
(2001) 02 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 1617 of 1996

Sushil Kumar Modi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 34, 89, 89(1), 89(2)

Citation : (2001) 2 PLJR 105

Hon'ble Judges : S.N. Jha, J; Narayan Roy, J

Bench : Division Bench

Advocate : Ravi Shanker Prasad and Sujeet Kumar Sinha in 1617, Mr. P.K. Shahi in 602, for the Appellant; B.B. Ahuja and L.N. Rastogi for Income-tax Department, Mr. D. Roy Choudhary for Enforcement Directorate, Mr. Ajay Kumar Tripathy for the Central Govt., Mr. Ganga Prasad Roy For the State, for the Respondent

Judgement

1. This order is being passed on the point of jurisdiction of this Bench to monitor the investigation of the AHD cases consequent upon the division of the State of Bihar under the Bihar Reorganization Act, 2000. By judgment and order dated 11.3.96 this Court directed the Central Bureau of Investigation (CBI) to inquire and scrutinize all cases of excess drawals and expenditure in the Animal Husbandry Department in the State of Bihar during the period 1977- 78 to 1995-96 and lodge cases where the drawals are found to be fraudulent in character, and take the investigation in those cases to its logical end. The investigations by the State police already instituted were directed to remain suspended in the meantime. While upholding the judgment the Supreme Court by its order dated 19.3.96 in Civil Appeal nos. 5177-5181 of 1996, the CBI was directed to take over the investigation of the cases already instituted by the police. To this extent the order of this Court that the cases already instituted by the State police shall remain suspended was modified. The Supreme Court also directed, to alleviate the apprehension of the State about the investigation by the CBI, that the same would be,

under the overall control and supervision of the Chief Justice of the Patna High Court. The CBI officers entrusted with the investigation shall, apart from the concerned criminal court, inform the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and may, if they need any directions in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before Bench presided over by him or constitute any other appropriate Bench.

In the light of the above direction of the Supreme Court the work of control and supervision-what has come to be known as "monitoring"-was assigned to the Bench comprising of one of us (S. N. Jha, J.) and S. J. Mukhopadhyaya, J. (since allocated to the High Court of Jharkhand), by the then Chief Justice. Thereafter, progress reports were submitted and the Bench gave directions from time to time.

2. In the wake of division of the State of Bihar and establishment of a separate High Court for the newly created State of Jharkhand, considering that majority of cases had originated from places which now fall within the State of Jharkhand under the exclusive territorial jurisdiction of the Jharkhand High Court, on 10.11.2000 this Court asked the CBI to seek clarification from the Supreme Court about the monitoring of investigation by this Court and/or the Jharkhand High Court. I.A. Nos. 1-5 of 2000 were accordingly filed in the Supreme Court in the disposed of Civil Appeal Nos. 5177-5181 of 1996, which were disposed of on 13.12.2000.

3. Copy of the said order dated 13.12.2000 has been produced for our perusal. Though the applications were apparently filed in the context of order dated 19.3.96 (supra), arguments seem to have been made on the point of transfer of cases u/s 89 (1) of the Reorganization Act. While according to CBI 52 out of 61 cases stand transferred to corresponding courts etc. in the State of Jharkhand, on behalf of some of the accused this was disputed. Their Lordships did not decide the dispute observing that section 89(2) of the Act provides a machinery to decide whenever any question arises as to whether any proceeding should stand transferred under sub-section (1) or not. It may be mentioned that a Special Bench of three Judges has since been constituted by the Chief Justice which is in seisin of the matter.

4. It may at this stage be pointed out that out of the cases registered so far, investigation in as many as 24 cases is said to be still pending, that is, no chargesheet has been submitted in those cases. In seven other cases though chargesheets have been submitted, further investigation is going on under orders of the Court.

5. Having regard to the clear language of section 89 of the Act we have no doubt in our mind that the cases in which the investigation is still pending, that is, cases in which chargesheet has not been submitted, do not come within the ambit of that section. Police investigation is not a proceeding pending before any

Court, Tribunal, authority or officer within the meaning of section 89(1) of the Act. The subject matter of dispute falling for consideration before the Special Bench u/s 89(2) of the Act being transfer of proceedings before courts etc., we do not think, the order which we propose to pass in any manner would create any conflict with the order/decision which may eventually be passed by Special Bench-as was feebly indicated in some quarters in course of hearing.

6. We may observe that by our present order what we are considering is not "transfer" of cases, as such; we are concerned only with the "monitoring" of the investigation i.e. giving directions to the Investigating Agency-as directed by the Supreme Court. It is relevant to mention here that on another occasion vide order dated 5.11.96 in Civil Appeal Nos. 14164-65 of 1996 reported in 1996(2) PLJR 218 : Union of India and others Vs. Sushil Kumar Modi and others, , the Supreme Court clarified the jurisdiction of this Bench in the context of the earlier order dated 19.3.96 (supra) in the following words :

The High Court would continue its task in the manner indicated by the earlier order dated March 19, 1996 passed by this Court till the completion of the task with the filing of the chargesheet in the competent court.

(emphasis added)

There is unanimity on the point that the jurisdiction of this Bench flows from the orders of the Supreme Court and the Bench is under mandate to complete its task. Further, neither section 89 nor section 34 (which deals with the transfer of proceeding pending in the Patna High Court) covers the proceedings before this Bench.

7. The question regarding jurisdiction of this Court/Bench vis-a-vis particular cases, in our opinion, has to be decided on general principles with reference to the orders of the Supreme Court. Though the Supreme Court in its order dated 13.12.2000 (supra) did not, if I may say so with respect, advert to this aspect, one thing is clear from the order that the monitoring is also to be done by the Jharkhand High Court. This is evident from the following observations of the Court :

Mr. Harish Salve, learned Solicitor General pointed out of us that the Division Bench constituted by the Chief Justice of Patna High Court consisted of Mr. Justice S. N. Jha and Mr. Justice S. J. Mukhopadhaya. Out of those two judges, Mr. Justice Mukhopadhaya has been allotted to the High Court of Jharkhand and he has taken charge there. When a new Bench has to be constituted by the Chief Justice of Jharkhand High Court the availability of Justice Mukhopadhaya in that High Court would be taken into account.

(emphasis added)

8. The CBI has furnished list of cases, investigation of which, according to it, is to be monitored by the Patna High Court and Jharkhand High Court respectively. The basis of identification being the place of occurrence. The cases having places

of occurrence at Patna or other places within the territorial jurisdiction of this Court have been mentioned in one category, while those whose places of occurrence are at Dumka, Chaibasa, Ranchi and other places within the territorial jurisdiction of Jharkhand High Court have been mentioned in the second category. In our opinion, since the jurisdiction of this Court is limited to the control and supervision of investigation upto the stage of submission of charge-sheets, and we are not concerned with the question of transfer of cases i.e. proceedings after submission of chargesheets, it would be appropriate to confine ourselves to the cases which were instituted by the State police at the police stations, within the territorial jurisdiction of this Court. In other words, the place of institution of the cases should determine the jurisdiction of the monitoring Bench. This would broadly be in conformity with the place of occurrence principle. It is worth mentioning here that though all the AHD cases have been registered at Patna Branch of the CBI, the fact of the matter, as noted at the outset, is that the CBI merely took over the investigation of the cases already instituted by the State police and re-registered them. This is evident from the following part of the order of the Supreme Court dated 19.3.96 (supra).

The entire investigation now stands entrusted to the CBI as aforesaid. CBI is directed to take over investigation already made by the State police inclusive of the F.I.Rs., arrest and attachment abovementioned and deal properly therewith.

Some cases, however, have been instituted by CBI later on its own, that is, after the above said order of the Supreme Court at the Patna Branch irrespective of the place of occurrence. We are of the view that it would be in consonance with the established principles that the investigation in these cases is supervised i.e. monitored on the basis of the place of occurrence. Thus, except cases in which places of occurrence are situated within the territory of State of Jharkhand, the investigation in other cases may be supervised by this Court as before. Thus, the jurisdiction of this Bench will henceforth be limited to the cases which were originally instituted by the State police at police stations falling within the territory of the truncated State of Bihar as well as the cases later instituted by the CBI on its own the basis of preliminary inquiry at its Patna Branch, in which place of occurrence falls within the truncated State of Bihar wholly or partly. CBI shall identify those cases and submit progress reports regarding those cases as before by the next date.

9. We again clarify that so far as transfer of proceeding after submission of chargesheets is concerned, it would abide by the principles laid down by the Special Bench.

10. So far as the income tax Department and Enforcement Directorate are concerned, as agreed to by all concerned, let status reports be continued to be filed before this Court as before.

11. List these matters on 16.3.2001. Let a copy of this order be supplied to Shri Rakesh Kumar, the CBI counsel.