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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order On : 12.09.2019

Order Passed on : 23.10.2019

W.P.(CR.) No. 381 of 2019

National Investigative Agency, New Delhi. Through : The CIO, Mr. Raju Thomas, Aged About 54 Years, S/o. Late Mathew Thomas, Dy. S.P., NIA, BO – Raipur (C.G.). R/o. D-1, Officers Bungalow, Moulshree Vihar, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. The State of Chhattisgarh, Through- The Secretary, The Ministry of Home Affairs, State of Chhattisgarh, Mantralay, Naya Raipur, Chhattisgarh.
2. The Secretary of Law and Legislative Affairs, State of Chhattisgarh, Mantralay, Naya Raipur, Chhattisgarh.
3. The S.H.O., P.S. Kuakonda, District- Dantewada, Chhattisgarh.

-----Respondents

For Petitioner : Mr. Vikramjit Bannarjee, Sr. Advocate/Additional Solicitor General with Mr. Shubhendra Anand & Mr. Sabyasachi Bhaduri, Advocates

For Respondent/State : Mr. S.C. Verma, Advocate General with Mr. V.R. Tiwari, Additional Advocate General

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

23/10/2019

1. The instant petition under Article 226 of Constitution of India has been filed for quashment of the order dated 06.06.2019, passed by the Special Court, NIA Cases, Jagdalpur, C.G. in NIA Case No. RC-11/2019/NIA/DLI.

2. One FIR has been registered in Police Station Kuakonda, District – Dantewada by the State Police for offence punishable under Section 147, 148, 149, 302, 307, 396, 120-B of the Indian Penal Code, Section 25 and 27 of Arms Act, Section 3 & 5 of Explosive Substances Act and Section 13 (1) (A), 38 (2), 39 (2) of Unlawful Activities Prevention Act. The incident is of 09.04.2019 at about 4.30 PM, when MLA Mr. Bhima Mandavi along with his security personnels was on his way to village Shyamgiri, when the members of Naxalite groups exploded a device and opened fire because of which Mr. Bhima Mandavi and other security personnels, received serious injuries and expired on the spot. After lodging of FIR No.11/2019 as mentioned herein above, the case is being investigated by the State Police.
3. It is submitted by the counsel for the petitioner that Ministry of Home Affairs has passed an order on 16.05.2019 vide Annexure P-3 in exercise of powers conferred under Section 6 (5) and Section 8 of National Investigation Agency Act, 2008, directing the petitioner to take over the investigation of the case. In compliance of this order, the petitioner agency has lodged FIR on 17.05.2019 vide Annexure P-4 registering the similar offences as have been registered by the State Police. Subsequent to which as the State Police did not handover the investigation diary, an application was filed before the Special Court vide Annexure P-5 seeking direction against the respondents for handing over the investigation of the case. The Court designated under NIA Act in

Bastar at Jagdalpur by order dated 06.06.2019 has rejected the application, therefore, this petition has been brought.

4. It is submitted by the learned counsel for the petitioner that Sub-section 4 of Section 6 provides that when the Central Government is of the opinion the offence is scheduled offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence. Subsection (5) of Section 6 also provides similar and specifically Sub-Section (6) provides that where any direction has been given under Sub-section 4 or Sub-section 5, the State Government and any police officer of the State Government shall not proceed with the investigation and shall forthwith transmit the relevant documents and the records to the Agency, therefore, the respondents were obliged in accordance with law to handover the investigation material to the petitioner. Relying on the judgment of Supreme Court in case of ***Pradeep Ram Vs. State of Jharkhand and another***, reported in ***2019 SCC OnLine SC 825***, it is submitted that the Hon'ble Supreme Court has clearly held that once the FIR has been registered by the NIA and the offence to be investigated is a scheduled offence in that case, NIA shall have the authority to investigate the same.
5. It is further submitted that this petition is specially challenging the order of the Special Court and seeking constitutional remedy. The offences under Unlawful Activities Prevention Act, 1967 are scheduled offence and there is authorization by the Central

Government. Further in accordance with the statutory mandate, the petitioner has authority to investigate the case. Therefore, the petition be allowed and appropriate direction be issued.

6. Learned Advocate General on behalf of the respondents/State submits that the prayer that was made before the learned Special Judge by the petitioner may be an application under Section 91 of Cr.P.C. The petition is not maintainable and the relief prayed can not be granted, therefore, the Special Judge has rightly rejected the application. The petitioner has joined two prayers in the petition, one regarding quashment of the order of the Special Court and second regarding issuance of appropriate writ for which a separate petition could have been filed.
7. It is submitted that Section 9 of National Investigation Agency Act provides that State Government shall extend assistance and cooperation to the agency for investigation of the scheduled offence, but no such assistance was sought by the petitioner. Further in Section 10 of the Act, 2008, it is specifically provided that nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any scheduled offence or other offence under any law for the time being in force. It is further submitted by the learned Advocate General that this matter pertains to entry No.2 of List- 2 of Schedule -7, therefore, jurisdictional error has been committed by the petitioner. The vires of the NIA Act has been challenged in W.P.(C) No.2717 of 2019 and W.P.(C) No.2998 of 2019. It is submitted that an

application has been filed by the respondents before the Division Bench for linking this petition with W.P.(C) No.2717 of 2019 and W.P.(C) No.2998 of 2019. Therefore, it would not be proper for this Court to consider on the same matter.

8. In reply, it is submitted by the learned counsel for the petitioner that ratio laid down in ***Pradeep Ram Vs. State of Jharkhand*** (supra) is very clearly applicable. It is submitted that challenge to vires of NIA Act has not been decided till date, therefore, the NIA Act is still effective and the mandate of law can not be ignored by the respondents. It is further submitted that the prayer in this petition is on totally different footing and there is no issue raised for considering vires of N.I. Act, therefore, the pendency of petitions before the Division Bench has no effect on this petition, which can be considered and dispose off by this Court.
9. I have heard the learned counsel for the parties and perused the documents placed on record.
10. The prayer made in this petition is for quashing the order passed by the Special Court dated 06.06.2019. The submission made on behalf of the respondents' side only indicates that there are petitions pending challenging the vires of N.I. Act, which shows that these petitions are yet to be decided and before any decision is taken, the N.I. Act and its provisions shall prevail as it is. Therefore, only for the reason that vires of the N.I. Act is challenged, the decision on this petition can not be withheld.

11. It is not disputed that the offence under Unlawful Prevention Activities Act have been registered in the FIR lodged by the Police Station – Kuakonda and thereafter, the Ministry of Home Affairs, Central Government has under the authority given under Section 6 and Section 8 of NIA Act has ordered on 16.05.2.19 vide Annexure P-3 and directed the petitioner to investigate the case. Section 8 of the Act, 2008 empowers the NIA to investigate the other connected offence along with the scheduled offence. Further Sub-Section (5) of Section 6 of Act, 2008, there is clear mandate that the State Government and any Police Officer of the State investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the agency. Hence, it is mandatory and obligatory upon the respondents to handover all the investigation material to the petitioner in accordance with the provisions of law under National Investigation Agency Act, 2008 mentioned herein above.
12. In **Pradeep Ram** case (supra) the Hon'ble Supreme Court has observed in para 42 and 43, which reads as under :-

“42. Before proceeding further, we may notice few features of the present case, which are necessary to be noticed. As noticed above, a charge sheet in the case Crime No.02/2016 was submitted by the investigating agency on 10.03.2016 and cognizance was taken on 11.03.2016. The offences under Unlawful Activities (Prevention) Act, 1967 were added on 09.04.2017. Charges were framed on 19.09.2016, offences under Unlawful Activities (Prevention) Act,

1967 were added for the first time on 09.04.2017, thus, there was no occasion for investigation of offences under Unlawful Activities (Prevention) Act, 1967 prior to April, 2017. The charge sheet dated 10.03.2016 and charges framed on 19.09.2016 were not with respect to offences under Unlawful Activities (Prevention) Act, 1967, thus, when the Central Government directed the NIA to investigate the offence under scheduled offences, NIA was fully competent to investigate the offences and submit a supplementary report. Present is not a case where any charges for offences punishable under the Unlawful Activities (Prevention) Act, 1967 were available prior to April, 2017, thus, NIA was fully competent to investigate further in the case as per the directions issued by the Central Government vide order dated 13.02.2018.

43. Sub-section (6) of Section 6 prohibits State Government or any police officer of the State Government to proceed with the investigation. In the present case, when order was issued by Central Government on 13.02.2018, it was not competent for police officer of the State Government to proceed with the investigation. We, thus, are of the opinion that FIR, which was re-registered by NIA on 16.02.2018 cannot be held to be second FIR of the offences rather it was re-registration of the FIR to give effect to the provisions of the NIA Act and re-registration of the FIR is only procedural Act to initiate the investigation and the trial under the NIA Act. The re-registration of the FIR, thus, is neither barred nor can be held that it is second FIR.”

13. Therefore, after over all consideration and the facts & circumstances of the case and the law applicable in this case, this petition deserves to be allowed. Therefore, this petition is allowed at motion stage. The impugned order of the Special Judge dated 06.06.2019, in NIA Case No.RC-11/2019/NIA/DLI is quashed and the respondent No.3 is directed to handover the entire case records with documents pertaining to the investigation that has been made so far in Crime No.11 of 2019, registered at Police Station – Kuakonda, District – Dantewada to the petitioner for further investigation, within a period of fifteen days from the date of passing this order.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram