

(2014) 01 JH CK 0096

Jharkhand High Court

Case No: Writ Petition (PIL) No. 4700 of 2008

Durga Oraon

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Jan. 6, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Penal Code, 1860 (IPC) - Section 109 120B 193 201 34
- Prevention of Corruption Act, 1988 - Section 13(1) 13(1)(d) 13(1)(e) 13(2)

Citation: (2014) 3 AJR 371 : (2014) 1 JLJR 476

Hon'ble Judges: R. Banumathi, C.J; Apararesh Kumar Singh, J

Bench: Division Bench

Advocate: Rajeev Kumar and Mr. Vishal Kumar, for the Appellant; R.R. Mishra, G.P. II for State, Md. Mokhtar Khan, ASGI for C.B.I, Mr. Amit Kumar Das, Advocate for E.D., Mr. Radhy Shayam and Anand Kumar Sinha and Vinay Prakash for Res. No. 22, for the Respondent

Judgement

1. Petitioner is represented by Mr. Rajeev Kumar. C.B.I. is represented by Md. Mokhtar Khan, ASGI. State of Jharkhand is represented by R.R. Mishra, G.P. II and some of the respondents represented through their respective counsels. Today, the C.B.I. has submitted the latest Status Report in a sealed cover in the Court, which was opened and kept with the record.
2. This writ petition (W.P. (PIL) No. 4700 of 2008) was filed by the petitioner praying for C.B.I. investigation against several Ministers of the Government of Jharkhand and other officials and also against some private persons who were allegedly involved in corrupt activities of massive scale and alleged to have amassed huge assets disproportionate to their known source of income by abusing their official position. In the Public Interest Litigation, the petitioner has levelled several allegations against the former Chief Minister, Sri. Madhu Kora and against seven Ministers of the then State of Jharkhand, who are respondents in the present case.

3. One Interlocutory Application being LA. No. 2978 of 2008 was filed in W.P.(PIL) No. 4700 of 2008, praying therein to implead the then Chief Minister Madhu Kora, Binod Sinha and Sanjay Choudhary as respondents in the present case. In the Interlocutory Application, the petitioner has made allegation of some corruption and siphoning of huge money to other places in India and it was prayed to direct the C.B.I. to investigate the instances of corruption. By order dated 26.05.2009, the Court has allowed the Interlocutory Application being I.A. No. 2978 of 2008 and directed to implead the above three persons as respondents in PIL.

4. One another Public Interest Litigation was filed being W.P.(PIL) No. 2252 of 2009 by one Aman Munda praying therein for a direction to the C.B.I. to investigate the allegation against the then former Chief Minister and his accomplices Binod Sinha, Sanjay Choudhary and Harendra Singh. The said PIL was tagged along with W.P. (PIL) No. 4700 of 2008 and later disposed of.

5. By order dated 4.8.2010 in W.P. (PIL) No. 4700 of 2008 the Court directed the C.B.I. to take over investigation in two cases; Vigilance P.S. Case No. 26 of 2008 and Vigilance P.S. Case No. 9 of 2009 from State Vigilance Bureau and accordingly the C.B.I. took over the investigation of these cases on 11.08.2010 by re-registering them as R.C. 4(A)/2010-AHD-R and RC 05(A)/2010-AHD-R.

6. On the request of the Government of Jharkhand, Case No. 38/2010 dated 30.08.2010 under Sections 409/420/423/467/468/471/120B/34 of the I.P.C. and 13(2) r/w 13(1) of the Prevention of Corruption Act, 1988 of Jharkhand State Vigilance Bureau was taken over by CBI and registered as RC 13(E)/2011-R at CBI, EO-1 Branch, New Delhi on 30.8.2010. However, while hearing W.P.(PIL) No. 4700 of 2008 vide order dated 3.9.2012, this Court clarified that the CBI was required to look into all allegations levelled in the PIL by taking over all the materials collected by existing investigating agencies for conducting comprehensive, complete and thorough investigation. And in furtherance of the direction of this Court, the CBI scrutinized the records and filed various status reports on various dates.

7. While hearing W.P.(PIL) No. 4700 of 2008 vide an elaborate order dated 3.09.2012 the Court directed the CBI to look into the allegation made in the PIL by taking over all the materials by CBI for conducting comprehensive, complete and thorough investigation.

8. In furtherance of the direction of this Court CBI has scrutinized the records and filed various Status reports on various dates. Today (i.e. on 6.1.2014) also one status report in a sealed cover has been submitted before this Court which we have perused. Relevant paragraphs of the Status Report, which are paragraphs 5 to 10, are quoted herein below:

5. CBI scrutinised the records collected from Income Tax Department in respect of about 40 persons including Public Servants, private persons, firms and companies, the result of which have been incorporated in earlier status reports. The scrutiny

suggested acquisition of property by Shri Dular Bhuiyan disproportionate to his known sources of Income, hence a Preliminary Enquiry was registered against Shri Dular Bhuiyan, the then MLA and Ex-Minister of Revenue, Land Reforms and Co-operatives of Govt. of Jharkhand vide No. PE 01(A)/2013-R. Scrutiny of documents collected from Income Tax department did not disclose information worth registration of separate cases, except PE 01(A)/2013-R.,

6. Status of Investigation/Enquiry:

6.1. Status in Case No. RC 04(A)/2010-AHD-R:

6.1.1. In the FIR of this case following two persons were also named as accused.

- i) Hari Narayan Rai, Former Cabinet Minister, Govt. of Jharkhand.
- ii) Anosh Ekka, Former Cabinet Minister, Govt. of Jharkhand.

6.1.2 This case is the re-registered version of Jharkhand State Vigilance Bureau PS Case No. 26/2008 which was taken up for investigation by CBI in compliance with the order dated 04.08.2010 of the Hon'ble Jharkhand High Court, passed in WP (PIL) No. 4700 of 2008 and 2252 of 2009. Vigilance Bureau had registered this case on the basis of a complaint dated 25.10.2008, filed in the Vigilance Court, Ranchi, by one Sri Kumar Vinod S/o. Anirudh Azad, R/o Lalpur, PO Rohni, PS Jasidih, Deoghar. Six allegations were investigated. Investigation of this case has been completed and all the charge-sheets have been filed as per details below:

- ◆ Charge-sheet was filed on 16.01.2012 against Sri Hari Narayan Ray, his wife Smt. Sushila Devi and his brother Sri Sanjay Kumar Ray U/s. 109 IPC and 13(2) r/w 13(1)(e) of PC Act, 1988, for possession of assets disproportionate to the extent of Rs. 1.46 Crore i.e. 94% over and above income and abetment thereof.
- ◆ Charge-sheet was filed on 27.01.2012 against Sri Anosh Ekka, Smt. Menon Ekka (wife), Sri Jay Kant Bara (brother in law), S/Sri Gidiyon Ekka and Ibrahim Ekka (brothers), Sri Roshan Minz (nephew) and Sri Deepak Lakra (associate) U/s. 109 IPC and 13(2) r/w 13(1)(e) of PC Act, 1988, for possession of assets disproportionate to the extent of Rs. 16.82 Crore i.e. 579% over and above income and abetment thereof.
- ◆ Charge-sheet was filed on 10.12.2012 against Sri Anosh Ekka, his wife Smt. Menon Ekka and 14 officers/officials of State Govt. of Jharkhand who worked in the Circle offices and in the office of LRDC, Ranchi U/s. 120B, 193, 420 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 for the allegation of purchase land in violation of CNT Act by way of misrepresenting residential address.
- ◆ Charge-sheet has been filed on 29.7.2013 against Sri Hari Narayan Ray, His wife Smt. Sushila Devi, Sri Sanjay Kumar, PS to Sri Hari Narayan Ray and 6 officers/officials of State Govt. of Jharkhand U/s. 120B, 201, 420, 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 for the allegation of fraudulent registration of M/s.

Mahamaya Construction as a Class IA contractor.

- ◆ Charge-sheet has been filed on 29.7.2013 against Sri Hari Narayan Ray his brother Sri Sanjay Kumar Ray and 7 officers/officials of State Govt. of Jharkhand U/s. 120B, 420, 471 IPC AND 13(2) r/w 13(1)(d) of PC Act, 1988 for the allegation of fraudulent registration of M/s. Ma Gauri Construction as a Class IA contractor.
- ◆ Charge-sheet has been filed on 29.7.2013 against Smt. Menon Ekka, her cousin Sri Jaykant Bara and 5 officers/officials of State Govt. of Jharkhand U/s. 120B, 420 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 for the allegation of fraudulent registration of M/s. Ekka Construction Pvt. Ltd. as a Class IA contractor.

6.2. Status in Case No. RC 05(A)/2010-AHD-R:

6.2.1. In the FIR of this case following four persons were named as accused,

- i) Madhu Koda, Former Chief Minister, Govt. of Jharkhand.
- ii) Kamlesh Kumar Singh, Former Cabinet Minister, Govt. of Jharkhand.
- iii) Bhanu Pratap Shahi, Former Cabinet Minister, Govt. of Jharkhand.
- iv) Bandhu Tirkey, Former Cabinet Minister, Govt. of Jharkhand.

6.2.2. This case was investigated by AC-I Branch, New Delhi. The allegation levelled in the complaint against all the four accused persons were distinct and separate and had no links with one another. However, the allegations are broadly as follows:

6.2.3. Amassing of assets disproportionate in own name, in the name of family members and also in benami by the accused persons in India and abroad.

6.2.4. Abuse of official positions by the accused persons in the matters of award of contract, procurements and allotment of mines etc. and showing favour to various parties in these matters and obtaining consequential pecuniary advantage for themselves and for others.

6.2.5. Apart from the above allegations, it had also been alleged in the PIL that during Chief Ministership of Madhu Koda, he and his accomplices like Binod Sinha and Sanjay Chaudhary extracted huge illegal gratification from several companies by granting iron ore mines leases as well as by entering into MoU with around 44 companies for setting up industries in the Jharkhand and promising to grant several concession in the MoU. It was further alleged that huge illicit money earned through the above method had been invested in several companies floated by Binod Sinha and Sanjay Chaudhary in India and abroad and huge assets had been illegally acquired.

6.2.6. The case no. 09/2009 of Jharkhand State Vigilance Bureau was taken over by CBI and registered as case no. RC 05(A)/2010-AHD-R. Investigation revealed that accused Madhu Koda, in connivance with his accomplices Binod Sinha and Sanjay

Chaudhary had extracted illegal gratification to the tune of Rs. 13 Crores from M/s. Core Steel Industries Pvt. Ltd., Mumbai in the matter of allotment of Iron Ore mines to the company in West Singhbhum District of Jharkhand. CBI filed a charge sheet against above accused persons on 11.10.2010 in the competent court.

6.2.7. On completion of investigation against the accused Bhanu Pratap Shahi, CBI has filed a charge sheet against the accused former Minister and five of his accomplices on 23.12.2011 in the competent court for amassing assets disproportionate to the tune of Rs. 6.99 Crores.

6.2.8 Investigation with regard to the allegations against the accused Kamlesh Kumar Singh was completed and a charge sheet was filed against accused Kamlesh Kumar Singh and his wife Smt. Madhu Singh for possession of assets disproportionate to the tune of Rs. 5,46,07,597/- which is about 504% of his income.

6.2.9 Investigation was conducted against accused Bandhu Tirkey and a final report u/s. 173 Cr.P.C. was filed in the competent court as evidence collected were insufficient for prosecuting the accused person. The learned trial Court has taken cognizance of the said case and the case is under trial.

6.2.10. On completion of investigation with regard to the allegation that accused Madhu Koda acquired assets disproportionate to his known sources of income in his own name and in the name of his family members, a charge sheet was filed u/s. 109 IPC and section 13(2) r/w 13(1)(e) of Prevention of Corruption Act 1988 against Madhu Koda and his accomplice Binod Sinha on 22.5.2013. It has been found that the accused was in possession of assets disproportionate to his known sources of his income to the tune of Rs. 8,42,22,056/-.

6.2.11. Investigation of RC 05(A)/2010-AHD-R has been completed in all aspects of the case.

6.3. Status in Case No. RC 13(E)/2011-EO-I/New Delhi:

6.3.1. Jharkhand State Vigilance Bureau had registered case no. 38/2010 against 29 person including former Chief Minister Shri Madhu Koda u/s. 409/420/423/467/471/120B/34 of the IPC and 13(2) r/w 13(1)(d) of Prevention Of Corruption Act 1988.

6.3.2. CBI has registered RC 13(E)/2011-EO-I/- New Delhi dated 14.10.2011 by taking over Jharkhand State Vigilance Bureau case no. 38/2010 u/s. 409/420/423/467/471/120B/34 of IPC and 13(2) r/w 13(1)(d) of Prevention of corruption Act 1988 and substantive offences thereof pertaining to implementation of Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY) scheme in three districts namely Latehar, Garhwa and Palamu of Jharkhand.

6.3.3. The allegation in the case RC 13(E)/2011-EO-I/- New Delhi pertains to irregularities, cheating and embezzlement of Government fund by Shri Madhu Koda,

the then Chief Minister, Jharkhand in connivance with officials of Jharkhand State Electricity Board and M/s. IVRCL under Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY) in Jharkhand. It was also alleged that M/s. IVRCL, in the process of obtaining contracts for rural electrification, had made payment of Rs. 11.40 Crores to Shri Madhu Koda, Ex. C.M. of Jharkhand and his associates for getting tender awarded in their favour.

6.3.4. Investigation has been carried out on the allegation aforementioned. After completion of investigation, final report u/s. 173 Cr.P.C. Has been filed on 24.10.2013 in the learned Court of Special Judge, CBI Cases, Ranchi.

6.4. Status in Case No. PE 01(A)/2013-R:

6.4.1. Enquiry prima facie disclosed that Shri Dulal bhuiyan, the then Minister of Revenue, Land Reforms and Co-operatives in Govt. of Jharkhand has acquired assets disproportionate to his known sources of Income to the tune of Rs. 94,75,081/- for which he cannot render satisfactory explanation. On the basis of enquiry, Anti-Corruption Branch, CBI, Ranchi has registered a regular case against Shri Dulal Bhuiyan, former Cabinet Minister in Govt. of Jharkhand vide no. RC 21(A)/2013-R u/s. 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, for amassing assets disproportionate to his known sources of income, which he cannot satisfactorily account for. This case is presently under investigation.

7. The petitioner of WP(PIL) 4700 of 2008 had filed an Interlocutory Application in which it was submitted that CBI was not conducting comprehensive and thorough investigation with respect to other public servants and private persons. It is submitted that records from Income Tax department in respect of public servants and private persons were collected by the CBI and scrutinized. The scrutiny did not reveal possession of disproportionate assets by Shri Bipin Bihari Singh, the then Director of Mines, and Shri Jai Shankar Tiwary, the then Secretary (Mines), Govt. of Jharkhand. Besides this, CBI, EOW, Ranchi has conducted investigation and submitted charge sheet against Shri Pradeep Kumar, the then Secretary (Health), Govt. of Jharkhand in the matter of purchase of medicine and equipments at exorbitant rates. CBI, ACB, Dhanbad has also submitted charge sheet against M/s. Subernrekha Coal Complex Pvt. Ltd. a company owned by Shri Manohar Paul, the then PS to Shri Shibu Soren, for allegations related to illegal diversion of coal. The result of scrutiny was reflected in Status Report dated 6.7.2013. The Hon'ble Jharkhand High Court has perused the said status report and was pleased to observe in its order no. 79 dated 3.9.2013 that "So far as the allegation of apathy against CBI in the matter of investigation in respect of some of the public servants is concerned, we find the same vague, unspecific and without any supporting particulars on record and deserves no response."

8. In compliance to the order passed by Hon'ble Jharkhand High Court in W.P. (PIL) 4700 of 2008 from time to time, CBI has registered and investigated four cases and

one preliminary enquiry vide RC-04(A)/2010-AHD-R, RC-05(A)/2010-AHD-R, RC 13(E)/2011-EO-I, PE-01(A)/2013-R and RC 21(A)/2013-R on the basis of the allegations mentioned in the W.P. (PIL) 4700 of 2008, subsequent Interlocutory Applications and scrutiny of records from other investigating agencies.

9. Regarding investigation into the role of other public servants and private persons as prayed by the petitioner in the PIL and subsequent I.A.S. it is submitted that scrutiny of income tax records did not disclose material worth registration of regular cases by CBI. In the absence of specific allegations and any *prima facie* material showing commission of a cognizable offence, CBI would not be in a position to register any regular case. Further, it would not be possible for the CBI to conduct a roving enquiry in the matter in the absence of specific allegations.

10. In the light of the above, it is respectively prayed that the WP (PIL) 4700 of 2008 may kindly be disposed off.

9. As stated in the status report, charge-sheet has been filed against some of the respondents in the competent Court and the competent Court is in session of the matter.

10. In the above status report it is stated that "scrutiny of income tax records did not disclose material worth registration of regular cases by CBI and therefore, the C.B.I. is not in a position to register any regular case."

11. Learned counsel appearing for the petitioner submitted that no fair investigation has been done by the C.B.I. and alleged that the C.B.I. is hand in glove with the some of the persons involved in this crime and had chosen to close the F.I.Rs.

12. Md. Mokhtar Khan, ASGI learned counsel appearing for the CBI raised strong objection regarding the allegation made on behalf of petitioner and submitted that the CBI has conducted thorough and fair investigation and on the basis of such thorough and fair investigation, the CBI has arrived at a conclusion that there are no sufficient materials to proceed for registering a regular case.

13. On perusal of paragraphs 8 and 9 of the Status Report submitted today i.e. on 6.01.2014, it appears that the CBI has categorically stated that in the absence of any specific allegations and any *prima facie* material showing commission of a cognizable offence, the CBI would not be in a position to register any regular case and further it would not be possible for the CBI to conduct a roving enquiry in the matter in the absence of special allegations. Since, based on the above findings, the C.B.I. has reached on a conclusion that CBI would not be in a position to register any regular case, we are not inclined to keep the matter pending.

14. On perusal of Status Report filed today, it further appears that in respect of investigation in the individual F.I.R. which were taken over by the CBI for investigation, CBI has filed charge-sheet and the competent Court is in session of the matter. Therefore, on that ground also, there is no reason to keep the matter

pending.

15. If the petitioner is further aggrieved, the petitioner is at liberty to work out the remedy in accordance with law.

16. The Status report filed by the C.B.I. today and other Status report filed by the C.B.I. shall form part of the record and is ordered to be tagged along with the record of this case.

17. The copy of Status Report filed today may be handed over to the counsel for the petitioner by the counsel for the C.B.I. So far as other Status Reports submitted by the CBI on different dates are concerned, the counsel for the petitioner is permitted to peruse the same in presence of responsible officer of the High Court of Jharkhand. With the above observations and directions, this writ petition filed by way of Public Interest Litigation is disposed of. Consequently, all the Interlocutory Applications are closed.