attracted in the case as the petitioner has passed an order in a revision application which order is being taken by the prosecution to be an illegal order but even if the order happens to be an illegal order, question of committing offence of forgery does not arise and thereby no offence is made out under Sections 467, 468, 469 or 471 of the Indian Penal Code.

4. Further it was submitted that one can hardly conceive as to how offence either under Section 423 or 424 of the Indian Penal Code is made out when there has been no case of dishonest or fraudulent execution of deed of transfer containing false statement of consideration nor it is the case of dishonest or fraudulent removal of concealment of the property.

5. Likewise in the facts and circumstances of the case, one cannot be said to have committed offence under Section 420 of the Indian Penal Code and at the same time, there has been no allegation against the petitioner of committing offence under Section 201 of the Indian Penal Code as the petitioner has never been alleged to have done any act in getting the record missing which allegation could not have been against the petitioner as the petitioner passed an order in the capacity of revisional authority and even if the record was missing, that allegation may be against others.

6. Learned counsel by referring to a decision rendered in a case of Sudhir Prasad @ Sudhir Kumar Prasad Vs. State of Jharkhand--> submits that when the court in similar situation had taken cognizance of more or less of some offences, the said order was quashed by this Court after holding that no such offence is made out even if the order passed by him is illegal.

7. Mr. Shailesh, learned counsel appearing for the Vigilance submits that in view of the submission which has been made on 29.1.2015, he did peruse the case diary to find out as to whether there has been any allegation of having undue pecuniary advantage for passing order in the revision application but after going through the case diary, he did not find any such allegation. However, this is the fact that the relevant record was found missing by the Investigating Officer during investigation.

8. Thus, it does transpire that the petitioner is being prosecuted for the offences under which cognizance has been taken as the order passed by the petitioner being revisional authority has been taken by the prosecution to be an illegal order but even if the order passed by the petitioner being revisional authority is

illegal, offence of forgery never gets attracted, as the act of passing even illegal order, cannot bring it within the purview of the provision as contained in Section 464 of the Indian Penal Code, defining the offence of forgery for simple reason that illegal order cannot be taken to be a false document in terms of Section 464 of the Indian Penal Code and if it is not a false document, then the question of committing offence under Sections 467, 468, 469 and 471 of the Indian Penal Code does not arise.

9. Going further in the matter, one can hardly conceive as to how offence either under Section 423 or 424 is made out when there has been no case of dishonest or fraudulent execution of deed of transfer containing false statement of consideration nor it is the case of dishonest or fraudulent removal of concealment of the property.

10. Likewise in the facts and circumstances, no offence is made out under Section 420 of the Indian Penal Code nor the allegation seems to be there against the petitioner for committing offence punishable under Section 201 of the Indian Penal Code. There also does not seem to be any material showing that the order was passed after getting undue pecuniary advantage and thereby the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is also not made out.

11. Under the circumstances, entire prosecution case including the order taking cognizance is hereby quashed so far as it relates to the petitioner.

12. In the result, this application stands allowed.

