

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 891 of 2012

Naresh Kumar Rastogi @ Naresh Rastogi..... Petitioner

Versus

State of Jharkhand through Vigilance..... Opp. Party

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Coram: The Hon'ble Mr. Justice R.R.Prasad

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For the petitioner : Mr. Ananda Sen, Advocate

For the Vigilance : Mr. Shailesh, Advocate

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O R D E R

**C.A.V. On 21/06/2013**

**Delivered on 28/06/2013**

20/28.06.2013 This application has been filed for quashing of the entire criminal proceeding of Vigilance P.S. Case No. 20 of 2003 (Special Case No. 22/2003), including the order dated 16/11/2011, passed by the Special Judge, Vigilance, Ranchi, whereby and whereunder cognizance of the offence punishable under Sections 420, 409, 120 B of the Indian Penal Code and also under Section 13 (1) (d) read with Section 13 (i) (ii) of Prevention of Corruption Act, 1988, has been taken against the petitioner and others.

**2.** It appears that when the information was received by the Vigilance that certain irregularities have been committed by ACMO, Garhwa, in purchasing medicines, appliances and instruments for the year 2000-2001 and 2002, inquiry was made during which certain irregularities were found. Thereupon, a first information report was lodged alleging therein that the medicines and other equipments were purchased by the Office of ACMO, Garhwa on much higher price though the said medicines/equipments were available on lower price and, as such, purchases have been made to benefit the purchaser and, thereby, the accused persons in conspiracy with each other put the State exchequer to loss.

So far as petitioner is concerned, who happens to be the proprietor of M/s Rahul Distributors, Ranchi, it has been alleged that the petitioner under the supply order, supplied 200 packets of 'Cotton' weighing 400 grams @ Rs. 66/- per packet though the rates had been determined in the Purchase Committee on 27/03/2000 as Rs. 54/- per packets and, thereby, a sum of Rs. 2400/- has been paid in excess. Similarly, the petitioner, under the supply order, supplied 200 bundles of 'Gauze' @ Rs. 142/- per bundle, though in the Purchase Committee meeting rate of Gauze per bundle had been fixed as Rs. 100/- and, thereby, a sum of Rs. 8,400/- was paid in excess.

On submission of the charge sheet, cognizance of the offence punishable under Sections 420, 409, 120 B of the Indian Penal Code and also under Section 13 (1) (d) read with Section 13 (i) (ii) of Prevention of Corruption Act, 1988, was taken against the petitioner and others vide order dated 16/11/2011, which is under challenge.

**3.** Mr. Ananda Sen, learned counsel appearing for the petitioner submits that the petitioner, who happens to be the proprietor of M/s Rahul Distributors, Ranchi, an authorized stockists of Bengal Immunity Limited a Government of India enterprises, has been made accused on mistaken facts as the Health Education and Family Welfare Department, Government of Bihar, had taken a decision as contained in Memo No. 96 (9) dated 18/02/1999, to purchase those medicines, manufactured by the Government of India undertaking, directly from the said company. The said policy was adopted by the Government of Jharkhand vide its Memo No. 280 (5)/Swa. Dated 31/07/2001. Pursuant to the said policy, Bengal Immunity Limited had circulated a letter to all intending authorities of the Health and Family Welfare Department, Government of Jharkhand with price list of the products manufactured by the Company. Accordingly, when supply order was

issued to the company, the company authorized M/S Rahul Distributors, Ranchi, an authorized stockists of Bengal Immunity Limited, to supply the products to the office of ACMO, Garhwa, on the price, which had already been made available by the company to ACMO, Garhwa. In spite of that case was lodged against the petitioner on the premise that the petitioner had supplied the Cotton and Gauze on the price excess than the fixed by the Purchase Committee, which can be said to be wholly misconceived as it is under the policy adopted by the Government of Jharkhand and, therefore, entire allegation levelled against the petitioner is based on mistaken facts and, as such, order taking cognizance is fit to be quashed. Learned counsel in this respect did point out that on a similar allegation as that of the present case the petitioner had also been made accused in Vigilance Case No. 2/2004, but the Vigilance after investigating the case submitted final form against the petitioner as mistake of fact.

**4.** A counter affidavit has been filed on behalf of the Vigilance wherein, it has been stated that the petitioner having conspired with the other accused persons, supplied Gauze and Cotton at higher rates than the rate fixed by the Purchase Committee and, thereby, the accused persons put the State exchequer to loss to the extent of Rs. 12,600/-.

**5.** Mr. Shailesh, learned counsel appearing for the Vigilance, by referring to the statements made in the counter affidavit submits that an order as contained in Memo No. 280 (5)/Swa. Dated 31/07/2001, was circulated to all the Chief Medical Officers, wherein it had been stipulated to purchase the medicines from the Government company if it is being manufactured by the Government company and the medicines, which are not manufactured by the Government company then purchase was to be made from the other companies but on a price

fixed by the Purchase Committee. Here in the instant case, price of Cotton weighing 400 grams was fixed by the Purchase Committee @ Rs. 54/- per packet, whereas it was purchase @ Rs. 66/- per packet. Similarly, the price of Gauze was fixed @ Rs. 100/- per bundle, whereas it was purchased @ Rs. 142/- per bundle and, thereby, the Government has been put to loss by the petitioner by hatching conspiracy with other accused and, as such, order taking cognizance never warrants to be quashed.

**6.** In the context of the submissions, one needs to take notice of the said letter as contained in Memo No. 280 (5) Swa. Dated 31/07/2001. From its perusal it does appear that on 27/03/2000, the Purchase Committee under the Chairmanship of Divisional Commissioner, Chhotanagpur Division, on the basis of the quotations received from different suppliers, fixed the rate of the medicines, appliances, machines, instruments etc. At the same time, decision has also been taken that the medicine, which is being manufactured by the Government company, is to be purchased directly from the company.

Putting emphasis rather placing reliance on that part of the decision taken in the meeting, plea is being taken that when the items as aforesaid, manufactured by the Government company Bengal Immunity Limited, supplied by the petitioner, an authorized distributor of the company, under the supply order, the petitioner did not do anything wrong. But, from the letter as contained in Memo No. 280 (5)/ Swa. Dated 31/07/2001, it is evidently clear that decision had been taken to purchase only the medicines and not other materials such as machines, instruments, appliances etc. from the Government company, rather those materials, other than medicines were to be purchased on the price fixed by the Purchase Committee. It is the case of the prosecution that Cotton and Gauze, which were supplied by the

petitioner, had been purchased on higher price than the fixed at the Meeting. In such situation, the petitioner cannot be said to have been made accused on mistaken facts.

**7.** In that event, I do not find any illegality with the order taking cognizance and, hence, order taking cognizance never warrants to be quashed.

In the result, this application stands dismissed.

Before parting with this order, it be stated that whatever finding has been given, that has been given for the purpose of disposal of the case, which may not be prejudicial to the case of the parties.

**(R.R.Prasad, J)**