(2012) 04 DEL CK 0113

In the Delhi High Court

Case No : Bail Application 444 of 2012

Sumit Tandon APPELLANT

Vs

CBI RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467, 468
Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2), 3(1), 4(2)

Citation : (2012) 3 ILR Delhi 729

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Ajay Burman, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Ms. Justice Mukta Gupta

1. The Petitioner seeks anticipatory bail in RC No. 220 2012 E 0001 u/s 420/465/468/471/ IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (in short the PC Act) registered by the CBI. The grievance of the Petitioner is that the Petitioner applied for an anticipatory bail before the Learned Special Judge, Delhi but the same was dismissed on the ground that the Court had no territorial jurisdiction to entertain the anticipatory bail application. According to the learned counsel for the Petitioner, the Court at Delhi only has jurisdiction to try the offence and thus the learned Special Judge erred in rejecting the anticipatory bail application for want of territorial jurisdiction. The FIR by CBI has been registered at Delhi. The Petitioner has been asked to produce documents at Delhi and the treasury from which the money has been embezzled is also at Delhi. Hence, even though the copy of the FIR has been filed by the CBI and the accused are produced for remand before the learned Special Judge, Gaziabad, the only Court which is competent to try the matter is the Court of learned Special Judge, CBI at Delhi. Reliance in this regard is placed on C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, and

Sanjay Tripathi Vs. CBI,

2. Learned counsel for the Respondent on the other hand contends that the abovementioned FIR was registered on the direction of Hon''ble High Court at Allahabad. After registration of FIR, the copy of the FIR was sent to and all the accused are being produced for remand before the learned Special Judge, Gaziabad as the corruption and embezzlement of Government funds has taken place in Uttar Pradesh.

3. I have heard learned counsel for the parties. The facts as set out in the abovementioned FIR are that the Hon''ble High Court of Judicature at Allahabad vide order dated 15th November, 2011 passed in Writ Petition No. 3611/2011 (PIL) and other connected writ petitions directed the CBI to conduct preliminary enquiry into the matter of execution and implementation of National Rural Health Mission (NRHM) Scheme and utilization of funds at various levels during such implementation in the entire State of Uttar Pradesh, register regular case in case of persons against whom prima facie cognizable offence is made out and proceed in accordance with law. The said enquiry was directed to be conducted from the period 2005-2006 till date. On the basis of the said direction, 5 separate preliminary enquiries were registered in different branches of CBI at New Delhi in respect of alleged irregularities in the utilization of funds of Government of India allocated for civil construction and upgradation of various hospitals in Uttar Pradesh under NRHM Scheme during the period 2005-2006 till date. NRHM was launched by Government of India on 12th April, 2005 with a view to provide accessible, adequate, affordable, accountable and reliable health care to all persons particularly the vulnerable sections of society residing in remote areas and in this regard a MOU was entered into between the Government of India and the Govt. of Uttar Pradesh on 22nd November, 2006 which governs the implementation of the Mission in the State. The Mission Directorate (NRHM) Uttar Pradesh received huge funds running into crores of rupees from Ministry of Health and Family Welfare (MOHFW) Govt. of India during the period 2009-2010 for improvement of Entrance Zone and facility of District Level hospitals. It was decided to improve 134 hospitals of the State for which Rs. 13.40 crores was allotted to Construction & Design Services (C&US) U.P. Jal Nigam, Lucknow in July, 2009 by the Executive Body of NRHM Uttar Pradesh. During the period 2009-2010 M/s. Surgicoin Mediquip Pvt. Ltd., Mohan Nagar, Ghaziabad through its Directors and representatives entered into a criminal conspiracy with M/s Modern Interiors, Lucknow and Ramesh Bhati of M/s. Ankur Goods & Parcel Services at Gaziabad with the illegal object to cheat the Central Government funded NRHM funds placed at the disposal of office of Director General Family Welfare, Uttar Pradesh in the matter of upgradation of 134 hospitals in Uttar Pradesh. The various accused including the then Minister of Family Welfare, Uttar Pradesh and the officials by abusing their official position as public servants, in collusion with the Directors/ representatives of the above said private firms and in order to give undue favour to the said firms, identified 27 items to be supplied to 134 hospitals for up gradation work without consulting the concerned District

Hospital authorities and used forged rate estimates without making any comparison with the then DGS&D, CPWD, PWD rates or actually conducting any market survey for getting approval of the competent authority. The estimates of the aforesaid 27 items were prepared and given by representatives of M/s. Surgicoin Mediquip Pvt. Ltd., Gaziabad to the officials of C&DS Gaziabad and the rates of items in terms of other firms were collected in such a way that M/s. Surgicoin may get the tender for supply of abovementioned items. Subsequently the work relating to upgradation work was allotted to M/s. Surgicoin Mediquip Pvt. Ltd., Gaziabad for 114 hospitals and M/s. Modern Interiors, Lucknow for 20 hospitals. These firms supplied the items at exorbitant rates to the extent of 5 times more than the existing market rates, thus causing wrongful loss to the extent of Rs. 5.36 crores to the Government exchequer. It is thus alleged that the accused along with unknown persons committed offence u/s 120-B IPC read with 420/467/468/471 IPC and section 13(2) read with 13(1)(d) of the PC Act and substantive offence thereof.

4. Thus, the cause of action in terms of Section 4(2) of PC Act took place in Uttar Pradesh as the fund was not embezzled at the level of Central Government but after the fund was entrusted for disposal to the Directorate Mission NRHM, U.P., the same was embezzled. Section 4(2)of the PC Act reads as under:

4.Cases triable by special Judges.

(2) Every offence specified in sub-Section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or, where there was more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

5. In the C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, it was held:

34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is u/s 13(1)(c) and also Section 13(1)(d) of the PC Act. The first among them is described thus:

A public servant is said to commit the offence of criminal misconduct,- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so.

The next offence is described like this:

A public servant is said to commit the offence of criminal misconduct,-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

35. We have no doubt in our mind that the hub of the act envisaged in first of those two offences is "dishonestly or fraudulently misappropriates". Similarly the hinge of the act envisaged in the second section is "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

36. The above acts were complete in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences u/s 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

6. It would be thus evident that in the present case, the misappropriation, embezzlement and the offence u/s 13 PC Act were committed in the State of Uttar Pradesh. The offence having been committed in the State of Uttar Pradesh, in terms of Section 4(2) of the PC Act, the Special Judge, Gaziabad at Uttar Pradesh is competent to try the same and the learned Special Judge, Delhi has committed no error in dismissing the application of the Petitioner for anticipatory bail for want of territorial jurisdiction. Petition is dismissed.

