

(2008) 10 PAT CK 0032
In the Patna High Court
Case No : Criminal Reference No. 1 of 2004

Vishwanath Ganguly

APPELLANT

Vs

The Stats of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 89, 89(1), 89(2)
Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2)

Citation : (2008) 10 PAT CK 0032

Hon'ble Judges : Subash Chandra Jha, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Jitendra Singh and Kamal Kishor Singh, for the Appellant; Rakesh Kumar, I/C, Spl. P.P. and Prabhu Narayan Sharma, J.C. to Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad and Subash Chandra Jha, JJ.—The petitioner is an accused in Vigilance P.S. case No. 7 of 1998. After investigation charge sheet u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, was filed against many accused, including the petitioner. According to the allegation an estimate for reclamation and maintenance of Unit No. 2 of Kosi Hydel Power Station situated at Birpur in Saharsa district of the State of Bihar was prepared by Engineers of Larson and Tubro for Rs. 5.75 lacs. However, the said estimate, according to the prosecution, got misplaced at the headquarters of the Bihar State Electricity Board and, hence, a fresh estimate for Rs. 6.36 lacs was prepared and sent to the Chief Manager-cum-Chief Engineer (Hydel and Communication), Ranchi. It has been alleged that without ascertaining the cost of materials it was raised to Rs. 8.93 lacs.

2. According to the prosecution tender notice was prepared on behalf of the Chief Manager (Hydel and Communication), Ranchi at the headquarter of the Bihar State Electricity Board. In response to the tender notice tenders submitted were

opened at Ranchi and work order was also issued at Ranchi. However the agreement with the contractor was executed at Birpur by the Executive Engineer. According to the allegation, reclamation and maintenance works were done by the contractor at Ranchi. According to the prosecution, the contractor was not equipped for execution of the work and bungling had taken place in execution of the work.

3. On these allegations trial commenced in the court of Special Judge, Vigilance at Patna.

4. By an Act of Parliament, namely, the Bihar Reorganisation Act, 2000 (hereinafter referred to as the "Act"), the erstwhile State of Bihar was reorganized into two States, namely, the State of Jharkhand and the State of Bihar. Various territories existing in the State of Bihar before its reorganization including Ranchi fell within the territory of State of Jharkhand. However, Birpur where the 2nd Unit of Kosi Hydel Power Station is located falls within the territory of the State of Bihar.

5. Petitioner filed application in the court of Special Judge, Vigilance, Patna praying for transfer of the case to the competent court at Ranchi, inter alia, contending that in terms of Section 89 of the Act jurisdiction lies with the court of corresponding jurisdiction at Jharkhand. It seems that no decision was taken on the said application.

6. It seems that few of the accused persons facing trial along with the petitioner filed Cr. Misc. No. 11230 of 2003 (Kapildeo Pd. Sinha and Anr. v. The State of Bihar and Ors.) before this Court for transfer of the case to the court of Special Judge, Vigilance at Ranchi. A Division Bench of this Court by order dated 29.9.2003 directed the Special Judge, Vigilance to decide the application by a reasoned order within stipulated time. In the light of the aforesaid order, the application filed by the petitioner was considered. It has been rejected by the Special Judge, Vigilance, by order dated 20.1.2004 passed in Special case No. 7 of 1998. While doing so the learned Judge has observed that Unit No. 2 for which the maintenance work was done situates at Birpur in the district of Saharsa, within the territory of existing State of Bihar and, as such, the case does not deserve to be transferred to the corresponding court in the State of Jharkhand.

7. Petitioner being aggrieved by the aforesaid order has preferred this application u/s 89 of the Act.

8. At the outset Mr. Jitendra Singh, appearing on behalf of the petitioner raises a grievance that the Special Judge has no jurisdiction to adjudicate as to whether the case deserves to be transferred to the corresponding court of the State of Jharkhand or not. In his submission when the party had joined issue the Special Judge ought to have folded its hand and relegated the petitioner to remedy before this Court in terms of Section 89(2) of the Act. Mr. Rakesh Kumar appearing on behalf of the prosecution, however, contends that it is the petitioner who had filed the application for transfer of the case and, as such, the

Special Judge was under an obligation to adjudicate the same. He further points out that in view of the order of this Court dated 29.9.2003 passed in Cr. Misc. No. 11230 of 2003, referred to above, the Special Judge was under an obligation to decide the application by reasoned order.

9. Having appreciated the rival submission we do not find any substance in the submission of Mr. Singh. It is the petitioner who had filed the application for transfer of the case and in that view of the matter the Special Judge was under an obligation to adjudicate the same. We are of the opinion that Special Judge did not err in deciding the application filed by the petitioner himself.

10. Mr. Singh, then contends that various acts of omission and commission alleged to have been committed by the petitioner were at Ranchi and hence case exclusively falls within the territory of Jharkhand State. Hence in view of Section 89(1) of the Act, the case deserves to be transferred to the corresponding court of the State of Jharkhand. In support of the submission, he has placed reliance on a decision of the Supreme Court in the case of C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, and our attention has been drawn to paragraphs 36 and 37 of the judgment, same read as follows:

36. The above acts were completed 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.

37. Thus, when it is certain where exactly the offence u/s 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences ensued.

Mr. Kumar, however, contends that acts of omission and commission relate to a unit situated at Birpur within the territory of the State of Bihar and, as such, it cannot be said that case falls exclusively within the territory of the State of Jharkhand.

11. We have given our anxious consideration to the submission advanced and we do not find any force in the submission of Mr. Singh and the authority relied on is clearly distinguishable. Acts of omission and commission are in relation to a unit situated at Birpur. Undisputedly it is within the territory of State of Bihar. The offence thus pertain to a unit which is in the State of Bihar. In these circumstances it cannot be said that the occurrence had taken place exclusively in the State of Jharkhand. In the case of Brij Bhushan Pd. (supra) on fact it was found that all the acts have been done within the territory of Jharkhand State, which is not the situation here. In view of what has been found, we are of the opinion that the offence had not taken place exclusively in the territory of State

of Jharkhand and, as such, it did not deserve to be transferred to the corresponding court of the Jharkhand State. We are of the opinion that learned Judge did not commit any error while passing the impugned order.

12. In the result, we do not find any merit in this application and it is dismissed accordingly.