(2005) 09 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (Cri) No''s. 74, 154, 162 and 164 of 2005

Tripurari Mohan Prasad APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Constitution of India, 1950 — Article 20(3), 226
Criminal Procedure Code, 1973 (CrPC) — Section 191, 223, 243(1), 313, 319
Penal Code, 1860 (IPC) — Section 109
Prevention of Corruption Act, 1988 — Section 13(1), 22

Citation : (2006) CriLJ 774 : (2006) 1 JLJR 212 : (2006) 37 AllIndCas 430 : (2005) 4 JCR 415 : (2005) 4 EastCriC 187 : (2005) AIR Jhar HCR 2529

Hon'ble Judges : S.J. Mukhopadhaya, J;N.N. Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner, who is accused in different Scam Cases of Animal Husbandry Department (commonly known as ''Fodder Scam Cases''), having preferred these writ petitions and having raised common question, all the three writ petitions have been heard together and are being disposed of by this common order.

WP (Cr) No. 74 of 2005

In this case, the petitioner has challenged the order dated 8th February, 2005, passed by the learned Special Judge, CBI, Ranchi, in RC 5(A) of 2000, whereby, the learned Court below while rejecting the prayer, made on behalf of the petitioner to issue summons u/s 319 of the Code of Criminal Procedure on certain witnesses, also rejected the prayer of the petitioner to record statements of the accused persons u/s 313 of the Code of Criminal Procedure along with the statement of the accused persons in RC 47(A) of 1996 (Pat), recorded u/s 313 of the Code of Criminal Procedure.

From the statement, made on behalf of the petitioner, and the enclosures, attached with the writ petition, it appears that altogether 58 prosecution witnesses have been examined in RC 5{A) of 2000. It is only at the time of taking statements or accused u/s 313 of the Code of Criminal Procedure, prayer has been made to issue summons to several witnesses for their examination and cross-examination, such as, Sri M.T. Mang, PI, CBI, Silchar, Sri Sudip Roy, PI, CBI, Calcutta, Sri Daulat Ram, P.I., CBI, New Delhi, Sri B. Das, PI, CBI, Calcutta, and eight others. It has been pleaded that although the aforesaid witnesses were cited by the Central Bureau of Investigation (in short ''CBI'') as the witnesses of the case, they have not been examined in the said case. In another petition, it was prayed that the statements of the accused persons u/s 313 of the Code of Criminal Procedure may be taken along with the statement, as made by the accused persons u/s 313 of the Code of Criminal Procedure in RC 47(A) of 1996 (Pat).

At this stage, it is pertinent to mention that in pursuance of an order, passed in Public Interest Litigation, preferred by one Sushil Kumar Modi, a Division Bench of Patna High Court vide its judgment, reported in 1996 (1) PLJR 561 : 1996 (2) ECC 2, having noticed a large scale of financial irregularities in Animal Husbandry Department of Govt of Bihar, directed the CBI to take up investigation to cover the period from 1977-78 to 1995-96 and to complete the investigation. The investigation of the State Police, in certain cases which were already instituted, were suspended and the State Government was directed to provide necessary facilities to the CBI in such investigations. The aforesaid judgment of Patna High Court was affirmed by the Supreme Court in the case of State of Bihar v. Ranchi Zila Samta Party, reported in 1996 (1) PLJR 97 (SC). While affirming the aforesaid judgment of Patna High Court, the Supreme Court directed that the investigation be transferred to the CBI from the State and then to follow up of the matter expeditiously after the investigation is complete by the CBI. By the order said of the Court, a Monitoring Bench was also constituted.

2. A large number of cases, such as, RC 45(A) of 1996(Pat), RC 46(A) of 1996(Pat), RC 47(A) of 1996 (Pat), RC 28(A)" of 1997 (Pat), RC 3(A) of 1998 (AHD-Pat), RC 1(A) of 1999 (AHD-Pat), RC 1(A) of 2000 (AHD-Pat) RC 2(A) of 2001 (Ran) etc., were instituted against various accused persons. The petitioner along with others is also an accused in many of them, including RC 5(A) of 2000, RC 25(A) of 1996 etc.

WP (Cr) No. 154 of 2005

In this case, the petitioner has challenged the order dated 5th April, 2005, passed by the learned Special Judge, CBI, Ranchi, in RC 5(A) of 2000 (the same case), whereby a similar petition, preferred by the petitioner seeking examination of eleven persons as defence witnesses has been rejected. Prayer was made to summon the following persons as defence witnesses :

(i) Sri Yoginder Singh, the then Director, CBI.

(ii) Sri Upen Bishwas, the then Joint Director, CBI

(iii) Sri Rakesh Asthana, the then DIG, CBI, Ranchi

(iv) Sri Praveen Sinha, the then S.P., CBI, Patna

(v) Sri P.K. Pandey, DSP, CBI, Ranchi

(vi) Sri Ashesh Kumar, Inspector, CBI, Ranchi

(vii) Sri M.T. Mang, the then Inspector, CBI, Ranchi

(viii) Sri K.M. Varkay, the then Inspector, CBI, Cochin, Camp at Ranchi

(ix) Sri Sudip Roy, PI, CBI, Calcutta

(x) Sri Javed Ahmed, the then SP, CBI, Patna and

(xi) Sri Naredra Prasad Singh, former Deputy Director, Head Quarters, AHD, New Secretariat Building, Patna (informant of RC 42(A) of 1996.)

It is relevant to mention that in the petitioner, earlier filed in the same case, which is the subject matter in connection with WP (Cr) No. 74 of 2005, similar prayer was made to summon many of the aforesaid officials. The aforesaid prayer has been rejected by the Court vide impugned order dated 5th April, 2005.

WP (Cr) No. 162 of 2005

In this case, the petitioner has challenged the order dated 7th April, 2005, passed by the learned Special Judge, CBI, Ranchi, in RC 25(A) of 1996, whereby and whereunder, the learned Court below has rejected the similar prayer to call certain persons as the defence witnesses and to call for certain documents from the Commercial Taxes Department, Income Tax Department as also other offices and Courts. In one petition, the petitioner has made prayer to summon the following persons as defence witnesses :

(i) Sri Joginder Singh, the then Director, CBI.

(ii) Sri Upen Biswas, the then Joint Director, CBI

(iii) Sri P.K. Pandey, DSP, CBI, Ranchi

(iv) Sri Javed Ahmed, the then SP, CBI, Patna and

(v) Sri Narendra Prasad Singh, former Deputy Director, AHD, New Secretariat Building, Patna (informant of RC 42(A) of 1996.

In another petition u/s 91 of the Code of Criminal Procedure, the petitioner has requested to call for certain documents, which were in possession of the Deputy Commissioner, Commercial Taxes, Patliputra Circle, Patna, the Deputy Commissioner, Income Tax, Central Circle-I, Patna, Sri P.K. Pandey, Inspector, CBI, Patna etc. The documents include records of Bihar Surgico Medico Agency, Patna, Samarpan Veterinary enterprises, Patna, Shri Baba Chemical Works, Patna, monthly and annual sales tax returns, submitted on behalf of M/s Bihar Surgico Medico Agency, Patna, Samarpan Veterinary Enterprises, Patna and Sri

Baba Chemical Works, Patna, tax deposits of the aforesaid Companies, Form-IX C of some of the aforesaid Companies, Road Permits, issued by Sales Tax Department in respect of some of the Companies etc.

WP (Cr) No. 164 of 2005

In this case, the petitioner has prayed for a direction on the learned Special Judge, CBI, Ranchi, to call for some relevant documents, concerning transactions, made by the petitioner in connection with the supplies, made by him, which is the subject matter of RC 5(A) of 2000, from the offices of Deputy Commissioner, Commercial Taxes, Patliputra Circle, Patna, the Deputy Commissioner, Income Tax, Patna etc.

It is pertinent to mention that these documents, which are to be called for from the aforesaid offices, find mention in a petition u/s 191 of the Code of Criminal Procedure, filed in a similar case being RC 25(A) of 1997, as noticed above in the proceeding paragraphs.

3. With regard to summoning certain witnesses, learned counsel for the petitioner submitted that although the prosecution cited so many witnesses, many of them were not called for their examination and cross-examination. It has been further submitted that the petitioner has requested to summon some of the CBI officers, who were at the helm of the affairs during the investigation of the case but have now retired, whose presence is required for the purposes of cross-examination by the defence. Though such submission has been made by the learned counsel for the petitioner and the list of the witnesses, to be summoned, has been shown in the petition, nowhere it has been pleaded by the counsel for the petitioner nor has been argued as to how evidences of such persons are material in the present case.

4. There may be one or other officer, posted from time to time during investigation in the hierarchy of CBI and there are the officer not only of the rank of Sub Inspector of Police but up to the rank of Director of CBI Merely because one or other officer was posted as Director or Joint Director of CBI, how their evidence is relevant for the purposes of the present has neither been brought to the notice of the Court below nor of this Court. If is not in dispute that the Investigating Officer of these cases have been examined and cross-examined and now at the stage of Section 313 of the Code of Criminal Procedure, prayer was made to summon certain persons for examination and cross-examination.

5. No cogent ground has been brought before this Court warranting interference with the order whereby the learned Court below has refused to summon certain persons for their examination as witnesses.

6. So far as prayer for recording the statement u/s 313 of the Code of Criminal Procedure of the accused persons of RC 5(A) of 2000 at the time of recording the statement u/s 313 of the Code of Criminal Procedure of the accused persons of RC 47(A) of 1996 (Pat) is concerned, learned counsel for the petitioner submitted

that the Investigating Officer during his cross-examination in RC 47(A) of 1996 (Pat) has made certain deposition and informed that the said case related to the period 1990-91 to 1995-96 and the Frozen Cymene Bank is under RD Ranchi, pertaining to the same period. The period of transactions of the cases being overlapping each other it was necessary to amalgamate the case as, if the petitioner''s defence is disclosed in RC 5(A) of 2000, it would prejudice him in RC 47(A) of 1996(Pat) and other cases, which would enable the prosecution to know the lacunae and thereby they would improve the statements in those cases. In such a circumstance, the defence of the petitioner may be defeated,, causing serious prejudice to his defence and the petitioner will be deprived of his right under Article 20(3) of the Constitution of India.

7. Learned counsel for the CBI referred to a decision of the Supreme Court in the case of Lalu Prasad @ Lalu Prasad Yadav Vs. State through C.B.I. (A.H.D.) Ranchi, Jharkhand, . The said Lalu Prasad Yadav is also an accused in AHD scam cases, including RC 47(A) of 1996(Pat) etc. He also made similar prayer for amalgamation of cases u/s 223 of the Code of Criminal Procedure but not allowed. When he made prayer before the Supreme Court for amalgamation of six cases, pending before the Special Courts in the State of Jharkhand, the Supreme Court held that the power of the Magistrate u/s 223 is discretionary. The Magistrate has to be satisfied that the person would not be prejudicially effected and that it is expedient to amalgamate the cases. Taking into consideration the similar submission, as made in the present case, the Supreme Court rejected the prayer of the said accused Lalu Prasad and refused to amalgamate the cases.

8. The present case of the petitioner is covered by the decision of the Supreme Court, given in the case of Lalu Prasad (supra). No ground has been made out for amalgamation of the cases at the stage when a number of witnesses have been examined by the prosecution and statements of the accused persons u/s 313 of the Code of Criminal Procedure are to be recorded. Counsel for the petitioner also failed to suggest as to how the petitioner will be prejudiced if the statement of the accused persons u/s 313 of the Code of Criminal Procedure are recorded separately in the respective cases.

9. So far as examination of defence witnesses is concerned, the petitioner, as stated above, wanted to examine the officers of the CBI and some others as defence witnesses. It has not been made clear as to why they should be examined and how the petitioner will be prejudiced if they are not examined as defence witnesses. The provisions of Section 243(1) of the Code of Criminal Procedure, as amended for Section 22 of the Prevention of Corruption Act, 1988, fell for consideration before the Supreme Court in the case of Arivazhagan Vs. State, Represented by Inspector of Police, . That was a case in which the accused were tried by Special Court for facing a charge for the offence u/s 13(1)(c) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code. In the said case, the prosecution examined a large number of witnesses by

summoning as many as 41 persons. When the case reached the stage, as envisaged in Section 243(1) of the Code of Criminal Procedure, the accused persons submitted a list of 267 witnesses for defence. The Special Judge made scrutiny of the list and dissected the names into four divisions. Having noticed the provisions, as envisaged in Section 243(1) of the Code of Criminal Procedure, as amended for Section 22 of the Prevention of Corruption Act, 1988, the Supreme Court held that it is the duty of the Court to shortlist the witnesses and if the Court feels that the list is intended only to delay the proceedings, the Court is well within its power to disallow even whole of it.

10. As pointed out and noticed above, the petitioner submitted a list of witnesses without giving cogent reason as to why he wanted to examine those persons, who were the officers of the CBI. The stage at which such petition was filed, as also noticed by the learned Court below. I have also noticed that the petitioner filed similar petition in almost all the cases in which he is accused, such as, RC 5(A) of 2000 and RC 25(A) of 2000 (Pat). In the circumstances if the Court below refused the prayer of the petitioner for examination of all the officers of the CBI, without any relevancy, I find no ground to be made out to interfere with such order.

11. Counsel for the petitioner submitted that the prosecution has not investigated the case properly. The CBI was asked by the Supreme Court to work as coheirships team. Inspite of repeated directions of the Supreme Court to the CBI to investigate the fraudulent transactions, involving more than Rs. 500 Crores, the investigation has not been made properly. Though the CBI was required to investigate with regard to the allegation action of the Accountant General, Bihar, the officers of the Sales Tax, Income Tax and other Departments, no such investigation has been made.

12. Though such plea has been taken by the counsel for the petitioner, no ground has been shown as to how the petitioner will be prejudiced if after the investigation, no charge sheet has been submitted against the Accountant General, Bihar or any other officer of the Sales Tax or Income Tax Department. None of the details relating to investigation being available before this Court, it is not desirable for this Court under Article 226 of the Constitution of India to give any observation with regard to one or other individual or officer, who was not been made accused. It is always open to the defence to take all appropriate pleas in the trial and during hearing.

13. I find no ground to be made out to interfere with any of the order impugned, passed by the learned Special Judge, CBI (AHD Scam Cases) in RC 5(A) of 2000 and RC 25(A) of 1996 (Pat) nor any ground has been made out to issue any writ in the nature of mandamus or under the supervisory jurisdiction for allowing the petitioner to examine certain persons as witnesses. There being no merit, all the writ petitions are hereby dismissed.

