

**Jagdish Sharma Vs. the State Through C.B.i. (A.H.D.)**

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**SooperKanoon Citation : [sooperkanoon.com/516240](http://sooperkanoon.com/516240)**

**Court : Jharkhand**

**Decided On : Jan-21-2003**

**Reported in : [2003(2)JCR341(Jhr)]**

**Judge : D.N. Prasad, J.**

**Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 409, 420, 467, 468, 471 and 477A; [Prevention of Corruption Act, 1988](#) - Sections 13(1) and 13(2)**

**Appeal No. : Crl. M.P. No. 793 of 2002**

**Appellant : Jagdish Sharma**

**Respondent : The State Through C.B.i. (A.H.D.)**

**Advocate for Def. : Rajesh Kumar, Adv.**

**Advocate for Pet/Ap. : Rajesh Shankar, Adv.**

**Disposition : Application dismissed**

**Judgement :**

ORDER

**D.N. Prasad, J.**

1. This application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') whereby and whereunder Shri N.K. Srivastava, the learned Special Judge, C.B.I. (A.H.D.), Ranchi took cognizance of the offences under Sections 420, 409, 467, 468, 471, 477A and 120B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the [Prevention of Corruption Act, 1988](#) against the accused persons including the petitioner.

2. The first information report was lodged by the Central Bureau of Investigation (CBI) alleging therein that there has been fraudulent withdrawal of Government money under deep conspiracy committed by the accused persons including the petitioner along with the private suppliers of the materials which have never been supplied resulting misappropriation of Rs. 1,05,13,827/- after withdrawing the money by submitting fake bills.

3. Counter-affidavit has also been filed on behalf of the CBI refuting the statements made in the application. It is stated that the petitioner has already retired from service in the year 1998 and the petitioner being a non-gazetted employee, no sanction is required against him. It is further submitted that the petitioner was indulged in deep conspiracy with the accused- suppliers/firms and passed fake bills of the articles, which have never been purchased/ supplied to the Animal Husbandry Department (A.H.D.) and thus knowingly violated the provisions of Bihar Treasury Code (the Treasury Code) and the Financial Rules (the Rules) resulting withdrawal of a huge amount totaling Rs. 60,17,019.23 paise by the petitioner. It has also been mentioned that the petitioner checked total 147 bills of various accused/suppliers out of which 131 bills amounting to Rs. 60,17,019.23 paise found to be false.

4. Mr. Rajesh Shankar, learned counsel appearing on behalf of the petitioner submitted that the learned Court below committed error in taking cognizance of the offence without applying his judicial mind as the petitioner was an Assistant in the Ranchi Treasury and there has been no violation of any provisions of the Treasury Code or any other Financial Rules. It is further argued that Rule 144 of the Treasury Code states about the general instruction regarding preparation of the

bills which does not authorize a Treasury Officer to refuse passing of bill if it is in proper form. So there was no responsibility whatsoever on the part of the petitioner for refusing the bills submitted by the suppliers as those bills are said to be in order. It is also submitted that the Treasury is only explainable or accountable to the Accountant General of the State. It is further argued that the petitioner being a Government official and there is a pre- condition that the trial Court should not take cognizance of the offences made against him without previous sanction and in the instant case, no sanction has been obtained, but even then, the learned Court below took cognizance of the offence by violating the mandatory provision of Section 197 of the Code. The learned counsel also relied upon a decision of the Supreme Court in the case of R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684.

5. On the other hand, Mr.Rajesh Kumar, learned counsel appearing on behalf of the CBI contended before me that the learned Court below has rightly took cognizance of the offence as the petitioner while working as a Dealing Assistant in the Ranchi Treasury passed huge fake bills under deep conspiracy and in league with various accused/suppliers, as a result ofwhich, huge amount was withdrawn and misappropriated. It is further argued that the petitioner already retired from service as back as in the year 1998 and, as such, no sanction is required for prosecution against the petitioner as well as the question of sanction can be raised at any stage after taking cognizance even at the conclusion of trial. The learned counsel in this connection relied on a decision of the Supreme Court in the case of P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation, (2001) 6 SCC 704.

6. The petitioner was admittedly functioning as Dealing Assistant in Ranchi Treasury during the period 1990-95. There is specific allegation that he has passed the bills of accused-suppliers-firms without proper checking by indulging in conspiracy and in complete violation of the Treasury Code and the other Financial Rules. The admitted position is that all the bills said to have been passed by the petitioner was under his scrutiny as 131 bills were found to be fake and thus bills must have been crossed from his table as his responsibility comes into effect for scrutinizing those bills with all care and caution but, apparently, the same has not

been complied with. It is true that the Treasury is also explainable/ accountable to the Accountant General of the State but it does not mean that fake bills ought to be cleared/passed without due scrutiny by the Treasury.

7. It is also clear that the petitioner has already retired from service in the year 1998 whereas charge sheet has been submitted in the case in 2002. In the case of P.K. Pradhan, (supra), it has clearly been held that :--

'Question of requirement of sanction for prosecution can be raised at any time after cognizance of the offence is taken, may be even at the time of conclusion of trial or after conviction. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it.'

8. Thus the question of sanction even if required shall be left open to be decided in the main Judgment itself after due consideration on the materials placed from both sides. It is also settled that this Court should be reluctant in exercising its inherent power under Section 482 of the Code if the allegations as made prima facie constitute the offences. In the instant case, as discussed above, the allegations made out, in my view, successively constitute the offences against the petitioner for which the learned Court below has rightly taken cognizance of the offences aforementioned. In view of the settled law where there is specific allegation against the accused persons disclosing commission of offence, this Court should not interfere with the cognizance order.

9. Thus I do not find any reason for interference in the matter. Hence this application, being devoid of merit, is dismissed.