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Court : Jharkhand

Decided On : Nov-08-2017

Appellant : Arun Kumar

Respondent : The State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI A.B.A. No. 976 of 2015 Arun Kumar Petitioner Versus The State of Jharkhand .....Opposite Party CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH For the Petitioners :Mr. B.M. Tripathi, Sr. Advocate Mr. Naveen Kr. Jaiswal, Advocate For the State :A.P.P. ..... 09/Dated: 08/11/2017 1. The petitionerArun Kumar is apprehending his arrest in connection with Sadar (Muffasil) P.S. Case No. 19 of 2015, corresponding to G.R. No. 103 of 2015 for the offence under sections 406, 409, 419, 420 and 120B of the Indian Penal Court.

2. This case has been lodged on the basis of written report of one Luis Toppo, District Cooperative Officer, Hazaribagh alleging therein that the petitioner is the owner of Ganpati Rice Plant. It is further alleged that he was directed to purchase paddy by the government from different PACS. As per direction the informant purchased paddy from five different village PACS and as per the agreement from Ganpati Rice Plant, Demotand, Hazaribagh the paddy was sent for milling and for that 68% was to be supplied by CMRFCI. It is alleged that Ganpati Rice Plant Pvt. Ltd, had not made available 57,932.77 quintal paddy to CMRFCI. The value of aforesaid paddy was Rs. 7,24,15,962.50. For realization of the amount

substantiated with the paddy a meeting was held by the Deputy Commissioner on 08.08.2014 and 11.09.2014 with the owner of rice mill. It is further directed by the Deputy Commissioner and also telepathically directed by the informant also. The informant vide letter no 294 dated 01.07.2014 and letter no. 519 dated 16.10.2014 have also directed the petitioner to deposit the value of rice, but he had not deposited any of the amount. The petitioner had also not followed the direction given by the Hon'ble Jharkhand High Court. As per the direction of the Hon'ble High Court of 2 Jharkhand, the Government of Jharkhand had also sent two letters to the petitioner for depositing the aforesaid amount, but inspite of that he had not deposited a single penny, hence, it is alleged that with the criminal intention the owner of Ganpati Rice Plant, Sri Arun Kumar (petitioner) had swallowed the government money to the tune of Rs. 7,24,15,962.50 and he misappropriated the said amount which itself is violation of the Contract Agreement and he had also obstructed the government plan and works and hence prayed for appropriate legal action. On the basis these allegations, the instant case has been lodged. It appears that the instant case that is Sadar (Muffasil) P.S. Case No. 19 of 2015, corresponding to G.R. No. 103 of 2015 has been lodged on 06.01.2015 and the Money Suit no. 09/2014 has been filed before the court of Civil Judge, Senior Division, Hazaribagh on 04.09.2014. 3. Learned counsel for the petitioner has submitted that much prior to lodging of this case, petitioner has filed a Money Suit No. 09 of 2014 before the Civil Judge, Senior Division, Hazaribagh on 04.09.2014.

4. Learned counsel for the petitioner has further submitted that written statement has not been filed as per Order VIII Rule 1 C.PC and the order was passed mechanically. It was further submitted that the F.I.R has been lodged after lodging of the aforesaid money suit. 5. Further, it has been submitted that the District Cooperative Officer, Hazaribagh who is respondent no. 4 in the aforesaid money suit who is informant of this case and to save his skin, this case has been lodged against the petitioner. It was submitted specifically that there is dispute regarding payment of money in which Section 73 of Contract Act is attracted and no criminality in the matter is attracted and without adjudicating the money suit of 3 the petitioner, criminal case has been lodged. So, taking all these facts the petitioner deserves privilege of anticipatory bail.

6. On the other hand learned A.P.P opposed the prayer for anticipatory bail and filed counteraffidavit and produced case diary.

7. From perusal of para 7, it appears that I.O has recorded the statement of the informantLuice Toppo, District Cooperative Officer, Hazaribagh who has fully supported the case of prosecution and has stated the petitioner is the Director of the Ganpati Rice Plant. In para 8I.O has recorded the statement of Ganesh Prasad, staff of office of the Deputy Commissioner. He has stated that the paddy after purchased from different PACS was sent to the Ganpati Rice Mill Pvt. Ltd whose owner was Arun Kumar (petitioner) for milling the said paddy for which 68% C.M.R had to be supplied to the F.C.I. But the M/s Ganpati Rice Mill Pvt. Ltd, Demotand, Hazaribagh had not supplied total 57932.77 qunital C.M.R of Paddy to the F.C.I total valued at Rs. 72415962.50.

8. In para 77 of the case diary, I.O has recorded the statement of Manoj Kumar who was the President of PACSKardari who has stated that in the year 201213, an agreement was arrived between between him and the owner of Ganpati Rice Mill namely Arun Kumar (petitioner) for converting the paddy into rice and total 68% of rice was to be sent to the F.C.I. Further, he has stated that he has purchased 4486.50 qunital paddy from the farmers at the rate of Rs. 12.50 and 4195.58 quntial paddy was sent to the Ganpati Rice Mill, Demotand but the rice was not sent to F.C.I.

9. Similar statement has been given by Kunal Kishor President of PACS Bengwari in para 78 of the case diary and also in para 79 of the case diary by Kailas Sao, the President of PACS, Chepakala. 10. Further, it appears that the petitioner has appeared before the I.O on 04.05.2017 in para 119 of the case diary wherein he has categorically stated 4 that there was agreement between Ganpati Rice Mill and the State Government whereby it was agreed that the State will send the paddy in his Rice Mill through PACS to which he had to keep 68% of the rice and in this regard to send information to the Government but despite information, the Government had not paid any money for milling nor the rice was lifted and when the rice was about to damage, but despite prayer made before the District Cooperative Societyinformant, he had sent the rice on his own expenses to the

different godowns for Rs. 3 crore 23 lac is due against the government for which he has filed money suit before the court of SubJudge. He has further stated that to save his skin, informant has lodged this case. 11. Further, in para 120 of the case diary, I.O has collected letter sent by District Supply Officer, Hazaribagh addressed to Regional Manager, F.C.I, Dhanbad in which it has been stated that it has been informed by the President of PACS that the C.M.R of paddy is ready but the vehicle of C.M.R had to stand 67 days in C.M.C premises for which the PACS have been facing lot of financial loss.

12. Further, in para 123 of the case diary, I.O has collected the agreement arrived between Ganpati Rice Plant Pvt. Ltdm Morangi, Demotand, DistrictHazaribagh and Barkagaon Primary Agriculture Cooperative Sammittee Ltd, Barkagaon, Hazaribagh for milling the paddy.

13. In para 124 of the case diary, there is agreement between the petitioner and M/s Keredari Primary Agriculture Cooperative Samittee, Keredari, Hazaribag.

14. In para 125 of the case diary there is agreement between Ganpati Rice Plant Pvt. Ltd, Demotand, Hazaribag and Jungra Chepakala Primary Agriculture Cooperative Samitte, Barkagaon, Hazaribagh.

15. In para 126 there is agreement between Ganpati Rice Plant Pvt. Ltd, 5 Demotand, Hazaribag and M/s Napokala Primary Agriculture Cooperative Samitte, Barkagaon, Hazaribagh. Further, from perusal of case diary it appears that the investigation is still going on.

16. Learned counsel for the petitioner has filed filed supplementary affidavit on 22.08.2017 brining on record the entire ordersheets of the Money Suit No. 09 of 2014.

17. From perusal of Money Suit No. 09/2014 it appears that the said suit has been filed by the Ganpati Rice Plant Pvt. Ltd through its Director namely, Arun Kumar (petitioner) on 04.09.2014 with the following prayers: (a)That after adjudication a decree of Rs. 3,23,37,773.00 decribed in Schedule A be passed, directing the defendants to pay the amount to the Plaintiff with interest of Rs. 11% within 30

days from the day of the decree failing which the plaintiff will be entitled to realize the same from defendants through the process of the Court. (b) That it be also declared that the defendants are not entitled to make demand to release money for the wasted as per agreement. (c) That the other relief or reliefs as plaintiffs to which the plaintiff is found entitled to.

18. Ordersheet reveals that the Money Suit No. 09 of 2014 has been filed by M/s Ganpati Rice Plant through its DirectorArun Kumar(petitioner) Kumar in which there are 11 defendants, out of which, defendant no. 1 is State of Jharkhand through Deputy Commissioner, defendant no. 2 is Deputy Commissioner, Hazaribagh, defendant no. 3 is Deputy Commissioner, Chatra, Defendant No. 4 is District Cooperative Officer, Hazaribagh, Defendant no. 5 is District Supply Officer, Hazariabgh, Defendant No. 6 is Jharkhand State Food 6 Corporation and rest of the defendants I.e defendant no. 7 to 11 are different PACS situated in Hazariabgh and Chatra districts. The petitioner herein is Arun Kumar who is the director of the Ganpati Rice Mill. From perusal of the agreement arrive at between M/s Ganpati Rice Mill (P) Ltd and Chepkala PACS limited.

19. From perusal of the entire ordersheets passed in Money Suit No. 09 of 2014 it appears that the Money Suit has been filed on 04.09.2014. Order sheet further reveals that on 23.09.2014 defendant nos. 1 and 2 as well as defendant nos. 4 and 5 have appeared and prayed time for filing written statement and further from the ordersheet dated 23.09.2014, it appears that G.P appeared and took time. Further, ordersheet dated 26.09.2014 reveals that defendant no. 3 and 4 have taken time for filing written statement. Further ordersheet dated 12.01.2015 reveals that defendant no. 4District Cooperative Officer, Hazaribagh filed written statement. Further, ordersheet dated 13.10.2015 reveals that defendant no. 11 (Amgawan PACS through the President Ajay Kumar Singh) has filed written statement, further ordersheet dated 19.11.2015 reveals that defendant no. 9 (Bengari PACS) through its President, Kunal Kishore) has filed written statement. Ordersheet further reveals that on 24.06.2016 the case was transferred to the Court of Sr. Civil JudgeII, Hazaribagh. 20. Thereafter under order dated 30.08.2017 report was called for the concerned trial court on the following points; (a) Whether the court while passing the aforesaid orders as referred hereinabove,

has taken into consideration the provisions of Order 8 Rule 1 of the C.P.C (b) Whether the order was dictated by the learned Sr. Civil Judge himself or recorded by the office clerk/Court 7 Master/Peskar. (c) Admittedly, the quantum of the amount inolved in this case is very huge and it is covered under the Commercial Courts Act. Whether Special provisions of the trial has been give, but the Court overlooked this aspect of the matter.

21. From perusal of report dated 16.09.2017 with regard to A.B.A. No. 976/2015 dated 30.08.2017 corresponding to Money Suit No. 09/14 submitted by Sri Yogesh Kumar Singh, learned Civil Judge, (Sr. Division)cumJ.M. Ist Class, Hazaribagh in which it has been mentioned the above referred has been passed by his predecessor and the record weas transferred to the court on 24.06.2016 that the quantum of amount involved in this case is very huge, but due to overlooked this aspect special provision has not been given. The next date of the suit is on 22.09.2017 for compliance of order by plaintiff for taking step or registered post for appearance of defendant no. 12. 22. Further a supplementary report dated 07.11.2017 submitted by Civil Judge (Sr. Divsion)IICumJ.M. Ist Class, Hazaribagh reveals that on 22.09.2017 t and on 22.09.2017 the plaintiff was directed to comply order regrading the appearance of defendant no. 12, but on that date one petition under Rule 1 and 2 has been filed by the plaintiff and next date of trial in this case is fixed for 10.11.2017 for rejoinder.

23. Learned counsel for the petitioner has filed supplementary affidavit stating therein that the petitioner was not in fault at any point of time rather it is the failure of the government machinery due to which they could not picked the rice from the concerned mills causing loss to the Government as well as huge loss to the mill owners/petitioners and now for saving their own skin and to hide their own fault the instant criminal case has been lodged against the innocent millers finding them a soft target. The mill owners have obtained 8 several letters of the Deputy Commissioner to the Secretary and the letter of informant to the Deputy Commissioner wherein they have showed their inability to lift rice from the mills even after their repeated request. The aforesaid letter were obtained by invoking right to informant from the office of District Supply Wing. It is stated that after lodgment of instant case the PACS have also filed representation to the S.P

Hazaribagh for conducting fair investigation as they apprehends that to save the government officials they could also be roped in the instant case. It is further stated that in reply to the directions, the petitioner furnished on 11.08.2014 requesting a Deputy Commissioner, Hazaribagh to secure the lifting of rice. Referring to annexure8, learned counsel for the petitioner has submitted that even after lodgment of the criminal case the Deputy Commissioner, Hazaribagh was transferred and the office was presided by a new Deputy Commissioner the owner of all the rice mills have again on 23.03.2015 again represented before the Deputy Commissioner, Hazaribagh with regard to the factual position of the instant case, but even then no action has been taken by the new Deputy Commissioner, Hazaribagh. Referring to Annexure9 to the supplementary affidavit, learned counsel for the petitioner has submitted that the rice mill owners including the petitioenr received one letter from the office of Deputy Commissioner, Hazaribagh on 07.08.2013 vide Memo No. 900 in which it was admitted by the Deputy Commissioner that the Enquiry Committee and officials of F.C.I found the stored rice in deteriorating condition and to that effect the rice mill owners have also represented several times before concerned authorities. Further, referring to Annexure10 of the supplementary affidavit, learned counsel for the petitioner has submitted that the another annexure of F.I.R is with regard to the letters given by District Co operative Officers, Hazaribagh to the rice mill owners vide Memo No. 519, 577 and 606. All the letters are more or less identical with regard to demand made 9 by the informant against the rice. Only one letter was sent to the petitioner I.e Memo No.606 dated 16.12.2014. The petitioner also received several letters from the Deputy Commissioner, Hazaribagh with regard to the milling and non milling of the rice. The petitioner all the time furnished reply immediately by registered post, but apart from this the instant case was lodged and the reply given by the petitioner was thrown. Further it has been submitted that initially on 23.05.2013 the petitioner specifically wrote to the Chairman of concerned PACS for lifting of the milled rice without any delay as because he had scarcity of storage space and there were every chances of the getting the rice damaged due to ensuing rainy season, but even then the callus attitude of Chairman of PACS and concerned Government Officials the rice became damaged and now they have lodged the criminal case. 24. Considering the aforesaid facts and circumstances of

the case and also considering the fact that the aforesaid money suit has been filed much prior to lodging of this case, I am inclined to enlarge the petitioner on anticipatory bail with cost.

25. Accordingly, the above named petitioner is directed to surrender in the Court below latest by 18.12.2017 and in the event of his arrest or surrender, the Court below shall enlarge the above named petitioner on bail on furnishing bail bond of Rs. 15,000/ (Rupees fifteen thousand) with two sureties of the like amount each to the satisfaction of the court learned Chief Judicial Magistrate, Hazaribagh, in connection with Sadar (Muffasil) P.S. Case No. 19 of 2015, corresponding to G.R. No. 103 of 2015, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. 26. The petitioner is directed to deposit cost of Rs. 2,00,000/ before the Secretary, District Bar Association, Civil Court, Hazaribagh latest by 16.12.2017 and file receipt of the deposition of aforesaid amount before the trial 10 court on the date of his surrender. The aforesaid amount will be used only for welfare of the learned member of Bar Association of Hazaribagh District Court.

27. Further the petitioner is directed to cooperate with the Investigation and he will appear before the Investigating Officer as and when his presence is required by the the I.O. 28. Further, if the I.O wants to record the further statement of the petitioner, he will give 72 hours notice to the petitioner fixing date, time and place and thereafter, the petitioner will appear before the I.O on the date fixed. 29. The petitioner will furnish his photo copy of Aadhar Card and cell number before the trial court on the date of his surrender. Thereafter the I.O will file application before the trial court for availability of the cell number of the petitioner. Let a copy of this order be communicated to the concerned trial court, court of Sri Yogesh Kumar Singh, learned Civil Judge, (Sr. Division)cumJ.M. Ist Class, Hazaribagh as well as to the Secretary, President District Bar Association, Civil Court, Hazaribagh and a copy of this order be handed over to the learned A.P.P and Nodel Officer for its transmission to the I.O. Let a copy of this order be communicated through Special Messenger, cost to be borne by Registry. Satyarthi/ (Anant Bijay Singh, J.)

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