

In the court of Shri Rakesh Yadav, Special Judge (CBI), Haryana at Panchkula.

Case No. 75 of 2009.

Date of Instt.: 10.11.2009.

Date of order: 07.05.2014.

CBI Versus Rattan Lal Razak & others

Present: Shri R.P.Verma, Special Public Prosecutor for the CBI.

Accused Harishbhai Madhavbhai Patel partner of M/S Agro Pack on bail with Shri S.K.Sud, Advocate.

Shri Ati Manav Gaur representative of DE-NOCIL Corp. Protection Ltd. (Now DOW Agro Science India Pvt. Ltd.) with Shri R.S.Rai and Ms.Priyanka Sharma, Advocates.

Accused Rattan Lal Razak on bail with Shri Anil Kaushik, Advocate.

Accused Satyabroto Banerjee expired.

ORDER :

Brief facts of allegations, sans unnecessary, culminating to filing of present case against the accused are summarized as under:-

On basis of some source information, a case No.RC AC3/2007 A0001 was registered with CBI ACU-III/New Delhi on 16.08.2007 for commission of offence under Sections 120-B read with Section 477-A IPC and Sections 7,8,12 & 13 (2) read with Section 13(1)(d) of PC Act, 1988 against accused R.L.Rajak, M/S Agro Pack, M/S Crop Health Products Ltd., Dr. L.Ramakrishnan, Dr. P.Natarajan, Shri Banerjee, the then Managing Director, M/S DE Nocil Crop Protection Ltd. and some unknown persons.

2. The allegations contained in FIR are that Dr. R.L.Rajak, the then Plant

Protection Advisor while functioning as Member of the Central Insecticides Board and Registration Committee obtained illegal gratification to the tune of US \$ 32,000 approximately from M/S DE-Nocil Crop Protection Ltd., presently known as DOW Agro Sciences India Pvt. Ltd., Mumbai, a subsidiary of M/S DOW Chemical Company based in USA for expediting registration of its products viz. Nurella D, Pride and Dursban 10 G during the period from 1996 to 2001. The product formulators of the company viz. M/S Agro Pack and M/S Crop Health Products Ltd. facilitated the payment of illegal gratification by accumulating funds in their books by loading bogus incidental charges in their bills to the company and raising false invoice on the company for capital goods by mutual agreement with the company with the approval of the Managing Director. The payments of illegal gratification were made through consultants of the company which include cash, gifts in the shape of jewellery, travel and hotel expenses, which were made to Dr. Rajak by M/S DE-Nocil Crop Protection Ltd.

3. On the basis of aforesaid allegations, investigation was carried out by the CBI. During investigation, voluminous record was seized and statements of relevant witnesses were recorded.

4. On finding material sufficient to send the accused to face trial, challan dated 09.11.2009 was submitted. In that challan, accused R.L.Rajak, Satyabroto Banerjee were arrayed as accused and were sent to face trial. On the basis of material collected by the CBI, charge against these two accused was framed on 30.05.2011 for commission of offence under Section 120-B read with Section 11,12,13(1)(d) read with Section 13(2) of

the Prevention of Corruption Act, 1988. Thus, the trial against these accused commences.

5. Supplementary charge sheet was filed by the CBI against M/S Agro Pack through its Director Proprietor and M/S De-Nocil Crop Protection Ltd. (now DOW Agro Sciences) through its Director on 30.12.2011. The case was taken up on 21.03.2012. On that date, Public Prosecutor for the CBI requested that supplementary charge-sheet be consolidated with the charge-sheet submitted by R.L.Rajak and Satyabroto Banerjee because the witnesses to be examined and documents to be produced by the CBI are the same. To the contrary, counsel for the accused opposed the request and seek adjournment which was allowed. On 24.08.2012, learned counsel for De-Nocil Crop. Protection Ltd. (now DOW Agro Sciences India Pvt. Ltd.) produced order of Hon'ble High Court wherein this court was directed to adjourn the case beyond the date given by the Hon'ble High Court. On 26.08.2013, order of Hon'ble High Court was placed in this file by learned defence counsel and adjournment was sought for arguments on charge by learned defence counsel.

6. On point of charge, learned counsel for Agro Pack and De-Nocil Pvt. Ltd. advanced arguments. On this point, learned Public Prosecutor was also heard.

7. As it is not necessary to bring all relevant facts emerging from the evidence collected by the CBI, therefore that is not re-produced. The only point which has been raised by defence counsel in this case can be settled by few facts which are further summarized as under:-

The real controversy between the parties is that initially charge-sheet under

Section 173(2) of the Code of Criminal Procedure was filed by the CBI against accused R.L.Rajak and Satyabroto Banerjee. Subsequently, supplementary charge-sheet under Section 173(8) of the Code of Criminal Procedure was filed against accused M/S Agro Pack and M/S DOW Agro Science by CBI.

8. It was argued by learned Public Prosecutor that at the time of filing initial charge-sheet, the evidence collected may be read by the court against the accused who have been charge-sheeted subsequently by filing supplementary charge-sheet. He has staunchly argued that the CBI was well within its ambit to conduct further investigation and submit the charge-sheet against the accused. The record which was collected by the CBI during investigation of both the charge-sheets is to be considered while deciding if charges against subsequent accused may be framed or not. If the entire evidence collected, available on file, is considered, prima facie a case for commission of offence against accused DOW Agro Pack Pvt. Ltd. is made out. He relied upon *Deepak Dwarkadas Patel and another Vs. State of Gujarat 1980 Criminal Law Journal 29 and Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Ors. 2004(2) ALL NR (Cri) 1436.*

9. To the contrary, learned defence counsel vehemently argued that from bare perusal of Section 173(8) of the Code of Criminal Procedure Code, 1973, it is crystal clear that before filing supplementary charge-sheet on basis of further investigation, it is required by Officer Incharge of the Police Station to obtain further evidence oral or documentary and if it is so, the Station Officer shall forward to the Magistrate further report or reports regarding such evidence in the form as prescribed. If it is so, then the

supplementary charge-sheet under Section 173 (8) Cr.P.C. may be considered by the court. In order to strengthen the aforesaid arguments on the basis of facts, learned defence counsel has pointedly drawn attention of this court to the entire contents of initial charge-sheet and supplementary charge-sheet. While referring the entire record, learned defence counsel pointedly argued that after submission of final report under Section 173(2) of the Code of Criminal Procedure, no further evidence was ever collected in this case and this fact is clear by supplementary charge-sheet. He argued that para No.16.1 of charge-sheet of November, 2009 is verbatim to the facts mentioned in para 16.1. of supplementary charge-sheet dated December 30,2011. Likewise para No.16.4 of the supplementary charge-sheet is replica of para No.16.3 of the initial charge-sheet, para No.16.5 of supplementary charge-sheet is replica of para No.16.3 of original charge-sheet, para No.16.6 is almost replica of 16.4 of initial charge-sheet.

10. Learned defence counsel further argued that it is also clear by complete analysis of both the charge-sheets that the CBI in supplementary charge-sheet has mentioned that the witnesses to be examined are “as mentioned in main charge sheet No.3 dated 10.11.2009 against accused R.L.Rajak and Satyabroto Banerjee already filed in this Hon’ble Court in CC No.75 of 2009. Thus, it is clear that neither any witness was cited nor any document was cited to infer that any further evidence was collected by the CBI before filing of supplementary charge-sheet.

11. It is pertinent to mention here that the learned Public Prosecutor was not in a position to refute the aforesaid contention of learned defence counsel that any further

evidence in shape of oral and documentary evidence was collected by CBI before filing of supplementary charge-sheet.

12. In order to buttress his arguments, learned defence counsel relied upon **2006 Criminal Law Journal 3981 titled as Manilal Keshri and Ors. Vs. State of Bihar and Anr.** Learned defence counsel has pointedly drawn my attention to para No.11 of the aforesaid judgment wherein it was held that submission of supplementary charge-sheet not on the basis of fresh evidence but only on reconsideration of evidence already collected at time of earlier submission of charge-sheet is not contemplated under Section 173(8) of the Criminal Procedure Code.

13. Learned defence counsel also relied upon **Kunjalata Dei Vs. State of Orissa 1985 CriLJ 1047** wherein it was held that submission of supplementary charge-sheet is not permissible in absence of further investigation and without obtaining further evidence. Learned defence counsel has also relied upon **Yamuna Pathak Vs. State of Bihar and Anr. 1993(4) CCR 2838** wherein it was held that supplementary charge-sheet can be submitted in respect of additional evidence collected in course of further investigation held which could not be available in course of the investigation held earlier. Reconsideration of the evidence which was already before the investigating agency prior to submitting the first charge-sheet after consideration of which the learned Chief Judicial Magistrate had discharged Yamuna Pathak by his order is not permissible.

14. After having heard both the parties at length I have to the following conclusion:-

Before advertng to the main controversy it requires adjudication on legal issues involved in the present case.

15. It is necessary to understand true mechanism of Criminal Procedure Code at the stage of investigation by the police (Executive) and after completion of investigation by the judiciary i.e. Court. Chapter XII of the Code of Criminal Procedure deals with information given to the police and the powers of police to investigate; whereas Chapter XIII deals with jurisdiction of the Criminal Courts in enquiries and trials.

16. As far as controversy in the present case is concerned, the relevant provision is given in Section 173 in Chapter XII of the Cr.P.C. which deals with power of police to investigate and file challan in court; whereas the powers of court during enquiry and trial is envisaged under Sections 190 and 193 in Chapter XIV of the Cr.P.C. In nutshell, there are two stages where the court can proceed against an accused. Initially under Section 173 when charge-sheet is filed by the police and secondly under Section 190 of the Code of Criminal Procedure and Section 193 of the Code of Criminal Procedure, which relates to the cognizance of offences by the Courts. As far as present court is concerned, it has power to deal with the cases as a Magistrate as well as the Court of Sessions being special court.

17. As per Section 173 (8) further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon said investigation, the officer in-charge of the police station obtains further evidence, oral or documentary, the police officer shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. However, the said report should be

inconformity with the provisions of sub-section (2) to sub-section (6) of Section 173, as far as the same may be applied in relation to such report or reports as they applied in relation to a report forwarded under sub-section (2).

18. Therefore, it is clear that the investigation may be further conducted and if any further evidence oral or documentary is collected a report may be forwarded to the court. Thus, it is clear that the powers given to the Executive are confined to a particular area wherein the Investigating Agency can collect further evidence with regard to any offence and can submit further challan better considered as “supplementary challan”. No doubt the subsequent further investigation is always in continuation of the previous investigation and therefore, the same is understood and described as further investigation. The Legislation designedly has limited the scope of Executive with regard to further investigation qua discovery of further oral and documentary evidence. The very purpose of further investigation is to bring any new facts before the court if discovered at some subsequent stage to the primarily investigation. Meaning thereby that in case primary/initial report under Section 173(2) is filed the hands of investigating agencies are not tied and they had been given the power to file “supplementary challan”. There is another rider on investigating agency that by further investigation they cannot wipe out expressly or impliedly the initial investigation conducted by it. I am of the opinion that in case when any report under Section 173(2) is submitted and evidence oral or documentary is filed with that which constitute commission of offence, further investigation cannot be relied upon if it is prayed in further investigation that no offence is committed by the accused. This fact goes to reflect that the further investigation is required only in case where some further evidence

oral or documentary is unearth by the investigating agency and the same is required to be forwarded to the court for bringing true facts before the court which might be necessary to arrive at a rightful conclusion by the Court. I am also of the considered opinion that the Criminal jurisprudence requires strict construction in favour of the accused contrary to liberal construction of Civil Law in favour of a person who is claiming relief. In these circumstances, the provision under Section 173(8) is to be construed strictly in accordance with its wordings and court can neither omit nor add something.

19. As far as Section 190 of the Code of Criminal Procedure is concerned, it empowers a Magistrate to take cognizance of any offence upon receiving a complaint of fact which constitute such offence, upon a police report of such facts, upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. As per aforesaid provision, if material is sufficient before the court which constitute commission of various offences, cognizance may be taken by the Court. In addition to the aforesaid two provisions Section 319 gives wide power to proceed against accused appearing to be guilty of offence who has not been brought before the court as an accused. The court may proceed against such person for the offence which it appears to have been committed. In case that person is not attending the court he may be arrested or summoned as per the circumstances of the case may require and he may be tried according to procedure.

20. In light of the aforesaid legal principles it is clear that there are three stages where an accused may be brought before the court. First is where police has sent a person to

be tried, second when the court comes to a conclusion that material is sufficient before it to summon a person as an accused. However, in present case as per facts disclosed by the parties the court has to deal with power of police to send a person to face trial when some incriminating evidence against him is collected in connection with some offence regarding which earlier a complaint under Section 173(2) is already filed.

21. For ready reference Section 173 Cr.P.C. is reproduced hereinafter:

“Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1-A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or

without sureties;

(g) whether he has been forwarded in custody under section 170;

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code (45 of 1860).]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report –

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not

relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

22. At this stage, it will not be out of context to repeat that in present case when report under Section 173(2) of the Code of Criminal Procedure was filed, the court has taken cognizance and charge was framed against two accused who were facing trial, therefore invoking the provision of Section 190 of the Code of Criminal Procedure loses its importance. I am of the considered opinion that word “obtains further evidence oral or documentary” is of great significance. It is crystal clear from the text used in legislation that in order to file supplementary charge-sheet, the investigating agency is required to obtain further evidence. Thus, obtaining further evidence, oral or documentary, is sign quo non for submitting supplementary charge-sheet. I am also of the considered opinion that any Statute

is legislated with an object to achieve the cause of justice.

23. Consequent upon my aforesaid findings, I am of the considered opinion that if the facts of the present case are considered with touchstone of legal proposition discussed supra, it is clear that in absence of any further evidence collected before filing of supplementary charge-sheet, the supplementary charge-sheet is bad in law. I am also of the considered opinion that submission of supplementary charge-sheet based on some previous materials collected through filing of main challan under Section 173 (2) of Cr.P.C. or on some stale material could not be justified. My aforesaid view is duly supported by *Manilal Keshri's case (supra)* and *Basudeo Mahto, Son of Siban Mahto Vs. The State of Bihar: Criminal Miscellaneous No.21941 of 2000 (Patna High Court)*. The case law *Deepak Dwarkadas Patel* and *Hasanbhai Valibhai Qureshi (supra)* is not at all applicable to the fact of the present case. I am also of the considered opinion that the language of Section 173 (8) of the Criminal Procedure Code is to be read with its plain meaning and there cannot be any deviation in understanding the plain meaning by adding or subtracting anything as it will be incorrect interpretation of law.

24. Now the further question arises that what is the effect of supplementary charge-sheet, which is bad or illegal in the eyes of law or the procedure adopted by prosecution, in this case at the time of filing supplementary charge-sheet under Section 173 (8), is not contemplated in the Criminal Procedure Code. I am of the considered opinion that in such circumstances, the only thing left with the court is to decide if cognizance can be taken by the court on the basis of supplementary charge-sheet filed in this case. I am of

the considered opinion that it is clear from my aforesaid reasonings that filing of supplementary charge-sheet under Section 173(8) without supporting the same by further oral or documentary evidence is not contemplated in Criminal Procedure Code and if it is so the court cannot take cognizance.

25. Consequent upon my aforesaid findings, the court cannot summon or cannot act upon the supplementary charge-sheet filed against accused DE-NOCIL Corp. ProtectionLtd. (Now DOW Agro Science India Pvt. Ltd.) and accused M/s Agro Pack, so question of framing charge on basis of supplementary challan does not arise. Therefore, aforesaid two accused are at liberty and not required to appear in the court on the basis of supplementary charge-sheet to face any trial etc. in this court.

Announced in open court.

Dated: 07.05.2014.

(Rakesh Yadav)

Addl.Sessions Judge-cum-
Special Judge CBI,
Haryana, Panchkula.