(2012) 12 JH CK 0072

In the Jharkhand High Court

Case No : Criminal M.P. No. 697 of 2012

Smt. Madhu Singh — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 109, 120B, 406, 409
Prevention of Corruption Act, 1988 — Section 10, 11, 12, 13, 13(1)(e)

Citation : (2013) 2 JLJR 244

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Kashyap, Samir Saurabh, Nitin Krishna and Sreenu Ganapati, for the Appellant; M. Khan for the C.B.I, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the entire criminal proceeding including the order dated 26.3.2012 whereby and whereunder cognizance of the offence has been taken u/s 109 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act against the petitioner. One Rajiv Sharma had filed a complaint, vide Complaint Case No. 1 of 2009 on 20.1.2009 before the Special Judge, Vigilance, Ranchi against four persons including Kamlesh Kumar Singh, the then Minister, Government of Jharkhand alleging therein that all the accused persons have amassed properties disproportionate to their known source of income. The Special Judge on receiving the complaint sent it before the Vigilance Police Station for its institution and investigation. Accordingly, Vigilance P.S. Case No. 9 of 2009 was registered.

2. On completion of investigation, Vigilance submitted charge-sheet against those named accused persons. However, this Court vide an order passed in W.P. (PIL) No. 4700 of 2008 directed the C.B.I. take further investigation in the matter. The C.B.I. having registered the case under Sections 406, 409, 420, 423,

424, 465, 120B of the Indian Penal Code and also under Sections 11/13(2) read with Section 13(1)(e) of the Prevention of Corruption Act as R.C. No. 5(A)/2010/ AHD-R took up the matter for further investigation.

3. The C.B.I. having completed investigation submitted charge-sheet on 22.12.2011 against Kamlesh Kumar Singh, this petitioner (wife of Kamlesh Kumar Singh) alleging therein that Kamlesh Kumar Singh had amassed properties in the name of his brother and his wife as well as daughter worth Rs. 50 crores and this petitioner even tried to justify the income as her own before the income tax authorities but the assessing authority did find income shown in the return to be false.

4. The court on filing of the charge-sheet took cognizance of the office u/s 109 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act against the petitioner, vide its order dated 22.12.2011 which is under challenge.

5. Mr. A.K. Kashyap, learned Sr. Counsel appearing for the petitioner submitted that the petitioner is a partner of a firm known as M/s Satya Sai Enterprises and this firm has been established prior to her husband becoming an MLA and as such, she had her own income from diary and fishery and has been filing return of income tax since financial year 1984-85 and thereby income tax authority by taking the income and asset of the petitioner as that of her husband has committed illegality. Moreover, the said assessment is subject to appeal but the C.B.I. without coming to independent finding has based his finding on the assessment order made by the income tax authority and thereby the C.B.I., has committed illegality by making the petitioner accused and submitting charge sheet against her.

6. In other words, it was submitted that one would be liable for an offence as an abettor in terms of Section 109 of the Indian Penal Code when act abetted is committed in consequence of the abetment; meaning thereby that abetment has to be preceded the commission of actual offence, i.e. to say that offence is committed in furtherance of abetment but no such case is there of the C.B.I. that the principal accused committed offence u/s 13(1)(e) of the Prevention of. Corruption Act in consequence of the abetment made by the petitioner.

7. Under the circumstances, the order taking cognizance is fit to be quashed.

8. As against this, Mr. Khan, learned counsel appearing for the C.B.I. submitted that Smt. Madhu Singh facilitated concealment of ill-gotten income of her husband by lending her name to properties acquired by him which were far beyond her legitimate income and as such, she is liable to be prosecuted alongwith the main culprit by virtue of the provision as contained in Section 109 of the Indian Penal Code.

9. Having heard learned counsel appearing for the parties, it does appear that on one hand, it is the stand of the C.B.I. that since the petitioner facilitated

concealment of ill-gotten income of the main accused by lending her name over the properties acquired by him, she abetted main accused to acquire properties disproportionate to his income whereas the stand which has been taken on behalf of the petitioner that even if the allegation for the sake of argument is accepted that the petitioner is the named lender of the properties acquired by the main accused Kamlesh Kumar Singh, she cannot be said to have abetted the main culprit to have asset disproportionate to his income rather lending the name over the properties acquired by the main accused would be altogether different transaction. But this submission presently is not acceptable in view of Explanation-II to Section 107 of the Indian Penal Code which does stipulate that offence can be abetted either prior to its commission or at the time of commission of that act. Therefore, this issue required to be gone into at the stage of trial.

10. Further it be stated that it has been well founded proposition that nonpublic servant can be tried for commission of offence u/s 13(1)(e) of the Prevention of Corruption Act with aid of Section 109 of the Indian Penal Code.

11. In this regard, I may refer to a decision rendered in a case of P. Nallammal Etc. Vs. State Rep. by Inspector of Police, wherein the Hon''ble Supreme Court has observed that it is true that Section 10 deals with the case of abetment of offences defined under Sections 8 and 9 and it is also true that Section 12 specifically deals with the case of abetment of offences under Sections 7 and 11. But that is no ground to hold that the Prevention of Corruption Act does not contemplate abetment of any of the offences specified in Section 13 of the Prevention of Corruption Act. Thus, I do not find any illegality with the order taking cognizance and hence, it never warrants to be interfered with by this Court. Accordingly, this application is dismissed.