(2014) 01 JH CK 0003

In the Jharkhand High Court

Case No : Criminal Rev. No''s. 262 of 2013

Shyamal Chakravarty and Others APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B) 120B 420 468 471
Prevention of Corruption Act, 1988 — Section 13(1)(c)(d) 13(1)(d) 13(2)

Citation : (2014) 2 AJR 94 : (2014) 1 JLJR 534

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Kashyap, Indrajit Sinha and Manish Kumar, for the Appellant; M. Khan, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Since all the five aforesaid revision applications arising out of the same case were heard together and are being disposed of by this common order. All these applications were initially filed against the order dated 8.3.2013 passed by Special Judge, C.B.I., Ranchi in R.C. No. 14(A) of 2009-AHD-R whereby prayer for discharge had been rejected. Subsequently, the order dated 29.4.2013 was challenged whereby charges have been framed u/s 120B read with Sections 420 /477A of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Further they were charged under Sections 420 and 477A of the Indian Penal Code simpliciter.

2. Before adverting to the submissions advanced on behalf of the parties, case of the prosecution needs to be taken notice of.

3. It is the case of the prosecution that during course of investigation of R.C. No. 11(A) of 2009-AHD-R registered against Dr. Pradeep Kumar, co-accused and others, the acts of criminal conspiracy on the part of these petitioners as well as said Dr. Pradeep Kumar came to light wherein it was found that Dr. Pradeep

Kumar, IAS while functioning as Secretary to the Health Department, Government of Jharkhand, had entered into a criminal conspiracy during 2008-09 with Dr. Vijay Shanker Narayan Singh, the then State RCH Officer, Namkum, Ranchi, M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco), Jamshedpur and also with some other unknown persons. In furtherance of the said conspiracy, they by abusing their respective official position as public servants, fraudulently and dishonestly, ordered for the procurement of 72 chassis, out of the fund allotted for implementation of National Rural Health Mission Scheme from M/s. Tata Motors Ltd., Jamshedpur. After purchasing the chassis, it was given to M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco) for its conversion into Mobile Medical Units (MMU) on the rates which were quite exorbitant which caused heavy pecuniary loss to the Government of India and corresponding pecuniary gain to themselves and/or to others. It got transpired that quotations were received for conversion of chassis into Mobile Medical Units. The firms which quoted their rates for conversion were M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco) to which the petitioners Naveen Bhalotia, Krishna Bhalotia and Gajanand Bhalotia are the Directors, M/s. Crown Industries and M/s. Bharat Automobiles Pvt. Ltd. to which petitioner Nitish Bhalotia is the Director. Of them M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco) had quoted its rate as Rs. 47,000,00/- plus taxes for conversion of one chassis into Mobile Medical Unit. Since M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco) was found lowest bidder, work was awarded to him.

4. It was further found that though three quotations have been submitted but all the quotations have been originated from the single source i.e., M/s. Bebbco to whom initially order was placed on 7.11.2008 for conversion of seven chassis into Mobile Medical Units. Subsequently, further order was placed with him for conversion of 72 chassis into Mobile Medical Units. After converting all the chassis into Mobile Medical Units, it were placed with the Secretary of the Department and bills for total sum of Rs. 41,77,12,500 were also placed against which a sum of Rs. 40,07,92,500/- was paid. Rest of the amount of Rs. 1,69,20,000/- remains to be paid to the firm. As per the terms and conditions, 70% of the total amount was payable at the time of placing the order and remaining 30% of the amount was to be paid after delivery but it was not adhere to as instead of 70%, 90% advance was given at the time of placing the order and thereby undue favour was shown to the firm.

5. Further it was found that only a sum of Rs. 23.75 lakh, as per the instruction of the Government of India, was to be spent for each Mobile Medical Unit, whereas a sum of Rs. 47 lakh plus taxes per unit as well as the cost of chassis was paid. That apart, as per the stipulation of the Government of India, State was supposed to have 24 numbers of Mobile Medical Units but 103 Mobile Medical Units was purchased.

6. Further case is that after conversion of the chassis into Mobile Medical Unit, an

advertisement was issued inviting ''expression of interest'' from NGOs for its operation. Pursuant to that, 38 NGOs including one NGO (Gramin Janchetna Sansthan) being run by one Shyamal Chakravorty, one of the petitioners responded. Of them 20 NGOs were selected for operationalisation of Mobile Medical Units. The NGO run by Shyamal Chakravorty, a close confidante of Dr. Pradeep Kumar had received five Medical Mobile Units though later on he like that of other NGOs had returned it as required amount of money to be given to the NGOs as per the stipulation of MMU were not paid. Thus, the purpose for which Mobile Medical Units were acquired in hot haste by offering exorbitant rate, could not be addressed in the manner, it ought to have been. Thus, it has been alleged that omission and commission attributable to Dr. Pradeep Kumar, the then Health Secretary, Dr. Vijay Shankar Narain Singh, the then State RCH Officer, Ranchi, M/s. Bharat Engineering and Body Building Company Pvt. Ltd. (Bebbco), Jamshedpur and some unknown persons constitute offences punishable under Sections 120(B), 420, 468 and 471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act. Accordingly, R.C. No. 14(A) of 2009-AHD-R was registered against Dr. Pradeep Kumar, Dr. Vijay Shankar Narayan Singh, M/s. Bebbco and some unknown persons. The matter was taken up for investigation.

7. During investigation, it came to light that on the last day fixed for submitting tender, accused Shyamal Chakravorty arranged for three quotations from three firms, namely, M/s. BEBBCO, M/s. Metal Crown Industries and M/s. Bharat Automobiles Pvt. Ltd. and got it submitted by depositing a cheque of Rs. 5000/- as an earnest money with the quotation though in terms of the NIT, earnest money was required to be submitted through Bank Draft and this was done to give false impression that the quotation has been submitted within time and that all the tenderers who submitted their quotations are father and sons.

8. It was further gathered that M/s. BEBBCO had purchased medical equipments which were fitted in the vehicles by making payment of Rs. 6,01,70,847/- only but as against that M/s. BEBBCO was paid a sum of Rs. 29.23 crores. Thus, there appears to be a great difference between purchase price and the price paid and the difference was to the extent of Rs. 23,21,29,153/-.

9. Further it was found that for body building M/s. BEBBCO was paid a sum of Rs. 7.90 crores @ Rs. 10 lakh per unit which is quite exorbitant as the firm had charged only Rs. 6.10 lakh for conversion of chassis of equal size into staff bus to the State Health Society. Thus, loss on this count is quantified to Rs. 3.10 crores. Thus, total capital cost of construction/fabrication of 79 Mobile clinics comes out to Rs. 12,52,57,367/- but as against that a sum of Rs. 40,39,151,621/- was paid to M/s. BEBBCO. Thus, the difference which comes out is to the extent of Rs. 27,86,58,254/- (Rupees twenty seven crores eighty six lakh fifty eight thousand two fifty four).

10. Though, huge expenditure was made for procurement of Mobile Medical Unit but no budgetary allocation was there. The payment of the cost of conversion of

chassis into Mobile Medical Unit was made to M/s. BEBBCO out of the fund allocated for different purposes of NRHM.

11. Further it got transpired during investigation that one Rajendra Kumar, younger brother of Dr. Pradeep Kumar had opened an account in the Bank of India, Vikash Bhawan, Ranchi in the name of M/s. ESSAR Enterprises, a partnership firm to which Shyamal Chakravorty (petitioner) happens to be the co-partner who has had proprietorship firm in the name and style of M/s. Rhea Enterprises. The said Shyamal Chakravorty who had close proximity with Dr. Pradeep Kumar had garnered orders for supply of computers, air-conditioners and other electronics gadgets in the name of style of M/s. Rhea Enterprises and received payment.

12. Further it was found that on three occasions the fund was transferred from the account of M/s. ESSAR Enterprises to the account of Rajendra Kumar maintained with Bank of India, Ratu Road Branch, Ranchi and also to the account of M/s. Nand Lal HUF. Late Nand Lal Meena happens to be the father of accused Dr. Pradeep Kumar and the said Rajendra Kumar.

13. Further it got transpired that the petitioner arranged for transfer of Rs. 22 lakhs from the account of Miss Lalventluangi of Aizwal, Mizoram to the account of M/s. Esser Enterprises. Father of Miss Lalventluangi happened to be the mechanic in the office of one Sh. Satyabrat Bhattacharjee, Executive Engineer, PWD, Aizwal, who happens to be maternal brother of Shyamal Chakravorty. According to Miss Lalventluangi, loan had been given to Satyabrat Bhattacharjee. Thus, it looks quite suspicious that how Miss Lalventluangi could transfer Rs. 22 lakh when credit balance of her account was only Rs. 7000/-. On the day when Rs. 22 lakh was deposited in the account of said Miss Lalventluangi, a draft of that amount was purchased by her in favour of M/s. ESSER Enterprises.

14. Further it was found that a flat at Kolkata had been purchased on 29.7.2009 in the joint name of M/s. Nand Lal, HUF and Shyamal Chakravorty. Thus, it was found that Shyamal Chakravorty had had close nexus with Dr. Pradeep Kumar, who in conspiracy with each other did commit illegal act whereby State exchequer was put to a great loss.

15. After completion of investigation, charge sheet was submitted against said Dr. Pradeep Kumar, the then Health Secretary, Dr. Vijay Shankar Narain Singh, the then State RCH Officer, Ranchi and Navin Bhalotia, Krishna Bhalotia and Gajanand Bhalotia, three Directors of M/s. Bebbco and Nitish Bhalotia, Director of M/s. Bharat Automobile Pvt. Ltd. and Shyamal Chakravorty u/s 120B, 420, 477A of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Accordingly, cognizance of the offences was taken against them. In due course, application for discharge was filed on behalf of the petitioners which was rejected.

16. That order was challenged before this Court. However, during pendency when the charges were framed, order framing charge was also challenged.

17. Learned counsel appearing for the petitioners, who are the Directors of M/s. Bebbco submitted that the petitioners have been made accused simply for the reason that they happen to be the Directors of the Company, though no specific role played by the petitioners in the alleged offence has ever been brought and that out of three bidders, two are the private company incorporated under the Companies Act and one of the partnership firm. All the three bidders have separate office, separate work and separate registration with Inspector of Factories and that it is a matter of chance that only three persons submitted their quotations though earlier more than 50 companies had participated and at that time, bid was accepted of Rs. 66 lakh plus tax but nobody raised their eye brows at that time.

18. Further it was submitted that in stead of demand draft, cheques were submitted along with quotations which has been taken to be incriminating circumstances though nothing wrong was done even by making payment of earnest money through cheque and if it was not in conformity with the terms and conditions, the tender committee could have rejected the tender and the other circumstance which is being used is that instead of 70%, 90% advance has been made but that is wrong on the part of the C.B.I. to take that plea as only in the last installment of the advancement, 90% amount was advanced which cannot be a culpable act on the part of the petitioners.

19. Further it was submitted that another incriminating circumstance which has been brought against the petitioners is that equipment installed in the Mobile Medical Unit was purchased for Rs. 6,01,70,847/- whereas M/s. Bebbco charged a sum of Rs. 29.23 crores and that for body building a sum of Rs. 10 lacs for per unit was paid instead of Rs. 6.10 lacs but the C.B.I. has failed to take into account that quotation was submitted by the Company for supply of fully equipped MMUs and sum offered was inclusive of both body building and equipping the MMUs and providing free services and maintenance of MMUs for three years and that apart, equipments were not only to be installed but it required proper test and to check functioning of each and every equipment.

20. Further additional expenditure was also to be incurred to make the vehicle run with all the equipments on the roads of the far flung rural areas of Jharkhand.

21. Further it was submitted that accepting the entire allegation to be true, petitioners are at a loss to understand as to how offence of cheating is made out when there has been no allegation of any fraudulent inducement on the part of the petitioners to have an order of converting chassis into Mobile Medical Units.

22. Further no act has been alleged against the petitioners which facilitated the other accused to make falsification of the document and that there has been absolutely no allegation of abetting the other accused i.e., Government officials to have pecuniary advantage by corrupt or illegal means and thereby no offence is made out u/s 13(1)(d) of the Prevention of Corruption Act.

23. Lastly, it was submitted that the company has not been charge sheeted and

therefore, in absence of the Company being made accused or charge sheeted, the Directors cannot be allowed to be prosecuted in absence of any allegation that the Directors were responsible for day-to-day affairs of the Company, in view of the decisions rendered in cases of Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, and R. Kalyani Vs. Janak C. Mehta and Others,

24. So far the petitioner Naveen Bhalotia is concerned, it was submitted on his behalf that the petitioner firm though participated in the bid but it being not found L1 work order was never placed with him. In spite of that, the petitioner, who happens to be the Director of the Company, has been made accused in absence of Company being made accused and thereby the prosecution against the petitioner cannot be maintained and that simply the petitioner had participated in the bid and as such, he cannot be said to have committed offence either u/s 420 or 477A of the Indian Penal Code as the act of the petitioner cannot be said to be fraudulent as admittedly the petitioner had not been awarded the work and in that event, question of inducing the Government servant fraudulently does not arise and at the same time, no evidence is there that the petitioner did anything to induce the other accused to falsify the document. Simultaneously, nothing is there to show that the petitioner got pecuniary advantage by corrupt or illegal means.

25. So far Shyamal Chakravorty is concerned, it was submitted that the petitioner is not a person to whom order was placed for conversion of the chassis to Mobile Medical Unit nor any payment was made to him. The petitioner has simply been alleged to have arranged three quotations from three different firms for its submission but that act does not constitute any offence either u/s 420 or 477A of the Indian Penal Code. The petitioner is being prosecuted also for the reason that he does have close connection with Dr. Pradeep Kumar, who had placed orders with M/s. Rhea Enterprises, belongs to the petitioner but those supplies had nothing to do with the subject matter of this case.

26. So far the allegation of transferring money from the account of M/s. ESSER Enterprises to the account of this petitioner and one Rajendra Kumar is concerned, that transaction had taken place in the year 2007 and therefore, it cannot be connected with the accusation made in the instant case.

27. So far the allegation regarding transfer of fund to the account of M/s. Nand Lal HUF, the petitioner has nothing to do with it as said Rajendra Kumar had transferred the amount from his personal account.

28. So far the allegation of transfer of Rs. 22 lacs to the account of M/s. ESSER Enterprises is concerned, that transaction took place in the year 2007 which cannot have any connection with the accusation made in the instant case.

29. Under the circumstances, one comes to conclusion that no sufficient materials are there for putting the petitioners to frame charges levelled against them.

30. As against this, learned counsel appearing for the C.B.I. submits that circumstances appearing against the petitioners are as such which do indicate that all the petitioners were hand in gloves with other accused including Dr. Pradeep Kumar and secured work order in their favour fraudulently and charged price exorbitantly and thereby it can be said that by corrupt or illegal means accused persons obtained for himself and for other accused pecuniary advantage and thereby they have rightly been prosecuted.

31. Learned counsel further submits that as per the terms of NIT, quotations were to be submitted along with Bank Draft of Rs. 5000/- but it got transpired that quotations were submitted on behalf of all the three companies along with cheque of Rs. 5000/- and number of the cheques and date given over it do suggest that those cheques could not have been issued on 28th day of September, 2008. In spite of that, the petitioners managed to get the work order whereby they in connivance with other accused persons charged exorbitantly and thereby they can be said to have committed offence of cheating and falsification of the document as the co-accused have wrongly shown to have paid the amount to the petitioners from the head under which money was not there.

32. Therefore, under the circumstances, the petitioners are being rightly prosecuted wherein number of witnesses have already been examined and therefore, neither the petitioners deserve to be discharged nor order framing charge warrants to be quashed.

33. Upon hearing the counsel it does appear that the petitioners, namely, Naveen Bhalotia, Krishna Bhalotia and Gajanand Bhalotia are the Directors of M/s. Bebbco. It was the company who submitted its quotation along with cheque as earnest money. Except the company of the petitioners, no other company submitted its quotation and that the company took 90% amount in advance instead of 70% as had been stipulated under terms and conditions and that the company charged exorbitantly.

34. Thus, whatever allegations seem to be there, those allegations are against the company but strangely the company though had been made accused initially but has not been charge sheeted. In stead of the company being charge sheeted, the petitioners, who are the Directors of M/s. Bebbco and also Nitish Bhalotia who is the Director of M/s. Bharat Automobile Pvt. Ltd. have been charge sheeted without there being any allegation that these petitioners were responsible for day-to-day affairs of the company and on account of this alone, the petitioners being Directors cannot be prosecuted in view of the decision rendered in a case of Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, and R. Kalyani Vs. Janak C. Mehta and Others,

35. Besides that accusation which seems to have been made against the company even if is accepted to have been made against the petitioners as indicated above, the act of the petitioners does not constitute offence either of

cheating or falsification of the document.

36. The petitioners have nowhere been alleged to have secured the work order fraudulently. Of course the allegation is there that the company secured work order on the basis of quotation submitted which was not in accordance with terms and condition of NIT. If it was not in conformity with the terms and condition, the tender committee was at his will to cancel it but it has never been cancelled, rather it has been awarded. Had this act been part of the connivance, then members of the tender committee would have been made accused but they have not been made accused. Therefore, the aforesaid act of the petitioners cannot be said to be the fraudulent.

37. Further it be stated that charging price for MMU more, rather exorbitantly as per the case of the C.B.I., who has calculated cost of fabrication and cost of instrument in his own way can never be said to be a fraudulent act.

38. It be stated that earlier for the same kind of MMU suppliers had charged Rs. 66 lacs plus taxes.

39. Going further into the matter, it be stated that charging even excess than what should have been, cannot be said to have had pecuniary advantage by corrupt or illegal means.

40. So far the case of Shyamal Chakravorty is concerned, he has simply been alleged to have been instrumental in submitting quotations on behalf of three firms. That act can never constitute offence either u/s 420 or 477A of the Indian Penal Code. Apart from that allegation, it has also been alleged that this petitioner had had close association with Dr. Pradeep Kumar but nothing has been brought directly or indirectly. Close nexus is being connected with the fact that the brother of Dr. Pradeep Kumar had had one partnership firm in the name and style of M/s. ESSER Enterprises to which this petitioner is the copartner. Certain transactions have been shown to have been made in the individual account from the account of M/s. ESSER Enterprises but that transaction is of the year 2007 which could not have any connection with the alleged offence. Similarly, transfer of Rs. 22 lacs from the account of Miss Lalventluangi to the company i.e., M/s. ESSER Enterprises does not seem to have any connection as it is also of the year 2007 whereas all the allegation as aforesaid is of later point of time.

41. Thus, I do find that none of the accusation made against the petitioners do constitute offence under which charges have been framed and thereby the order framing charge is hereby quashed so far these petitioners are concerned. In the result, the aforesaid applications stand allowed.