

**(2011) 07 JH CK 0044**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 264 of 2010

Shyam Das Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** July 21, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 120B, 21, 406, 409, 420

**Hon'ble Judges:** Dilip kumar sinha, J

**Bench:** Single Bench

**Advocate:** P.P.N. Roy and A.K. Sahani, for the Appellant; S.N. Rajgarhia, Assistant Public Prosecutor for the State, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The Petitioner has invoked the inherent jurisdiction of this Court for quashment of the order impugned dated 17.2.2010 passed by the Additional Sessions Judge, FTC-I Garhwa in Criminal Revision No. 12 of 2007 by which the discharge petition of the Petitioner rejected by Sri. T. Hassan, Judicial Magistrate, 1<sup>st</sup> Class Garhwa in G.R. No. 289 of 1997 was affirmed and the revision was dismissed.

2. The prosecution story as it stands in the written report of the Block Development Officer, Garhw, presented before the Garhwa police was that as against the Scheme No. 1 of 1990-1991 Rs. 3,65,000/- was estimated to be the cost for the construction of Gowawal High School Dhumria and the work in the first phase was allotted to one Jadunandan Dubey who did the work in part by 24.9.1991 worth Rs. 1,10,250/- but its cost was assessed Rs. 1,09,700/-. Finding certain slackness on his part, remaining part of the work was assigned to another person, Rajendra Jha as against revised estimate of Rs. 4,01,500/-.He received a sum of Rs. 2,93,050/- and work done by him

was estimated to Rs. 3,10,725/- which was entered into measurement book. After sometime the work of the construction of the school building was supervised by the Executive Engineer, N.R.E.P. Garhwa on 15.1.1996 and he put his comment on the measurement book that unless the work and quality of the construction of the building were improved, no final payment should be made. After sometime, the construction work of the school building was inspected by the Executive Engineer(vigilance) and he observed that there was error in the construction of the building since not in consonance with the nature of the land. After a few months the Executive Engineer N.R.E.P. Garhwa reported the Deputy Commissioner, Garhwa and the informant that there was crack in the newly constructed building of the school and therefore, the students should not be allowed to study in the newly constructed building. The building was inspected by other authorities also and the complaint was found true. On the direction of the Deputy Commissioner, Garhwa the informant B.D.O lodged the case alleging that poor quality of materials were used in the construction of the school building by the contractors Jadunandan Dubey, Panchayat Sewak and Rajendra Jha Jansewak Garhwa. Similarly, the Petitioner Shyam Das Singh the then Junior Engineer and Lakshmi Narayan Prasad the then Assistant Engineer N.R.E.P. Garhwa had also in prosecution of criminal conspiracy embezzled the public money to the tune of Rs. 4,03,330/- by recording measurement and cost of the construction at the inflated rate and thereby making false entry in the measurement book.

3. On the basis of the written report Garhwa P.S. Case No. 86 of 1997 was registered for the alleged offence under Sections 406/409/420/120B of the Indian Penal Code. The police after investigation submitted charge sheet and accordingly cognizance of the offence was taken against the Petitioner and others. The Petitioner with another then preferred a petition for discharge which was rejected by the order impugned dated 16.9.2002 by the court of Sri. S.B. Ojha, Judicial Magistrate, Ist Class Garhwa.

4. The Petitioner along with Lakshmi Narayan Prasad preferred Cr. Rev. No. 656 of 2002 before this Court against the order impugned dated 16.9.2002 whereby the petition for discharge of the Petitioner was rejected and the Petitioner was called upon to stand charged.

5. This Court by a detailed order dated 28.7.2006 set aside the order impugned dated 16.9.2002 and directed the court concerned to pass afresh and speaking order in accordance with law taking into consideration of the Government Notification vide Memo No. 1075 dated 17.11.1986 of the Home Department, Government of Bihar wherein an instruction was issued for obtaining sanction from the Government before prosecution of a Junior Engineer or an Assistant Engineer from the Engineer-in-chief of the concerned department. However, discharge petition of the Petitioner was reconsidered and it was dismissed by Sri. T. Hassan, Judicial Magistrate, Ist Class on 9.1.2007 against which the Petitioner preferred Criminal Revision which was also dismissed.

6. Mr. P.P.N. Roy, the learned Sr. Counsel submitted that the Petitioner Shyam Das Singh was admittedly a Junior Engineer at the relevant time and was a public servant u/s 21 of the Indian Penal Code as declared by the Government of Bihar vide Notification No. 4493 dated 14.3.1977 issued by the Public Works Department (Annexure-10) and therefore, sanction was required u/s 197 of Code of Criminal Procedure before launching prosecution against him. As a matter of fact, Executive Engineer N.R.E.P. Garhwa had prepared plan and estimate cost for the construction of a school building at Dhumaria on the guideline of the model plan of the Education Department, Government of Bihar for whole of the State in the Erstwhile undivided Bihar and in that manner the authorities concerned ignored the essential factor of varying soil conditions in the different areas of the State and no precautionary measure was taken for the construction of the school building at the particular place keeping in view the soil condition. It was alleged that construction of the school building at Dhumaria started without investigation of the suitability of the land for the erection of the building and therefore, the Petitioner was bound by the plan, estimate and site given but had no alternative other than to perform his supervisory duties. Being the Junior Engineer he had neither authority nor he had jurisdiction to raise the question about the site condition and to safeguard against any shortcomings. Soil being of black cotton alluvial category, needed special type of foundation structure through pile foundation of specific reinforced concrete in cement columns to avoid the possibility of cracks and damages of the building. Executive Engineer(Vigilance) detected that due to percolation of rain water through the voids of the holes in the cracked earth, in the nature of black cotton soil, cracks occurred on the outer walls of the building and accordingly he suggested and recommended appropriate precautionary measure to safeguard against the future damages. Therefore, nothing wrong was found in the construction work except in the foundation. As a matter of fact, the Block Development Officer did not take step to implement the suggestion of the Executive Engineer(Vigilance) and negligently allowed the minor cracks to assume bigger proportions. FIR was lodged after more than three years of the completion of building work with oblique motive of passing the buck or shifting his liability to others. There was no allegation against this Petitioner of non-execution of the work or wrong or over measurements resulting in irregular payments or quality or quantity or the structural strength of the materials used or his workmanship. The Executive Engineer N.R.E.P. Garhwa had given an unqualified certificate of satisfactory work at page 94/5 M.B. 57 that he found the work satisfactory, however, he had made it clear that final adjustment with the contractors should be done only after the rectification work being carried out to prevent an escalation of the cracks. Contractors engaged in the construction of the school building work were drawn from the "block staff" and the entire payment and disbursement was vested with the "BDO informant" who himself used to make running payments including advances to the contractors after having been satisfied with the work done by them and there was no adverse comment from the Block Development Officer as to the nature of the work done by the contractors who were

the staffs of the block under his control. Finally Mr. P.P.N. Roy the learned Sr. Counsel submitted that in the facts and circumstances, sanction u/s 197 Code of Criminal Procedure was required before cognizance of the offence could be taken against the Petitioner Junior Engineer who is admittedly a public servant u/s 21 of the Indian Penal Code and it was not the allegation that offence was committed in his personal capacity and for his personal gains

7. In order to apply the provision of Section 197 Code of Criminal Procedure the essential ingredients are that the offence must be committed by the Public servant and that public servant employed in connection with the affairs of the Union or a State is not removable from the office save by or with the sanction by the Central Government or the State Government as the case may be. I find from perusal from the impugned order recorded by the Additional Sessions Judge, F.T.C. No. I Garhwa in Cr. Rev. No. 12 of 2007 that while dismissing the Cr. Rev. on 17.2.2010 though he considered the case of the Junior Engineer that sanction u/s 197 Code of Criminal Procedure was required before taking cognizance of the offence against him but with regard to the Petitioner Shyam Das Singh though he admitted that the Petitioner was a public servant but observed that he was removable from his office without the sanction of the Government of Bihar/Jharkhand and his such observation has not been buttressed by disclosing any source of information/document in this regard. With reference to the circular of the Home Department, Govt. of Bihar the learned Additional Sessions Judge observed that it could not take the place of the statutory law and he held that no sanction was required u/s 197 Code of Criminal Procedure for prosecution of the Petitioner Shyam Das Singh, a Junior Engineer I find that observation made by the Revisional Court is based upon erroneous consideration and without support of any relevant document. For the reason stated above and relying upon the notification of Bihar Government(Annexure-10), I find and hold that the Petitioner, Junior Engineer, is a public servant u/s 21 of the Indian Penal Code. It was not the case that the act purported and alleged to have been done by him was done in his personal capacity and for his personal gains and therefore, in the given facts and circumstances sanction u/s 197 Code of Criminal Procedure was "Sine Qua Non" before taking cognizance of the offence against him. In the facts and circumstances, the prosecution of the Petitioner Shyam Das Singh, for want of sanction u/s 197 Code of Criminal Procedure, cannot be sustained under law accordingly, his prosecution in G.R. No. 289 of 1997 pending before Sri. T. Hassan Judicial Magistrate, 1<sup>st</sup> Class Garhwa or his successor is set aside and order impugned dated 9.1.2007 recorded by Sri. T. Hassan, Judicial Magistrate, Ist Class Garhwa and order impugned dated 17.2.2010 recorded by the Additional Sessions Judge, FTC-I Garhwa in Cr. Rev. No. 12 of 2007 are quashed. This petition is allowed.