
Jagdish Sharma Vs The State

Criminal M.P. No. 793 of 2002

Court: Jharkhand High Court

Date of Decision: Jan. 21, 2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 482#Penal Code, 1860 (IPC) â€” Section 120B, 409, 420, 467, 468#Prevention of Corruption Act, 1988 â€” Section 13(1), 13(2)

Citation: (2003) 2 JCR 341

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: Rajesh Shankar, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as ""the Code"") whereby

and whereunder Shri N.K. Srivastava, the learned Special Judge, C.B.I. (A.H.D.), Ranchi took cognizance of the offences under Sections 420,

409, 467, 468, 471, 477A and 120B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption

Act, 1988 against the accused persons including the petitioner.

2. The first information report was lodged by the Central Bureau of Investigation (CBI) alleging therein that there has been fraudulent withdrawal of

Government money under deep conspiracy committed by the accused persons including the petitioner along with the private suppliers of the

materials which have never been supplied resulting misappropriation of Rs. 1,05,13,827/- after withdrawing the money by submitting fake bills.

3. Counter-affidavit has also been filed on behalf of the CBI refuting the statements made in the application. It is stated that the petitioner has

already retired from service in the year 1998 and the petitioner being a non-gazetted employee, no sanction is required against him. It is further

submitted that the petitioner was indulged in deep conspiracy with the accused- suppliers/firms and passed fake bills of the articles, which have

never been purchased/ supplied to the Animal Husbandry Department (A.H.D.) and thus knowingly violated the provisions of Bihar Treasury

Code (the Treasury Code) and the Financial Rules (the Rules) resulting withdrawal of a huge amount totaling Rs. 60,17,019.23 paise by the

petitioner. It has also been mentioned that the petitioner checked total 147 bills of various accused/suppliers out of which 131 bills amounting to

Rs. 60,17,019.23 paise found to be false.

4. Mr. Rajesh Shankar, learned counsel appearing on behalf of the petitioner submitted that the learned Court below committed error in taking

cognizance of the offence without applying his judicial mind as the petitioner was an Assistant in the Ranchi Treasury and there has been no

violation of any provisions of the Treasury Code or any other Financial Rules. It is further argued that Rule 144 of the Treasury Code states about

the general instruction regarding preparation of the bills which does not authorize a Treasury Officer to refuse passing of bill if it is in proper form.

So there was no responsibility whatsoever on the part of the petitioner for refusing the bills submitted by the suppliers as those bills are said to be in

order. It is also submitted that the Treasury is only explainable or accountable to the Accountant General of the State. It is further argued that the

petitioner being a Government official and there is a pre- condition that the trial Court should not take cognizance of the offences made against him

without previous sanction and in the instant case, no sanction has been obtained, but even then, the learned Court below took cognizance of the

offence by violating the mandatory provision of Section 197 of the Code. The learned counsel also relied upon a decision of the Supreme Court in

the case of R.S. Nayak Vs. A.R. Antulay, .

5. On the other hand, Mr. Rajesh Kumar, learned counsel appearing on behalf of the CBI contended before me that the learned Court below has

rightly took cognizance of the offence as the petitioner while working as a Dealing Assistant in the Ranchi Treasury passed huge fake bills under

deep conspiracy and in league with various accused/suppliers, as a result of which, huge amount was withdrawn and misappropriated. It is further

argued that the petitioner already retired from service as back as in the year 1998 and, as such, no sanction is required for prosecution against the

petitioner as well as the question of sanction can be raised at any stage after taking cognizance even at the conclusion of trial. The learned counsel

in this connection relied on a decision of the Supreme Court in the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central

Bureau of Investigation, .

6. The petitioner was admittedly functioning as Dealing Assistant in Ranchi Treasury during the period 1990-95. There is specific allegation that he

has passed the bills of accused-suppliers-firms without proper checking by indulging in conspiracy and in complete violation of the Treasury Code

and the other Financial Rules. The admitted position is that all the bills said to have been passed by the petitioner was under his scrutiny as 131 bills

were found to be fake and thus bills must have been crossed from his table as his responsibility comes into effect for scrutinizing those bills with all

care and caution but, apparently, the same has not been complied with. It is true that the Treasury is also explainable/ accountable to the

Accountant General of the State but it does not mean that fake bills ought to be cleared/passed without due scrutiny by the Treasury.

7. It is also clear that the petitioner has already retired from service in the year 1998 whereas charge sheet has been submitted in the case in 2002.

In the case of P.K. Pradhan, (supra), it has clearly been held that :--

Question of requirement of sanction for prosecution can be raised at any time after cognizance of the offence is taken, may be even at the time of

conclusion of trial or after conviction. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the

performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity

to the defence to establish it.

8. Thus the question of sanction even if required shall be left open to be decided in the main Judgment itself after due consideration on the materials

placed from both sides. It is also settled that this Court should be reluctant in exercising its inherent power u/s 482 of the Code if the allegations as

made prima facie constitute the offences. In the instant case, as discussed above, the allegations made out, in my view, successively constitute the

offences against the petitioner for which the learned Court below has rightly taken cognizance of the offences aforementioned. In view of the settled

law where there is specific allegation against the accused persons disclosing commission of offence, this Court should not interfere with the

cognizance order.

9. Thus I do not find any reason for interference in the matter. Hence this application, being devoid of merit, is dismissed.