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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 09.08.2018

Order Passed On : 21/08/2018

CRMP No. 1564 of 2017

1. Sarabjit Singh Chatwal S/o. Late Surinder Singh Chatwal, Aged About 48 Years, R/o. S. S. Plaza, Power House Road, Korba, Chhattisgarh.

---- Petitioner

Versus

1. Central Bureau of Investigation (C.B.I.), Through -S.P.(C.B.I.), Qr. No. 4, Street 15, Sector – 9, Bhilai, District- Durg, Chhattisgarh.

-----Respondent

For Petitioner	:	Mr. Ravindra Shrivastava, Sr. Advocate with Mr. Ashish Shrivastava, Mr. Soumya Rai, Mr. Abhijit Shrivastava, Mr. Anshuman Shrivastava, & Mr. R.S. Marhas, Advocates.
For Respondent	:	Mr. Kishore Bhaduri, Advocate with Mr. Pawan Kesharwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

21/08/2018

1. This petition has been brought under Section 482 of Cr.P.C. praying quashment of final report dated 30-06-2017 filed by the respondent against the petitioner for his prosecution under Sections 120-B, 409 of the IPC along with Section 13(2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act, 1988.

2. It is submitted by the Senior Counsel for the petitioner that the petitioner has been falsely and erroneously implicated in this case, without there being any legally admissible evidence against him. In the charge sheet filed in this case it is mentioned that this applicant as overburden removal carrier, conspired with the main accused persons S.K.Ranu, R.B. Shukla and others by lifting coal through his trippers unauthorizedly, 1775 times to cover up the

shortage of the coal in the mines and the storage area of the mines, which was found in the joint surprise check of SECL and CBI between 06-08-2014 to 09-08-2014. Whereas, the charge sheet itself mentions that a private transporter M/s Vinayak Ex-serviceman Coal Carrier was engaged for lifting the coal. The only evidence against the petitioner on record of the trial case is the statement given by approver co-accused Anand Kumar, which is a plain statement not supported with any evidence. The prosecution has relied upon entries in the register of the mines showing coming and exit of the vehicles which by itself does not establish about the lifting or transporting of any coal.

It is submitted that in the recent development the trial has concluded against co-accused persons before the concerned Court and all the co-accused persons have been acquitted. In that judgment learned lower Court has observed that transporting of coal by overburden carrier is not proved in para 29 of the judgment. It is also observed by learned lower Court in paragraph No.58 that register of entries showing coming and exit of the trucks was not proved, as it was not certified by any of responsible officers of the coal mines, hence, the prosecution cannot get any benefit of this document. Again in paragraph 64 of the judgment the trial Court has clearly observed that the transportation of coal by M/s S.S. Chatwal is not proved, there is no recorded proof of such transportation. Again learned trial Court has observed in paragraph 77 that shortage of coal itself was not found proved on the basis of the evidence present on record.

Learned Senior Counsel places reliance on the judgments of Kerala High Court in the matter of **(1) Renjith Lal Vs. State of Kerala, (2) Latheef V. Sub Inspector of Police**, wherein the High Court of Kerala extended relief under Section 482 of the Cr.P.C. in similar situation where the co-accused persons were acquitted of the charge in the trial and the proceeding against

the petitioner was quashed.

It is further submitted that in the matter of **Gorle S. Naidu Vs. State of A.P. and others**, reported in (2003) 12 SCC 449, Hon'ble the Supreme Court held that Court has a duty in such cases where the co-accused persons have been acquitted, to separate the grain from the chaff and in case it is found that after sieving the untruth or unacceptable portion of the evidence, residue is sufficient to prove the guilt of the accused, there is no legal bar in convicting a person on the evidence which has been primarily disbelieved vis-a-vis others, but in case the evidence is such that is unseparable and any attempt to separate them would destroy the substratum on which the prosecution version is founded, then the Court would be within its legal limits to discard the evidence in toto.

The judgments delivered by Hon'ble the Supreme Court in the matter of **Rajiv Thapar and others Vs. Madan Lal Kapoor**, reported in (2013) 3 SCC 330 and **Manoj Kumar Sharma and others Vs. State of Chhattisgarh and another**, reported in (2016) 9 SCC 1 have also been relied upon with respect to principles laid down for exercising powers under Section 482 of the Cr.P.C.

It is further submitted that in view of the present situation after conclusion of the trial against the co-accused persons and the legal position in the light of the principles laid down, the trial of this petitioner shall be a futile exercise, hence, the petition may be allowed.

3. Learned counsel for the respondent opposes the submissions made by learned counsel for the petitioner and submits that the approver witness has specifically mentioned this petitioner as a person who conspired with the co-accused persons in commission of the offence as alleged and he has actively participated by making use of his carrier company to reduce the shortage in

coal fields to help out the main accused persons. It is submitted that this petitioner has avoided trial by not appearing before the concerned Court and the trial that has been conducted and concluded was certainly not with respect to this petitioner, hence. The findings in the judgment passed with respect to the co-accused persons cannot be referred to as findings in the case for or against this petitioner and therefore, the petitioner cannot be allowed to reap the benefits obtained by the co-accused persons.

Reliance has been placed on behalf of the respondent on the judgment delivered by Hon'ble the Supreme Court in the matter of **Central Bureau of Investigation Vs. Maninder Singh**, reported in (2016) 1 SCC, 389 wherein it was held that only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, the Court would be bound to quash the proceedings. This fact has to be kept in mind by the Court, where society has been defrauded at large.

4. In reply, learned Senior Counsel submits that the remedy under Section 482 of the Cr.P.C. is not barred in such cases, specifically when there is reason to consider that the specific finding given by learned trial Court are also in favour of this petitioner, though he has not been tried in this case.

5. Heard learned counsel for the parties and perused the documents.

6. It is a case in which the co-accused persons were charged with pilferage of coal at Amgaon Open Caste Project. It is the case in which information was received about pilferage of coal at Amgaon Open Caste Project and a surprise check was conducted by the CBI and SECL Bishrampur between 06-08-2014 to 09-08-2014 and shortage of 31211.85 metric tonnes of coal was found, which was 12.35% excess to the permissible $\pm 5\%$. It is alleged

that the co-accused persons have transported and sold the coal that was found in shortage in the open market and have pocketed the amount. In a subsequent checking reported on 28-11-2015 it was found that shortage of coal was only 4.14% within the permissible limits. This is where the role has been assigned to the petitioner regarding commission of the offence. The approver co-accused Anand Kumar has given statement before the Court that this petitioner along with main accused persons namely S.K. Ranu, R.B. Shukla and others hatched a conspiracy to reduce shortage, by transporting coal from other deposits so as to reduce the shortage found in the site where the inspection was made. For this purpose the service of petitioner, the transporter was taken unauthorizedly and no official account was maintained about entry and exit of the truck transporting coal to the disputed site. This had been the oral statement given by the approver Anand Kumar, in support of which the documentary evidence that was relied upon by the prosecutor was entries in the register.

The trial Court has not found proved the documentary evidence as not being certified by any of the officers of the SECL and as it appears that the author of these entries also has not been examined before the trial Court, according to the judgment given against the co-accused persons by the Court of Special Judge of Special Court for trial of CBI cases in Special Criminal Case CBI/02/2017 dated 25-07-2018, hence, for these reasons, the trial Court has found the statement given by approver uncorroborated, because of which, it was disbelieved and a clear finding was given that transportation of coal by the transporting company of the petitioner was found not proved.

7. After conclusion of the case, the question which arises is this, that when the offences charged against the other co-accused persons under Sections 409, 120-B of the IPC and Section 13(2) r/w 13(1) (c) & (d) of the Prevention of

Corruption Act, 1988 have not been found proved, whether the offence of conspiracy can remain alive. At this stage, it cannot be said that the prosecution against the co-accused persons have concluded because the respondent/CBI has option to file appeal against the judgment passed by the trial Court.

8. In the matter of **Moosa vs Sub Inspector Of Police**, reported in 2006 CriLJ 1922, (2006) 1 KLT 552, full Bench of Kerala High Court has held in para 50, 51 and 53 that :-

50. From the above discussion, it can thus be seen that a judgment to be relevant within the meaning of Sections 40 to 43 of the Evidence Act so as to bar a trial under Section 403 Cr.P.C. should be a judgment inter parties. So however, it does not mean that the judgment is not admissible if it is admissible under any other provisions of the Evidence Act. Thus, in order to prove as to who were the accused in the previous trial or ought to prove the factum of acquittal in those cases it will still be admissible under Section 30 or 35 of the Evidence Act. At the same time, the judgment rendered in the case of a co-accused and the reasoning of the judgment contained therein or appreciation of the evidence therein are not matters to be taken into account for the purpose of granting any relief to quash the proceedings and thus bar the trial itself. It may however, be a case where the very substratum of the case is lost which may be an exception to this rule. However, as held by the apex court it has to be held that even when a co-accused is acquitted in the very same trial, the other accused can be convicted if there are good reasons to do so. In other words, the acquittal of some of the accused by itself is not a reason to bar the trial in the case of the other accused.

51. The broad principle stated in the decision in Arunkumar v. State of Kerala (2004 (2) KLT 2039) is that it is up to the Judge who hears the petition under Section 482 Cr.P.C. to examine the factual situation in each case with reference to the overt act attributed and such other relevant factors and to decide as to whether the discretion vested in the court should be exercised or not. The court also held that it will not be justified to give a straight jacket formula to deal with the case like one on hand.

The principle that no straight jacket formula can be applied is consistent with the various decisions of the apex court and all that could be said is that the power has to be exercised with the object of preventing abuse of process of court and to secure the ends of justice.

53. In the light of the above discussions, we may summarise the legal position as follows:

(i) The inherent powers of the High Court reserved and recognised under Section 482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only

(a) to give effect to any order passed under the Code of Criminal Procedure or

(b) to prevent abuse of process of any court or

(c) otherwise to secure the ends of justice.

Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under Section 482 of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under Section 482 Cr.P.C.

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume

that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not interparties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.”

9. This being the principle for exercising powers under Section 482 of the Cr.P.C., now this Court has to consider whether because of the findings given by the trial Court the substratum of the case against the petitioner is lost. The only evidence against the petitioner is oral statement given by the approver which has not been supported with documentary evidence. The reason given for disbelieving the documents by the trial Court cannot be reviewed or reversed by the trial Court, if the petitioner is put to trial. Hence, it is a situation of no going back, because of which, it appears that the trial of the petitioner shall be futile exercise and it may be abuse of process of Court. Only in case the respondent challenges the judgment of the trial Court before the appellate authority and the appellate authority pleases to reverse the judgment, in that case there would be possibility for putting the petitioner to trial before the trial Court. Hence, it is a very specific and exceptional situation to be dealt with. Following the principle laid down in *Gorle S. Naidu Vs. State of A.P. and others* (supra), it is found that finding given in the judgment with respect to the co-accused persons is so much intertwined with the facts and evidence that is proposed against the petitioner, that case of the petitioner cannot be separated and distinguished from that of the co-accused persons. Hence, for these reasons, I am of this view that the petition deserve to be allowed conditionally.

10. Consequently, the petition filed by the petitioner under Section 482 of the Cr.P.C. is allowed. The prosecution against the petitioner in FIR No.RC 1242014 A007 is quashed with a condition that in case the judgment against the co-accused persons is challenged by the respondent and overturned by the appellate Court, the cause of action against this petitioner shall revive.

11. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge