Shiv Kant Tripathi Vs State of U.P. and Others

Criminal Misc. Writ Petition No. 4909 of 2010

Court: Allahabad High Court

Date of Decision: Aug. 1, 2013

Acts Referred:
Constitution of India, 1950 â€" Article 226#Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 173(2)#Penal Code, 1860 (IPC) â€" Section 120B, 420, 467, 471#Prevention of Corruption Act, 1988 â€" Section 10, 13(1)(e), 7, 8, 9#Prevention of Money-Laundering Act, 2002 â€" Section 17(1), 18(1), 3, 4, 43

Citation: (2013) 6 ADJ 672 : (2013) 3 UPLBEC 2239

Hon'ble Judges: Sushil Harkauli, J; N.A. Moonis, J; L.K. Mohapatra, J

Bench: Full Bench

Advocate: Samit Gopal, G.S. Chaturvedi, K.S. Singh, S.K. Srivastava and Sandeep Kumar Singh, for the Appellant; Kunwar Siddharth Singh, N.I. Jafri, Rahul Chaturvedi, Ram Dular and Ram Jethmalani, for the Respondent

Final Decision: Disposed Of

Judgement

L.K. Mohapatra, J.
The prayers in this writ application are for a direction to the Enforcement Directorate (the respondent No. 4) to take

up the investigation of Crime Case No. 458/09 registered for commission of offences under Sections 420, 467, 471, 120-B of the Indian Penal

Code read with Sections 7, 8, 9, 10, 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and Sections 3, 4

of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the Money-Laundering Act") in police station Babu Purwa, District

Kanpur Nagar, and for a direction in the nature of Mandamus directing the Special Cell, Economic Offences Wing as also the Enforcement

Directorate to submit such periodic reports as may be deemed fit and proper as to the stage, status and manner of investigation to this Court and

to direct the Enforcement Directorate and the Special Cell of the Economic Offences Wing to complete the investigation in the aforesaid case in a

time-bound manner within such period as may be deemed just and proper. The limited issue before this Court for the present is as to whether the

Enforcement Directorate is required to file the Final Form before the designated Court or not. But before deciding the issue raised in this writ

application, it is necessary to refer to the brief history of the case.

2. The petitioner Shiv Kant Tripathi lodged an F.I.R. at P.S. Babu Purwa, District Kanpur Nagar, alleging commission of certain scheduled

offences, certain offences under the Prevention of Corruption Act, 1988 as well as commission of offences under Sections 3 and 4 of the Money-

Laundering Act. The said F.I.R. was lodged on 15.10.2009 and was registered as Crime Case No. 458 of 2009 in the said police station. The

allegations in the F.I.R. related to the period when the respondent No. 7, Amar Singh was Chairman of the Uttar Pradesh Development Council in

the year 2003. The substance of the allegations is that Amar Singh while holding the office of the Chairman of the Uttar Pradesh Development

Council, misused his official position and awarded various Government contracts worth thousands of crores to companies owned and controlled

by him and he also received kickbacks in the form of commission. It was also alleged in the F.I.R. that Amar Singh indulged in Money-Laundering

business by creating a web of shell companies. His wife was the major shareholder of M/s. Pankaja Arts & Credit Private Ltd. and M/s.

Sarvottam Caps Ltd. It was further alleged that in all, there are 6 companies which were under the control of Amar Singh but at the same time they

were not involved in any active business. As many as 41 companies merged with M/s. Pankaja Arts & Credit Private Ltd. and M/s. Sarvottam

Caps Ltd. by orders of Kolkata High Court dated 31.12.2003 and 31.1.2005. Those 41 companies were shell companies with little or no

business. Therefore, the amalgamation process was a deception and in the process of amalgamation, the companies in which Amar Singh had

controlling shares were enriched by wealth of around 400 crores. Thus, he was in possession of wealth disproportionate to his known sources of

income and misused his position by indulging in Money-Laundering business by conspiring with other Directors, officials and statutory authorities.

3. Amar Singh filed Criminal Misc. Writ Petition No. 24225 of 2009 before/this Court for quashing the above F.I.R. The present writ petition was

filed by the complainant Shiv Kant Tripathi for the relief mentioned in the beginning of the judgment. Both the writ petitions were heard by a

Division Bench of this Court. Criminal Misc. Writ Petition No. 24225 of 2009 filed by Amar Singh was dismissed and so far as the present writ

petition is concerned, keeping it pending for monitoring the investigation, the following direction was issued.

In the above perspective we are of the view that regard being had to the various materials on record and also considering the averments made in

the writ petitions and also in counter and rejoinder-affidavits, we are of the firm view that it is a preeminently fit case for exercise of extraordinary

power and the matter needs thorough probe by Special Cell as the matter of has national ramifications. Regard being had to the fact that the

companies which are alleged to be shell companies are registered in various States and therefore, the Enforcement Directorate being Central

Agency shall be the appropriate Cell capable of carrying out thorough probe. It is therefore directed that the entire papers relating to this matter

shall be entrusted to the Enforcement Directorate within 2 weeks and immediately after receipt of the papers the Enforcement Director shall

commence investigation. The First Status report shall be submitted by the Enforcement Directorate within one month after receipt of papers.

4. An application for modification of the above order was filed on behalf of the Enforcement Directorate. When the case was taken up on 30th

September, 2011, the Division Bench directed the Enforcement Directorate to continue investigation with Money-Laundering matter only and the

case was adjourned. The learned counsel appearing for the Enforcement Directorate was also directed to inform the Court about the progress of

the investigation. Thereafter the case suffered some adjournments and ultimately came up before the larger Bench on 12.9.2012. It appears that so

far as the scheduled offences are concerned, the State police was permitted to investigate it whereas the offences alleged under the Money-

Laundering Act were investigated by the Enforcement Directorate. At the time of hearing of this writ petition, the Court was informed that so far as

the scheduled offences are concerned, the investigation has already been completed and as no material for constituting the offence alleged could be

made available to the investigating agency, Final Form u/s 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ''the Code'')

has been filed before the concerned Magistrate and now it is awaiting acceptance or other order by the learned Magistrate.

5. It prima facie appears from the proviso to Section 17(1) and more importantly the proviso to Section 18(1) of the Prevention of Money-

Laundering Act, 2002 that the Directorate of Enforcement comes into action in respect of the money laundering allegations only after a charge-

sheet is submitted by the police/agency investigating the question whether any of the ''scheduled offences'' has been committed. We will assume

that even if the police submits a final report, alleging that no scheduled offence has been committed, but the Magistrate does not accept the same

and issues process, even then the directorate can initiate investigation into money -laundering allegations. In that view the investigation done by the

directorate under the interim orders passed herein, even before a charge-sheet by the police regarding any scheduled offence having been

committed, was premature.

6. So far as the offences under the Money-Laundering Act are concerned, it was informed by the learned counsel appearing for the Enforcement

Directorate that the investigation has been completed but on the basis of materials made available during investigation, the Directorate did not find

any thing against Amar Singh to submit a charge-sheet and therefore, the investigation has been closed but no report has been submitted in any

Court.

7. So far as the scheduled offences are concerned, Final Form having been submitted before the concerned Magistrate, this Court need not pass

any further order as it is open for the Magistrate to either accept or differ with the report. It is also open to the complainant, the petitioner before

this Court, to file protest petition, if not satisfied with the investigation.

8. If the final report is accepted by the Magistrate, subject to any successful challenge to his order, the investigation by the Enforcement

Directorate will become redundant. In the event of rejection of the final report, and issue of process or a direction of further investigation and a

consequent charge-sheet, the investigation of the Directorate will assume relevance.

9. So far as the investigation conducted by the Enforcement Directorate is concerned, it was specifically submitted on behalf of the Enforcement

Directorate that there being no provision under the Money-Laundering Act for submission of Final Form, in case where the materials collected

during the investigation do not constitute or are not sufficient to prove an offence under the Money-Laundering Act, the file is to be closed after

investigation and no report is required to be filed in any Court. The Court, not being satisfied by such stand taken by the Directorate, requested the

learned counsel to address on the question. Long arguments were advanced by the learned senior counsel appearing for all the parties on this issue

but we need not refer to all those arguments as the answer can be found in the relevant statute.

10. It was contended on behalf of the Enforcement Directorate that there is no provision in the Money-Laundering Act for filing of a Final Form

when after investigation no material is found against an accused for submission of a charge-sheet. We are unable to accept such contention

considering the provision contained in Section 65 of the Money-Laundering Act, which is quoted below:

65. Code of Criminal Procedure, 1973 to apply.--The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they

are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other

proceedings under this Act.

11. On perusal of the said Section we find that the provisions of the Code, insofar as they are not inconsistent with the provisions of the Money-

Laundering Act, shall apply in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings

under the Money-Laundering Act.

12. The term "investigation" has not been defined in the Money-Laundering Act but it has been defined in the Code. With reference to the said

definition of the term "investigation" appearing in the Code, it was contended on behalf of the Enforcement Directorate that the investigation as

defined in the Code, only includes the proceedings for the purpose of collection of evidence conducted by the police officer and does not include

submission of final report, which is provided u/s 173 of the Code.

13. It is true that the term "investigation" has not been defined in the Money-Laundering Act, but the said term has been defined under the Code,

as quoted below:

(h) ""investigation"" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other

than a Magistrate) who is authorised by a Magistrate in this behalf;

14. The question as to whether the term "investigation" shall include submission of Final Form or not, has been set at rest by the Supreme Court in

the case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, . The relevant finding of the Supreme Court in paragraph 5 of the judgment is

quoted below:

Thus under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and

circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence

which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer

thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation

of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the

necessary steps for the same by the filing of a chargesheet u/s 173.

15. Similar view has also been expressed by the learned Single Judge of Orissa High Court in the case of Smt. Sabita Praharaj Vs. Smt. Gitarani

Praharaj and Others, .

16. Section 173 of the Code makes it obligatory on the part of the" Officer in charge to submit the report of completion of investigation before the

concerned Court. Section 173(2) of the Code provides that as soon as the investigation is completed, the Officer in charge of the police station,

shall file a report in the form prescribed by the State Government giving certain information as indicated in the said provision including nature of the

information and as to whether any offence appears to have been committed and if so, by whom. It will also include filing of the final report, if no

material is found during investigation for submission of a charge-sheet. It will not be out of place to say that when an investigation is conducted in

respect of scheduled offences and no material is found to support the allegations during the investigation, Final Form is also submitted u/s 173 of

the Code. Therefore, there is no reason why the term "investigation" shall not include submission of final report when in course of investigation no

material is found against the accused for submission of the charge-sheet.

17. Apart from above, it can never be the intention of the Legislature while legislating the Money-Laundering Act to empower the Directorate of

Enforcement to sit over the records when after investigation no material is found in respect of the offence alleged under the said Act against an

accused keeping the public, the complainant and most importantly the Court in dark regarding nature and extent of investigation and outcome

thereof. Lack of judicial scrutiny, coupled with lack of transparency would confer too excessive a power/discretion upon the Director of

Enforcement. Judicial scrutiny under Article 226 would also not be of any help when the petitioner has no access to the nature, manner and extent

of investigation by the Directorate. We cannot overlook the fact that generally persons engaged in money laundering are likely to be rich and

powerful. This should not be seen as doubting the personnel presently serving in the directorate, but then there would be others who would occupy

these positions in future.

18. For avoiding undesirable consequences it is open in statutory interpretation to read it down or read it wide. However, we are of the view that

Section 65 of the Money-Laundering Act takes care of such a situation and the Enforcement Directorate is duty bound to submit final report or

charge-sheet, as the case may be, before the Court which is designated as Special Court by the Central Government in consultation with the Chief

Justice of the High Court u/s 43 of the Money-Laundering Act. In the present case, admittedly after completing investigation the Enforcement

Directorate has not filed the final report on the ground that there is no provision for submission of the final report under the Money-Laundering Act.

Since we hold that the term "investigation" shall also include submission of final report as defined in the Code, we direct that if the process is issued

by the Magistrate or upon a further investigation a charge-sheet is submitted in respect of any scheduled offence, the Enforcement Directorate will

submit the Final Form before the designated Court so that the designated Court shall be in a position to examine the efforts made by way of

investigation, the evidence collected during the investigation and find out as to whether the final report was justified or not. The complainant shall

also get an opportunity to look into the report and submit a protest petition, if he desires. We therefore, dispose of this writ petition directing the

Enforcement Directorate, in case of contingencies given above, to submit Final Form before the designated Court within 2 months from the date of

knowledge of the same.