

**(2009) 09 JH CK 0017****Jharkhand High Court****Case No:** None

Braj Kishore Sharma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision:** Sept. 15, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 239
- Prevention of Corruption Act, 1988 - Section 11, 12, 13, 7

**Hon'ble Judges:** Dilip kumar sinha, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

D.K. Sinha, J.

Instant criminal revision is directed against the order impugned dated 4.9.2008 passed by the learned Special judge (Vigilance), Ranchi in Vigilance P.S. Case No. 3 of 2001, corresponding to Special Case No. 7 of 2001 by which the petition filed on behalf of the petitioner u/s 239 of the Code of Criminal Procedure for his discharge against the alleged offence under Sections 7/13(2) of the Prevention of Corruption Act, 1988 was dismissed.

2. Prosecution story in short was that the informant Hardev Bhagat submitted a written complaint on 24.3.2001 before the vigilance police (State of Jharkhand) stating therein that he had been constructing a PCC Road at village Charki on the instruction of B.D.O., Mandar and it was completed. Though he had received sum of Rs. 1,42,500/- towards the work done but balance amount to the tune of Rs. 17,000/- was due for payment. Informant alleged that one Rameshwar Singh Junior Engineer had already obtained Rs. 11,000/- illegally from him and was further demanding Rs. 13,000/- towards the last payment of Rs. 17,000/ It was further alleged therein that the petitioner Assistant Engineer used to accept illegal money through the Junior Engineer Rameshwar Singh. After verifying the allegation and having been found,

the same to be true, a trap was laid by the team of the State Vigilance Department and the co-accused Rameshwar Singh Junior Engineer, Mandar Block, Ranchi was trapped accepting the bribe amount to the tune of Rs. 5,000/- which was recovered from his possession in presence of the witnesses and memorandum of seizure was prepared. Upon complain and seizure whereof Vigilance P.S. Case No. 3 of 2001 was instituted for the alleged offence u/s 7 of the Prevention of Corruption Act against the petitioner Braj Kishore Sharma as also against the Junior Engineer Rameshwar Singh from whose possession G.C. notes were recovered in presence of the witnesses alleged to be tendered by the informant-contractor. The case was investigated and the investigating officer submitted charge-sheet against the named accused persons, including the petitioner Assistant Engineer for the alleged offence u/s 7 read with Section 13(2) of the Prevention of Corruption Act.

3. Learned Sr. Counsel Mr. P.P.N. Roy initiating his argument submitted that in the written report submitted on behalf of the informant it was nowhere alleged that the petitioner Assistant Engineer had demanded money or that he was trapped accepting bribe from the informant except the wild allegation based upon suspicion that he might be receiving his share through the Junior Engineer. As a matter of fact there was no reason or occasion for the petitioner to demand money from the contractor because no work was pending before him at the relevant time and if at all any liability was made, it was only against the Junior Engineer against whom there was allegation that he found accepting bribe and such amount was recovered from his person and possession in presence of the witnessed Petitioner has been implicated in the instant case merely on suspicion, without any legal evidence on the record and even no nexus could be established between the petitioner and the co-accused Junior Engineer having hands in gloves for the alleged transaction between the Informant and the Junior Engineer. Petitioner's role was confined to verify the estimate of work prepared by the Junior Engineer who had forwarded the estimate of the alleged work in the instant case within four days and therefore, he had no interest at all against the balance amount which was due to the informant. Measurement book was produced before him for verification on 14.10.2000 and having been satisfied, he had returned the measurement book on the same day, therefore, question of any demand or that he had earlier received any part of certain amount through the Junior Engineer did not arise.

4. The learned Sr. Counsel Mr. Roy pointed out that a joint petition was filed by the petitioner Assistant Engineer and the co-accused Rameshwar Singh, Junior Engineer for their discharge u/s 239 of the Code of Criminal Procedure on the ground that none of the witnesses in course of investigation had supported-or-corroborated the prosecution version as presented by the informant, but the same was dismissed in a mechanical manner as there was no material against the petitioner to proceed against him.

5. Advancing his argument, the learned Sr. Counsel discussed about the procedure for allotment of work under Jawahar Gram Samriddhi Yojana (JGSY) and according to such procedure, B.D.O. of the Block was the only competent authority to grant administrative approval and pursuant to that, Gram Panchyat Parywekshak was empowered to allot any work to any Contractor/ Abhikarta on the basis of the decision taken by the Gram Sabha.

6. Sr. Counsel further contended that it was the Panchyat Sevak or the Gram Panchyat Parywekshak as the competent person to issue cheque to the Contractors/Abhikartas after due verification of the work done in accordance with specification. Contractors/Abhikartas after verification of the work would make an application before the Gram Panchyat Parywekshak for issuance of cheque which used to be forwarded to, the Junior Engineer to supervise the work and also to prepare measurement book. After such exercise, measurement book used to be referred to the Assistant Engineer (petitioner) and thereafter to the Executive Engineer in case the work was related to more than one-lakh for verification and ultimately, it was the Panchyat Sevak or the Gram Panchyat Parywekshak who had to verify the measurement book and to make payment.

7. The admitted case of the informant was that a sum of only Rs. 17,000/- was due for the work done as per specification and for that the Junior Engineer had demanded Rs. 13,000/- which did not make any sense or logic as he was neither the passing authority nor issuing authority of the cheque and so was the case with the petitioner Assistant Engineer. Therefore, it could be safely said that the petition filed u/s 239 for discharge was dismissed mechanically and without application of judicial mind which calls for interference by way of revision.

8. On the point of law, the learned Sr. Counsel pointed out that Special Judge (Vigilance), Ranchi proposed the charges to be framed against both the accused; persons including the petitioner Braj Kishore Sharma for the alleged offence under Sections 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 which cannot be sustained as against the petitioner as there was no allegation against the petitioner having accepted bribe from the informant and therefore, neither Section 7 which deals with public servant taking gratification other than legal remuneration in respect of an official act" nor u/s 13(2) which deals with "public servant committing criminal misconduct by accepting bribe" nor Section 13(1)(d) which deals with the "public servant alleged to have committed the offence of criminal misconduct by corrupt or illegal means and obtains for himself or for any other person any valuable thing or pecuniary advantage or by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage" could be attracted. Learned Special Judge grossly erred by proposing the charges as referred to hereinbefore under submission of Public Prosecutor without application of judicial mind and such charges have got no relevancy under the facts and circumstances of the case as against the petitioner,

therefore, cannot be sustained under law. The only allegation that was made against the petitioner Assistant Engineer was that the co-accused Junior Engineer had been accepting bribe as also on behalf of the petitioner but there was no material evidence on the record collected In course of investigation substantiating the allegation of nexus between the two that h\$ had ever accepted any amount from the Junior Engineer what the latter had collected by way of commission or bribe and, if at all, any offence was made out against the petitioner, though denied, it would have been u/s 12 of the Prevention of Corruption Act which deals with punishment for abetment of offence defined under Sections 7 and 11 of the Prevention of Corruption Act but without any sort of legal evidence except the wild allegation. Prosecution failed to show nexus that the Junior Engineer had accepted gratification on the abetment of the petitioner Assistant Engineer for his own benefit as well as for the benefit of the petitioner herein and therefore, criminal prosecution of the petitioner for the alleged proposed charge would amount to miscarriage of justice and therefore, he be discharged. Learned Special Judge even failed to show even *prima facie* materials to proceed against him.

9. On the other hand, Mr. A.K. Kashyap, Learned Spl. P.P. opposed the contention as raised on behalf of the petitioner and relied upon several decisions of the Apex Court wherein it were consistently held that what the Special Judge was required to examine at the time of framing of charge against the accused under the Prevention of Corruption Act, 1988 had to see as to whether *prima facie* materials were available on the record to proceed against the accused after framing charge for the relevant offence.

10. Mr. Kashyap, learned- Spl P.P. further pointed out that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error in framing of charge would not by itself be sufficient for upsetting the conviction. The impugned order by which charges were proposed were subject to alteration at any stage of trial.

11. In Dinesh Seth Vs. State of N.C.T. of Delhi, the Apex Court held that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. It was further held that appellate, confirming or revisional court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned.

12. In the instant case, missing of charge to be proposed u/s 12 of the Prevention of Corruption Act, 1988 against the petitioner was not going to frustrate the entire exercise of prosecution and that not sufficient for setting aside the impugned order, rather the same could be corrected at any stage of trial with sufficient opportunity to the accused for explanation or rebuttal and therefore, order impugned did not call for interference.

13. Having regard to that facts and circumstances of the case, I find that though the allegation of accepting bribe is not levelled against the petitioner accused but what has been alleged by the informant that the co-accused Junior Engineer had been also accepting bribe on his behalf as also on behalf of the petitioner Assistant Engineer, I find that has been argued, on behalf of the petitioner that he was neither concerned with the allotment of work to the Cpntractor/Abhikartas nor he had any role in making payment to the Contractors by issuing cheques for the work done. Yet, it cannot be denied that the petitioner Assistant Engineer was a passing authority whose responsibility was to examine the measurement book forwarded by the Junior Engineer and then to forward, having been satisfied with the entries made therein, to the Executive Engineer, approving the measurement done by the Junior Engineer and also upon physical verification of the actual work done, therefore, it would be too early to observe that the petitioner was not at all connected with the allegation as levelled against him, without prejudice, in view of the allegation that the co-accused Junior Engineer used to accept gratification/commission on his behalf as also on behalf of the petitioner Assistant Engineer and the trap that was laid by the Vigilance Department the co-accused Junior Engineer was found accepting bribe from the informant and such amount was recovered from the Junior Engineer. I further find substance in the argument advanced on behalf of the Vigilance that the proposed charge can be changed, altered or modified at any stage of the trial at the instance of the prosecution, certainly, with the opportunity of *audi alteram partem*" to the other side. In the given facts and circumstances, learned Sr. Counsel for the petitioner failed to show any ground so as to call for interference in the order impugned dated 4.9.2008 passed by learned Special Judge (Vigilance), Ranchi in Vigilance P.S. Case No. 3 of 2001, corresponding to Special Case No. 7 of 2001 by which charges have been proposed, but patent error may be rectified.

14. Accordingly, this criminal revision is dismissed with the direction to the Special Judge to proceed in accordance with law and expedite the trial in view of institution of the instant case in the year 2001.