

(2004) 02 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Criminal Rev. 94 of 2002, 561-A Cr.P.C. 125 of 2002 and 561-A Cr.P.C. 26 of 2003

S.R. Gupta and Others

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Ranbir Penal Code, 1989 — Section 120A, 218

Citation : (2004) 2 JKJ 137

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Advocate : D.C. Raina, Sakal Bhushan and P.N. Raina, for the Appellant; B.S. Salathia, AAG, for the Respondent

Judgement

Y.P. Nargotra, J.—The Vigilance Organization, Jammu received information that there was large scale bungling and mis-utilization of funds

committed by the officers of J&K Energy Development Agency (JAKEDA) for the purchase of Solar Devices. Preliminary enquiry was conducted

which led to the registration of FIR No. 6/1998. The investigation was conducted by the Vigilance Organization into the FIR and after completion

thereof, four separate charge sheets stand filed in the Court of Special Judge, Anti-Corruption, Jammu against the accused. The facts alleged for

constituting the offences in nutshell be stated as follows.

2. Government of Jammu and Kashmir issued Government Order No. 10-Ind. of 1995 dated 19th January 1995, whereby a package of

incentives was released for the Industrial Units of the State. One such incentive was Price Preference up to twelve and half percent for all

registered SSI Units, meaning thereby that if the rates quoted by the SSI Units as compared to the lowest quotation is within twelve and half

percent then it would be mandatory on the part of the Purchase Committee to place the orders on the said SSI Units provided quality of the

contract of such Unit is not doubtful.

3. In respect of JAKEDA, two Committees were constituted vide Government Order No. 116-ST of 1995 dated 20th November 1995. One

Committee was given the power to decide purchases whose contract value was more than Rs. 25 lacs while the other was empowered to decide

purchases of the contract value of which was less than Rs. 25 lacs. Both the purchase Committees consisted of Chief Executive and Assistant

Directors, JAKEDA and co-opted members from some Government Departments.

4. The Chief Executive, JAKEDA issue NIT dated 17th September 1996 for the year 1996-97 for supply of four thousand Units of Solar

Domestic Lights as per technical specifications prescribed. In response, 11 Firms submitted tenders. Five Firms were not considered because they

have not deposited the samples. Rest of the six tenders were considered by the Purchase Committee in its meeting on 5th February 1999. The

names of five firms were approved out of which four were Small Scale Industrial Units of the Suppliers/accused. The supply orders of different

contract value were placed with the said four Firms after their rates Were approved by the Purchase Committee/accused by giving them Price

Preference of about 8% because Units of these four Firms were registered SSI Units and rates quoted by them were within the parameters of

price preference. After the issuance of the supply orders, the Firm of Supplier/accused made the supplies of Solar Domestic Lights. The

prosecution through the said four Charge Sheets has been launched against the members of the Purchase Committee, who placed the orders for

supply with four firms, the officers of District Industries Centre, who facilitated the registration of said Firms as SSI Units and the Suppliers of the

Domestic Solar Lights.

5. This case pertains to Challan No. 28. The case of the prosecution is that in pursuance of a conspiracy, accused No. 6, 7 and 8, officials of

District Industries Centre, Budgam, registered bogus Unit of accused No. 9 by issuing false certificates in favour of the Firm. The members of the

Purchase Committee, accused No. 1 to 5 by accepting the said registration placed the supply order with the Firm of accused No. 9 and the

accused No. 9 supplied the Domestic Solar Lights to JAKEDA after acquiring the same in finished form from other Firms by projecting the same

as its assembled articles in its Unit and thereby defrauded the Government by obtaining the price preference. The accused are alleged to have

committed the offences u/s 5(2) of the Prevention of Corruption Act read with Section 167A, 120B, 420, 467 and 468 RPC.

6. As regards accused No. 3, 6 and 8, learned Trial Court, after hearing the accused and the prosecution on the question of charge, came to the

conclusion that prima facie, allegations were made out that they in connivance with accused No. 9 framed false certificates in favour of the firm of

accused No. 9 and thus they conspired to commit offence u/s 218 RPC. It was further found that the offence u/s 420A RPC was, prima facie,

made out against the accused No. 9 as he had supplied articles after acquiring the same in finished form from other Firms while projecting the same

to have been assembled in his Unit and so Offence of criminal conspiracy to commit the offence u/s 420A RPC was prima facie made out against

accused No. 1 to 5 and accused No. 9.

7. Aggrieved by the order of learned Trial Court, accused No. 1, 2, 3 and 5, members of the Purchase Committee, have filed Petition No.

125/2002 561-A Cr. P. C and 26/2003. Likewise, accused No. 6, 7 and 8, officials of District Industries Centre, Budgam have filed Criminal

Revision No. 94/2002.

8. Learned counsel for the accused No. 1, 2, 3 and 5/petitioners has argued that there is no material available on the file to indicate the meeting of

the minds between the petitioner and the other accused for inferring the criminal conspiracy. He has submitted that the Purchase committee was

bound in terms of the Government Order to accept the tender of accused No. 9 by granting him the benefit of incentive of Price Preference as the

Unit of accused No. 9 was duly registered Small Scale Industrial Unit with the Industries Department. The members of the Purchase Committee

acted according to the law as well as to the Government Order yet the learned Trial Court without appreciating the facts in issue in proper

perspective has come to hold that they were in league with accused No. 9. He

has further argued that the Purchase Committee had no role to play in the registration of the Firm as Small Scale Industrial Unit, as such, they could not in any manner be in league or in connivance with accused No. 6, 7 and 8 for that matter with accused No. 9. As the registration of the Firm of accused No. 9 was valid and Purchase Committee had no competence to examine its validity, no exception can be taken against the Purchase Committee for having granted the price preference to the Firm of accused No. 9 by accepting its tender for supply of Domestic Solar Lights. Learned counsel has further argued that accused No.9 had made the supply of Domestic Solar Lights in accordance with the specifications of the Supply and had even removed the defects pointed out by the Officers of the JAKEDA. The quality of the Domestic Solar Lights so supplied was indisputably ,up to the mark. The price paid was in accordance with the Supply Order and there is no allegation of the prosecution that any undue advantage was given in any manner to the accused No. 9 while approving the rates. The question of entering into criminal conspiracy with accused No. 9 cannot arise. According to the learned counsel for the accused-petitioner, the learned Trial Court was not right in holding that the accused members of the Purchase Committee deserved to be charged. There was no prima Facie case made out, as such, they ought to have been discharged.

9. On the other hand, contention of Mr. B. S. Salathia, learned AAG that members of the Purchase Committee were in conspiracy with accused No. 9 because they were bound to see the Unit of the accused No. 9 to find out as to whether they were actually assembling the Domestic Solar Lights in their Unit in order to decide whether any price preference should be allowed in their favour or not but it was not done. Mr. Salathia further argued that members of the Purchase Committee without examining as to whether the Firm of accused No. 9 was capable of supplying the required quantity of Domestic Solar Lights placed the supply order with the Firm by granting it the incentive of price preference. The members of the Purchase Committee, according to Mr. Salathia, were, therefore, can be said to be in league with accused No. 9 and are equally responsible for the fraud committed by accused No. 9 in taking undue advantage of price preference.

10. As already said, the Government of Jammu and Kashmir had issued Government Order No. 10-Ind. Of 1995 dated 19th January 1995,

whereby a package of incentives was released for the Industrial Units of the State. Under this Government Order, the Purchase Committee of the

accused was bound to accept the tender of the Registered Small Scale Industrial Units if the rates quoted by the said registered SSI Units were

within twelve and half percent as compared to the lowest quotation. It is no body's case that the rates offered by the firm of accused No. 9 were

not within twelve and half percent as compared to the lowest quotation offered by the un-registered SSI Units. It is also not the case of the

prosecution that the Firm of accused No. 9 was not a registered SSI Unit and, therefore, was not entitled to price preference. It is also not the

case of the prosecution that the accused's Firm did not have the capacity to supply the articles ordered to be supplied through Supply Order by the

accused, therefore, no fault can be attributed to the Purchase Committee in its act of approving the tender of the Firm of accused No. 9. The

members of the Purchase Committee are sought to be roped in by the prosecution on the basis of alleged conspiracy, which according to the

prosecution they hatched with accused No. 9. The Criminal conspiracy is defined in Section 120A of the Ranbir Panel Code which reads as

follows:-

120-A. Definition of Criminal Conspiracy.--When two or more persons agree to do, or cause to be done-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy:

Provided that, no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the

agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: -- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

11. From the bare reading of this Section, it is manifest that for making out the criminal conspiracy, there must be an agreement of some kind.

There must be unity of design or purpose, a concert of will and endeavor

comprising what has agreed to, not what has been done. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. No written, formal, or definite agreement is necessary to constitute a conspiracy, its existence being generally a matter of inference from the acts of the parties. To infer the conspiracy, there must be a meeting of the minds; a mutual implied undertaking or tacit agreement, all the parties working together with a single design, for the accomplishment of the common purpose. In view of the nature of the offence, conspiracies if not always/mostly hatched in privacy and, therefore, direct evidence is seldom available. If such is the case, then it has to be gathered-from the surrounding circumstances and acts in which the accused are alleged to have acted for commission of the offence. In the present case, so far as the Purchase committee is concerned, it had no role to play admittedly in the registration of the Unit as Small Scale Industrial Unit. The registration of a Unit as SSI Unit is granted by a separate Department of the Government. The members of the Purchase Committee have no role to play in such registration. The Unit of accused No. 9 was registered even when the NIT had not been floated for the purchase of Domestic Solar Lights. To the NIT floated, all the Firms dealing in the supply of Domestic Solar Lights could make their bids or tenders quoting their individual rates. There is no evidence on record to show that any of these Firms knew what rates were being offered by the other, meaning thereby the pooling of the rates was not there. Apart from un-registered Small Scale Industrial Units, registered SSI Units could make their tenders. Acceptability of the rates offered by a registered SSI Unit depended upon the fact that rates offered by it fell within the price preference rates as compared to the lowest rates offered by any of the other Firms. Thus, there could be no certainty that the tender submitted by a particular Firm would be accepted by the Purchase Committee. The Purchase Committee has not shown any undue favour in accepting the tender of the Firm of the accused No. 9. The Firm of accused No. 9 was a duly registered SSI Unit, therefore, there could not be and cannot be any inference of meeting of minds or an agreement between the members of the Purchase committee and that of accused No. 9. The articles for which the supply order has been placed stands duly supplied. The quality of

the Domestic Solar Lights supplied by the accused No. 9 is, admittedly, not below the specifications or of low standard.

12. In this view of the position, in my view, no inference of any criminal conspiracy can be drawn against the members of the Purchase Committee.

Mr. B.S. Salathia, learned AAG was pointedly asked to identify the evidence on which it can be shown that what the Purchase Committee omitted

to do which it ought to have done according to law. Mr. Salathia has only submitted that the Purchase committee should have visited the Unit of

accused No. 9 so as to find out whether the Unit was having the capacity to make the supplies asked for by the Supply Order. Submission of Mr.

Salathia is without any force because it is not the case of the prosecution that the accused has not been able to make the supplies of the articles for

which the supply order was given to him. As the accused has supplied the articles asked for no question of incapacity to supply the same can arise.

13. I have perused the record of the case thoroughly and am of the view that there is no material available on the record to link the accused

members of the Purchase committee with the commission of any offence, as they cannot be said to be in conspiracy with accused No. 9 who

supplied the articles or with the accused No. 6, 7 and 8, who were instrumental in registration of the Unit of accused No. 9 as Small Scale

Industrial Unit. As per the said Government order, members of the Purchase Committee were to see only that they approved the rates of SSI

Units which was duly registered as such and the rates offered by it were the lowest falling within the permissible limits of price preference. Since

admittedly, the Unit of accused no. 9 was duly registered with Industries Department and the rates offered were the lowest falling within the

permissible limits of price preference, action of Purchase Committee in granting the price preference in favour of the Unit of accused No. 9 cannot

be faulted with, therefore, the accused members of the Purchase Committee deserve to be discharged irrespective of the fact that facts alleged

disclose the commission of the offence u/s 420A RPC independently against the accused No. 9.

14. As regards accused No. 6, 7 and 8, there is prima facie evidence available on record as noticed by the learned Trial Court also that they had

given the reports for facilitating the registration of the Firm of accused No. 9, when in fact the Unit of accused No. 9 was almost non-existent and

non-functional. Learned Trial Court was right in holding that on the basis of these certificates and reports made by accused No. 6, 7 and 8, offence

u/s 218 read with Section 120B RPC was clearly made out against them and accused No. 9. Learned Trial court has also found commission of the

offence u/s 218 RPC against accused No. 3 on the basis of his letter issued to Dy. Commissioner Sales Tax Vigilance and Inspections Jammu

dated 25.6.1997 that consignment containing 200 numbers of CFL-II Luminaires of SDLs which had been seized by officials of Sales Tax

Department at Lakhanpur Check Post were to be replaced by M/s. Cashco Electronics already supplied to the Department. Learned Trial Court

took the view that since accused No. 3 had himself admitted that the systems supplied by the accused to the Department required replacement of

the luminaries in the said letter, therefore, his certificate issued earlier to the effect that systems received were according to the specifications was

false and, therefore, offence u/s 218 RPC was constituted against him also prima facie. Merely because replacement of some of the components of

the systems was ordered it does not necessary mean that systems supplied by the accused were not according to the specifications. The defect

could come up in the system after supply and, therefore, simply because replacement was ordered. It does not mean that certificate was false.

Therefore, learned Trial Court's view that offence u/s 218 RPC was also made out against accused No. 3 is not correct and the accused No. 3 on

that count also deserves to be discharged.

15. For the said reasons, petition No. 561-A Cr. P. C 125/2002 and 26/03, filed by accused No. 1, 2, 3 and 5 are allowed and Cr. Revision No.

94/2002, filed by accused No. 6, 7 and 8 are dismissed. The record of the case along with copy of this order be returned to the learned Trial

Court.