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(2010) 09 JH CK 0077

In the Jharkhand High Court

Sushil Kumar, Ram Chandra Prasad Singh and Rajesh Gupta — APPELLANT

Vs

The State of Jharkhand and Abhay Kumar Sinha, Executive Magistrate — RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 109, 120(B), 406, 409, 420

Citation : (2010) 58 BLJR 1348

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the petitioners and the counsel for the State.

2. Petitioners in this application, have prayed for quashing the impugned order of cognizance dated 4.7.2007 passed by the Chief Judicial Magistrate, Hazaribagh whereby cognizance for the offences u/s 406, 409, 420, 120(B) and 109 of the Indian Penal Code, was taken against the petitioners, on the basis of the charge sheet submitted by the police in Hazaribagh Sadar P.S. Case No. 90 of 2006 corresponding to G.R. No. 435 of 2006.

3. The case was registered at the police station on the basis of the written report submitted by the Executive Magistrate, Hazaribagh (Opposite Party No. 2) on 16.2.2006 against the present petitioners and others. The petitioner Nos. 1 and 3 were employed as Assistant Engineers in the Hazaribagh Mines Board. The petitioner No. 2 was the Additional Collector-cum-Secretary, Mines Board, Hazaribagh. The allegations in the First Information Report summarized briefly, are as follows:

i. The appointment of the petitioners Sushil Kumar and Rajesh Gupta on the post of Assistant Engineers and that of the co-accused Sanjay Singh as Junior Engineer in the Mines Board, were not made in accordance with the rules of

procedure and their appointment itself, was illegal.

ii. Services of the co-accused Mukhlal Singh used to be taken continuously even after his retirement from service.

iii. Even after implementation of the model code of conduct on the eve of the Jharkhand Assembly Election, substantial amounts of money was given by the then Secretary Ram Chandra Prasad Singh by way of advance to the Engineers Sushil Kumar and Rajesh Gupta for execution of road construction work.

iv. That the road construction work was not executed by the two engineers in accordance with the rules of procedure and several irregularities were committed by them involving misappropriation of Government money.

4. The FIR explains that the project for carrying out road repairs for as many as 79 roads, at an estimated cost of Rs. 7,83,10,188/-, was approved by the Board on 15.12.2004 and, on 15.12.2004, road repair work was distributed amongst the two engineers namely, Sushil Kumar and Rajesh Gupta. Against the estimated cost of Rs. 5,22,16,300/-, a sum of Rs. 81 lakhs was paid as advance to Sushil Kumar (Petitioner No. 1) by the then Additional Collector-cum-Secretary, Mines Board (Petitioner No. 2) for repairs of 48 roads. Likewise, a sum of Rs. 27 lakhs was paid to the accused petitioner Rajesh Gupta for repairs of 31 roads, the estimated cost of which was Rs. 2,60,93,887/-. It is alleged that though, the road repair project was approved and payment of advance money of the estimated cost, were also approved, but such payments could not have been made to the Engineers due to imposition of the model code of conduct which was announced in the evening of 17.12.2004 on the eve of the Jharkhand Assembly Election. Despite such prohibition, the Additional Collector-cum-Secretary, Mines Board (accused petitioner No. 2) has paid the advance amount to both the engineers and that too, without obtaining administrative sanction and without obtaining utility certificate from the Sub Divisional Officer and the Executive Engineer of the Department. The further allegation against the petitioners is that the Engineers Sushil Kumar and Rajesh Gupta were not legally appointed in the Mines Board against any sanctioned post and further, that though the engineers had informed that they had executed the repair work of roads entrusted to them, but such execution was not in accordance with the rules of procedure.

5. Counsel for the petitioners has assailed the impugned order of cognizance primarily on the ground that the FIR was filed maliciously in order to cause undue harassment to the petitioner by suppressing material facts and had the material facts been placed before the Magistrate, no cognizance of any offence against the petitioners, would have been taken.

6. Elaborating his arguments, learned Counsel explains by referring to the copy of the inquiry report (Annexure-8) submitted by the successor Additional Collector-cum-Secretary, Mines Board, Hazaribagh and addressed to the Deputy Commissioner, Hazaribagh, that upon receipt of some allegations from some members of the public against the petitioners, questioning the legality of the

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payment of advance money to the two engineers and also alleging irregularity in the execution of the road repair work, the Deputy Commissioner had directed the Additional Collector-cum-Secretary of the Mines Board to conduct a detailed inquiry and submit a report. The Additional Collector-cum-Secretary submitted his inquiry report vide (Annexure-8). Learned Counsel adds further that on perusal of the inquiry report, it would be manifest that the same allegations as made in the present FIR, were earlier made and the corresponding charges were inquired into by the Additional Collector. Reading out the concluding portion of the inquiry report, learned Counsel points out that upon conducting the inquiry, the Inquiring Officer had recorded his finding that no illegality or irregularity was committed either in the appointment of the two engineers namely, the petitioners Sushil Kumar and Rajesh Gupta and there was no illegality or irregularity committed by them in discharge of their duties and in the matter of execution of the road repair work. The inquiry report also confirms that though, advance payment to both the engineers were made, but such payment was made prior to the declaration of the model code of conduct and such payments were made by cheque issued on the date prior to the declaration of the model code of conduct. Learned Counsel adds that having perused and accepted the inquiry report of the Additional Collector, the Deputy Commissioner had referred the matter for legal opinion from the public prosecutor with further instruction to place the matter before the Commissioner of the division for appropriate orders. Soon after passing the aforesaid order on the inquiry report, the Deputy Commissioner had demitted his office. Yet, before demitting office, the same Deputy Commissioner had instructed the Opposite Party No. 2 to lodge the FIR on the basis of the same allegations. The FIR was accordingly lodged, but suppressing the material facts that the inquiry into the entire set of allegations was conducted by a responsible officer of the Mines Board and that the report submitted by the inquiry officer had categorically exonerated the petitioners from the charges in respect of such allegations.

Learned Counsel adds further that not only the inquiry report of the Additional Collector, but also the relevant documents available in the office of the Mines Board, would confirm that though initially, both the petitioners Sushil Kumar and Rajesh Gupta were appointed on daily wage basis, but later, under the powers vested in it, the Mines Board had regularized their services in the years 1992 and 1995 respectively confirming them on the post of Assistant Engineers. Such regularization was made against the available sanctioned post in the Mines Board and therefore, there is no reasonable basis to question the legality of the appointment of the Assistant Engineers.

7. Counsel for the Opposite Party No. 2, on the other hand, would submit that on instruction of the Deputy Commissioner, the Opposite Party No. 2 had lodged the FIR and therefore, in the light of the allegation in the FIR, prima facie case is made out for the offences for which cognizance was taken by the court below and the impugned order of cognizance did not suffer from any illegality.

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8. I have learned Counsel for the parties and have also gone through the materials available on record including the impugned order of cognizance and the various annexures to the present criminal miscellaneous petition.

9. From the admitted facts, it transpires that the petitioner Nos. 1 and 3 were appointed as Assistant Engineers. The inquiry report (Annexure-8) as well as the copies of the relevant documents relating to their appointments which have been annexed by the petitioners, do suggest that their services were regularized on the then available sanctioned post by the Managing Committee of the Mines Board. Admittedly, the project for carrying out road repairs of as many as 79 roads were approved and according to the Rules stipulated, videography of the proposed roads was taken and the decision was taken by the Managing Committee of the Board to distribute and entrust the road repair work to both the Engineers. Approval for making payment of advance amount was also accorded by the Management of the Board where-after, payments were made.

The inquiry report of the Additional Collector informs that it was only after the approval made by the Management of the Board, that the advance payments were released to both the Engineers prior to the date of announcement of the implementation of the mode code of conduct notified in the evening of 17.12.2004.

10. It appears from the inquiry report of the Additional Collector (Annexure-8), the genuineness of which has not been denied or disputed by the opposite parties, that after conducting inquiry into each of the allegations, the Additional Collector had recorded his finding that there is no substance or merit in any of the allegations / charges and that the allegations are incorrect. The findings of the Additional Collector also indicate that appointments of the petitioner Nos. 1 and 3 as Assistant Engineers did not suffer from any illegality and further, that there was no illegality committed by them in discharge of their duties while executing the road repair work. It also appears that the inquiry report of the Additional Collector together with his findings recorded therein, was placed before the Deputy Commissioner, who on going through the same, had expressed his satisfaction and directed the same to be placed before the Commissioner for final orders after obtaining legal opinion from the public prosecutor. It is not understood as to why, after having ordered the inquiry to be conducted and after having obtained the inquiry report and directing the same to be placed before the Commissioner, and also to obtain legal opinion on the same, the Deputy Commissioner had abruptly instructed the Opposite Party No. 2 to lodge the FIR at the police station in respect of the same allegations which were inquired into.

11. The allegations in FIR are virtually the same which were inquired into by the Additional Collector and on which, he had recorded his findings in favour of the accused petitioners. The Mines Board appears to have accorded satisfaction on all the aforesaid relevant issues including the legality of the appointment of the two Assistant Engineers and the satisfactory manner in which the work was

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conducted by the two Engineers. Strangely enough, the FIR does not mention about the inquiry report submitted by the Additional Collector-cum-Secretary of the Mines Board and no explanation has been offered as to why such vital information has been suppressed by the informant. No reason has been assigned as to why even after acceptance of the findings of the Additional Collector, the Deputy Commissioner had proceeded to issue instructions for lodging the FIR against the petitioner on the self same allegations which were inquired into by the additional Collector and found baseless.

12. The allegation that the Government money was misappropriated by the petitioners, does not find qualified by any specific evidence and neither has any specific amount been mentioned. It is not denied or disputed that the road repair work entrusted to the engineers, was duly executed by them and in course of execution of the work, relevant measurement book and registers recording the other relevant details of work, was maintained by the persons who had performed the work and the same was duly supervised by the authorities concerned.

13. While invoking its inherent jurisdiction, this Court can take judicial notice of the admitted facts and documents. This Court can, for the purpose of finding out as to whether the allegations in the FIR are prima facie correct, take into consideration the relevant documents and admitted facts produced on record.

In the case of All Cargo Movers (India) Private Limited and Ors. v. Dhanesh Badarmal Jain and Anr. (2009) 1 SCC (Cri) 947, The Supreme Court has observed in the following terms:

...the court can, for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the court at this juncture would have considered defence of the accused, but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impressible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.

14. In the instant case, the facts even as admitted, would indicate that the same allegations, as contained in the FIR was thoroughly investigated and inquired into by the responsible office of the Mines Board and were found to be baseless. The suppression of this material fact in the FIR and absence of any valid reason offered by the prosecution for such suppression of the material facts, only indicate that the FIR was ordered to be instituted by the Deputy Commissioner only on account of some pressure of some external forces with mala fide intention to cause undue harassment to the petitioners. The material facts, which have been suppressed in the FIR, if disclosed, could also have been investigated by the investigating officer and all relevant materials collected in course of

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investigation, could have been placed before the Magistrate along with the Police Report to enable the Magistrate to apply his judicial mind in proper perspective to all the relevant facts.

15. The criminal prosecution of the petitioner under such circumstances, certainly amounts to an abuse of the process of the court, since the order of cognizance of the offences has been obtained without placing the essentially relevant full facts of the case before the Magistrate.

16. Having considered the entire facts and circumstances of the case and for the reasons stated above, I find merit in this application. Accordingly, this application is allowed. The impugned order of cognizance dated 4.7.2007 as also the entire criminal proceedings pending against the present petitioners before the court below vide G.R. No. 435 of 2006 arising out of Hazaribagh Sadar P.S. Case No. 90 of 2006, is hereby quashed.

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