

Mathura Choudhary Vs. State of Bihar

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Court : Patna

Decided On : Nov-28-1996

Judge : S.K. Chattopadhyaya, J.

Appeal No. : Criminal Misc. No. 576 of 1992 (R)

Appellant : Mathura Choudhary

Respondent : State of Bihar

Disposition : Application Dismissed

Prior history : S.K. Chattopadhyaya, J 1. Invoking jurisdiction of the High Court under Section 482, Cr. P.C, the petitioner has prayed for quashing the criminal proceeding as well as the order taking cognizance dated 20.11.91 in Vigilance P.S. Case No. 3/83 (R). 2. In order to bring out the point in clear perspective, it may be useful to set out some facts of the case. It is scam studded scenario where at the relevant time the petitioner was posted as District Superintendent of Education at Ranchi, when FIR

Judgement :

S.K. Chattopadhyaya, J

1. Invoking jurisdiction of the High Court under Section 482, Cr. P.C, the petitioner has prayed for quashing the criminal proceeding as well as the order taking cognizance dated 20.11.91 in Vigilance P.S. Case No. 3/83 (R).

2. In order to bring out the point in clear perspective, it may be useful to set out some facts of the case.

It is scam studded scenario where at the relevant time the petitioner was posted as District Superintendent of Education at Ranchi, when FIR was lodged alleging, inter alia, involvement of the petitioner with other officers and staff of the office in an offence under Sections 420, 467, 468, 479A, 120B, 149 IPC, Sections 5(2), 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947, corresponding to Section 13(2) read with Section 13(1)(c)(d) of the Presentation of Corruption Act, 1988 as well as under Section 24/19 of the Bihar Sales Tax Ordinance. It appears that the then Deputy Collector, Ranchi submitted a written report to I.G. Vigilance Bureau on 30.7.1983 alleging misappropriation of huge government amount in the name of purchasing heavy number of stationery items and furniture in the office of District Superintendent of Education, Ranchi during September, 1976 to October, 1980 and in between December, 1980 to July, 1983. It is alleged that those items were on higher rates without the approval of the Purchase Committee as well as in utter violation of the direction of the Education Commissioner, Government of Bihar. Allegation of irregular appointment of number of teachers on the basis of forged signatures has been levelled including defalcation relating to construction of buildings and repairs. On these allegations, the Deputy Collector came to the conclusion that the petitioner along with others in conspiracy with each other committed criminal breach of trust as well as cheating and misappropriation of Government amount. In the FIR names of 23 persons have been mentioned except that of the petitioner but in the body of the FIR the name of the petitioner has been mentioned stating therein that during his tenure i.e. 14th September, 1976 to 29th October, 1980 the petitioner was posted as DSE of Ranchi and taking advantage of his post and position, he alongwith co-accused, Bambahadur Mishra and Ors. misappropriated huge sum of money. It is alleged that the petitioner also forged documents and deliberately disobeyed the Government instructions etc. for his personal gain. On the prayer made by the Investigating Officer, by an order dated 21.5.1986 the Special Judge issued non-bailable warrant of arrest against the petitioner and co-accused Safruddin Ansari. However, on submission made by the Public Prosecutor that till that date there was no specific material against any of the aforesaid two accused persons,

provisional bail was granted to them by an order dated 2.6.1986. This provisional bail was confirmed subsequently by an order dated 18.9.1986. After investigation and supervision by the Superintendent of Police, Ranchi, charge-sheet was filed against the petitioner and other co-accused persons and by the impugned order cognizance was taken of the offence under the aforesaid sections of different Acts.

3. This application was filed on 13.2.1992 and by an order dated 14.2.1992 case diary was called for. After receipt of the case diary, on 17.3.1992 application was admitted for final hearing but further proceeding in the Court below was not stayed.

4. Mr. Ram Balak Mahto, learned Sr. counsel appearing on behalf of the petitioner, with reference to voluminous record of the case, has strongly contended that FIR as well as entire case diary will reveal that no case has been made out against the petitioner and on the contrary, good work rendered by the petitioner in the Department has been done away by filing this case. According to him, petitioner was posted as DSE at Ranchi during the period from 14.9.76 to 29.10.80, whereas the FIR was lodged on 30.7.83 without naming the petitioner as one of the accused persons. Referring to various paragraphs of the FIR, which is of 19 pages, Mr. Mahto has tried to show that the petitioner, as a responsible officer, did his best for interest of the Department and during his tenure no irregularity, much less illegality was committed in purchasing the materials in the office of DSE at Ranchi. In this connection he has also drawn my attention particularly to the statements at page 9 of the FIR, where it has been stated that on 3.12.79 and 12.3.79 on recommendation of the Chairman of the Purchase Committee, tenders were invited which were published in daily newspapers. Similarly, referring to Second paragraph of the FIR, he submits that admittedly during the period 1982-83 the petitioner was not posted at Ranchi and as such, all allegations are against co-accused, Bambahadur Mishra and Ors. and not against the petitioner, as everything happened after his transfer. Referring to page 10 of the FIR Mr. Mahto further submits that only allegation against the petitioner is that he did not purchase items immediately after receiving the approval of the Purchasing Committee but the may be negligence on his part for which departmental proceeding should have been initiated but not the instant criminal case. Referring

to Audit report mentioned in page 17 of the FIR, it is submitted that allegation of double payment of salary and bungling in building construction does not relate to the period when the petitioner was posted at Ranchi. Similarly, referring to supervision note, he contends that nothing has been found against the petitioner as the petitioner was transferred admittedly on October, 1980 and joined at Giridih. On the aforesaid facts and circumstances, learned Counsel submitted that if High Court finds from the FIR and other documents relied by the prosecution that even prima facie no case has been made out against the petitioner, the order taking cognizance must be quashed. His further contention is that the allegation referred to a period when admittedly the petitioner was not at Ranchi and merely on the allegation that petitioner did not purchase the material immediately after receiving the approval of the Purchase Committee, cannot be held to be an offence under any of the Sections mentioned in the FIR. Relying on the decision of State of Haryana v. Bhajan Lal, reported in : 1992 CriLJ527 Mr. Mahto submits that under these circumstances the High Court will be justified in quashing the criminal proceeding against the petitioner as well as order taking cognizance.

5. Mr. Dilip Jerath, learned Counsel appearing on behalf of the Vigilance Department, however, emphatically countering the argument of Mr. Mahto, submits that allegations made in the FIR coupled with voluminous documents gathered by the prosecution from the investigation will unmistakably show that petitioner was one of the main persons concerned in misappropriating huge amount of governed money, by reason of which the State Ex-chequer had to bear a heavy loss. With reference to the period from 14.9.96 to 25.10.80, when the petitioner was admittedly posted as DSE at Ranchi, Mr. Jerath has pointed out that, goods were purchased during period , 1978-79 to 1982-83 and by this period a sum of Rs. 4, 10, 000/- was the total defalcation. Referring to page 9 of the FIR, he submits that though it is stated that tenders were invited legally on 3.12.79 and 12.3.79 on the approval of the Chairman of the Purchase Committee but on 27.8.80, when tenders were opened, it was found that according to the tenders, minimum price was quoted. However, the petitioner alongwith other two accused, suppressing this quotation of minimum rate which were received from the tender took steps for purchasing the materials on higher rate. Similarly, referring to page 10 of the FIR, he submits that the petitioner neither purchased on minimum quoted

rate nor placed the said tenders before the Purchase Committee, which will clearly show that a racket was there in purchasing the materials of the Department in which petitioner was also involved. Similarly, referring to Audit report, as mentioned in page 17 of the FIR, Mr. Jerath has submitted that Item Nos. 1, 2 and 3 clearly shows that during this period the petitioner was posted at Ranchi. Refuting the argument of Mr. Mahto that Audit report does not show any conspiracy of the petitioner, Mr. Jerath has drawn my attention to the Audit report (Annexure 4) and submits that before October, 1980 when petitioner was required to obtain decision of the Purchase Committee headed by the Deputy Development Commissioner, the petitioner deliberately did not took part in the said meeting is a result of which no release order could be obtained. According to Mr. Jerath, petitioner is the person, who started the ball rolling which continued even after his transfer to Giridih. Referring to other allegations made in the FIR, Mr. Jerath has submitted that initiation of this racket was the brain child of the petitioner when he post at Ranchi and he though withdraw a sum of Rs. 6 lacs and odd but never utilised the same. Petitioner also asked for rate for printing, which was in utter violation of the Government order/instruction inasmuch as he was not supposed to call for such rate. Submitting a detailed note regarding various statements made in the case diary, Mr. Jerath has particularly referred to paragraphs 4, 33(Ka), 34 (Ka), 107, 201, 1039, 1041, 1054 and 1140 in support of his argument that all these facts revealed that scam in the Education Department was a result of deep rooted conspiracy in which the petitioner was actively involved. Referring to the same, Mr. Jerath has submitted that though the Sales Tax Officer directed the petitioner to make payment to the Press after deducting at source, petitioner did not obey the same Referring to paragraph 826, statement of senior Auditor and paragraphs 966, 987, 1005 and 1139 of report dated 16.9.87, learned Counsel urged that all the see go to show that excess payment of Rs. 19 lacs and odd was made by the petitioner and co-accused, Bambahadur Mishra and Audit report shows irregularities in all these. He also referred other statements against the petitioner which, according to him, clearly shows the role played by the petitioner. Last but not the least, Mr. Jerath emphatically contended that antecedent of the petitioner will show that he was involved earlier also in other cases of similar nature. Concluding his argument, Mr. Jerath has contended that in exercising its

jurisdiction under Section 482, Cr., P.C., the High Court will not go into the voluminous documents to weigh the evidence on record which is purely the functions of the trial court.

6. In the back drop of the above facts, I shall now consider the weight of the contentions advanced by the counsel for the parties.

The principle for exercising power under Section 482 Cr.PC by now is well settled. The Supreme Court as well as this Court repeatedly has held that while exercising inherent power under this Section the High Court should not usurp the jurisdiction of the trial court. This power has been vested in the High Court to quash a prosecution which amounts to abuse of process of the court but that power cannot be exercised by holding a parallel trial only on the basis of the statements and documents collected during investigation or enquiry for the purposes of expressing an opinion whether the accused concerned is likely to be punished, if the trial is allowed to proceed.

7. I can do no better than to reproduce the observation of their Lordships of the Supreme Court in the case of Mrs. Rupan Deol Bajaj and Anr. v. Kanwar Pal Singh Gill and Anr. reported in JT 1995(7) SC 229 (1996) 1 BLJR 99 (SC) which reads thus:- ,

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognisable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the

charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further Act could be done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rare case of mala fide initiation of the proceedings to wreak private vengeance process of criminal is avail of in laying a complaint of FIR itself does not disclose at all any cognisable offence-the court may embark upon the consideration thereof and exercise the power.

Their Lordships further observed that when the court exercise its inherent power under Section 482 the prime consideration should not be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principal should always be kept in mind before embarking upon exercising inherent power.'

8. This well settled principal has been reiterated again in the case of State of Bihar v. Sri Rajendra Agrawalla, reported in JT 1996(1) SC 601, (1996) 1 BLJR 608 (SC) where setting aside a judgment of this Court it is held that power under Section 482, Cr.PC should be very sparingly and cautiously used when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. Further it has been held that at that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.

9. In the instant case, I have noted above that FIR discloses the fact that during tenure of the petitioner at Ranchi a criminal conspiracy was hatched up which continued even after his transfer to Giridih in October, 1980. It has been alleged that during this period, in connivance with other accused persons, some acts were done by the petitioner which caused financial loss to the State Government. Moreover, statements recorded by the investigation officer further reveal that petitioner was one of the persons who indulged in such activities. Argument of Mr. Mahto that materials gathered so far does not make out any offence against the petitioner, in my view, is to be considered by the trial court and not by the High Court. The question as to whether ultimately the prosecution will be able to prove the guilt against the petitioner is to be answered by the trial court after scrutinising the evidence on record. It should not be forgotten that the ingredients of offence under Penal Code need not be proved only by direct evidence. All materials and circumstances have to be collected during investigation and enquiry and have to be produced and proved before the trial court. Even in the case of *State of Haryana v. Bhajan Lal*, reported in 1992 SC 604, on which reliance has been placed by Mr. Mehto, it has been categorically held that High Court may interfere in exercising its power under Article 226 of the Constitution or under Section 482 Cr.PC by quashing the FIR and investigation but only in exceptional cases i.e. in rarest of rare cases and can be exercised sparingly. Some circumstances have been enumerated by their Lordships, which are, though illustrative, but definitely not exhaustive.

10. After going through the allegations made against the petitioner in the instant case, in my considered opinion, none of the circumstances, as suggested by their Lordships, applied to the present case.

11. Appreciating the elaborate arguments of the learned Counsel for the parties and scrutinising the voluminous documents referred by them, I am of the view that as to whether these documents are enough to prove the guilt of the petitioner is to be decided by the trial court. From the facts and circumstances of the case, I am of the view that the order taking cognizance of offence under various sections of the Penal Code and Prevention of Corruption Act cannot be quashed by the High Court by rejecting the evidence collected by the investigating officer against the

petitioner before its veracity could be tested at the trial. It is true that petitioner has not been arrayed as an accused in the FIR but facts remain that his name appears in the body of FIR suggesting his active involvement in conspiracy for defrauding and cheating the State Government for some motive. Prime facie I am of the view that the allegations made in the FIR and the evidence collected during investigation pin point the petitioner as one of the accused and now it is up to the prosecution to prove the guilt against him and for the defence to disprove the same. At this juncture the High Court, in my view, cannot the prosecution by exercising its inherent power under Section 482, Cr.PC

12. In the result, I find no merit in this application and the same is dismissed. The trial court is directed to proceed with the trial for with taking into consideration of the fact that matter has already been lingered for considerable time due to pendency of this application in the High Court. Office is directed to send a copy of this judgment alongwith entire lower court records to the court below immediately and positively within one week from today.

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