

(2009) 09 JH CK 0022
Jharkhand High Court
Case No: None

Nalin Soren

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 17, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 156, 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 409, 420, 423
- Prevention of Corruption Act, 1988 - Section 11, 12, 13, 15

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.R. Prasad, J.

Through this writ application extraordinary jurisdiction of this Court as enshrined under Article 226 of the Constitution of India has been invoked for quashing of the first information report of Vigilance P.S. Case No. 11 of 2009 (arising out of Special Case No. 15 of 2009) instituted under Sections 406, 409, 420, 423, 424, 465 and 120B of the Indian Penal Code and also under Sections 11, 12, 13 and 15 of the Prevention of Corruption Act, 1988.

2. The facts giving rise this application are that the complainant lodged a complaint in the court of Vigilance-cum-Additional Judicial Commissioner, Ranchi, alleging therein that right from the inception of the State of Jharkhand, all the officials and the Minister of the Department of Agriculture started functioning in the manner which suited to their interests, though it was always prejudicial to the interest of the general public. Such irregularities came to light in the year 2003 when reputed institution applied for supply of the seeds but supply order was given to a concern which was quite unknown for the obvious reason of having benefit out of it. Later

on, in the financial year 2003-04, various schemes for the betterment of agricultural sector of the State of Jharkhand were introduced but it did not serve the purpose of the general public, rather it served the interest of the accused persons. For execution of such schemes, decisions were taken to purchase pulses" seeds from reputed institutions but order was placed to a firm which was quite unknown and that Rs. 250 lacs were allocated for developing Agri Bio Zone to promote production of vegetables but it never came to surface, as fund was misused. The same was the fate of the scheme known as "Akasmik Fasal Yogana" in which more than Rs. 200 crores were invested but the result was nil.

3. Further allegation is that in the year 2006 a scheme known as "Shankar Dhan Beej Kray Yogana" was introduced under which orders for supply of the seeds were placed by accused No. 1, Director, Agriculture to M/s. Nefed and also to M/s. Naramake, who of course supplied the seed but, it was all of inferior quality whereas payments were made of the better quality seed. Further under the scheme known as Biz Binimay Karyakram, seeds were claimed to have been purchased in the year 2006, but the same were never supplied to the farmers and thereby accused persons misappropriated the amount. It has also been alleged that in the same year, when the Secretary, Agriculture and Sugarcane Development Department, Jharkhand sanctioned money for purchase of seeds of vegetable and food grains in the month of September, 2000, orders were placed to M/s Nefed and M/s. Naramake, though the said concern were incapable to supply seeds in such a huge quantity and in that deal, the accused persons grossly misused the public money.

4. Similarly, in other scheme also funds were misused in purchasing liquid "bio khad" and in execution of the scheme, known as "Zaivik Kheti Vikas Yogana" supply orders of not less than Rs. 371.36 lacks were placed to a favourable firm in the year 2005. Subsequently, in the month of June, 2006, Rs. 240 lacs were sanctioned for purchase of vegetable seeds but the aforesaid amount was paid to Sasanka Agriculture for construction of poly home without there being any agreement for obvious reason to defraud the State by misappropriating the public money. Again in the year 2006, total amount of Rs. 1920 lacs were sanctioned for construction of well and distribution of pump set to farmers but the same was not utilized until the end of financial year when at the last moment, the amount was withdrawn which was never utilized for the purpose rather it was misappropriate.

5. Similarly, Rs. 500 lacs were sanctioned in the month of July, 2006 for promotion and purchase of Engineering Products and also for other purposes for promoting agriculture but again it was not utilized until the end of financial year, when it was withdrawn, which was never accounted for in the Department.

6. It has also been alleged that accused No. 1, Director, Agriculture under supply order has shown to have purchased paddy seed HPS 111 and got it distributed but that kind of seed has never been developed in India by any Institute or any Agriculture University. At the end, it has been alleged that both the accused No. 1

and accused No. 2 (petitioner) in violation of the rules and regulation and without inviting the tenders indulged themselves in malpractices whereby they misappropriated a sum of Rs. 46.10 crores and the indulgence of the accused persons in the malpractices, would be evident from the fact that Rs. 1920 lacs were withdrawn from the Treasury in the second week of March, which were shown to have been utilized by the end of 31st March for the training and distribution of pump set which is highly improbable and in these manners, both the accused persons have been alleged to have committed offence of misappropriation, cheating etc.

7. The said complaint u/s 156(3) of the Code of Criminal Procedure was forwarded to the Officer-in-Charge of Vigilance Police Station, Ranchi for institution and investigation.

8. Accordingly, the case was instituted and is being investigated upon by the Vigilance.

9. Mr. Abhoy Singh, learned Senior counsel appearing for the petitioner submitted that whatever allegations have been levelled virtually all of them are directed against the accused No. 1, who is the Director, Department of Agriculture, Government of Jharkhand and the persons who held the post as Minister of Agriculture from 2003 to September, 2006, which fact would be reflected from the complaint petition itself as allegations levelled in paragraph Nos. 3 to 26 and the documents furnished in this respect relates to period from 2003 to 25.7.2006 during which petitioner was not holding the post of the Minister in the Agriculture Department, Government of Jharkhand, rather the petitioner's tenure was from 12.10.2006 to 17.8.2008 and again from 2.9.2008 till the Presidential Rule was promulgated but it is quite strange that in spite of allegations of misappropriation being there, the persons who held the post of Minister of Agriculture have not been made accused which itself indicates that the instant case has been lodged with mala fide intention and to jeopardize the future prospect of the petitioner.

10. Learned Counsel further submitted that only two documents, i.e, Annexure 4 and Annexure 5 which have been annexed with the complaint petition relate to the period when the petitioner was holding the post of the Minister. One of them, is a letter No. 670 dated 19.3.2007 which has been issued by the Secretary to the Agriculture Director giving direction to take steps for making seeds available for its distribution among the cultivators of the drought area and pursuant to that direction, Director issued a letter (Annexure 4) to all the District Agriculture Officers for making seeds of the vegetable available to the farmers of the drought areas. Thus, in no way these documents go to show the indulgence of this petitioner in any malpractices or his indulgence in any act of any misappropriation of the Government fund. Thus, allegations made by the complainant against the petitioner never constitute any offence whatsoever and in that view of the matter, first information report is fit to be quashed so far this petitioner is concerned.

11. As against this, Mr. A.K. Kashyap, learned Senior counsel appearing for the Vigilance submitted that gist of the allegations made by the complainant in the complaint is that for execution of several schemes, seeds, agricultural implements, Pump Set etc. were purchased by the officials of the Agriculture Department but in such purchases, according to complainant, malpractices were adopted, rules and regulations were violated and thereby whatever benefit should have been reached to the general public, it never reached to them, rather officials of the Agriculture Department even the persons holding topmost post, according to complainant, defrauded the State exchequer to a great extent.

12. In this regard it was further submitted that it is not correct to say that none of the allegations relates to the period when the petitioner was holding the post as allegations are there that huge amount was sanctioned in the month of May, 2006 for the construction of wells and distribution of pump sets to farmers but the same was not utilized until the end of the financial year when the petitioner was holding the office and thereby there has been reasonable belief that huge money was misappropriated as it is impossible to utilize huge amount only at the end of financial year.

13. Similar allegation is there with respect to purchase of engineering products and also seeds from M/s. Nefed and M/s. Naramake.

14. There has been no dispute to the principle that where allegation made in the first information report or the complaint does not constitute offence, High Court in exercise of power either u/s 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India can quash the first information report.

15. At the same time, it has also been well settled that court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution as has been held in a case of [Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another](#), where the Court has held as under:

The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

16. But at the same time, the Hon'ble Supreme Court in a case of [State of Karnataka Vs. L. Muniswamy and Others](#), has cautioned that the inherent power should not be exercised to stifle a legitimate prosecution and the High Court should refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court.

17. The instant case seems to be well within the realms of the principle laid down by the Hon'ble Supreme Court in the aforesaid case. Having gone through the

complaint petition, the complainant seems to have put allegation of misusing of huge amount of public money but those allegations seems to be incomplete and hazy and, therefore, factual aspect of the matter can only come out even against petitioner No. 1, when the matter is investigated upon as irregularities have been alleged to have been committed in the matter of purchase of seeds, agriculture products, pump sets etc. with a view to defraud the State exchequer to a great extent. The allegation also seems to be there of drawing money at the fag end of the financial year 2006-07 with respect to purchase of the articles, order of which was given some times in the mid of 2006 which, according to complaint, is indicative of fact of indulgence of the accused of the malpractices for defrauding the State exchequer.

18. Under this situation, I find no merit in this writ application. Hence, it is dismissed.