

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1806 of 2011

With

Cr.M.P. No. 2777 of 2012

M/s Apical Exim Private Limited.....
Binod Ram.....

Petitioners (In Cr.M.P. 1806/2011)
Petitioner (In Cr.M.P. 2777/2012)

Versus

State of Jharkhand & Anr.....

Opp. Parties (In both the cases)

Coram: **The Hon'ble Mr. Justice R.R.Prasad**

For the petitioners

: Mr. Milan Mukherjee, Sr.Advocate
Mr. A.K.Kashyap, Sr. Advocate

For the State

: Mr. A.P.P.

For the CBI

: Md. Mokhtar Khan, ASGI

ORDER

C.A.V. On 05/05/2014

Delivered on 12/05/2014

19/12.05.2014 Both the cases have been filed for quashing of the first information report of R.C. Case No. 07(S)/2010-AHD-R, registered under Sections 120B, 420, 467, 468, 471 of the Indian Penal Code and also under Section 21 of the MMDR Act.

2. Before adverting to the submissions advanced on behalf of the parties, the facts of the cases, needs to be taken notice of.

The Deputy Commissioner, West Singhbhum at Chaibasa, constituted a task force for checking illegal mining and its transportation. The task force collected statements from the District Transport Officer, West Singhbhum, Chaibasa as well as from the authority of Noamundi Railway Station relating to transportation of the iron ore for the period from January to February, 2010, relating to several Firms namely Tirupati Balaji Enterprises Private Limited, Maa Tarini Minerals, Devansh Export, Sara International Private Limited and Apical Exim Private Limited (petitioner in Cr.M.P. No. 1806/2011). Binod Ram (petitioner in Cr.M.P. No. 2777/2012) happens to be the Staff (Manager) of M/s Apical Exim Private Limited. Upon inquiry being made, it was found in the case of the petitioners that on 17/02/2010, 3898.290 M.T iron ore had been transported from railway siding to Monate Steel and Energy Limited under transit permit (Form-D),

which had been issued by the Mining Department, Chaibasa. On making verification of the vehicles under which iron ore was claimed to have been transported to railway siding, it was found that 95 vehicles had been used, out of which when number of vehicles was verified, 12 were found to be Motorcycle and 2 were found to be Maxi. Over each of the vehicles 36-39 M.T of iron ore had been shown to have been transported. Same quantity of iron ore was shown to have been transported by each of other vehicles, capacity of which was 16.220 and 25 M.T. Thus, it was alleged in case of other Firms that they had transported iron ore but it had no mining lease. So far petitioner's Firm Apical Exim Pvt. Ltd. is concerned, suspicion was raised to have been exported iron ore clandestinely.

On such accusation, the then S.D.O., Sadar, Chaibasa lodged a first information report, which was registered as Gua (Bada Jamda) P.S. Case No. 28 of 2010, under Sections 467, 468, 471, 420, 120 B of the Indian Penal Code and also under Section 20 of the MMDR Act. The matter was taken up for investigation by the District Police. Upon completion of the investigation, charge sheet was submitted by the District Police on 19/08/2010, against some of the accused persons namely, Sanjay Kumar Dhada, Shyam Kishore Prasad, Ravi Shankar Singh and Devendra Nath Sahu and against rest of the accused persons including the petitioners investigation was kept open. Before the charge sheet was submitted, the Central Government, with the consent of the State Government, issued a Notification on 09/08/2010, under Sections 6 and 5 of the Delhi Police Establishment Act for investigation of the same case, registered as Gua (Bada Jamda) P.S. Case No. 28 of 2010, against the accused persons including the petitioners. On issuance of such Notification, the CBI instituted a fresh case as R.C. Case No. 07(S)/2010-AHD-R on 28/09/2010, under Sections 120B, 420, 467, 468, 471 of the Indian Penal Code and also under Section 21 of the MMDR Act. By that time, as has been stated above, the charge sheet had already been submitted by the District Police against the other accused persons, upon which cognizance of the offence was taken by the

Court vide its order dated 20/08/2010.

3. It is worthwhile to state herein that some of the persons, against whom, the charge sheet had been submitted, had moved to this Court for quashing of the first information report vide Cr.M.P. No. 1306 of 2010, which was allowed by this Court. The petitioner M/s Apical Exim Pvt. Limited had also challenged the first information report of the said Gua (Bada Jamda) P.S. Case No. 28 of 2010 vide Cr.M.P. No. 1297 of 2010, in which interim order was passed whereby further proceedings of the case had been stayed vide order dated 04/11/2010.

Since, on the same allegation, two F.I.Rs have been lodged, one by the District Police and another by the CBI as R.C. Case No. 07(S)/2010-AHD-R, these two applications have been filed for quashing of the first information report of the case, lodged by the CBI.

4. Mr. Milan Mukherjee, learned senior counsel appearing for the petitioner M/s Apical Exim Pvt. Ltd., submits that upon a police case being registered against the petitioner and others, the police took it for investigation. After investigation, charge sheet was submitted on 19/08/2010 against other accused persons and not against the petitioners. Thereupon, cognizance of the offence was taken by the Court vide its order dated 20/08/2010. While submitting charge sheet against the other accused persons, it was recorded in the charge sheet itself that the investigation has been kept open so far other accused persons are concerned. Since, further proceeding of the case has been stayed by this Court, the police perhaps did not proceed for further investigation so far this petitioner is concerned. Meanwhile, CBI, on the basis of the Notification issued by the State Government and the Central Government, re-registered the case not against all the accused persons but only against this petitioner on the premise that the charge sheet had never been submitted against this petitioner. That cannot be allowed to stand for simple reason that for the same allegation, two FIRs cannot be registered, though CBI may have power to go for further investigation but this is not the case herein, which is

evident from the statement made in the counter affidavit filed on behalf of the CBI stating therein that the matter has never been taken for further investigation, rather it has been taken as a fresh case.

Further, it was submitted that there has been decision of the Hon'ble Supreme Court that if upon lodging a case, it gets transpired that the said case does have element of conspiracy, there would be no illegality in registering a case of conspiracy but the instant case does not have any element of conspiracy as the CBI has lodged the case only against the petitioner on the premise that the petitioner had not been charge sheeted by the police and even after investigation, charge sheet has been submitted by the CBI only against the petitioner and in that event it can never be a case of conspiracy, much less of larger conspiracy. Therefore, not only the FIR but also the charge sheet submitted, are fit to be quashed in view of the decisions rendered in a case of "***T.T.Antony-versus- State of Kerala & Others***", [(2001) 6 SCC 181]" as well as "***Babubahai-versus- State of Gujrat and Other***", [(2010) 12 SCC 254]".

5. As against this, Mr. Khan, learned counsel appearing for the CBI, submits that admittedly the District Police though had registered the case against the petitioners also, did not submit charge sheet perhaps on account of the fact that this Court had passed an order of stay of the further proceeding. In that event, the petitioners cannot be said to be an accused in the case lodged by the District Police and, therefore, the question of petitioners being prosecuted twice for the same offence, does not arise. Under the circumstances, the ratio laid down by the Hon'ble Supreme Court in the cases, referred to above, do not apply in this case.

6. The submission, advanced on behalf of the CBI never seems to be in consonance with the ratio laid down by the Hon'ble Supreme Court in the cases of "***T.T.Antony-versus- State of Kerala & Others***" as well as "***Babubahai-versus- State of Gujrat (supra)***".

7. The Hon'ble Supreme Court has been pleased to lay down the law that a second FIR in respect of an offence or different offences committed in

the course of same transaction is not only impermissible but it violates Article 21 of the Constitution. In the case of **“T.T.Antony”** (*supra*), the Hon'ble Supreme Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution. Their Lordships have drawn conclusion in paragraphs-19, 20 and 27 of the judgment, which reads as under:-

“19. *The scheme of CR.P.C. Is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C. On the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.*

20. *From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C., only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Cr.P.C.*

27. *A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C Empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of the Sections 154 and 156 CR.P.C, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection*

with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C or under Articles 226/227 of the Constitution.”

8. The Hon'ble Supreme Court in a case of “**Babubhai-versus- State of Gujrat (supra)**” after taking notice of the provision of Section 154, 162, 169, 170 and 173 of the Code of Criminal Procedure, was pleased to hold that the Court has to examine the fact and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents having two or more parts of the same transaction. The Hon'ble Supreme Court was further pleased to hold that in case the contrary is proved, where the version in the second FIR is different and is in respect of the two different incidents/crimes, the second FIR is permissible.

9. Thus, it has been well established that for the same allegation, two FIRs cannot be maintained. But the question does arise as to whether in the facts and circumstances and also in view of the decision rendered in a case of “**Amitbhai Anilchandra Shah-versus- the Central Bureau of Investigation & Anr. [(2013) 6 SCC 348]**”, it would be proper and appropriate to quash the second FIR and also the charge sheet submitted?.

It be stated that in the first case lodged by the District Police, the charge sheet was submitted against other accused persons, whereas the investigation was kept open. However, when the matter was under further investigation so far the petitioners are concerned, an order was passed for stay of the further proceeding of the case by a Bench of this Court and, meanwhile, a Notification was issued by the Central Government with the consent of the State Government for taking up the investigation of the case, lodged by the District Police, the CBI instead of going for investigation/further investigation, re-registered the case as a fresh and proceeded with the investigation against the petitioners. After finding *prima-facie* case against the petitioners for the offences under which case has been

lodged, did submit charge sheet.

10. Therefore, in such situation, when the petitioners have not challenged the charge sheet, it would be proper and appropriate keeping in view the case of **“Amitbhai Anilchandra Shah”** (*supra*) that the charge sheet, submitted by the CBI against the petitioners, be treated to be a supplementary charge sheet to the charge sheet submitted by the District Police.

With these observations, both these applications stand disposed of.

(R.R.Prasad, J)