

Krishna Kumar. Vs. State of Bihar, and ors.

Krishna Kumar. Vs. State of Bihar, and ors.

SooperKanoon Citation : sooperkanoon.com/916262

Court : Patna

Decided On : Oct-08-2010

Judge : C.M.Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 409, 420, 120(B), 21; [IT Act, 1961](#) - Section 254, 34; Central Vigilance Commission Act - Section 13; [Constitution of India](#) - Article 226

Appeal No. : Cr.W.J.C.No.247 OF 2009

Appellant : Krishna Kumar.

Respondent : State of Bihar, and ors.

Advocate for Def. : Mr. Shashi Kant Singh, Adv.

Advocate for Pet/Ap. : Mr. S.A. Narayan; Mr. Suresh Prasad Singh; Mr. Vitesh Kumar Singh, Adv.

Judgement :

1. The writ petitioner Krishna Kumar has filed this petition as a Member/Secretary of Punjab National Bank Officers' Association (BiharJharkhand) having its registered Office at Chanakya Tower 2nd Floor, R-Block, Patna.
2. The informant Sandip Gautam, a Cluster Head of H.D.F.C.Bank, Exhibition Road, Patna gave a written report dated 8th November 2008 to the Officer-in-charge, Gandhi Maidan Police Station, Patna alleging that his Patna Main Branch

has a current A/c No. 0380002100060239 with Punjab National Bank at Exhibition Road, Patna for last several years as a Branch of Punjab National Bank which is linked to Current Chest. Due to safety reasons, the cash of his Bank was deposited in Punjab National Bank through authorized agency dealing with secured cash remittance, viz M/s Securitrans India Pvt. Ltd. On 19th September 2008 his Branch handed over cash amounting to Rs.4,70,00,000/- (Rupees four crore seventy lacs) through the authorized representatives of M/s Securitrans India Pvt. Ltd. Out of the said amount of Rs.4,70,00,000/-, only a sum of Rs.1.7 crores was credited in his Bank's Current Account with the Punjab National Bank on different dates from 20th September 2008 to 3rd October 2008 and that on observing the reconciliation account it was found that a sum of Rs.3,00,00,000/- (three crores) had not been credited to his Bank Account by the Punjab National Bank Officials. It was further alleged that on 21st October 2008, an amount of Rs.4,90,00,000/- (Rupees four crore, ninety lacs) was deposited in the Punjab National Bank through their authorized representative M/s Securitrans India Pvt. Ltd. and that Sri K.P. Singh, Branch Manager confirmed that the amount was deposited in his Bank. The further allegation was that the Branch Manager and the Head Cashier of the Punjab National Bank had not provided credit of total amount of Rs.7.9 crores of his Banks and that the money had been fraudulently misappropriated. The informant stated in his written report that his Bank wrote to Punjab National Bank, Zonal Office at Patna vide its letter dated 24th October 2008 and again on 3rd November 2008 seeking their intervention but they failed to act and to set the Account right and credit his aforesaid current Account with the amount deposited with them and that the concerned Officials of the Punjab National Bank, Zonal Office seemed to be protecting the illegal activities of their Branch Officials and that they were busy in destroying the records by tampering the Bank records and that, therefore, they were involved in criminal conspiracy for the same. The informant stated that his Bank's authorized representative M/s Securitrans India Pvt. Ltd. confirmed the deposit of said amount of Rs.7.9 crores with the Punjab National Bank. The informant stated that the amount of Rs.7.9 crore had been fraudulently misappropriated by Sri R.K.Narayan, Head Cashier (who was absconding as per information), Sri P.N.Sikdar, Chief Manager (then Branch Manager on 19th September 2008) and Sri Ashish Sinha, Manager (then

Branch Manager on 21st October 2008) and other officials of the Punjab National Bank who committed criminal breach of trust in criminal conspiracy with other officials and cheated him. The informant also expressed his apprehension that Sri Shailesh Ranjan Singh, Chief Manager, who was then Branch Manager, Punjab National Bank, Exhibition Road, Patna Branch with other officials of the Bank was indulging in destroying and fabricating the records and the Branch, including CCTV footage of the transactions and that he had not provided the CCTV Footage to his Bank in spite of repeated requests.

On the basis of the written report of the informant, Gandhi Maidan P.S. Case No. 346 of 2008 dated 8th November 2008 under Sections 409, 420 and 120(B) of the Indian Penal Code was registered against the four named accused, namely, the said P.K. Sikdar, Ashish Sinha, Shailesh Ranjan Singh and R.K. Narayan as well as others unknown.

3. On the basis of the FIR, Sub Inspector of Police Sri Narayan Singh of the Police Station was conducting the investigation of the case. It was during the investigation of the case that the writ petitioner, who is not an accused in the FIR, has filed the writ petition in his representative capacity as a Member/ Secretary of the Punjab National Bank Officers' Association challenging the investigation of the case being carried on by the Bihar Police and praying for a mandamus to direct the investigation to be made by the Central Bureau of Investigation and raising some points of law alleging that the Bihar Police is not competent to carry out investigation into the case.

4. The writ petitioner raised several points of law and facts including those that in this case only the CBI has the jurisdiction to investigate, alleging that the instant case is under the purview of investigation by the CBI, that the petitioner and his member Officers are entitled to seek relief for a fair and impartial investigation, that the dignity and personal liberty of the innocent Officers not named in the FIR will be invaded upon and that the investigation requires to be handed over to an independent professional agency, like CBI so that the innocent persons be protected from police atrocities.

5. During hearing, learned counsel for the petitioner referred to the provisions under the Central Vigilance Commission Act, 2003 and the Office Order No. 14/3/05 dated 30th March 2005 of the Government of India, Central Vigilance Commission that offences alleged to have been committed under the Prevention of Corruption Act, 1988 (hereinafter, in short, referred to as the 'Act') by certain categories of Public Servants of the Central Government, Corporation established by or under the Central Act, Government Companies, Societies and local authorities owned and controlled by the Central Government will be investigated by the Central Vigilance Commission.

6. Admittedly, the FIR of this case has been registered for the offences under Sections 409, 420 and 120(B) of the Indian Penal Code and not under any of the Sections of the Act.

7. Referring to the case of Union of India and others v. Ashok Kumar Mittal, reported in (1995)2 SCC 768 wherein it was held that the employees of Nationalized Banks are Public Servant under Section 21 of the IPC, learned counsel for the petitioner tried to impress that the accused of the case who are Officers of the Punjab National Bank which is a Nationalized Bank, are Public Servant and the offences alleged to have been committed by the accused come under definition of the offence, as defined and punishable under Section 13 of the Act and, therefore, it was further submitted by the learned counsel that in view of the provisions of the C.V.C. Act, such offences under the P.C. Act is required to be investigated by the Central Bureau of Investigation.

8. The learned counsel appearing for the respondents challenged the locus standi of the writ petitioner in filing of this writ petition. It was submitted that the writ petitioner is not an accused in this case and he has filed the writ petition as a representative of the Officers of the Bank in the capacity of Secretary of the Association. It was submitted that the writ petitioner has filed this petition as a Public Interest Litigation and that under the High Court Rules, the Public Interest Litigation can be heard by a Division Bench of this Court and that the writ petitioner requires being non-suited at the very outset on this ground alone.

9. Undoubtedly, the writ petitioner is not an accused in the case. He has not been able to show how he is personally prejudiced or affected by the criminal prosecution of the accused persons of the case who are stated to have committed the offence.

10. The Learned counsel for the respondents did not enter into any questions of law raised by the petitioner alleging that the offence is triable by the Central Vigilance Commission, although it was incidentally remarked by the learned counsel that the offence alleged does not come under the purview of the Act and that it is not a case of obtaining illegal gratification or bribe by misuse of official position for the gain of 3rd party, but it is out and out a case of cheating and forgery for not depositing the amount in the Bank by the concerned Officers who received it and that they were also involved in destroying and fabricating the evidence, including CCTV footage of the transaction.

11. It is admitted fact that the writ petitioner is not an accused in the case and prima facie he appears to have filed the application in representative capacity. But the learned counsel for the petitioner tried to impress that even being a stranger to the Police case, the petitioner is entitled to challenge the Police investigation and raise questions for making prayer for an order to hand over the investigation from Police to the CBI. In support of his stand, learned counsel for the petitioner cited the case of *Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Government of Haryana*, reported in (2002)6 SCC 269. In this case the appointment of an official concerned was challenged on the ground that the same had been made in violation of the mandatory provisions relating to the appointment. The High Court dismissed the writ petition on the ground that the appointment was not prejudicial to the interest of the petitioner. Subsequently, on appeal, the Hon'ble Supreme Court held that the High Court erred in dismissing the writ petition and that when the appointment had been challenged before it in violation of mandatory provisions; the High Court ought to have looked into it.

On the basis of what was held in the above cited case, learned counsel for the respondents submitted that even if the petitioner is not found to be entitled to raise

his questions as under his writ petition but still then he can raise such question with a prayer for writ of quo warranto.

12. The learned counsel for the respondents replied that in the above cited case, the question of legal authority to hold a public office was allowed to be raised by the stranger in the circumstances that the appointment of such public office was challenged to be in violation of the mandatory provisions, but in the instant case, the question is entirely different and it is not the question of challenging the right of any of the respondent officials in holding their public post but it is a question of making prayer for transfer of investigation of a criminal case from one agency to another on some technical grounds, the applicability of which is highly debatable, hence, in such a case, the question of grant of a writ of quo warranto entitling the writ petitioner to interfere into the investigation, cannot be permitted. The submission of the learned counsel for the respondents appears to carry substantial reasons.

13. Learned counsel for the writ petitioner cited the case of Assistant Commissioner, I.T., Rajkot v. Swarashtra Kutch Stock Exchange Ltd. reported in (2008)14 SCC 171. In this case it was held that non- consideration of a binding decision of a superior court was a mistake apparent on the record which could be rectified under Section 254 of the I.T.Act, 1961. This decision does not appear to have any bearing on the question involved in the instant case.

14. In another case of S.Nagraj and others v. State of Karnataka reported in 1993, Supt. Vol.(4) SCC 595, similar view as in the case of Assistant Commissioner of I.T., Rajkot (supra) was expressed. 15.Learned counsel for the petitioner also referred the case of Calcutta Discount Company Ltd. v. I.T.O., Calcutta, reported in AIR 1961 SC 372. In this case, notice was issued by the I.T.O without existence of the necessary conditions precedent which confers jurisdiction under Section 34 of the Act hence, notice was quashed. In this case, notice was not challenged by a stranger, but by the affected person to whom it was issued. Thus, this decision does not help the petitioner.

16. The learned counsel for the petitioner also referred to the case of Dr.Meera Massey v. Dr.S.N. Mahrotra and others, reported in (1998)3 SCC

88. In this case the appellant Professor had challenged the legality and propriety of some appointment made by the University in violation of the Act and the Rules. The appellant was not a candidate for any such post, still the Hon'ble Supreme Court held the appellant's locus standi on the ground that the appellant was interested in equity, justice and fair play. Thus in this case, when some appointment was challenged on the ground of it being violative to the Act and the Rules, even a stranger was permitted to intervene under a writ of quo warranto, but this is not a case here. The instant case before this Court relates to investigation into a criminal case and the question is of permitting a stranger, who is not an accused of the case, to make prayer with regard to the prosecution/investigation of the offenders, the accused of the case, who only can be the affected person, but they have not come to join the petitioner in his prayer.

17. The learned counsel for the petitioner further cited the case of Gaddle Venkateswara Rao v. Government of Andhra Pradesh, reported in AIR 1966 SC 828. In this case the order of the court regarding establishing of a Primary Health Centre at Lingapalem was prejudicial to the interest of the appellant who was President of Panchayat Samiti of Dharmajigudem which had collected Rs.10,000/- for establishing a Primary Health Centre there and, therefore, the Hon'ble Supreme Court held the locus standi of the appellant in challenging the order. But the position in the instant case before this court is quite different. It is a case of criminal prosecution/investigation, being challenged by a stranger who is not an accused in this case.

18. Similar was the position in another cited case of University of Mysore v. C.D.Govinda Rao and another, reported in AIR 1965 SC 591 wherein the appellant who was a contender for the post of Research Reader had challenged the appointment of the respondent on the post.

19. The petitioner cited the case of Biman Chandra Bose v. H.C.Mookerjee, reported in (1992)56 Cal. Weekly Notes 651. It was an application for a writ of quo warranto filed by a private person challenging the validity of appointment to an office of a public or substantive nature. It involved the question of legal right of a person nominated to occupy the public post. It was held that such application was

maintainable at the instance of such private person, even though he is not seeking enforcement of any fundamental right of his under the Constitution. Thus, in this case, the petitioner was allowed to intervene under a writ of quo warranto when the question of fundamental right of any person to hold a public post was concerned. But in the instant case, there is no such question of that respect to any of the respondents holding any public post, without any legal right, but the question is of making interference into the investigation/prosecution of some offenders in the instant case by the writ petitioner who is not an accused in the case and thus, being a stranger to the case.

20. By making reference to the above cited case, learned counsel for the petitioner tried to impress that the writ petitioner if not found fit to grant of writ of mandamus, for his prayer made he can it be favoured under a writ of quo warranto for pressing his prayer for the transfer of investigation from Bihar Police to the CBI as made. But this stand on behalf of petitioner was opposed by the learned counsel for the respondents who submitted that the petitioner is not entitled to any relief, in view of the fact that he has no locus standi to file the instant writ petition for the prayer as made therein.

21. In support of his stand, learned counsel for the respondents cited the case of Janta Dal v. H.S.Chowdhary, reported in (1991)3 SCC 757. It was a Public Interest Litigation. The question involved was if one who is not an accused in a criminal case can question the proceeding of that case against any of the specified accused. Replying to the question, the Hon'ble Supreme Court held that even if there are millions questions of law to be deeply gone into and examined in a criminal case of the nature, registered against specified accused persons, it was for them and them alone to raise all such questions and challenge the proceedings initiated against them at appropriate time before proper forum and not for the 3rd party under the garb of Public Interest Litigation. Thus, the Hon'ble Supreme Court categorically lay down that a criminal proceeding can be challenged only by the accused of the case and not by the stranger. Therefore, as what has been held by the Hon'ble Supreme Court, the writ petitioner, who is a stranger to the criminal case cannot challenge the investigation/prosecution in absence of the accused inasmuch as any order passed may be prejudicial to them which cannot be done

in their absence.

22. The petitioner cited another decision of the same case subsequently delivered in the case of *Janta Dal v. H.S.Chowdhary*, reported in (1992)4 SCC 305 wherein at Para-46 the Hon'ble Supreme Court held that the vested legal right of the accused to defend their case, in their own way, would be completely nullified by the verdict now sought to be obtained by way of Public Interest Litigation. The appellant therein was not found aggrieved because he was not an accused. Thus, the Hon'ble Supreme Court again reiterated that in a criminal case, it is only the accused of that case who can challenge the criminal proceeding. The writ petitioner is not an accused in the instant case. Hence, he is a person without locus standi to challenge the criminal investigation/prosecution.

23. In another case of *Simranjit Singh Man, v. Union of India*, reported in (1992)4 SCC 653 when a third party (appellant) had tried to challenge the conviction and sentence to the accused on the ground of violation of fundamental right, the Hon'ble Supreme Court held that the petitioner had no locus standi.

24. In the case of *Vinay Kumar v. State of Uttar Pradesh and others*, reported in (2001) 4 SCC 734 it was held that Article 226 can be invoked by 3rd party in case of habeas corpus, quo warranto or Public Interest Litigation on behalf of such persons who by reason of poverty, helplessness suffer a disability or due to disability are unable to approach the Court for the relief. Thus, in special cases, when the affected/ aggrieved person suffers a disability due to poverty or helplessness, a 3rd party can be permitted to move for such person under Article 226 of the Constitution. But in the instant case any disability of any of the accused who only are the aggrieved or affected persons of the criminal case is not shown by the petitioner.

25. Thus in view of the ratio held in the decisions, cited on behalf of respondents, it is established that in the instant case, which relates to the criminal investigation/prosecution the writ petitioner who is neither an accused nor affected person under the criminal case/proceeding cannot be allowed to question the criminal proceeding under the instant writ petition.

26. During the pendency of the writ application, one of the accused Madhavendra Singh of the said criminal case filed I.A.No. 2014 of 2009 wherein prayer was made for impleading him as Respondent no.10 to the writ petition. Thus the accused Madhavendra Singh has sought to be added as a respondent/O.P. No.10 for opposing the writ petition. This I.A. is deeply assailed by the learned counsel for the respondents who submitted that it is a collusive petition and that there are no reasons to allow it. Learned counsel submitted that an intervener respondent can be permitted to be added as respondent/O.P. only for the purpose of opposing any application but the instant I.A.No. 2014 of 2009 has not been filed for the purpose of opposing the writ petitioner, but it is a collusive attempt to support the petitioner by standing in the line of respondent and thereby destroying their case also which is not permissible in law. Learned counsel submitted that under Chapter XXIC Rule 5 of the Patna High Court Rules, a person who desires to be heard in opposition to the petition can be added as intervener/opposite party. It was contended that the accused petitioner under I.A.No. 2014 of 2009 had every right to file a separate application challenging the criminal prosecution in a fair way but he has not done so and he has adopted the collusive way to stand in the opposite side and support the case of other side from there and also collusively destroy the case of opposite side/respondents which is not justifiable nor permissible under law.

27. As to the contents of I.A.No. 2014 of 2009 it was pointed out that in Para-3 the intervener- petitioner/accused has mentioned same grounds as taken by the writ petitioner to support the stand of the writ petitioner. In Para-5 of the Interlocutory application, the intervener-petitioner/accused states that he has no objection if the investigation is transferred to the Central Bureau of Investigation for fair investigation as well as in pursuance of the C.V.C.Act, 2003. Thus, the intervener-petitioner who prays to be added as a respondent/opposite party for opposing the writ petitioner does not oppose him; rather he comes in support of the writ petitioner and has tried to destroy the case of the respondents/opposite party which cannot be allowed by permitting him to stand among the respondents. In Para-7 of the Interlocutory application, the intervener-petitioner has mentioned that there is no chance of fair and impartial investigation could be made by local Police and also that it has no jurisdiction to investigate the case. Further in Para-9(a) to

(h) many points as raised by the writ petitioner have been raised to support the writ petitioner's claim. Thus, it is clear that the I.A.No. 2014 of 2009 does not intend to oppose the writ petitioner, rather it intends in sum and substance on all points to support the writ petitioner. Therefore, he cannot be allowed to be added as O.P.No.10 under a plea and prayer that he wants to oppose the writ petitioner.

28. As to the aspect of I.A.No. 2014 of 2009, being collusive one as challenged by the respondents, it was pointed out that Vakalatnama attached with I.A. No. 2014 of 2009 is the Vakalatnama executed by the learned Advocate Mr.Suresh Prasad Singh No.1. It was pointed out by the respondents that the learned counsel for the writ petitioner is also the same counsel i.e. Mr.Suresh Prasad Singh No.1. It was submitted that the same counsel cannot work from both sides. Therefore, it was submitted that the I.A.No. 2014 of 2009 has not been filed with fair purpose and prayer for opposing the writ petitioner, but it has been filed as a collusive attempt to support the writ petitioner and to destroy the case of the respondents by way of standing in the side of respondents. In view of above, I find that the I.A.No. 2014 of 2009 is not fit to be allowed hence the same is rejected.

29. Thus, in view of the discussions as made above, I find that the writ petitioner has no locus standi to file the writ petition. Since the writ petitioner has no locus standi, it is not necessary to go into the question of legality of the criminal investigation/prosecution.

30. In the result, the writ petition is dismissed as being not maintainable. The interim relief granted by this Court, vide order dated 14th May 2009 stands vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com