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Court : Rajasthan

Decided On : Jan-18-1990

Reported in : 1990WLN(UC)13

Judge : G.K. Sharma, J.

Appeal No. : S.B. Cr. Misc. Application No. 209 of 1989

Appellant : Devendra Nath

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

G.K. Sharma, J.

1. This petition Under Section 482, Cr.Pc is directed against the order dated 12th May, 1989, by which, the Special Judge, ACD Cases, Jodhpur, bas framed charges against the petitioner Under Sections 420, 457, 468, 471/120B, IPC and Under Section 5(l)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short, 'the Act').

2. During famine relief operations, some gravel roads were constructed in Banner District. The present case relates to the construction of the gravel road from Setraw to Bhunia Zone (I), 10.0 Kms. to 29.10 Kms. The construction of this road

was sanctioned by the State Government. Tenders were invited from the registered contractors, by the Superintending Engineer, Jodhpur, and the tender was passed in favour of one Doshi, his being the lowest quotation.

3. During the relevant period, Bhagwan Singh Bhati was the Overseer; Umakant Awasthi was the A.En. and the petitioner was the Executive Engineer (Ex.En). The contractor submitted his first running-bill, which was paid on 31st July, 1982. This bill was prepared by the Overseer and checked by the A.En., which was ultimately, sanctioned by the Ex En., who was authorized to do so. The payment of the bill was drawn on 16th August, 1982, and this payment was subject to adjustment at the final stage, as per Clause 7 of the agreement which was entered into by the State Government and the contractor. Later on, the famine operations were closed on 31st July, 1982, and the work remained incomplete. The petitioner was then transferred on 31st August, 1982, and was orderd to await his posting order. Then, he was transferred to Bikaner. No explanation was called from the petitioner prior to getting sanction to prosecute him. The petitioner was then suspended on 11th September, 1986.

4. The allegation against the petitioner is that Bhagwan Singh, who used to maintain the measurements, had prepared the bill: the A.En. Umakant Awasthi had checked the bill; but, the petitioner, without checking it properly countersigned the bill and sanctioned it. So, he was charge-sheeted Under Section 120B, for conspiring in giving advantage to the contractor and putting the Government to loss. Before filing of the challan, the State Government was moved to accord sanction for the prosecution of the petitioner, and the same was granted on 18th January, 1986. The petitioner was then challaned; and after hearing both the parties, the trial court framed charges against the petitioner, as mentioned in the impugned order.

5. The learned Counsel for the petitioner argued that the trial court has erred in framing charge against the petitioner. The allegation against the petitioner is that he had conspired with the Overseer the A En and the contractor; and in that conspiracy, he had given advantage to the contractor putting the Government to loss. It was alleged that it was the duty of the petitioner to have checked the bills;

and that intentionally, relying on the checking of the A.En. he did not check the bill, and the payment was made without cheking the bill. So, allegedly, the petitioner had overlooked the rules and did not act honestly.

6. During arguments, the relevant rule was perused. The order of sanction for prosecution of the petitioner dated 18th January, 1986, was also shown to this court. The learned Counsel for the petitioner has relied on the cases of H.N. Dubey v. State of Rajasthan [1984 Cr LR (Raj.) 475] and Union of India and Anr. v. Maj. J.S. Khan etc. : 1972 CriLJ849 .

7. The first argument of the learned Counsel for the petitioner is with regard to the sanction granted by the Governor of the State, for prosecuting the petitioner. In this sanction order, para, 4 is the relevant para, and upon a reading of this para, it reveals that the sanction was granted, because, the Ex.En. without checking the work of one contractor, had passed the first bill, and thereby, he had violated Rule 2.10.6 of the PWD Manual (Volume-I) General. According to the department, it was the duty of the Ex.En. to have checked the work, thrice or four times in the case where the contract was worth more than one lakh. As the petitioner did not check the work according to the rule, the prosecution of the petitioner was permitted and sanction was accorded. So, looking to the sanction, it is found that the prosecution is not on the ground that the petitioner did not check the work of the contractor, but, it is for not checking the first bill, which the petitioner had sanctioned. Thus, the sanction is with regard to sanctioning the bill without checking and not for not checking the work of the contractors required Under Rule 2.10.6. So, the sanction was accorded for one purpose, but the challan was filed for some other fault. The case against the petitioner is that he had sanctioned the first bill with checking it properly, Rule 2.10.6 of the PWD Manual is not with regard to checking bills, but, it is with regard to inspection of the construction work. A plain reading of this rule shows that the Ex.En. should inspect, during the course of construction of important works, costing about Rs. 50,000/-, in the manner as mentioned in this rule. Where the works cost about Rs. 1,00,000/-, the Ex.En. has to have frequency of inspection more, as warranted by the nature of the work. In the sanction, order, a reference is given of Rule 2.10.16. The said rule 2.10.16 reads as under:

Rule 2.10.16. The Divisional Officer will also be responsible for achieving the norms for test-checking the measurements and other items as given in paras 32.5 and 32.6, Chapter-32.

In Rule 32.5, the norms of test-checking have been mentioned, according to which, the norm for the work worth more than Rs. 50,000/- outside the headquarters, the A.En. has been given some powers; and for Ex.En. it has been mentioned that (a) 20% of all selective items; (b) 20% of the value of other items of every fourth bill. This rule has been amended and intimated to the department vide letter No. F. 14(78) PW/78/D-192 dated February, 1979. The amendment was in the PWD Manual, and according to this amendment, regarding the works costing Rs. 50,000/- outside the headquarters, the norm for test-checking for the Ex En. with regard to Selective items, is 10% and 10% of every third bill for works costing more than RS. 50,000/-. So, instead of 4th bill, as provided in the norms, prior to the amendment, the 3rd bill was to be checked by the Ex En. It is not disputed that the first bill was submitted by the contractor, which was prepared and checked by the Overseer and the A.En. and ultimately, it was sanctioned by the Ex.En. So, this was the first bill of the contractor; and according to Rule 32.5 of the Manual, the Ex En. is not required to check the first bill. This is not the allegation that the contractor bad submitted the third bill and that bill was not checked by the Ex.En. (petitioner here in) or that it was falsely checked and there by, the Government was put to loss. So, absolutely, the sanction is not a correct one, and hence, on the basis of this sanction order, the prosecution is also bad.

8. The second argument is that the petitioner had conspired with the contractor in getting a false bill sanctioned in connivance, with the A En. And the contrator, and the bill was sanctioned with checking. This is also not correct. According to the amendment to the PWD Manual with regard to Rule 32.5, the Ex.En is required to check every third bill for works, costing; more than Rs. 50,000/-. The present work was costing more than Rs. 1,00,000/- If the contractor would have submitted the third bill, then certainly, it was the duty of the petitioner to have checked it and then sanctioned it. But, as the bill Was the first bill, it was not necessary for the Ex.En. to have checked it thoroughly, because, the first bill is not the final payment, It was a runningbill; this was a sort of advance to be granted to the contractor to carry out

certain works. So, the first bill being a running-bill and not the final bill, the Ex.En. was not required to check it thoroughly. The bill was prepared by the Overseer and checked by the AEn; and by it was merely a running-bill, a mere advance for carrying out a construction work, the petitioner was not required to check it thoroughly. Had it been the third bill, the position would have been different. Therefore, the trial court had not been able to appreciate the rule rightly, nor did it apply its mind in finding out whether a prima facie cases for framing charge, was made out or not. Merely, a challan was submitted against the petitioner, and in a routine manner, without applying its mind, the trial court has framed charges against him. As such, the order of framing charge is not a correct order, and it cannot be maintained.

9. The order of the trial court dated 12th May, 1989, is set aside and is here by quashed. All the proceedings pending against the petitioner, are quashed and, the petition allowed.