

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 03.08.2018

Order Passed on : 20/08/2018

CR.M.P. No. 420 of 2018

Jasbir Singh Makkad, S/o. Late Jagdish Lal Makkad, aged about 50 years,
R/o. Station Road, Thomas Gali, Mahasamund, District – Mahasamund
(C.G.)

---- Appellant

Versus

Central Bureau of Investigation, A.C.B., Chhattisgarh, Raipur, through :
Superintendent of Police C.B.I., A.C.B., Chhattisgarh, Raipur, District –
Raipur (C.G.)

-----Respondent

For Petitioner	: Mr. Manoj Paranjpe, Advocate & Mr. Prasoon Agrawal, Advocate
For Respondent/CBI	: Mr. Kishore Bhaduri, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

20/08/2018

1. This petition has been brought under Section 482 of Cr.P.C. with prayer to quash the criminal proceedings against the petitioner on the basis of the FIR lodged bearing No. R.C. 1242016A0005/2016 and the final charge-sheet No.19/2017 filed by the respondent, before the Court of Special Judge for C.B.I. cases, Raipur for the offences punishable under Section 420, 477-A read with Section

120-B of the Indian Penal Code and Section 13 (2) & 13 (1) (d) of the Prevention of Corruption Act, 1988.

2. It is submitted by the learned counsel for the petitioner that the petitioner has been falsely and baselessly implicated in this case. There is no evidence to show that any false bills were raised by the petitioner with Food Corporation of India (in short "FCI"). There is no evidence to show that the payment on bills raised by M/s. Chhattisgarh Gadiwan Hamal Reja Majdoor Mahasamund (in short "CGHRMMM") has been received by this petitioner. On the basis of the submission of bills, the FCI used to pay to the transporter directly and FCI used to release payment to SWC for the payment to its transporter. Some releases have also been made by the FCI directly to the transporter through cheque/RTGS. It is mentioned in the charge-sheet itself that M/s. Chawla Road Carriers has not done work of transportation for FCI and the payments of bills regarding transportation from FCI has been made to CGHRMMM. The payments of bills of transportation regarding the transporter of SWC has been separately released and losses were suffered because of the excess payment to CGHRMMM, out of which recovery of Rs.1,81,29,319/- was made from CGHRMMM, even then FCI has deficit of Rs.67,97,186/-. This loss has not been attributed to M/s. Chawla Road Carriers and bald allegations have been made against the representative of the Chawla Road Carriers, that he entered into conspiracy with FCI officials, subsequent to which the FCI officials have signed and passed the false bills/work

slips causing losses to FCI. It is mentioned in the charge-sheet itself that the petitioner has claimed transportation bill only from SWC and the petitioner was working with CGHRMMM. Petitioner had received some payments in excess from CGHRMMM, which he has refunded, is also mentioned in the charge-sheet.

3. It is also submitted that FCI was aggrieved with CGHRMMM regarding which Civil Suit No. 7-B/2016 was filed before the Commercial Court, District Level, Naya Raipur, in which by the judgment dated 09.01.2018, the decree has been passed in favour of FCI directing the CGHRMMM for payment of Rs.1,99,09,788/-. In this matter, no allegation has been made against the petitioner about receiving any excess payment. Apart from that representative of the CGHRMMM wrote a letter to the FCI for extension of time to pay recovery amount of Rs.2,76,36,293/- without putting any blame on the petitioner. The letter is attached along with this petition as Annexure P/9. Thus FCI itself has no complaint against the petitioner and it has been clearly observed by the Commercial Court that all the loss caused to the FCI has been caused by the CGHRMMM. Hence, no case is made out for prosecution of this petitioner. Hence, it is prayed that the criminal proceedings against the petitioner be quashed.
4. Counsel for the respondent/CBI opposes the submission made by the counsel for the petitioner and submits that there is evidence that this petitioner along with representative of CGHRMMM was engaged in conspiracy with FCI officials, because of which excess

payment to the tune of Rs.2,83,29,767/- was made to the CGHRMMM on the basis of fake, forged and false bills of transportation work. Further proof of conspiracy is that the petitioner has received his share in the profit from CGHRMMM because of which, he has agreed to make refund to CGHRMMM. CGHRMMM was transporter for FCI, whereas M/s. Chawla Road Carriers was transporter for SWC, both of them have raised bills for the same work, because of which double payment has been released in connivance of the officials of FCI against the work that was done once. When defalcation was revealed it was then, the petitioner has made refund to the CGHRMMM of Rs.65,00,000/- from personal account, from the account of his son and from the accounts of M/s. Hora Transport (sister concern). Documentary evidence is present on record to show double raising of bills by CGHRMMM and by M/s. Chawla Road Carriers.

5. Reliance has been placed on the judgment passed by the Hon'ble Supreme Court in case of ***Lalmuni Devi (Smt.) Vs. State of Bihar & Ors.*** reported in ***(2001) 2 SCC 17***, in case of ***Amit Kapoor Vs. Ramesh Chander & Anr.*** reported in ***(2012) 9 SCC 460*** on this point that this is not a case of civil wrong there are elements of criminal case present. Reliance has also been placed on the judgment passed by the Supreme Court in case of ***Dineshbhai Chandubhai Patel Vs. The State of Gujrat*** reported in ***(2018) 3 SCC 104*** and in case of ***C.B.I Vs. Maninder Singh*** reported in ***(2016) 1 SCC 389*** regarding the principle of exercise of powers

under Section 482 of Cr.P.C.. It is further submitted that according to the judgment of Supreme Court in case of ***Rajiv Kumar Vs. State of Uttar Pradesh*** reported in ***(2017) 8 SCC 791*** and in case of ***Chaman Lal & Ors. Vs. State of Punjab & Anr.*** reported in ***(2009) 11 SCC 721*** that conspiracy can be proved directly as well as by circumstantial evidence and the evidence of conspiracy is present in this case. Hence, no case is made out for quashment of FIR/Charge-sheet in favour of the petitioner.

6. In reply, counsel for the petitioner submits that there is no evidence against the petitioner in the statement given by the witnesses under Section 161 of Cr.P.C. regarding this fact that this petitioner has conspired for committing offence as alleged. Further the petitioner has made refund of the excess payment, which he received from CGHRMMM, is also a fact. This can not be ignored that FCI itself has not complained against the petitioner. Hence, the petition deserves to be allowed.
7. I have heard the learned counsel for the parties at length and perused the documents placed on record.
8. The facts of this case are this that one Narayan Lal Chandrakar is the representative of the CGHRMMM and this petitioner is representative of M/s. Chawla Road Carriers. For the year 2010 to 2012, one transport contract was awarded to CGHRMMM by FCI and another transport contract was awarded to M/s. Chawla Road Carriers by SWC, which was operated by FCI. In the performance of this transport work, work slips were issued by FCI to the

contractors. It is alleged that, manipulation was done in the work-slips by including the work done by SWC contractor in the work slip of FCI contractor, which is CGHRMMM, on the basis of which, the bills were raised by both the contractors in which the SWC was paid by FCI for the work done, whereas the extra payment was made to the contractor of FCI because of the included work, which was done by SWC contractor. The officials of the FCI have connived in this manipulation, defalcation and misappropriation of the amount received. Hence on the basis of such information received by CBI, investigation has been done and charge-sheet has been filed against the petitioner and other co-accused persons.

9. According to the facts mentioned in the charge-sheet itself, M/s. Chawla Road Carriers had not performed the transportation work for FCI and for that the services of CGHRMMM was availed. It does not appear to be disputed that the FCI transporter i.e. CGHRMMM raised bills including the work done by SWC transporter, whereas the SWC transporter has separately raised the bills for the same transportation work and the payments were released according to the bills submitted by both the transporters. Although some recovery has been made from CGHRMMM, even then amount of Rs.67,91,168/- is outstanding. The only allegation against the petitioner is that he had entered into conspiracy with FCI officials because of which FCI officials agreed to sign fake, false and forged work slips/bills for clearance, which has caused loss to the FCI. It was found in the investigation, some amount in excess was paid to

the petitioner by CGHRMMM and not by FCI, which has been refunded by the petitioner to CGHRMMM, the details of which are mentioned in the charge-sheet. Certified copy of the whole charge-sheet has been filed by the petitioner along with this petition.

10. On perusal and close scrutiny of the statement of the witnesses recorded under Section 161 of Cr.P.C. it appears that the witnesses namely Naresh Nishad, Purushottam Lal Sonwani, Pokhan Lal Sahu, Ramkhilawan Sahu, Sonsay Vishwakarma and Suresh Chandrakar, who happen to be the members of CGHRMMM have given statement, that at the instance of co-accused Narayan Lal Chandrakar, some extra payment was made to the petitioner transporter company against the services availed by CGHRMMM. Further it is also stated by some of the witnesses that later on when it came to their knowledge that the petitioner has also claimed and received for the transportation work done by him for SWC, the petitioner then agreed and has refunded the excess payment made to him, which is mentioned in the charge-sheet.
11. On close scrutiny of all the documents present on record and the certified copy of the whole charge-sheet, it appears that none of witnesses have made any allegation that petitioner used his influence or acted in any other manner, which may be regarded as an act of conspiracy. Between M/s. Chawla Road Carriers and CGHRMMM there had been an internal arrangement in which the FCI was not involved. Further it is not disputed that on coming to know that the petitioner has separately raised bills of transportation

work slip by SWC and have received payment, the petitioner has agreed and made refund of the excess payment received by him to CGHRMMM.

12. The allegation of raising false bills on the basis of the material in the charge-sheet appears to be against CGHRMMM only. The petitioner was not a party to such raising bills by CGHRMMM, it appears to be established on basis of the statement given by the witnesses in this case. Further by making refund of excess payment received from CGHRMMM, it appears that the petitioner has established his bonafide and that the allegation of conspiracy is not supported by any evidence. After close scrutiny of all the evidence in charge-sheet, it appears that prosecution and trial of the petitioner in this case shall be a futile exercise. Hence, after due consideration, I am of this view that it is a fit case for exercise of inherent jurisdiction under Section 482 of Cr.P.C.
13. Accordingly, the petition is allowed. The criminal proceeding launched against the petitioner i.e. FIR lodged bearing No. R.C. 1242016A0005/2016 and the final charge-sheet No.19/2017 filed by the respondent, before the Court of Special Judge for C.B.I. cases, Raipur for the offences punishable under Section 420, 477-A read with Section 120-B of the Indian Penal Code and Section 13 (2) & 13 (1) (d) of the Prevention of Corruption Act, 1988 is hereby quashed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge