

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M. P. No. 400 of 2015

Satyabrat Gupta, S/o late D.P. Gupta, resident of Balaghat,
PO-Lalbag, PS- Sundarpur, District-Darbhanga, Bihar.

... .. **Petitioner**

Versus

State of Jharkhand through C.B.I. **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Shailesh, Advocate
: Mr. Chandrajit Mukherjee, Advocate
For the State-C.B.I. : Mr. Rohit Sinha, Advocate

16/21.01.2020

1. Heard Mr. Shailesh, learned counsel appearing on behalf of the petitioner along with Mr. Chandrajit Mukherjee, Advocate.
2. Heard Mr. Rohit Sinha, learned counsel appearing on behalf of the State-C.B.I.
3. This petition has been filed for the following reliefs: -
"for quashing of order dated 03.04.2014 passed in R.C.5(A) of 1997(D) by learned District Judge VII cum Special Judge, C.B.I., Dhanbad whereby and whereunder the charges have framed against the petitioner under sections 120-B, r/w 406, 407, 409, 420, 468 and 471 of I.P.C., and sec. 13(2) r/w 13(1)(c)&(d) of PC Act, 1988 and entire criminal proceedings arising thereof and now pending in the court of Learned A.D.J.- VII at Dhanbad, as also the entire criminal proceeding associated with the case now pending in the court of learned ADJ VII, cum Special Judge C.B.I., Dhanbad."
4. The learned counsel for the petitioner submits that the entire Lower Court Records was called for by this Court and the records are available.

5. The learned counsel for the petitioner further submits as per the present petition, the charge-sheet was submitted against the petitioner and many other co-accused. It was further observed in the charge-sheet that necessary sanction for prosecution in respect of the other accused public servants accorded by the competent authority, in original, was enclosed along with the charge-sheet. So far as the petitioner and other two co-accused are concerned, charge-sheet was filed against the petitioner, only under Sections 406, 407, 409, 420 and 120-B of Indian Penal Code and it was also mentioned that the charge-sheet under Section 13(2) read with Section 13(1)(c)&(d) of *Prevention of Corruption Act, 1988 (hereinafter referred to as the Act of 1988)* will be filed against the petitioner, and other two co-accused only after the sanction for launching prosecution under Section 19(1)(c) of the aforesaid Act of 1988 is obtained from the competent authority.

6. The learned counsel further submits that the petitioner has brought on record a proceeding sheet regarding sanction for launching prosecution against the petitioner which is dated 25th January, 2002 and annexed as Annexure-4 to the main petition. The learned counsel submits that the sanction for prosecution under Section 19(1)(c) of the aforesaid Act of 1988, in respect of the petitioner, was considered and the sanction was refused. The learned counsel further submits that the petitioner has also been exonerated in the departmental proceedings and the order of exonerating the petitioner of the charges is also annexed along with main petition which is dated 21st September, 2004.

7. The learned counsel has submitted that the learned court below has framed charges against the present petitioner under Sections 120-B read with Sections 406, 407, 409, 420, 468 and 471 of Indian Penal Code as well as Section 13(2) read with Section

13(1)(c)&(d) of the Act of 1988 without there being any sanction for prosecution under the provisions of the aforesaid Act of 1988. He submits that the order framing charge as well as the charge itself has been annexed along with the main petition which is dated 03.04.2014 and 05.04.2014 respectively.

8. The learned counsel submits that altogether eleven paragraphs regarding charges are available in the charge framed and so far as tenth charge is concerned, the name of the present petitioner has been included therein which relates to alleged offence punishable under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned counsel submits that there is no prosecution sanction against the petitioner so far as the Prevention of Corruption Act, 1988 is concerned and no case for alleged offence under the provisions of Indian Penal Code is made out against the present petitioner, as the petitioner has already been exonerated from the departmental proceeding by the competent authority.

9. The learned counsel also submits that the sanction for prosecution was refused by a reasoned order and on the same set of facts, the departmental proceeding was initiated and the petitioner has been exonerated.

10. The learned counsel for the petitioner submits that accordingly, petition under Section 482 of Code of Criminal Procedure has been filed for quashing the criminal proceedings including order framing charge to meet the ends of justice as the continuation of criminal proceedings against the petitioner under the provisions of Prevention of Corruption Act as well as the Indian Penal Code would be an abuse of process of law.

11. The learned counsel further submits that so far as the charge under the provisions of Prevention of Corruption Act, 1988 as well as the Indian Penal Code are concerned, they are absolutely same and similar and therefore in absence of

prosecution sanction under the provisions of aforesaid Act of 1988, the criminal prosecution under Indian Penal Code also cannot be sustained and its continuation would amount to an abuse of the process of law. On this point, he refers to a judgment passed by the Hon'ble Allahabad High Court which is reported in (2001) *Cr. Law Journal* 2058 (*Ravindra Kumar Sharma vs. State*).

12. The learned counsel submits that it has been held by the Hon'ble Supreme Court in the judgment which is reported in (2018) 16 SCC 299 (*Asian Resurfacing of Road Agency Private Limited and Another vs. Central Bureau of investigation*) that powers under Section 482 of Code of Criminal Procedure are still available for quashing the entire criminal proceedings in spite of bar under Section 397(2) of Cr.P.C. and accordingly, in an appropriate case, it can be exercised in order to prevent abuse of process of law or otherwise to serve the ends of justice. The learned counsel further submits that the aforesaid judgment (*Asian Resurfacing of Road Agency Private Limited and Another*) (*supra*) has followed the judgment passed in the case of *Madhu Limaye vs. The State of Maharashtra* reported in (1977) 4 SCC 551, wherein by way of example, it was mentioned that one such circumstances where power under Section 482 of Cr.P.C. can be exercised is the situation where there is absence of sanction for prosecution under the Prevention of Corruption Act, 1988.

Argument of the State-C.B.I.

13. The learned counsel for the opposite party-C.B.I., on the other hand, submits that so far as Annexure-4 to the main petition is concerned, the same is an internal communication of the office of the employer of the petitioner and no reliance can be placed on such document. He submits that from perusal of Annexure-4, it appears that the authority had requested the

E.D. (Vigilance) of the employer of the petitioner to advise C.B.I. that instead of giving them sanction to prosecute the petitioner in a court of law, the authority would initiate departmental proceeding against the petitioner for the reasons mentioned in the said document. The learned counsel further submits that this particular document is not a communication to the C.B.I. and accordingly, he is not in a position to say as to whether any communication regarding refusal or grant of sanction for prosecution of the petitioner was ever received from the C.B.I. or not.

14. However, from the records of this case which has been received from the learned court below, it is not in dispute that sanction for prosecution of the petitioner under the Prevention of Corruption Act, 1988 has not been forwarded to the learned court below. Moreover, there is no document on records of the learned court below that the refusal to grant sanction for prosecution of the petitioner under the provisions of the aforesaid act of 1988 was ever communicated to the learned court below. He submits that till the receipt of communication from the employer of the petitioner regarding grant or refusal of sanction to prosecute under the provisions of the aforesaid act of 1988, it cannot be said that the sanction for prosecution has been refused.

15. The learned counsel for the opposite party-C.B.I. further submits that as per the judgment passed by the Hon'ble Supreme Court in the case of *Madhu Limaye vs. The State of Maharashtra* reported in (1977) 4 SCC 551, it has been held by way of example that if a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal, a second trial after proper sanction will not be barred on the doctrine of *autrefois acquit*. He submits that as it has been

argued by the petitioner that the prosecution under the provisions of Prevention of Corruption Act, 1988 is without jurisdiction in absence of sanction, therefore, the right to launch prosecution, if any prosecution sanction under the provisions of the Prevention of Corruption Act, 1988 is received, may be protected.

16. The learned counsel further refers to the Lower Court Records to submit that the prayer to discharge the petitioner was rejected by the learned court below vide order dated 11.02.2014 and from perusal of this order, it appears that it has been recorded that the sanction for prosecution under the aforesaid act of 1988 in connection with the petitioner was not filed before the learned court below, and the learned court below found that there were sufficient materials on record to frame charges *interalia* against the petitioner under various provisions of Indian Penal Code.

17. The learned counsel further submits that so far as the framing of charge under the various provisions of Indian Penal Code is concerned, the same does not call for any interference in the present case. But, so far as the prosecution under the provisions of Prevention of Corruption Act, 1988 is concerned, he is not in a position to dispute that the court could not have proceeded to prosecute the present petitioner under the provisions of aforesaid Act of 1988 in absence of sanction for prosecution under the said Act of 1988.

18. The learned counsel has also referred to the judgment passed by the Hon'ble Supreme Court reported in **(2016) 16 SCC 30 (Prabhu Chawla vs. State of Rajasthan and Another)** to submit that the Hon'ble Supreme Court has considered the plea regarding relative scope of maintainability of a proceeding under Section 482 of Code of Criminal Procedure before this Court and exercise of power under Section 397 of Cr.P.C. He

submits that the exercise of power under Section 482 of Cr.P.C. should be exercised under very limited circumstances only in order to prevent the abuse of process of law or in case of matters, when the proceedings are without jurisdiction. However, while arguing on the point of maintainability of the present case under Section 482 of Cr.P.C., the learned counsel is not in a position to dispute that if sanction for prosecution under Prevention of Corruption Act, 1988 is not available on record, then the proceeding would not be sustainable, so far as the proceedings under the Prevention of Corruption Act, 1988 is concerned.

19. The learned counsel, on the point of exoneration of the petitioner from departmental proceeding, submits that the matters relating to departmental proceeding has no bearing in the present case and the same is not binding before the learned court below. He also submits that the order refusing to discharge the petitioner has been passed by considering this aspect of the matter also the petitioner has never challenged the order refusing to discharge. He further submits that in such circumstances, the present proceeding under the provisions of Indian Penal Code may not be quashed.

Findings of the Court

20. After hearing the counsel for the parties and considering the records which has been received from the learned court below, this Court finds as follows: -

- a) Admittedly the charge-sheet against the petitioner was submitted only under the provisions of Indian Penal Code and the charge-sheet was not submitted under the provisions of the aforesaid Act of 1988 awaiting sanction for prosecution from the employer of the petitioner. So far as some of the other co-accused are concerned, charge-sheet was submitted against Indian Penal code as well as

under the aforesaid Act of 1988 as the prosecution sanction was available.

- b) Accordingly, the cognizance of offence against the petitioner was taken only under the provisions of Indian Penal Code.
- c) There is no communication before the learned court below either granting or refusing prosecution sanction of the petitioner under the provisions of aforesaid Act of 1988 and there is nothing on record to suggest as to whether the CBI has received any communication from the employer of the petitioner, either refusing or granting prosecution sanction under the provisions of aforesaid Act of 1988. Annexure-4 is an internal communication of the employer of the petitioner in connection with sanction for prosecution of the petitioner, but neither the same is conclusive nor the same is a communication to the CBI.
- d) The law is well-settled that the right to launch prosecution under the aforesaid Act of 1988, if any prosecution sanction under the Prevention of Corruption Act, 1988 is protected even after the accused is acquitted for offence under the provisions of Indian Penal Code.
- e) Vide order dated 11.02.2014, the petition for discharge which was filed by the petitioner, was rejected and the learned court below found that there are sufficient materials on record to frame charges under Sections 120-B, 406, 407, 409 and 420 of Indian Penal Code against the petitioner and the learned court below also took note of the fact that there was no sanction for prosecution. The learned court below also observed that the petitioner being an employee of BPCL (*Bharat Petroleum Corporation*

Ltd.), a public sector organization, no sanction for prosecution under Section 197 of Cr.P.C. was required.

- f) This Court further finds that the learned court below while rejecting the petition for discharge has considered the materials on record and ultimately held as follows: -

"I have considered the rival submissions of both the parties and perused the record of this case. It appears that petitioners were officers of Bharat Petroleum Corporation Ltd. posted at its Barauni office and they have falsely issued receipts of transport challan towards transportation of bitumen and thereby facilitated the transporters causing wrongful gain to themselves and corresponding wrongful loss to the state as the bitumen was never physically transported through Barauni.

So far as sanction for prosecution is concerned, it appears from record that the competent authority has not granted sanction for the prosecution of the present petitioners. The cognizance has been taken against these petitioners for offences u/s 120-B/420, 406, 407, 409, 420 IPC. Admittedly the petitioners are the employees of Bharat Petroleum Corporation Ltd. which is public sector oil company. It has been held by the Hon'ble Apex Court in the case of Mohd. Hadi Raja Vs. State of Bihar [1998] 5 SCC 91 28 that "the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government."

Therefore, the petitioners who are the employees of BPCL, being the employees of a public sector company are not entitled to protection by way of sanction u/s 197 CrPC. The petitioners are not facing any prosecution under provisions of CVC-Act, therefore their case is not hit by ex-post-facto laws. The plea of exoneration in departmental proceeding is also not relevant as standard of proof in the criminal proceeding vis-à-vis departmental proceedings are different.

The facts of the case clearly indicate that, prima facie there are sufficient materials on record in this case to frame the charges u/s 120(B)/420/406/407/409/420 of IPC against the accused/petitioners abovenamed."

- g) This Court further finds that the matter regarding discharge of some other co-accused was rejected vide other orders on record, wherein their claim for discharge under the provisions of Prevention of Corruption Act, 1988 were also rejected. Admittedly there is prosecution sanction for some of the co-accused in the records of the learned court below.
- h) **From perusal of the records, this Court finds that at the time of framing charge, the learned court below has not considered the fact that there is no prosecution sanction on record to prosecute the petitioner under the provisions of Prevention of Corruption Act, 1988. The learned court below while framing the charge under the provisions of aforesaid Act of 1988 against the present petitioner along with the other co-accused has failed to consider the absence of sanction under the Prevention of Corruption Act, 1988, so far as the petitioner is concerned, although, the learned court below had taken**

note of this fact at the time of rejecting the prayer for discharge of the petitioner. Learned court below is directed to consider this aspect of the matter while passing the judgement. This Court finds that the evidence of the prosecution is over and the statement of the petitioner has already been recorded under Section 313 of Cr. P.C. and the matter is pending for evidence of the defense. This certainly cannot be treated as a bar for a fresh trial against the petitioner under the provisions of the aforesaid Act of 1988, if any prosecution sanction under the aforesaid Act of 1988 is received.

- i) So far as the argument of the learned counsel for the petitioner that the petitioner has been exonerated in the departmental proceeding is concerned, this Court finds that this aspect of the matter has been considered by the learned trial court at the stage of discharge and the order refusing to discharge is not under challenge before this Court. Further, this Court is of the considered view that there are serious allegations against the petitioner under the provisions of Indian Penal Code and such allegations could not have been considered in the departmental proceeding and they are strictly within the realm of criminal proceeding and therefore, mere exoneration of the petitioner in the departmental proceeding has no bearing in the criminal proceeding.
- j) So far as the judgment which has been relied upon by the learned counsel for the petitioner which is reported in *(2001) Cr. Law Journal 2058* is concerned, this Court finds that the same also does not apply to the facts and circumstances of this case. In the present case, there is neither refusal to grant of sanction for prosecution nor there is any order granting sanction for prosecution, so far

as the petitioner is concerned. The accused in the said case was entitled to protection of sanction under the provisions of Indian penal code as well as under the provisions of aforesaid Act of 1988 and in the instant case, the petitioner is not entitled to any protection under the provisions of Indian penal code. In the said case, there was application of mind of the authorities in connection with sanction for prosecution and in the present case there is absence of sanction for prosecution and not refusal of sanction for prosecution. The said judgment was passed in the peculiar facts and circumstance of the said case which is apparent from the following paragraph of the said judgement: -

"12. On the facts and circumstances of the case, it is apparent that the State Government had passed the order dated 26-2-1997 under Section 197, Cr. P.C. by which sanction for prosecuting both under the Indian Penal Code and Prevention of Corruption Act was refused. However, subsequently, the State Government by an order dated 29th May, 1997 reviewed its earlier order under Section 197, Cr. P.C. and the permission for prosecuting the applicant under the provisions of the Indian Penal Code was accorded. Thereafter since the applicant is an employee of the Central Government, therefore, the matter was sent to the Government of India for its consideration for grant of permission for prosecution. The Government of India considered both the orders and passed a detailed order under Section 19 of the Prevention of Corruption Act, 1988 refusing sanction for prosecution, as already indicated hereinabove, by order dated 7-11-1997. From a perusal of the same, it is crystal clear that the Government of India was of the opinion that there is no material to indicate that the applicant obtained any pecuniary advantage either for himself or any person either by corrupt or illegal means or abusing his position as a public servant or without any public interest. The report of the Central Bureau of Investigation does not indicate any material wherefrom it can be inferred that the applicant obtained any pecuniary advantage. The order further provides that there is no circumstance much less evidence, which could lead even to a suspicion that the applicant had received illegal gratification. Further the State

Government's order declining to grant sanction is a detailed, reasoned and speaking order touching upon each and every aspects of the case including the allegation of commission of offences under the provisions of Prevention of Corruption Act, 1988 and the material placed by the Central Bureau of Investigation on record, in support of the allegation. The legal experts like Law Department of the State as well as the learned Advocate General of U.P. had examined in detail the proposal for grant of sanction and in regard to the legal implications thereof and had given cogent reasons in not according the sanction for prosecution sought by the Central Bureau of Investigation against the applicant. The Central Bureau of Investigation has neither assailed those reasons with reference to any deficiency or infirmity therein nor it has given any reason as to why the Central Government should hold a different view in the matter. The order further indicates that the competent authority has also taken cognizance of the fact that the State Government on a reconsideration of the issue by an order dated 29-5-1997 granted sanction for prosecution under Section 197(1)(b) of the Cr. P.C., 1973, against the applicant in this case. The fact that the State Government had received its opinion (with the change of Government) is not of much significance because as the matter stands today, the competent officials of the State Government had once refused sanction under Section 197, Cr. P.C. and on a review, sanction is now granted. Such sanction is required to be granted with due application of mind. The tenure of two and a half months of the applicant as Secretary, Medical Education, which was also taken into account in the order, is too short to draw a conclusion with regard to the complicity of the applicant in the criminal conspiracy aspect as according to the investigation report, the scandal was going on for the last few years till it was detected in the month of March, 1994. In these circumstances, it was provided that no case for sanction is made out to prosecute the applicant under the provisions of Prevention of Corruption Act, 1988."

- k) In the said case, it was pointed out by the accused that as per the statement made by the prosecution in the charge-sheet, the accused committed offence punishable under the Indian Penal Code in furtherance of conspiracy to commit offence under the Prevention of Corruption Act, 1988 and that the offence alleged to be committed by the applicant were only incidental and sequel to the offence punishable under the Prevention of Corruption Act, 1988

with a view to obtain illegal pecuniary advantage. In the present case, this Court finds that the allegation which have been levelled against the petitioner under Indian Penal Code cannot be said to be a sequel to the allegations under the Prevention of Corruption Act, 1988 and are independent of each other.

l) In view of the aforesaid facts and circumstances, the aforesaid judgment which has been relied upon by the petitioner as reported in *(2001) Cr. Law Journal 2058 (supra)* does not apply to the facts and circumstances of this case.

21. This petition is hereby disposed of with the aforesaid observations and directions.

22. Interim order, if any, stands vacated.

23. Pending interlocutory applications, if any, are also dismissed as not pressed.

24. This Court finds that the case was filed as back as in the year 1997, the learned court below is directed to expedite the trial and the petitioner as well as the opposite party are directed to cooperate with the proceedings before the learned court below.

25. Let the Lower Court Records received be immediately sent back to the learned court below.

26. Let a copy of this order be communicated to the learned court below through 'FAX'.

(Anubha Rawat Choudhary, J.)