

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :12/09/2019

Order passed on :24/10/2019

WPCR No. 269 of 2019

- Pramod Kumar Sharma S/o Late Shri Raja Ram Sharma, Aged About 60 Years, Presently Posted as Deputy General Manager, Chhattisgarh Rajya Antyavyavasai Sahkari Vitt Evam Vikas Nigam, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Superintendent of Police, Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Deputy Superintendent of Police/ Investigating Officer, Anti Corruption Bureau, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

-----Respondents

For Petitioner : Dr. N.K. Shukla, Sr. Advocate with Shri Tarkeshwar Nande and Shri Sourabh Sharma, Advocates.

For Respondents/State: Shri Devendra Pratap Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

24/10/2019

1. This petition has been brought praying for quashment of criminal proceeding initiated against the petitioner by the respondents.
2. It is submitted that it is a case of year 1994. The petitioner was posted as General Manager of M.P. Rajya Antavyavsayee Sahkari Vitt Avam Vikas Nigam Maryadit in Ambikapur, District Surguja. A meeting was held on 03-04-1995 which was attended by Collector, Additional Collector who was ex-officio Vice President of Nigam, Assistant Registrar of Cooperative Societies, Deputy Director (Agricultural),

General Manager of District Industries Center, General Manager of District Cooperative Central Bank, Assistant Commissioner of Tribal and Executive Officer of the District Committee. A dairy scheme was approved by this committee for providing eligible persons cows on subsidized price to such persons. The amount of subsidy was to be paid by the Nigam. The responsibility of purchase of cows and distribution to the beneficiaries was upon the M.P. Pashudhan Avam Kukkut Vikas Nigam, Ambikapur. The eligible persons/beneficiaries were selected and 36 number of cattle were purchased by the M.P. Pashudhan Avam Kukkut Vikas Nigam and disbursed to 9 beneficiaries, in which each beneficiary received four cows. It has been alleged in the complaint filed that the cows that were provided to the beneficiaries were old and suffering from diseases which were of lesser price, because of which the supplied cattle died in short period. Exorbitant price was paid for the purchase of the cows, therefore, it was concluded in the investigation that this petitioner and others have drawn undue benefit themselves or allowed the sellers of the cows to receive wrongful gain. On the basis of which offence under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 420, 120B of the IPC were registered against the petitioner and others. Charge sheet has been filed after completion of the investigation.

3. It is submitted by learned Sr. counsel that the petitioner was posted and working as the Chief Executive Officer of C.E.O. M.P. Antyavassayee Sahkari Vikas Nigam (in short 'MPASV Nigam') and his only responsibility was to make the payment. Vide order dated 17-11-1994 funds for purchase of cows under the scheme approved were to be provided and deposited in the account of Managing Director

MPASV Nigam. The minutes of the proceeding, copy of the same is attached in page 48 onwards, very clearly shows that the C.E.O. MPASV Nigam was directed to issue purchase order and the approval was given for providing 50% of amount in advance to Executive Officer Mr. Baghel to make purchase of cattle by M.P. Pashudhan Avam Kukkut Vikas Nigam, Ambikapur. Which again shows that the petitioner had no direct involvement in purchase and distribution of the cattle. The purchase order was issued and the copy of the same was forwarded to Executive Officer, M.P. Pashudhan Avam Kukkut Vikas Nigam, Ambikapur for compliance. The advance fund for purchase was also provided to Executive Officer, Pashudhan Avam Kukkut Vikas Nigam vide Annexure - P/11 in which there was again no direction for this petitioner.

4. A complaint was made against the petitioner to the police regarding which a memo Annexure – P/14 dated 27-4-1998 was given by the Collector Surguja to S.P., E.O.W. that the complaint given against the petitioner is false and baseless for the reason that the beneficiaries were given liberty to make selection from the cows purchased, regarding which satisfaction certificate was also obtained from the beneficiaries. The cows so distributed was also insured before distribution. Thereafter, on the basis and authorization given by the beneficiaries the payment has been made for the said purchase of cows. The petitioner has performed his duty in making payment for the purchase of cows subsequent to the satisfaction expressed by the beneficiaries and on the recommendation made by the M.P. Pashudhan Avam Kukkut Vikas Nigam. Therefore, he has not committed any error or any illegal act and thus it is not a criminal misconduct as it is defined in Section 7 of the Prevention of Corruption

Act. There is no substance to make out commission of any offence by this petitioner in whole charge sheet. Therefore, it is prayed that the petition be allowed and reliefs be granted.

5. Learned counsel for the State replying the argument on behalf of the respondents submits that according to the decision taken in the meeting held on 03-04-1995 of Board of Directors and District Committee and others, approval for scheme was given in which the petitioner had responsibility to monitor the whole purchase. The satisfaction certificate given by the beneficiaries shows that they had taken loan from MPASV Nigam in which the petitioner was the C.E.O. and the loan cannot be disbursed without making proper verification regarding appropriate utilization of the loan amount, the petitioner had responsibility to take possession of the purchased cattle before their distribution. Therefore, it was duty of the petitioner to see that healthy, milking cows had been purchased for the distribution to the beneficiaries. As the cows that were distributed were not healthy and were suffering from illness, therefore, the complaints have been given by the beneficiaries that the cows purchased by them were not producing milk as it was claimed, further because of the illness of the cows some of the cattle have also died. The postmortem examination which was conducted on the dead cows that were distributed to the beneficiaries. It has been reported by the examining surgeon that the cows were suffering from diseases. There is allegation made by witness Baldev Prasad Soni that he had to pay bribe Rs.3000/- to one Mr. Chaturvedi who received it on behalf of this petitioner. Another witness Deepak Kumar Tamrakar has stated that as a beneficiary when he went for selection of cows then he found that the cows were not of Jarsi breed and the cattle seller told him that he has received

only Rs.30,000/- for price, when he complained about this to the petitioner and others he was taken to task and forced to give receipt of cows and also forced to sign the satisfaction certificate. Similar statement has been given by the other witnesses which show presence and involvement of this petitioner in purchase and distribution of the cows. Hence, the petitioner is not entitled to get any relief and he is required to face the trial and the allegations against him. Therefore, it is prayed that the petition be dismissed.

6. In reply it is submitted that the postmortem report of the dead cows have not been seized in the investigation. The statement of the witnesses recorded under Section 161 of the Cr.P.C. do not make out any offence against the petitioner and there is no direct allegation present against this petitioner. Further, there is no date of recording statement under Section 161 of the Cr.P.C. The statement of complainant Uttam Kansari itself shows that when he approached the petitioner for grant of loan he was asked to deposit margin money and then subsequent to making deposit of margin money when he met the petitioner again he was told by him that he will get the cows through M.P. Pashudhan Avam Kukkut Vikas Nigam, which again shows that the petitioner was neither involved in the purchase nor in the distribution of the cows, therefore, he cannot be held responsible for taking undue benefit himself or giving benefit to any other person.
7. The crux of the argument presented on behalf of the petitioner is this, that there is no prima facie case present against this petitioner for his prosecution. There is mention of earlier petitions filed by this petitioner in the reply filed by the State that one WPC No.1681/2007 was filed praying for restrain on grant of sanction for prosecution. There had been a stay order operative till 2008, subsequent to which there is no

stay order operative and the charge sheet has been filed on 08-01-2019. The petitioner then again filed a Cr.M.P. No.207/2019 praying for quashment of the charge sheet which has been dismissed as withdrawn on 23-01-2019. Subsequent to which, this petition under Article 226 of the Constitution of India has been filed.

8. The charge sheet has been filed making allegation that this petitioner in collaboration with other co-accused Heeramani Singh Baghel, the Executive Officer of M.P. Pashudhan Avam Kukkut Vikas Nigam Ambikapur and in collaboration with the cattle sellers instead of purchasing the cows of Shankar Jarsi breed, made purchase of other cows at lesser price for which higher price was paid to them by the Nigam, because of which the cattle sellers made wrongful gain and the department and the beneficiaries suffered wrongful loss. It is also submitted that the beneficiaries were forced to sign the satisfaction letters. On perusal of the copy of the charge sheet filed by the respondents side, it is found that there is proper sanction by the State Government for prosecution of the petitioner. There is no denial that the petitioner in capacity of C.E.O. M.P. Antavyavsayee Sahkari Vitt Avam Vikas Nigam in Ambikapur, District Surguja, the co-accused being the Executive Officer of M.P. Pashudhan Avam Kukkut Vikas Nigam shared responsibility of purchase of cattle. Attention was drawn of this Court by the respondent counsel to the procedure for the schemes of self employment which is part of the charge sheet, in which under the head of Control of Schemes it is mentioned that four buffaloes or four cows shall be provided to the beneficiaries under the milk scheme. The purchase of the same shall be made by the representative of the M.P. Pashudhan Avam Kukkut Vikas Nigam, Executive Officer and Officers of Veterinary Department. It has been

argued that the Executive Officer mention in this scheme is mentioned for the petitioner, which has been argued otherwise by the petitioner side. By order dated 23-01-1995 it was the petitioner who has sanctioned the loan for the purchase of cows in favour of the beneficiaries, copy of the same was part of the charge sheet, although, copy of sale purchase memos attached does not show the signature of this petitioner.

9. It is in the statements given by the witnesses that they met with the petitioner for sanction of loan and they were informed about the scheme by this petitioner. As promised the cows that were supplied, all of them were not of Jarsi breed and were also sick giving less milk, when the witnesses complained about this to the petitioner and the other officer responsible, the witnesses were not given any hearing. There is also statement of all the witnesses that the cows purchased were not worth in accordance to the payment made, which they have stated after making verification from the cattle seller. It is further stated by the witnesses that soon the volume of production of milk came down and some of the cows also died because of the illness they were suffering.
10. It cannot be said that it is a case of no evidence as there appears to be evidence present in the statement of the witnesses regarding involvement of the petitioner as he was approached by the beneficiaries. He made it known to the beneficiaries what is the scheme and thereafter he was the person who sanctioned the loan. It is the duty of the person sanctioning loan to make verification regarding proper and effective utilization of the loan advanced. It may be so that the petitioner was not a part of the purchase and distribution of the cattle, he being simply the loan sanctioning authority according

to the documents on which the prosecution has relied and the documents which was filed by the petitioner along with this petition, but the evidence of the witnesses do not give any exoneration to the petitioner, on the contrary, it shows that the complaint was made to the petitioner regarding supply of cows of lesser breed and also regarding the lesser production of milk, on which he did not act which shows his full connivance. Some of the witnesses have also stated that they have not signed the satisfaction letters, however, there is a report of handwriting expert regarding the signatures of the beneficiaries on satisfaction letters. The report of the handwriting expert is also part of the charge sheet. There is some report of common authorship, but there is some other report regarding differences with respect to the handwriting on the satisfaction letters.

11. In **Jehan Singh Vs. Delhi Administration**, 1974 (4) SCC 522 wherein it was held by Hon'ble the Supreme Court that High Court could not in exercise of its inherent jurisdiction apprise the evidence or inquire into the reliability of the same. The only test available is that on collective perusal of the evidence it discloses commission of cognizable offence or not. Therefore, after overall consideration, I am of this opinion that it is not a case for interference by use of jurisdiction under Article 226 of the Constitution of India. The petitioner has liberty to approach the trial Court and make a prayer for discharge. No comment has been made in this order regarding prima facie case. Accordingly, I do not find any substance in this petition, which is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge