

(2009) 08 JH CK 0041
Jharkhand High Court
Case No: None

Dr. Rabindra Kumar Rana

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Aug. 24, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 161, 164, 420, 467
- Prevention of Corruption Act, 1988 - Section 13

Citation: (2011) 7 RCR(Criminal) 937

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Judgement

R.R. Prasad, J.

Heard leaned counsel appearing for the appellant and learned Counsel appearing for the CBI on the matter of bail.

2. Learned Counsel appearing for the appellant submitted that the appellant having been convicted for the offence u/s 120B read with Sections 420, 467, 468 and 471 of the Indian Penal Code was sentenced to undergo imprisonment for five years and also to pay a fine of Rs. 3,00,000/- and was further sentenced to undergo imprisonment for three years on being found guilty for the offence u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act on the allegation that this appellant being a Member of the Legislative Assembly had closed association with the then Chief Minister and taking advantage of that, the appellant extended patronage to the high officials of the Department of Animal Husbandry and also the suppliers and thereby received huge money from them and facilitated the other accused persons to draw money from the Godda Treasury without supplying medicines or materials to the Department but the prosecution has completely failed to establish the fact that the appellant was in league with other accused persons, who either draw the money illegally or facilitated other accused to draw money

illegally.

3. In this respect learned Counsel submitted that the trial court while holding the appellant guilty for conspiracy has mainly relied upon the evidences of four witnesses, namely, P.W. 17, P.W. 30, P.W. 37 and P.W. 39 but if their evidences are taken in totality not in isolation as has been done by the trial court, whatever circumstances has been shown to be used an act of conspiracy it would get demolished.

4. In this respect learned Counsel appearing for the appellant submitted that so far P.W. 17 is concerned, he has spoken about three circumstances which, according to prosecution, go to show the act of conspiracy so far this appellant is concerned but those evidences highlighting the circumstances if are read in the context of the fact as elicited in the cross-examination, it would never indicate any incriminating circumstances of indulgence of this appellant in the act of any conspiracy. To substantiate this it was submitted that P.W. 17 has testified that this appellant in association with Dr. S.B. Sinha, one of the perpetrators, was quite instrumental in getting Dr. Ram Raj Ram posted as In-charge, Director of the Department of Animal Husbandry but the fact elicited in the cross-examination would go to show that Dr. Ram Raj Ram was made In-charge, Director by virtue of his seniority and under the order of the High Court/Hon'ble Supreme Court. The other circumstance which was used to hold the appellant guilty for conspiracy is that the vigilance when detected gross illegality in the matter of purchase of certain materials from a foreign country, had lodged a case against the members of the purchase committee and other officials posted at Regional Office, Patna but this appellant, according to P.W. 17, in association with Dr. S.B. Sinha exerted influence on the authority as a result of which case was never investigated properly but that assertion of P.W. 17 gets demolished from his own evidence elicited in cross-examination whereby he has deposed that the then Chief Minister did not interfere in the matter by directing the authority to stay the investigation, rather vigilance after taking advice of special Public Prosecutor and even the then Advocate General submitted charge sheet. The other circumstance used against the appellant is that when certain irregularities were found during audit inspection, the then Departmental Minister ordered for CBI enquiry but in order to save the culprits, enquiry was never handed over to the CBI, rather the enquiry was entrusted to be made by Public Accounts Committee and this was done by the then Chief Minister but at the instance of the person, who had influence over the Department but the same witness has testified that the Public Accounts Committee had found the Regional Director, Animal Husbandry Department to be the innocent and the said report had even been accepted by the Accountant General and that said allegation had no connection with the matter relating to Godda Treasury.

5. Testimony of P.W. 17 was also impeached on the ground that his statement made u/s 161 or 164 was never made available at the time of supply of police paper or

subsequently also and hence, great prejudice has been caused and thereby testimony of this witness is not only liable to be expunged but it is fit to be rejected as this witness was himself an accomplice.

6. Learned Counsel further submitted that prosecution has examined P.W. 30 and P.W. 37 in order to prove that this appellant had close association with the officials of the Animal Husbandry Department and had great influence over them whereby P.W. 37 has testified that this appellant got his three relatives appointed in the Department but the prosecution has never proved the relationship of the appointees with this appellant and in absence of this, the said evidence of this witness cannot be taken to be incriminating. Likewise P.W. 30 has testified that Dr. Shyam Bihari Sinha used to arrange Air Tickets for this appellant and his family members but this witness had never disclosed about the date or the year and as such, any statement regarding association of this appellant with said Mr. Sinha or any other accused will have no bearing particularly when there has been no corroboration of this fact by any independent witness. Moreover, since the wife and son of this witness are accused in the case he can be said to have spoken at the instance of the CBI so that C.B.I may not pursue the case of his relative to its logical end. That apart, one more witness, P.W. 39 has been examined, who has only stated about the opening of several savings account as well as other accounts in the Bank by this appellant in his name or in the names of other member of the family but this appellant has admitted his signatures over seven documents only relating to his accounts but the trial court in absence of examination by an expert of other documents relating to savings account or other accounts has taken to be the accounts of this appellant and thereby the trial court has committed illegality in convicting the appellant as from the circumstance as highlighted on behalf of the defence, one can easily say that the prosecution has failed to establish the charge of conspiracy.

7. It was lastly submitted that the appellant has remained in custody for about 25 months and as such, keeping in view the period of custody, the appellant be admitted to bail as in number of cases the Hon"ble Supreme Court has granted bail even to the person who remained in custody only for about 18 months.

8. As against this, learned Counsel appearing for the CBI submitted that P.W. 17 being an employee of the Animal the persons having influence in the Department and as per his evidence, he had occasions to see this appellant in association with S.B. Sinha at number of occasions. The testimony of P.W. 17 gets corroboration from the evidence of P.W. 30 who has not only testified about arrangements of the Air Tickets for this appellant by S.B. Sinha but has also testified that at number of occasions S.B. Sinha extended hospitality to this appellant. That apart, huge money was found deposited in the account either in the name of this appellant or in the name of his relative at Allahabad Bank, Patna and those deposits were made in a very short span of time for which the explanation given was never found to be

justified by the trial court and thus, the prosecution can be said to have successfully established that under the conspiracy hatched by this appellant with other accused including high officials of Animal Husband Department and the politicians and also suppliers, the State was defrauded of huge amount whereby suppliers took payment without there being any allotment and without supplying the medicine/materials and they got the money shared.

9. Learned Counsel for the CBI further submitted that it is not that only on the ground of custody the persons have been admitted to bail by the Hon"ble Supreme Court, rather in the circumstances of the case has also been taken into consideration.

10. Regard being had to the facts and circumstances of the case and taking into consideration the submission advance on behalf of the parties, I am not inclined to grant bail to the appellant. Hence, the prayer for bail of the appellant is rejected. However, the appellant would be at liberty to move for bail after serving half of the sentence of the maximum sentence imposed by the trial court if the appeal is that taken up before that.