

Surendra Kumar Sarawgi Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Jan-07-2016

Appellant : Surendra Kumar Sarawgi

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND, RANCHI Cr. M. P. No. 1455 of 2014
Surendra Kumar Sarawgi, S/o Sri Mahabir Prasad Sarawgi, Resident of Dumari Road, Giridih, P.O. Giridih, P.S. Sadar, District Giridih. Petitioner Versus 1.The State of Jharkhand through Vigilance. 2.Sahabuddin Mansoori, Son Nasiruddin Mansoori, presently working as Supply Inspector, Giridih, Resident of Kunkun Singh Lane, P.O. & P.S. Pirvahor, District Patna, Bihar. . Opp. Party CORAM: HONBLE MR. JUSTICE R. R. PRASAD For the Petitioner : M/s Anil Kumar Sinha, Sr. Advocate N. K. Pasari, Amit Sinha, Advocates. For the Vigilance : Mr. Shailesh Kumar Singh, Advocate. ----- 08/07.01.2016. Heard Mr. Anil Kumar Sinha, learned senior counsel appearing for the petitioner and Mr. Shailesh Kumar Singh, learned counsel appearing for the Vigilance. The First Information Report of Muffasil P.S. Case No.25 of 2013 (corresponding to Special Case No.01 of 2013) instituted under Sections 406, 420/ 34 of the Indian Penal Code, under Section 7 of the Essential Commodities Act as well as under Section 29 of the Bihar Prevention of Specified Corrupt Practices Act, 1883 and also under Sections 8, 10 & 12 of the Prevention of Corruption Act, 1988, was sought to be quashed on the ground that taking the entire allegations to be true, no offence is made out either under

Sections 406 or 420 of the Indian Penal Code, as necessary ingredients, constituting those offences are never there in the first information report. Similar is situation with respect to offence under Section 29 of the Bihar Prevention of Specified Corrupt Practices Act, 1883, as the petitioner never happened to be a dealer under the 'Bihar Public Distribution System' and at the same time, the petitioner cannot be prosecuted under Section 7 of the Essential Commodities Act, on account of the fact that the person, who raided the premises of M/s. Mahavir Prasad Sarawgi, to which this petitioner is one of the partners, was not authorized to make search and seizure and that the offence under the Prevention of Corruption Act is also not attracted. In support of the submission, learned counsel referred to a decision reported in 2015 (4) Supreme Today 4 and 2015 (7) Supreme Today 414. In this regard, it had further been submitted that the petitioner being one of the partners, was never alleged in the first information report to have offered money to the informant, rather allegation of offering money was upon the three persons namely, Sanjiv Sharma, Alok Sharma and Sri Ram, who are said to be the representatives of the firm M/s. Mahavir Prasad Sarawgi. At that point of time, argument was advanced on behalf of the Vigilance that though the petitioner had been challenged the first information report, but he never happens to be a named accused persons and that the investigation is still going on. In that event, the case was adjourned, so that the matter be taken, after submission of the charge sheet, as the investigation was pending since last two and half years against this petitioner, though the charge sheet had already been submitted against other accused persons. Upon passing of such order, when the charge sheet was submitted against this petitioner, the charge sheet was also challenged by way of Interlocutory Application bearing I.A. No.62 of 2016. Mr. Sinha, learned senior counsel appearing for the petitioner submits that there has been no change in the fact situation of the case, as the petitioner has never been alleged either to have offered the money to the informant or to have abetted those three persons, named above, to abet the offence under Section 12 of the Prevention of Corruption Act and, thereby, necessary ingredients for constituting offence even under Section 12 of the Prevention of Corruption Act is not there and taking into account the submission advanced earlier with respect to necessary ingredients being absent, constituting offence under the I.P.C. or Bihar Prevention

of Specified Corrupt Practices Act, 1883 or on account of case of search and seizure not being made by the competent authority, offence under Section 7 of the Essential Commodities Act, does not get attracted, the first information report and the charge sheet is fit to be quashed. Mr. Shailesh Kumar Singh, learned counsel appearing for the Vigilance submits that he would mainly be arguing on the point relating to offence being attracted under Section 12 of the Prevention of Corruption Act. By referring to Section 12 of the Prevention of Corruption Act, Mr. Shailesh Kumar Singh submits that if one abets any public officer to commit offence punishable under Section 7 or Section 11, said person can be said to have committed offence irrespective of the fact that whether offence under Section 7 or 11 is committed or not? Learned counsel, in this respect, has referred to a decision rendered in the case of State through Central Bureau of Investigation Vs. Parmeshwar Subramani reported in [2009]9 SCC729 wherein it has been held by the Hon'ble Supreme Court that abetment of any offence punishable under Section 7 or 11 is itself a distinct offence and that the offence punishable under Section 7 or 11 whether actually committed by a public servant is of no consequence. Further, learned counsel did refer Sharad Kumar vs. State of Madhya Pradesh reported in [2008] 0 Supreme (MP) 814 wherein the Madhya Pradesh High Court has been pleased to lay down the same proposition. Mr. Shailesh Kumar Singh, learned counsel appearing for the Vigilance in order to make it more specific, did refer to illustration (a) to Section 116 of the Indian Penal Code, which reads as follows:- Illustration (a) to Section 116 of the Indian Penal Code-A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section. Thus, it was submitted that abetment of any offence punishable under Section 7 or 11 is itself a distinct offence. The offence punishable under Section 7 or 11 whether actually committed by a public servant is of no consequence. As against this, Mr. Sinha, learned senior counsel submits that here in the instant case, it is said that three persons offered a sum of Rs.5 lakh to the informant for getting favour, which the informant refused and then the said money was recovered from the Car by which those persons had come. In that event, when the petitioner has not been alleged even to have offered money, offence under Section 12 of the Prevention of Corruption Act, does get attracted in case of the petitioner and,

thereby, the prosecution launched against the petitioner is fit to be quashed. Having heard learned counsel appearing for the parties and on perusal of the record, it be stated that the case of the prosecution, as has been made out in the first information report, is that when the Supply Inspector, Giridih along with other Supply Officers of other places made inspection of the premises of M/s Mahavir Prasad Sarawgi, wholesale dealer of K. Oil, they did notice a tanker containing K.Oil standing near the premises of said M/s Mahavir Prasad Sarawgi. They also did find other material, measuring implement etc. by which, the informant had reasoned to believe that the accused persons were making preparation of adulteration by mixing K. Oil in the Diesel. Further case is that during that course, three persons namely, Sanjiv Sharma, Alok Sharma and Sriram, the representatives of M/s Mahavir Prasad Sarawgi, made offered of Rs.5 Lakh to the informant, which the petitioner refused to accept. The money of Rs.5 Lakh, which was there in the Car, was recovered. On such allegation, a case was registered for the offences as aforesaid. It be further stated that the I.O., after making investigation of the case, submitted charge sheet against the accused persons other than the petitioner. In that event, the petitioner did move before this Court for quashing of the first information report wherein it was placed before this Court that the charge sheet has been submitted against the named accused persons, but the investigation has been kept open by the I.O., though two and half years have elapsed, since submission of the charge sheet. In that event, hearing of this case was adjourned. Meanwhile, charge sheet was submitted against this petitioner also, being one of the partners of M/s Mahavir Prasad Sarawgi. According to Mr. Sinha, learned senior counsel, no improvement has been made in the case, which had initially been made by the informant, which is evident from the charge sheet submitted against the petitioner. In that event, it was submitted that even if any case is made out under Section 12 of the Prevention of Corruption Act, the petitioner, in absence of any allegation of offering bribe to the informant, cannot be held responsible. However, submission was also advanced on behalf of the petitioner that in any event, offence under Section 12 of the Prevention of Corruption Act, is not made out as offence under Section 7 of the Corruption of Prevention Act on account of public officer not accepting the bribe never gets completed and thereby question of committing offence under Section 12 of the

Prevention of Corruption Act, does not arise. Other submission, with respect to non-attracting of the offence under Sections 412/406 of the Indian Penal Code and other offences including offence under Section 7 of the Essential Commodities Act is the same, which had already been advanced and has been recorded hereinabove. Now the first question does arise as to whether an offence under Section 12 of the Prevention of Corruption Act, is made out in the facts and circumstances of the case or not?. I would straight away refer to a decision, as has been referred to on behalf of the Vigilance rendered in the case of R.P. Malik Vs. State of NCT of Delhi & Ors. [2013] 1 Bankmann 649 and State through Central Bureau of Investigation (supra) wherein Their Lordships did hold in Para-1.11 and 15 as under:- 1.11. Section 12 of the Act, in clear and categorical terms, speaks that whoever abets any offence punishable under Section 7 or 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided thereunder. It is thus clear that abetment of any offence punishable under Section 7 or 11 is itself a distinct offence. The offence punishable under Section 7 or 11 whether actually committed by a public servant is of no consequence. It is precisely for the said reason Section 19 of the Act specifically omits Section 12 from its purview. The courts by process of interpretation cannot read Section 12 into Section 19 as it may amount to rewriting the very Section 19 itself. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise, if undertaken by the courts may amount to amending or altering the statutory provisions.

15. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be.

The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony. Similar view has been taken by the Madhya Pradesh High Court in the case of Sharad Kumar (supra). While taking such view, the Division Bench of the Madhya Pradesh High Court has taken aid of illustration (a) of Section 116 of the Indian Penal Code and has observed as follows:- Para(4). For a ready reference, the following excerpts from the judgment in Rajarams case (supra), the correctness of which is at issue, may be reproduced:-

7. Section 116, Indian Penal Code relates to abetment of offence punishable with imprisonment. Section 116 of the Code is reproduced below:- Illustration (a) of section is reproduced below:-A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section. thus, it is clear that bribe is offered to a public servant as a reward for showing some favour in discharge of his official function. On refusal of public servant, to accept bribe, the person-offering bribe is punishable under this Section. The language of Section 165-A of the Code and that of Section 12 of the Act are identical in nature. Since the definition of abetment is not given in the Act, therefore, considering the provisions of illustration (a) of Section 116 of the Code, it is established that person offering bribe which is refused by public servant, is also guilty of abetting offence and is liable to be punished under Section 12 of the Act. Thus, in the facts and circumstances of the case, prosecution has established that the appellant has offered bribe to a public servant therefore, there is no force in the arguments of appellant that conviction under Section 12 of the Act is not maintainable.

8. On going through the evidence on record, a concurrent finding is recorded by the Trial Court and the Appellate Court that the appellant has offered bribe to a public servant. Thus, considering the illustration (a) of Section 116 of Code, offence under Section 12 of the Act, is proved against appellant. No infirmity is committed by the Trial Court in framing charges under Section 12 of the Act. The appellant has rightly been punished under Section 12 of the act. The appeal has no merit and is dismissed.. In the aforesaid situation, there cannot be any other

view that offence under Section 12 of the Prevention of Corruption Act, is attracted even offer made by a person is not accepted by the public servant. Now next question does arise as to whether necessary ingredients are there to constitute offence under Section 12 of the Prevention of Corruption Act against this petitioner. It has already been stated that the raid was laid in the premises of M/s Mahavir Prasad Sarawgi to which this petitioner is one of the partners. During that search, three persons, namely, Sanjiv Sharma, Alok Sharma & Sri Ram offered bribe of Rs.5 Lakh to the informant, which the informant refused to accept and then recovered the money which was there on the Car. It has never been the case that this petitioner was also the members, who along with three persons, named above, had made offer to the informant, neither any allegation seems to be there that the petitioner, being the partner of the firm, abetted those three persons to offer a bribe to the informant. In such event, keeping in view the illustration (a) of Section 116 of the Indian Penal Code, the petitioner cannot be said to have abetted the offence under Section 7 of the Prevention of Corruption Act and thus, in absence of necessary ingredients, offence under Section 12 of the Prevention of Corruption Act, never gets attracted against this petitioner. So far other offences under Sections 406 and 420 of the Indian Penal Code are concerned, necessary ingredients are never there and, thereby, those offences are not made out against this petitioner. Similarly on account of necessary ingredients being lacking, offence under Section 29 of the Bihar Prevention of Specified Corrupt Practices Act, 1883, is also does not get attracted. At the same time, on account of search and seizure being not affected by the Competent Officer in the premises of a wholesale dealer of K.Oil, offence under Section 7 of the Essential Commodities Act, is also not attracted. It is pertinent to mention here that the charge sheet has been submitted against this petitioner for commission of the aforesaid offences, on the premise that the petitioner was one of the active partners of M/s Mahavir Prasad Sarawgi, but that would not be sufficient to hold a partner of Firm or Director of the Company to be impleaded as an accused, in absence of any role being played in the commission of the alleged offence. The petitioner has been implicated on the premise of principle of vicarious liabilities but the Indian Penal Code save and except some provisions, especially proviso thereof, does not contemplate any prosecution on account of vicariously liable on the part of the party, who is not

charged directly for commission of the offence. This proposition has been laid down in the case of S.K. Alagh vs. State of Uttar Pradesh and others [(2008)5 SCC662 and also in the case of Aneeta Hoda vs. Godfather Travels and Tours Pvt. Ltd. [(2012)5 SCC661 and recently in the case of GHCL Employees Stock Option Trust vs. India Infoline Limited [(2013)4 SCC505. Further it would be pertinent to record that since some materials were seized, there had reasoned on the part of the informant that K. Oil tanker was there with a view to make adulteration in the diesel, but nothing seems to be there on record to place before this Court that actually adulteration was made, rather on the other hand, a report which was submitted, at the instance of the informant of this case, goes to show otherwise, but since the prosecution has not come forward that it is the case of prosecution, I need not to record any finding in this regard. Thus, in the facts and circumstances, as stated above, entire criminal proceeding of Muffasil P.S. Case No.25 of 2013 [corresponding to Special Case No.01 of 2013] including charge sheet submitted against the petitioner-Surendra Kumar Sarawgi is hereby quashed. In the result, this application is allowed, so far as the petitioner-Surendra Kumar Sarawgi is concerned. Consequently, I.A. No.62 of 2016 is also disposed of. (R. R. Prasad, J.) Ravi/

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