

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No.2175 of 2014

Radhey Shyam Prasad, S/o Sri Mahadeo Sah, Resident of Village:-
Makdampur, Ram Mandir, P.O:- Tatanagar, P.S:- Parsudih, Dist:- East
Singhbhum (Jamshedpur)-831002 ... Petitioner

Versus

The State of Jharkhand through Vigilance Bureau
... Opposite Party

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Krishna Murari Singh, Advocate
For the Vigilance Bureau : Mr. Suraj Verma, Spl. P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties through video conferencing.

2. This Cr.M.P. has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the entire criminal proceeding including the order taking cognizance dated 17.11.2011 passed by learned Special Judge (Vigilance), Ranchi in connection with Special Case No.25 of 2002 arising out of Chatra Sadar P.S. Case No.53 of 2002.

3. Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner, in criminal conspiracy with the co-accused persons, was involved in making excess payment of money to the contractors much more than the estimated amount even though the work, for which the payment was made, was not completed. It is submitted that the allegation against the petitioner is false. It is next submitted that the petitioner is not named in the

F.I.R. It is further submitted that the petitioner is a Junior Engineer. It is also submitted that in the F.I.R., specific allegation has been made against the Executive Engineer. It is further submitted that all the repairing works were done by the contractors selected and appointed by the Executive Engineer and the petitioner got the work executed satisfactorily as per the estimate and there is no complaint whatsoever against him and the due certificates of satisfactorily completion of work has been issued by the occupants of the quarters and buildings which were cross-verified by the then Assistant Engineer and the Executive Engineer and only thereafter payment has been made. It is next submitted that the lodging of the F.I.R. is a false table work and vindictive approach on the part of the informant because the informant claims to have verified 22 sites within just nine hours and proper verification of the work by the petitioner during such short time is impossible. It is next submitted that the petitioner has been put under suspension in October, 2011 but no proceeding was initiated against him till filing of this petition. It is also submitted that the learned court below has taken cognizance of the offence in a mechanical manner without application of judicial mind. It is further submitted that the learned Special Judge ought to have appreciated that work alleged to have been executed, was temporary repairing works for which satisfactory work done certificates and occupancy certificates issued by the occupants have been issued.

4. It is further submitted that in the matter of the co-accused the Assistant Engineer-Naresh Singh, a co-ordinate Bench of this Court vide Cr.M.P. No.2372 of 2012 quashed the entire criminal proceeding of this case including the order dated 05.07.2012 taking cognizance under Sections 409, 511, 467, 468 and 120 (B) of the Indian Penal Code and also under Sections 7/8, 13 (1) (d) of Prevention of Corruption Act, 1988 so far as the co-accused Naresh Singh is concerned. Hence, it

is submitted that as the case of the petitioner stands on better footing than Naresh Singh, so the petitioner is also entitled to get the same relief as Naresh Singh. Hence, it is submitted that the order dated 17.11.2011 passed in connection with Special Case No.25 of 2002 arising out of Vigilance (Chatra) P.S. Case No.53 of 2002 passed by learned Special Judge (Vigilance), Ranchi be quashed.

5. Mr. Suraj Verma- the learned Special P.P. appearing for the Vigilance Bureau opposed the prayer for quashing the entire criminal proceeding and the order taking cognizance and defended the order taking cognizance and submitted that it is a settled principle of law that the F.I.R is not the encyclopedia of the prosecution case and cognizance of the offence taken by Magistrate is only after submission of the charge-sheet and during investigation of the case, it has been found that the petitioner was responsible for recommending passing of the bills of the contractors in respect of the works which have not been actually done and in some works also in excess of amount of the estimate for the concerned work. It is next submitted by Mr. Verma that photography and videography of the work has also been done which has been mentioned in detail in different paragraphs of the case-diary and in para-69 of the case-diary also, the offence committed by the petitioner has been mentioned in detail. Mr. Verma further submits that as has been observed by this Court in the case of **Mithilesh Prasad Singh Vs. The State of Jharkhand through A.C.B.** passed in **Cr.M.P. No.2755 of 2020** vide order dated 08.03.2021, relying upon the judgment of Hon'ble Supreme Court of India in the case of **Sonu Gupta Vs. Deepak Gupta & Others** reported in **(2015) 3 SCC 424**, paragraph-8 of which reads as under:-

"8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case

has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. “ (Emphasis supplied)

that at the stage of cognizance, the Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the material or evidence of the complainant and the Magistrate is not required to undertake the exercise to find out at the stage of taking cognizance whether the materials will lead to conviction or not. It is further submitted by Mr. Verma that the contention of the petitioner that the satisfactorily work completion certificate were issued by the occupants or for that matter, the petitioner discharged his duties satisfactorily are the defence of the petitioner which is open to be taken during the trial and certainly that cannot be considered by this Court as a ground to quash the entire criminal proceeding or for that matter, the order taking cognizance by the trial court. Hence, it is submitted that the instant petition, being without any merit, be rejected.

6. Having heard the submissions made at the Bar and after carefully going through the materials in the record, it is crystal clear that there is specific material in the record to implicate the petitioner in this case which has been mentioned in different paragraphs of the case-diary to the effect that the petitioner also involved in criminal conspiracy with the co-accused persons in payment of the amount in excess of the actual work done by the contractors and even in certain cases in excess of the estimated cost of the concerned work, which are sufficient to take cognizance of the offence by the learned trial court. Hence, this Court is of the considered view that this is not a fit case where the entire criminal proceeding or even the order taking cognizance against the petitioner be quashed.

7. Accordingly, the instant petition which has been filed to quash the entire criminal proceeding including the order taking cognizance dated 17.11.2011 passed in connection with Special Case No.25 of 2002 arising out of Chatra Sadar P.S. Case No.53 of 2002 passed by learned Special Judge (Vigilance), Ranchi, being without any merit, is dismissed.

08. This Cr.M.P. is disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 08th September, 2021.
AFR/ Animesh