NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved On 31.07.2019

Order Delivered On 24.10.2019

CRR No. 352 of 2019

- Ramesh Kumar Sharma, S/o Late Shri Satyanarayan Sharma, aged about 59 years, R/o C/17, Sector 1 Avanti Vihar Colony, Telibhandah, Raipur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh through Anti-Corruption Bureau/Econmic Offences Wing, Raipur, District Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. Kishore Bhaduri, Advocate
For Respondent	:	Mr. R.S.Baghel, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Order

24.10.2019

1. The present revision has been filed by the applicant against the order dated 15.10.2018 passed by Special Judge (Prevention of Corruption Act) in criminal case No. 06/2018 whereby the learned trial Court framed charges against applicant under Section 13(1)(e) read with 13(2) of Prevention of Corruption Act.

02. Before trial Court, Anti-Corruption Bureau filed charge-sheet under Section 13(1)(e) read with Section 13(2) Prevention of Corruption Act against the applicant, who is posted as Assistant Engineer in the department of Public Health Engineering. The learned trial Court on 15.10.2018, framed charges against the applicant. Hence, this revision.

3. Learned counsel for the applicant submits that the learned trial

Court failed to consider that the entire material in the charge-sheet does not make out any case against the present applicant and the charges have been framed without there being any evidence inculpating the present applicnt in the alleged offence. He further submitted that the investigating agency even after calling for an explanation from the applicant failed to give any heed to the same and mechanically went on to file the final report before the Court below leading to framing of charges against the applicant. He added that the Investigating Officer even not relied upon the documents procured by the applicant from the Statutory Bodies including the Income Tax returns and have mechanically prepared the final report including the entire income and expenditure of the family members onto the domain of the applicant and Investigating Agency did not follow this Court's order and filed charge-sheet against the applicant.

He also submits that in Writ Petition (Cr.) No. 223/2018, this Court held in para 3, which reads thus :-

> "After due consideration, this petition is disposed off at the motion stage with the directions to respondents No. 4 and 5 to consider the representation already made by the petitioner and also allow him to make additional submission or produce additional documents in objective manner after duly verifying the source of information so produced before respondents No. 4 & 5 before taking any action against him. The matter is said to be pending before respondent No. 2 and it is also directed that respondent No. 2 shall take into consideration the directions issued by this Court with respect to respondents No. 4 & 5 before passing any order."

4. He next submitted that, pursuant to the order of this Court in WP(Cr.) No. 223/2018, the applicant submitted his representation to the respondent authorities on 18.05.2018, but respondent authority without considering accord of the order passed by the High Court

decided the representation submitted by the applicant on 10.07.2018, in mechanical manner, and got prosecution sanction order on 26.03.2018 much prior to the passing of order by this Court. So the order dated 15.10.2018 is liable to be set-aside. In support of his argument, he placed reliance in the decision passed on 24.04.2017 **Criminal Revision Nos. 702 & 703 of 2016** of High Court of Judicature at Madras and this Court's order in **CRR No. 721/2018.**

5. A reply has been filed on behalf of the respondent/State stating that the learned trial Court has framed the charges against the applicant after considering the detailed investigation i.e. final report, the statements of witnesses and other documents collected with respect to the disproportionate income of the applicant. The charges have been rightly framed under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act.

6. Heard both the parties and perused the material available on record.

7. Earlier, the applicant had filed Writ Petition (Cr.) No. 223/2018 before this Court, and this Court passed the order dated 11.04.2018, which reads thus:-

> "After due consideration, this petition is disposed off at the motion stage with the directions to respondents No. 4 and 5 to consider the representation already made by the petitioner and also allow him to make additional submission or produce additional documents in objective manner after duly verifying the source of information so produced before respondents No. 4 & 5 before taking any action against him. The matter is said to be pending before respondent No. 2 and it is also directed that respondent No. 2 shall take into consideration the directions issued by this Court with respect to respondents No. 4 & 5 before passing any order."

8. This Court passed the order on 11.04.2018 and respondent No. 2 (Secretary Law and Legislative Affairs) in WP(Cr.) No. 223/2018

sanction order on 26.03.2018 which shows that the prosecution sanction order was passed much prior to the order of this Court. Applicant submitted representation (Annexure A/6) before Anti-Corruption Bureau on 18.05.2018. On this representation, the Anti-Corruption Bureau passed an order on 10.07.2018,.which is as under:-

> " संदर्भ - High Court of Chhattisgarh Bilaspur Writ Petition Cr. No. 223 of 2018.
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> माननीय उच्च न्यायलय बिलासपुर में आरोपी श्री रमेश कुमार शर्मा, सहायक अभियंता द्वारा प्रस्तुत याचिका क्रमांक 223ध्2018 में माननीय न्यायाधीश द्वारा दिनांक 11.04.2018 को पारित निर्णय के अनुसार अभ्यावेदन दिनांक 18.05.2018 को प्रस्तुत किया गया जिसकी बिन्दुवार समीक्षा की गई है जो निम्नानुसार है :- "

and after that charge-sheet has been filed against the applicant.

9. After taking into consideration the facts and circumstances of the present case, it is evident that vide order dated 11.04.2018 passed in Writ Petition Criminal No. 223 of 2018, the respective respondents were directed by this Court to take into consideration all the documents submitted by the applicant in support of his case, and the explanation offered by him before arriving at any conclusion. It is also clear that after the order dated 11.04.2018, the applicant submitted his representation before Anti-Corruption Bureau on 18.05.2018, on his representation, the respondent / Anti-Corruption Bureau only analyzed applicant's reply and document. This Court has directed that respondent after duly verifying the source of information so produced before Respondent No. 4 & 5 allow the applicant to make additional submission or produce additional document before taking any action against him. Respondent No. 2 was also directed to take into consideration the directions issued by the Court with respect to respondent Nos 4 & 5 before passing any order.

10. Thus, it is clear from the material available on record that respondent Nos. 4 & 5 has not taken into consideration the applicant's representation before respondent No. 2 and did not obtain prosecution sanction after passing this Court's order. It is apparent from annexrure A/7 that respondent No. 4 & 5 did not verify the source of income and only analysis has been

done. Thus, it is clear from Annexure A/7 that respondent Nos. 4 & 5 in writ petition (Cr.) No. 223/2018 (State Economic Offences Investigation Agency & Station House Officer) did not follow this Court's order in appropriate manner.

11. In *State of MP v. S.B. Johari (AIR 2000 SCC 665)* it is observed by the Supreme Court that under Section 401 of Cr.P.C., quashing of charge by High Court would be justified if even on considering the entire prosecution evidence, the offence is not made out.

12. Filing of the final report by the investigating agency, without verifying the source of income and without placing the facts emerged after the subsequent investigation before the sanctioning authority, has caused a serious prejudice to the applicant. When this Court ordered respondent Nos. 4 & 5 to verify the source of income, it was the bounden duty of respondent Nos. 4 & 5 to follow the direction of this Court and place all material before the respondent No. 2 in WP (Cr.) No. 223/2018 and a fresh prosecution sanction order ought to have been obtained, which they failed to do so.

13. As consequences, the impugned order dated 15.10.2018 passed by the trial Court is set-aside. Applicant is discharged from the charges. The investigating agency shall follow the direction of this Court in Writ Petition (Cr.) No. 223/2018 and placed all material before sanctioning authority and obtain a fresh prosecution sanction order. The Special Judge shall take cognizance of the offence after filing a fresh order of sanction for prosecution.

14. Accordingly, the revision is allowed in terms of above.

Sd/-
(Rajani Dubey)
JUDGE

Vijay Sahu