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(2013) 04 JH CK 0004

Jharkhand High Court

Case No: Criminal M.P. No. 2635 of 2012

Riyaz Khan Faridi — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision: April 5, 2013

Citation: (2013) 4 JLJR 125

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Ajit Kumar Sinha, Imtiyaz Ahmad, Pandey Neeraj Rai and Rohit Ranjan Sinha, for the Appellant; M. Khan and N. Roy for the C.B.I, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rakesh Ranjan Prasad, J.
This application has been filed for quashing of the entire criminal proceeding of R.C. No. 11(A) of 2009-AHD-R including the order dated 10.8.2011 whereby and whereunder cognizance of the offences punishable under Sections 120B, 420, 4G7 468, 471 of the Indian Penal Code and also under Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act has been taken against the petitioner. It is the case of the prosecution that during financial year 2007-08, the Health Department, Government of Jharkhand having invited tenders purchased medicines on fixed prices under the scheme known as NRHM. For the financial year 2008-09 also medicines were purchased after inviting tenders on the rate approved for the financial year 2007-08 but by that time "Purchase Preference Policy" had come into force whereby certain medicines were to be purchased compulsorily from the Government manufacturing companies and if the medicines would have been purchased, fixed percentage of discount was admissible but medicines were purchased ignoring the said policy completely, as a result of which, enormous pecuniary loss was caused to the State of Jharkhand whereas public servants as well as private suppliers received wrongful pecuniary gain.

2. It has been further alleged that medicines/equipments/appliances/sundry items to be used in hospital were purchased worth crores of rupees from M/s. Satya Sai Agencies, M/s. J.R. Pharma, M/s. Kalyan Enterprises, M/s. Medhavi Associates, M/s. P.D.P.L, M/s. Annu Enterprises, M/s. Endo Lab, M/s. Hindustan Antibiotics, M/s. U.P.D.P.L, M/s. Savitri Safes, M/s. Hindustan Latex, M/s. Unique Pharma, M/s. Laxmi Medial Agencies, M/s. G.R. Associates, M/s. Prabhat Drug House, M/s. Gaurav Enterprises, M/s. Plasti Surge India Pvt. Ltd., M/s. Nicholas Piramal India Limited and also from M/s. Nand Kishore Fogla but these purchasers were not at all need based, as quantity of medicines and medical equipments/instruments which were purchased were far more than the actual requirement.

3. In this regard it has been alleged that Nitrogen Oxide Cylinders of 510 liters capacity were purchased in huge quantity which were to be supplied to the PHC/CHC where Anaesthetists are posted but in the State of Jharkhand hardly there is any PHC/CHC where Anaesthetist is posted and as such, it remained lying unused. Similarly, some of the medicines were purchased which were being rarely prescribed by the Doctors. Likewise, some instruments including Fogger Machine (which is subject matter in this case) were purchased many times more than the actual requirement.

4. Further it has been alleged that budget allocation for purchase of Sahiyya Kit, medicines and equipments were far less than the amount invested in purchasing those items. Out of the budget allocation made by the State Government, 50,000 units of Disinfectant Microgen-D 125, 300 units of Fogger Machine and dispenser have been purchased for Rs. 14.74 crores, Rs. 5.15 crores and Rs. 19,57,000/- respectively and that medicines and medical equipments worth Rs. 48.58 crores have been purchased from M/s. Nand Kishore Fogla which firm was not authorized dealer/supplier of medicines and medical equipments. Those medicines and equipments have been purchased at an exorbitant rate and in excess without ascertaining the requirement and that too by procuring false documents to show excess consumption of requirement of medicines and equipments.

5. Thus, it has been alleged that the then Secretary, Health Department, Government of Jharkhand, State RCH Officer, Namkum, Ranchi and other officials of the Health Department in connivance with suppliers by abusing their official positions as public servants, fraudulently and dishonestly purchased medicines/medical equipments/appliances/sundry items worth Rs. 1,30,50,79,951.74 from 19 suppliers without having such requirement and beyond the fund allocation allotted to "National Rural Health Mission (NRHM)".

6. On such allegation, a case was registered as R.C. No. 11 (A) of 2009-AHD-R under Sections 120B, 420, 467 468, 471 of the Indian Penal Code and also under Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The matter was taken up for investigation. On completion of investigation, charge-sheet was submitted, upon cognizance of the offences punishable under Sections 120B, 420, 467

468, 471 of the Indian Penal Code and also under Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act was taken against the petitioner vide order dated 10.8.2011 which is under challenge.

7. Mr. Ajit Kumar Sinha, learned Sr. Counsel appearing for the petitioner submitted that the petitioner, the Executive Director of M/s. Microgen Hygiene Pvt. Ltd. (M/s. Microgen India) having its Head Office at Mumbai is having licence to import drugs manufactured by M/s. Microgen Incorporation, New Jersey, USA, a world-wide known manufacturer of medicines/equipments of which M/s. Microgen India is the exclusive agent. Various products of M/s. Microgen incorporation are being supplied to various State Governments in India as well as to the institutes and corporal hospitals through various consignee agent including M/s. Sonanchal Enterprises, Ranchi who is concerned with the supply of the products in the State of Jharkhand. In order to promote its business and to provide better equipments/medicines, the petitioner had met the then Secretary, Drug Controller and other officials to explain about the advantages and benefits of the products.

8. It was submitted that in the month of July, 2008, a tender was issued by the Department of Health and Family Welfare, Government of Jharkhand inviting tenders from the Government as well as private manufacturers for the purpose of supplying Disinfectant, Fogger Machines and Dispenser and also other materials and medicines. That tender was cancelled. Subsequently, another NIT was issued putting a clause that manufacturer would be eligible to participate in the tender having turn over in current financial year of Rs. 12 crores. Since the petitioner''s firm was not qualified, the company did not submit any tender. After issuance of NIT, a person approached the petitioner for appointing M/s. Nand Kishore Fogla as its Distributor. Subsequently, a letter of M/s. Nand Kishore Fogla was received wherein request had been made for providing certain documents enabling him to participate in the tender in order to supply Disinfectant and Fogger Machines. Accordingly, M/s. Microgen India authorized M/s. Nand Kishore Fogla to supply its products, Disinfectant D-125 and Fogger Machines on a condition that products should be supplied against the supply order through consignee agent M/s. Sonanchal Enterprises on advance payment. On submission of the tender, M/s. Nand Kishore Fogla was awarded with the work order for supply of 50,000 liters of Disinfectant, 300 pieces of Fogger Machines. Thereupon when supply order was issued to the petitioner''s company it supplied the aforesaid products through M/s. Sonanchal Enterprises, who received the payment from M/s. Nand Kishore Fogla. On supply of the aforesaid materials and other medicines and equipments, when information was received by the C.B.I. that the purchases have been made clandestinely by the officials of the Government in league with the suppliers whereby the State Government has been put to loss to a great extent, a case was registered against certain persons, Government officials as well as suppliers but not against the petitioner. During investigation, notice was issued to the petitioner asking him to produce certain documents relating to procurement of Disinfectant from Microgen Inc., USA, Custom Clearance Documents, Supply details of 50,000 liters Disinfectant, Office Copy of Technical Bids submitted by

the company, Wholesale price of the company for institutional supply of Disinfectants as well as Fogger Machine and the details of supply of Fogger Machine and Dispenser to the State Government.

9. Pursuant to that, it was informed that M/s. Microgen India had never participated, rather all the relevant papers relating to authorization of sale of the products of Microgen Incorporation and other documents were handed over to M/s. Nand Kishore Fogla, who had participated in the tender. When it was awarded with supply order, it made request to petitioner''s company to supply Fogger Machines and disinfectant which were supplied by petitioner''s consignee agent M/s. Sonanchal Enterprises. Petitioner''s consignee agent M/s. Sonanchal Enterprises had supplied Disinfectants (D-125) @ Rs. 1300/- per liter but the petitioner came to know that said M/s. Nand Kishore Fogla had quoted the price @ Rs. 2,948/- per liter and similarly, Fogger Machine had been supplied at the rate of Rs. 15,000/- per piece whereas price of Fogger Machine was quoted as Rs. 1,71,722/- per piece and thereby whatever wrong was committed, it was committed at the end of M/s. Nand Kishore Fogla. This fact was found by the C.B.I. during investigation and got it recorded in the charge-sheet. The C.B.I. in course of investigation, got statement of Rajesh Fogla, Manufacturing (sic--Managing?) Director of M/s. Nand Kishore Fogla recorded u/s 164 of the Code of Criminal Procedure wherein he has admitted that money received on supply of medicines/materials has been given to the then Minister, Secretary and other Government officials as bribe, still the petitioner was charge-sheeted in the case in spite of the fact that the petitioner''s company was paid money at the rate on which Fogger Machines and Disinfectants had been supplied to M/s. Nand Kishore Fogla and that this petitioner according to Rajesh Fogla, co-accused was never paid any illegal money and thereby the petitioner cannot be said to have committed any offence.

10. Learned counsel further submitted that the petitioner is being prosecuted as, according to the C.B.I., he conspired with Rajesh Fogla and had participated in the process of tender but did not take into account the fact that the said Rajesh Fogla or any of the witness has never disclosed about the act of connivance of this petitioner in influencing the Government officials to purchase the aforesaid two materials at higher rate and that it is the statement of the co-accused Rajesh Fogla that the petitioner''s signature over the tender paper had been forged by other accused and that the petitioner has not been benefited in any manner by the illegal act of other accused persons and therefore, whatever material has been collected that never goes to show the culpability of this petitioner and still cognizance of the offence has been taken against the petitioner which in the facts and circumstances is fit to be quashed.

11. As against this, Mr. Khan, learned counsel appearing for the C.B.I. by referring to the statements made in the counter affidavit submitted that it is the petitioner at whose instance first tender was cancelled and re-tender was issued and that the petitioner having entered into conspiracy with other accused public servants and M/s. Nand Kishore Fogla had participated in the tender and quoted exorbitant rate of Disinfectants, Fogger Machines and Dispenser and that the officials favoured his company through M/s. Nand

Kishore Fogla and that market/purchase rate of Disinfectant was Rs. 1,200/- per liter whereas rate quoted was Rs. 2,948/-per liter by M/s. Nand Kishore Fogla and market/purchase rate of Fogger Machine was Rs. 15,000/- per piece whereas rate quoted by M/s. Nand Kishore Fogla was Rs. 1,71,722/- per piece which was much higher than the market rate and still supply order was given to M/s. Nand Kishore Fogla and thereby all the accused persons in conspiracy with each other put the State exchequer to a great loss and under the circumstances, order taking cognizance never warrants to be quashed.

12. Thus, on one hand, it is the case of the petitioner that the petitioner''s company M/s. Microgen India Ltd. being not eligible to participate in the process of tender as annual out turn was never more than Rs. 12 crores did not submit its tender paper and that the petitioner''s company had supplied Disinfestant D-125 and Fogger Machine to M/s. Nand Kishore Fogla through its consignee agent M/s. Sonanchal Enterprises @ Rs. 1,200/- per liter and Rs. 15,000/- per piece respectively but M/s. Nand Kishore Fogla to whom supply order was given had charged for Disinfectant Rs. 2,948/- per liter whereas he charged for Fogger Machine Rs. 1,71,722/- per piece which fact during investigation has been found to be correct which would appear from the charge-sheet. In spite of that, charge-sheet has been submitted against the petitioner, Executive Director of M/s. Microgen India Ltd. for the reason that during investigation, it got transpired that this petitioner had also participated in the process of tender and this petitioner had had meeting with other accused before finalization of the tender, though this fact has been denied on behalf of the petitioner by referring to the statement of co-accused Rajesh Fogla made u/s 164 of the Code of Criminal Procedure stating therein that signature of the petitioner over the tender paper has been forged. However, accepting this fact to be true, it is to be considered as to whether materials are there against the petitioner justifying order taking cognizance.

13. It is the case of the prosecution that Rajesh Fogla, son of Nand Kishore Fogla, Managing Director of M/s. Nand Kishore Fogla has disclosed in his statement u/s 164 of the Code of Criminal Procedure regarding booty being shared among the Minister, Secretary and other officials of the Health Department. Nowhere he has said anything about the booty being shared with this petitioner nor there appears to be any other materials showing sharing of booty with this petitioner. In absence of that, the materials collected against the petitioner as has been stated above, would be sufficient to prove the charge? If it is not, then certainly in view of the decision rendered in a case of R.P. Kapur Vs. The State of Punjab, order taking cognizance can certainly be said to be bad wherein it has been held that inherent jurisdiction of the High Court can be exercised to quash proceeding in a proper case either to prevent the abuse of any court or otherwise to secure ends of justice.

14. Their Lordships have laid down following categories where as per their Lordships, inherent jurisdiction can and should be exercised for quashing of the proceeding:--

1. Where it manifestly appears that there is legal bar against the institution or continuance of the said proceeding.

2. Where the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety, do not constitute offence alleged.

3. In cases where the allegations made against the accused persons do constitute offence alleged but there is neither legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge.

15. In my view, the instant case falls within third categories as circumstances/allegations, as stated above, appearing against the petitioner in absence of any evidence that this petitioner sold Disinfestants and Fogger Machine at much higher rate than the market rate to M/s. Nand Kishore Fogla, who charged exorbitantly from the Government and that booty was shared with this petitioner and that this petitioner in connivance with Rajesh Fogla had given share of the booties to different persons would hardly prove the charge, even if the case of the prosecution is accepted that this petitioner had had meeting with other accused persons before finalization of the tender and that he had participated in the process of tender.

16. In such situation, any continuance of the proceeding against the petitioner would certainly amount to abuse of the process of the court. Accordingly, order taking cognizance is hereby quashed. In the result this application stands allowed.