

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH.

Crl. Petn. 11 (AP) 2011

Sri Jai Prakash Khetan → Petitioner.

By Advocate:

Mr. G. N. Sahewalla, Sr. Advocate, assisted by Mr. A. Chetia, Advocate.

-Versus-

Central Bureau of Investigation. → Respondent.

.....

.....Respondent.

By Advocate:

Mr. A. Bhattacharya, S/C, CBI.

BEFORE

THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH

Date of hearing : 18.11.2014

Date of Judgment & Order : 16.12 .2014

JUDGMENT & ORDER (CAV)

By filing this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner has challenged the order dated 17.10.2011 passed by the Special Judge, (P.C. Act-cum-District & Sessions Judge, West Sessions Division, Yupia (A.P.) in Prevention of Corruption Act Case No. 15/2010 whereby charges under Section 120 (B) IPC R/W Section 13 (1) (d) R/W 13 (2) of Prevention of Corruption Act, 1988 have been framed.

2] Heard Mr. G. N. Sahewalla, Sr. Advocate assisted by Mr. A. Chetia, learned counsels for the petitioner and Mr. A. Bhattacharya, learned Standing Counsel for the CBI.

3] In the year 1994, the Department of Power, Govt. of Arunachal Pradesh was preparing for establishment of Micro Hydro Projects in and around Arunachal Pradesh to generate electricity for the purpose of rural electrification in the State of Arunachal Pradesh.

3] The Under Secretary, Department of Power, Govt. of Arunachal Pradesh lodged a complaint, wherein, he alleged as under:-

“1(A) That Sri Darshan Singh, the then Chief Engineer, Department of Power, in conspiracy with M/s M.R. Power Project showed undue favour to the firm in the matter of award of contract relating to supply of 30 Portable Micro Hydel sets imported from Czechoslovakia. It was alleged that the work was awarded to the firm without observing any formality and the contract was executed even when quotation of the party was not the lowest.

1 (B) That a contract for supply of 41 imported portable Micro Hydel sets from Germany was awarded to M/s Hydro Power Equipments, Jorhat who were an intruder and did not participate in the tender process.

2(A) That undue favour was shown to M/s Horizon Hi-tech Engicon Private Limited, Kolkata in the matter of award of contract relating to supply, installation, testing and commissioning of 132 KV S/C. Transmission line from Tenga to Jang and 132/33 KV Sub-station at Jang. It was alleged that though the original quotation of the party was at the rate of Rs.28,39,55,881/- but the amount was enhanced and contract was given to the party for a sum of Rs.39,54,21,000/- thereby causing a financial loss to the Government.

2(B) That undue favour was shown to M/s Horizon Hi-tech Engicon Private Limited, Kolkata in the matter of award of contract relating to supply, installation, testing and commissioning of 132 KV S/C. Transmission line from Deomali to Namsai. It was alleged that though the original quotation of the party was at the rate of Rs.28,53,76,306/- but the amount was enhanced and contract was given to the party for a sum of Rs.45,59,00,000/- thereby causing a financial loss to the Government.

3(A) That undue favour was shown to M/s Boving Fouress Ltd. Of Bangalore in the matter of award of work of 3 Hydel Projects at Kush, Domkhong and Simyuk. For these projects approval of the Govt. was

taken in 1991 and without checking the enhanced value, the contracts were awarded at prices which were 4 times higher than the original cost without the approval of the Govt.

3(B) That favour was shown to M/s Subhash Project & Marketing Ltd., Kolkata in the matter of award of work of remaining 6 Hydel Projects at Nuranang, Mukto, Kitpi, Siddip, Liromoba & Sipit which were also awarded without getting revised sanction from the Govt. and at a rate which was approximately 4 times higher than the rates approved by the Govt. in 1991.

4(A) That favour was shown to M/s Jemsi Enterprises of Itanagar in the matter of award of contract for supply of Transformers.

4(B) That favour was shown in the matter of supply of ACSR conductors during the year 1994-95 to M/s Power Equipments, Itanagar thereby causing a loss to the Government”.

4] On the basis of the complaint so lodged, a case under Section 120 (B) IPC R/W Section 13 (1) (d) R/W 13 (2) of Prevention of Corruption Act, 1988 was registered. On completion of the investigation, the CBI submitted the Charge-Sheet against Sri Darshan Singh, Sri T. Ringu, Sri Ashok Nath, Sri Tomi Ete, Sri J.P. Khaitan, Sri Rajendra Kumar Goel, Sri Pardeep Jain, Sri Gurmukh Singh, Sri Dinesh Kumar Agarwal and Sri K.S. Baidwan. Since K.S. Baidwan has expired, prosecution against him was dropped. On receipt of the summon, the petitioner entered appearance and was allowed to go on bail. The relevant copies of the statement of the witnesses were furnished to the accused petitioner. The petitioner, thereafter, filed an application under Section 227 of Cr.P.C., Praying to discharge him from the charges under Section 120(B) IPC R/W 13 (2) in connection with Sessions Case No. 15/2010 and/or to pass appropriate order.

5] It is alleged that the learned Trial Court without considering the application filed by the petitioner framed charges under Section 120 (B) IPC R/W Section 13 (1) (d) R/W 13 (2) of Prevention of Corruption Act, 1988. It is further alleged that the learned Trial Court without going through the materials on the record, pass the order framing charges against the petitioner.

Although, the evidence of witnesses relied upon by the prosecution is totally silent regarding the commission of the offence by the petitioner. Moreover, the charges framed against the petitioner under Section 120 (B) IPC R/W Section 13 (1) (d) R/W 13 (2) of Prevention of Corruption Act, 1988 will not be applicable in respect of the petitioner inasmuch as the petitioner is a contractor not a public servant. There is no prime facie material against the petitioner under Section 120 (B) either.

6] It appears from the record that the petitioner is one of the partners of M/s Hydro Power Equipment which deals with supplying of various Electrical items and also the authorized dealer of Mini Hydel sets. The petitioners' firm wrote a complaint to the Chief Engineer, Department of Power stating that for supplying of turbines as they are the distributors of M/s Balaju Yantra Shala Pvt. Ltd., Nepal and thereafter, the petitioners' firm by his letter dated 27.09.1994 offered their rates for 10 KW and 20 KW micro sets. The power Department with sanction from the State Government and observing all the formalities placed the order for supply of items amounting to Rs.7,98,87,000/-. Before placing the aforesaid orders, the firm has to enter into an agreement with the Power Department and as per the agreement the firm has to submit the Bank Guarantee of Rs.2Crores which the firm has accordingly submitted the required Bank Guarantee of Rs.2Crores. The firm supplied the materials to the Power Department, for which the firm had also received the payment.

7] Mr. A. Bhattacharya, learned Standing Counsel for the Central Bureau of Investigation has submitted that there is evidence to show that there was money transaction between Sri Darshan Singh and the firm M/s Power Equipments through M/s North Eastern Trade and Industries Pvt. Ltd. Whose directors are Sri Gurumukh Singh (Brother-in-law of the accused Sri Darshan Singh) and Sri Dinesh Agarwal. There is material that a sum of Rs.30 Lakhs was paid by M/s North Eastern Trade and Industries Pvt. Ltd. to M/s Power Equipment vide Cheque No. 960551 dated 30.08.1994. There is also evidence

that M/s North Eastern Trade and Industries Pvt. Ltd was taken over by the accused Sri Darshan Singh and Sri Gurumukh Singh through Sri Suresh Verma, who was then the C.A. OF Sri Darshan Singh. Although, in the impugned order dated 17.10.2011, the learned Trial Judge has not mentioned that there is a prima-facie case against the petitioner to frame charges against him. It appears from the averments of the petitioner that the petitioner filed an application under Section 227 and the matter was fixed for hearing on 22.06.2011. The learned Trial Court heard both sides and postponed the pronouncement of the Judgment for next date. On the next date, petitioner could not appear before the learned Trial Court as he was suffering from back pain and on subsequent dates on 17.10.2011, the impugned order was passed by framing charges against the petitioner after giving opportunity of hearing to both sides and considering the materials available on record.

8] On perusal of the record it also reveals that the order placed by the Power Department to the petitioner was itself objectionable against the establishment norms.

9] The preliminary objection has also been raised by the learned Standing counsel CBI referring to the provisions of Section 19, Sub-Section 3 (C) of the Prevention of Corruption Act, 1988 which states as under:-

“No Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the Powers of Revision in Relation to any interlocutory order passed in any inquiry, trial appeal or other proceedings”.

10] In the cited case of Bharat Parikh-vs- Central Bureau of Investigation and Another (2008) 10 SCC 109, It has been held as under:-

“19 As observed in Debendra Nath Padhi case, at the stage of framing charge roving and fishing inquiry is impressible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the Investigating agency. The accused will get a opportunity to prove the documents subsequently produced by the prosecution on

the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure”

11] In the cited case of Central Bureau of Investigation-vs- K.M. Sharan (2008) 4 SCC 471, it has been held as under:-

“31 At this stage, the High Court in its jurisdiction under Section 482 Cr. P.C. was not called upon to embark upon the inquiry whether the allegations in the FIR and the Charge-Sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the Court concerned after the entire material is produced before it on a thorough investigation and evidence is led”.

12] In the cited case of Rukmini Narvekar-vs-Vijaya Satardekar and Ors (2008) 14 SCC 1, it has been held as under:-

“22 Thus in our opinion, while it is true that ordinarily defence material cannot be looked into by the Court while framing of the Charge in view of D.N. Padhi case, there may be some very rare an exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted”.

13] In the cited case of Yogesh @ Sachin Jagdish Joshi-vs- State of Maharashtra (2008) 10 SCC 394, it has been held as under:-

“16 It is trite that the words “ not sufficient ground for proceeding against the accused” appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima-facie case against the accused has been made

out. The test to determine a prima-facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible”.

14] In this case and on perusal of the Lower Courts record, it appears that there is material to suggest that the contract was wrongly awarded to the petitioners firm in violation of the Establishment procedures and norms, there was money transactions between the petitioners firm as well as M/s North Eastern Trade and Industries Pvt. Ltd. one of whose Director was the (Brother-in-law of the accused Sri Darshan Singh), therefore, at this stage, framing of the charge, and the Court has to consider that there are Prima-facie materials against the accused for the purpose of framing of the charge. Only because of the Trial Court has not mentioned there is Prima-facie material against the accused petitioner, the order passed by the learned Trial Court cannot be interfered.

15] Accordingly, this Criminal Petition stands disposed of.

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JUDGE