

Ganesh Dutt Sharma Vs. Central Bureau of Investigation

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Court : Kolkata

Decided On : May-04-2012

Judge : Kanchan Chakraborty

Appeal No. : C.R.R No. 4135 of 2006

Appellant : Ganesh Dutt Sharma

Respondent : Central Bureau of Investigation

Judgement :

Kanchan Chakraborty, J.

1) This is an application under Section 482 of the Code of Criminal for quashing of the proceedings in Case No. 3 of 2001 arising out of Crime No. R.C. 52/07-Cal dated 28.11.1997 under Sections 420/120B of the Indian Penal code read with Section 13(2) and 13(1) (d) of Prevention of Corruption Act pending in the Court learned Judge, Special Court No. 5 at Calcutta.

2) One R. A. Prasad, Deputy Zonal Manager, F.C.I, Calcutta Zone entered into a Criminal conspiracy with M/s Prakash Road Lines Corporation and others in the year 1994 and in furtherance of said conspiracy, issued work orders dishonestly in favour of M/s Prakash Road Lines Corporation for transportation of foodgrains from the food supply depots of F.C.I. in Bihar to various North East Regions at a lower rate breaking the norms and procedure and thereby they caused wrongful loss to tune of Rs. 1,07,13,524.74 and consequential wrongful gain to themselves.

It was alleged also that the accused persons had violated the minimum stipulated period of 21 clear days between publication and opening of tenders intentionally to favour M/s Prakash Road Lines Corporation to issue the work orders. The said work was entrusted by the accused overruling the observations of contract, commercial and finance department fixing a much higher pro rata rate.

3) On the basis of a source information one F.I.R. was lodged against R. A. Prasad and M/s Prakash Road Lines Corporation initially. Ganesh Dutta Sharma, Ram Ratar Prasad, Jitendra Kumar Mullick, Asish Bhattacharjee, Biswanath Surekha and Bimala Devi Surekha were made accused by the investigating officer who filed a charge-sheet against them for prosecuting them under Section 420/120B and under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act. Out of the accused mentioned above Asish Kumar Bhattacharjee filed an application before the learned Special Court under Section 239 Cr.P.C. praying for his discharge from the case and by an order dated 31.7.2006 the learned Magistrate discharged him.

4) Co-accused G. D. Sharma and R. A. Prasad also filed applications under Section 239 of Cr.P.C. praying for their discharge from the case. By that time, the Court already framed charges against them. By an order dated 6.11.2006 the learned Special Judge did not allow their prayer on the ground that Court can not review its order by which it has framed charges already.

5) This petitioner Ganesh Dutt Sharma who was the Executive Director/Zonal Manager East F.C.I. has come up with this application under Section 482 of the Code of Criminal procedure praying for quashing of the proceedings against him on two fold grounds:

a) that sanction to prosecute him accorded was not in accordance with law;

b) that no case against him is made out in the F.I.R. as well as in course of investigation;

6) In the F.I.R. it was alleged that the tenders for transportation of wheat to North East Region from Bihar was invited on 17.8.1994 by the F.C.I. Zonal Office,

Calcutta by publishing the same in only two dailies of Calcutta with dishonest intention. Tender was opened on 26.8.1994 though F.C.I. manual stipulates 21 clear days in opening tenders. Such intentional short notice with poor circulation resulted in poor response and ultimately M/s Prakash Road Lines Corporation became the only tenderers for all the five routes. Thereafter, Ganesh Dutt Sharma, the then Zonal Manager East (petitioner herewith) in connivance with Ram Ratan Prasad, Ex. Deputy Zonal Manager issued work order to M/s Prakash Road Lines Corporation arbitrarily by overruling the observations of contract and commercial section, finance department of F.C.I. Zonal Office and also by fixing the pro rata rate of much higher amount.

7) Mr. Basu learned Counsel appearing on behalf of the petitioner contended that sanction to prosecute Ganesh Dutt Sharma, the petitioner was given on 28.8.007. The authorities to issue such a sanction was not provided with the evidence, documents and materials collected by the I.O. in course of investigation for his consideration. As such, sanction can not be said to be legal in a sense that the sanctioning authority have no scope to apply its mind while passing the sanction order. In support of his contention Mr. Basu referred to the decision of the Apex Court in State of Karnataka Vs. Ameer Jain, reported in (2008) 1 SCC (Cri) 160.

8) Mr. Basu also have taken this Court to the note sheet of the entire deal of the F.C.I. and contended that when the proposal was forwarded to the petitioner, he sent back the file to the Deputy Zonal Manager East for his comments as he was the Head of the Commercial Division. The Deputy Zonal Manager East agreed to the proposal made by the Joint Manager Commercial. There was diverse opinion over the issue between the Joint Manager (Commercial) and Deputy Zonal Manager East over the issue. In such a situation, the petitioner formed a committee consisting of himself, additional finance manager, Deputy Zonal Manager and Joint Manager Commercial to discuss the issue regarding fixation of pro rata rate. The committee unanimously decided and fixed the pro rata rate of Rs.1853 per metric tons Mokamah to Dimapur and Rs. 1156/- per metric tons for Mokamah to Srilong. The contract given in favour of M/s Road Lines Corporation and communicated to the Managing Director F.C.I. who never raised any objection at any point of time. Mr. Basu contended that the official note-sheets altogether

shows clearly that nothing was initiated by the order of this petitioner. The file reached to him after taking observations from various levels right from the regional office. The notes from the Manager Finance, Joint Manager Commercial were placed before the petitioner who finding different of views over the issues, formed a committee consisting of himself, R. K. Prasad, Deputy General Manager, Manager Finance and Account, D. Mundu, Joint Manager Legal, A. K. Bhattacharjee, Joint Manager Commercial and S. N. Mondal, Assistant Manager (Cont.). The proposal of Deputy Zonal Manager was accepted by that committee on 11.8.1994 with some modification. The note-sheet also shows that the Deputy Zonal Manager advised the Assistant Manager, (T.R) to publish the NIT on 14.8.1994. It was published from Regional Office Patna as advised by Deputy Zonal Manager. The Manager Finance and account confirmed the publication of NIT from Regional Office Patna. Thereafter, D.M.(F) added some points for consideration for the purpose of correction of the model tender form. The note of A.K. Bhattacharjee, Joint Manager (Cont.) dated 23.8.1994 shows that NIT was floated in the newspapers for movement of stocks Ex. Bihar to different destination in North East Zone and Sikim. Amended tender form was duly floated by Zonal Manager (Legal) and finance. It was mentioned in the notes of A.K. Bhattacharjee that the date for receipt of tender was fixed on 26.8.1994 at 2.30 p.m. and same would be opened on the same day at 03.00 p.m. and a committee consisting of J. N. (Com), J.N. (Fin.), J.N. (Legal) of Zonal office be constituted for opening of the tenders. It appears from the notesheet that M/s Prakash Road Line Corporation, M/s Ajoy Kumar Sharma and M/s Nikhilesh Kumar submitted a tender on the stipulated date and time. Thereafter, Assistant Manager (Cont.) placed a note over the issue to Joint Manager (Cont.). Joint Manager (Cont.) A. K. Bhattacharjee (who has been discharge under Section 239 of Cr.P.C.) passed a notes about acceptance of single tender filed by M/s Road Lines Corporation and to take a decision in order to finalise the deal. A. K. Bhattachajee (Com.) also had given a note on 19.9.1994 to place the matter before Finance Division for examination and commence. D.M. (F) refused to pass any comment. There were exchange of notes, views, comments over the issue and Deputy Zonal Manger R. A. Prasad had to request Zonal Manger to convene a meeting for discussion and decision over the issue. A. K. Bhattachjee, Joint Manager (Com.), R. A. Prasad, Deputy

Zonal Manager, G. K. Mullick, Finance Associates and G. D. Sharma, Zonal Manager together held the meeting and fix the pro rata rate for Makameh to Dimapur and pro rata rate for Makameh to Srilong which was communicated to S.R.M. Patna for further action.

9) I have carefully gone through the entire note-sheet prepared in the office of Assistant Manager, Finance, D.M(F), Joint Manager, Finance and Accounts, Deputy Zonal Manager, Joint Manager (Commerce) with attention and found that there were diverse opinions regarding publication of the tender notice, fixing of date and rate. Out of three tenderers, the tender filed by M/s Road Lines Corporation was accepted after giving proper deliberation over the issue by each of the officer. Meetings were held and ultimately the prorata rate in question was accepted not by the petitioner himself but by the committee.

10) It also appears that before finalizing the tender, the finance wing of the F.C.I. made through enquiry about the competency of M/s Prakash Road ways and it was found out that the firm had good numbers of truck and trawlers, and has experience in doing works in Government, Semi Government and public Sector under takings. The enquiry also reveled that M/S Prakash Road Ways had sufficient financial capability to carry on the work. The food grains were to be supplied to the North Eastern Region at a war footing basis and there was no time for the department to waste by following all the norms. A clear reading of the F.I.R. and report filed by the I.O. in final form do not disclose that this petitioner was the man who actually committed the misdeed and mischief. It was a decision of the entire office headed by different wings including finance, account, commerce and contract. Being Zonal Manager he had to accept the unanimous view of the committee in the matter of issuing work order in favour of M/s Prakash Road lines Corporation and fixing the prorata rate. In my estimate, no offence of cheating against this petitioner has been made out. The higher prorata rate was allowed on the basis of tender quoted by M/s Prakash Road Lines Corporation. The committee accepted the same. Mere acceptance of a higher quotation by itself can not be amount to commission of any offence.

11) In the instant case the petitioner has been charged with section 13 (2) read with Section 13(1) (d) of prevention of corruption act. He being the Zonal Manager, Calcutta Zone, F.C.I., is a public servant within the meaning of Section 21 of the Indian Penal Code and is protected under Section 197 of the Code of Criminal Procedure. In other words, in order to prosecute the petitioner a sanction under Section 19 of the prevention of corruption act is required. In the instant case, sanction was obtained. According to Mr. Basu, sanction order so accorded was not proper. The sanction order does not disclose that materials collected by the I.O. in course of investigation was placed before the sanctioning authority for its perusal. The sanction order is not also demonstrative of the fact that there has been proper application of mind on the part of sanctioning authority. In this connection, the decision of the Apex Court in State of Karnataka Vs. Ameer Jan (Supra) can well be referred to. In the instant case, the sanctioning authority simply stated the facts for which sanction was sought for but nowhere within four corners of the same it is demonstrated that materials on the basis of which sanction sought for were placed before it for perusal. The sanctioning authority had no scope to apprise the materials on the basis of which charge sheet is filed. It is not clear whether the sanctioning authority had gone through the entire office record containing the notes comments, opinions of different officers of different department before the notice was floated, tender was accepted, prorata rate was fixed and work order was issued. In such a situation, it can safely be said that order of sanction was passed without application of mind. Such a sanction order being irregular and without basis can not be said to be a valid sanction on the basis of which Court can take cognizance of an offence under Prevention of Corruption Act. Therefore, I find substance in the submission of Mr. Basu that sanction to prosecute the petitioner was not proper and in accordance with law.

12) Mr. Mr.Himangshu De, learned Counsel appearing on behalf of the C.B.I. contended that in exercising power under Section 482 of the Code for quashing a proceeding, Court should not consider the probative value of materials on record. Probative value of materials on record is to be judged by the penal code. Reference of a decision in Soma Chakraborty Vs. State (2007) 2 SCC (Cri) 514 was given by Mr. Dey. There is no dispute as to the legal proposition held by the Apex Court in Soma Chakraborty's case (Supra). In the instant case, the factual

background inflicting the petitioner has been mentioned clearly in the charge-sheet. The official notes are made part of the charge-sheet. Neither of the parties has denied the correctness or authenticity of the notes, observation, remarks, comments, of the heads of different departments. Therefore, this Court has taken the opportunity to look at those materials which are the basis of the charge-sheet and which would be the basis of issuing sanction order.

13) Upon consideration of the entire matter, I find that this prosecution against the petitioner Ganesh Dutt Sharma, now superannuated, is not required to be continued as no case of cheating made out against him and that there is want of proper and valid sanction to take cognizance against them.

14) Accordingly, the application is allowed. The proceeding in case no. 3 of 2001 arising out of R.C. 25 of 2007 - Cal dated 28.11.1997 against the petitioner Ganesh Dutt Sharma is quashed.

15) The Revision is disposed of. No order as to costs is passed.

16) Urgent Photostat certified copy of the judgement, if applied for, be handed over to the parties on compliance of necessary formalities.

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