

Judicial Magistrate in connection with Case No. 30 of 2019 corresponding to proceedings pending in court of Judicial Magistrate, 1st Class Palamau.

3. The appellant challenging the order impugned is the original complainant to an application under Section 156 (3) of Code of Criminal Procedure, 1973 against M/s SS Infrastructure Co and its Partners (Respondent No.2 – Santosh Kumar Choudha in SLP (CrI.) No. 1500/2024; Respondent No. 2 – Sandhya Choudha and Respondent No. 3 – Rajeev Choudha – in SLP (CrI.) No. 1660/2024). Accordingly, the said FIR No. 38 of 2019 came to be registered on 02.04.2019. In this said FIR it is alleged that the all the above mentioned respondents have committed offences under Sections 384, 389, 406 and 420 r/w Section 34 and 120B of Indian Penal Code, 1860. The accusation was two-fold. Firstly: the complainant had worked as a sub-contractor and an amount due to him was not paid by the main contractor i.e. Respondent no.2 – Santosh Kumar Choudha. The second allegation is of more serious nature namely the Respondent No.2 - Santosh Kumar Choudha, was successful in obtaining the contract fraudulently by submitting forged and fabricated documents.

4. The said contract was in respect of a project namely Namna Ankiat Project and the work under this project was of extension, restoration and modernisation under the Jinjoyi Irrigation Scheme in district Palamau, Jharkhand. The estimated cost of the work was of Rs.35,18,11,422/-. In response to the offer, the respondent firm M/s SS Infrastructure Co and its Partners submitted its bid along with the documents. The requisite condition was to have past experience of construction

to the tune of Rs.18,40,00,000/-. It was alleged that though the respondent firm had an experience of construction of Anikat (Check Dam) over Mandi River and the work contract was only for a sum of Rs.3,40,00,000/- but by submitting forged and fabricated documents, the respondent firm claimed that the work undertaken by the firm under tender no.1797 was of Rs.18,40,00,000/-.

5. Subsequent to the lodging of First Information Report, the Respondent No. 2 – Santosh Kumar Choudha, apprehending his arrest directly approached High Court of Jharkhand by filing an application for seeking anticipatory bail. The High Court of Jharkhand considering submissions on hearing the parties rejected the said bail application.

6. It may not be out of place to mention that the High Court considered the serious nature of allegation against the appellant of being in conspiracy with the officers and other persons in the higher echelons of the State Government having defrauded the State Government of huge amount of money, there is requirement of his custodial interrogation during the investigation of the case, and thus, declined to grant the privilege of anticipatory bail in favour of the Respondent No. 2 - Santosh Kumar Choudha.

7. The investigating agency initially submitted its first final report on 31.10.2020. The investigation agency submitted final report on the grounds of lack of evidence. The appellant being aggrieved and not satisfied by this final report filed protest petition. The learned Magistrate in his detailed order dated 12.02.2021 observed that there are serious lapses and defects in the investigation

and further investigation is necessary to meet the ends of justice. The investigating agency again citing the same reason that no sufficient evidence is available against the accused, submitted the second final report. The learned Magistrate was pleased to observe that the statements of the witnesses clearly revealed that the documents were fabricated. The Magistrate also observed that the informant himself had fabricated the documents and the Respondent No. 2 -Santosh Kumar Choudha, though was not entitled for grant of the tender on the basis of false and fabricated documents, the tender was still allotted to the respondents. It is also observed by the Magistrate that the respondents were the beneficiaries and the aspect of fabrication of the documents is a matter of trial. Consequently, summoning order dated 31.01.2022 was issued. As stated above, being aggrieved by the summoning order, the respondents filed an application for quashing the summoning order and criminal proceedings pending before the Judicial Magistrate, 1st Class Palamau.

CONTENTIONS:

8. Counsel for the appellant vehemently submitted that it is an admitted fact that the experience certificate furnished is a false and fabricated document and accused firm was the ultimate beneficiary and hence there is no occasion for anyone else to fabricate the said document. It was also submitted that the bidder declared as L1 bidder is required to submit a hard copy of all the documents filed on the e-portal. Hence, the accused cannot claim that they were oblivious of the

forged experience certificate. Further, at the stage of summoning of accused, the Trial court is only supposed to examine whether a prima facie case is made out or not and Trial court is not required to appreciate the evidence at this stage. Hence, the High court has transgressed its jurisdiction by quashing the summoning order.

9. Learned counsel for Respondent No.1 - State of Jharkhand, submitted before this Court that the order for taking cognizance passed by Trial court was a well-reasoned order and did not warrant interference (the applications filed by the respondents were opposed by the State of Jharkhand). Thus, in effect, it can be said that the Respondent No. 1- State of Jharkhand, also supports the case of the appellant.

10. The learned counsel for Respondent No.2 - Santosh Kumar Choudha, vehemently opposed the appeals. It was submitted that Respondent No. 2 – Sandhya Choudha, is a sleeping partner while Respondent No. 3 – Rajeev Choudha was a partner of M/S. SS. Infrastructure, but he resigned w.e.f. 01.04.2016 which was much before submission of the tender. Thus, they did not play any active role and, bald averments have been made to rope them in. The learned counsel submits that twice the final report was submitted and in both these reports the investigating agency submitted that no incriminating material is found against the respondents. It is also submitted by the learned counsel that firstly, the Trial Court erred in taking cognizance on the basis of statements referred to in the case diary and secondly, the learned Magistrate observed that the appellant himself has submitted forged documents and was having criminal antecedents at

his credit. It is also submitted by the learned counsel for Respondent No.2 - Santosh Kumar Choudha that the investigating agency had recorded the statements of the witnesses and some of the witnesses stated that the appellant had demanded money from Respondent No. 2 - Santosh Kumar Choudha. Thus, it is the submission of the learned counsel for Respondent no.2 - Santosh Kumar Choudha, that the appellant is using the criminal proceedings for ulterior motive as he had failed to procure payments from Respondent No. 2 - Santosh Kumar Choudha.

ANALYSIS:

11. We have heard the arguments and perused the Judgments passed by the High Court as well as other relevant documents on record.

12. Admittedly, in the present case the documents which were presented by the appellant were forged and fabricated documents. There are cross allegations by the appellant as well as Respondent No. 2 - Santosh Kumar Choudha, about the complicity of the forged documents. The High Court after perusing Para 140, 141 & 142 of the case diary observed that it was the appellant herein who had manipulated the documents by altering the experience certificate along with the tender and Respondent No. 2 - Santosh Kumar Choudha, was not involved in submitting the forged documents. The High Court laid much emphasis on the statements which are referred in the case diary and observed that it was the

appellant before this Court who had manipulated the documents by altering the Experience Certificate along with the tender.

13. In our opinion, the High Court failed to appreciate the aspect that admittedly at the relevant time, the appellant was an employee and working for Respondent No.2 - Santosh Kumar Choudha. The High Court also failed to appreciate the fact that Respondent No.2 - Santosh Kumar Choudha, was successful in obtaining the tender on the basis of fabricated documents. Though Respondent No. 2 - Santosh Kumar Choudha, was not fulfilling the requisite condition of the experience but by using forged and fabricated documents, he has shown himself before the competent authority to be fulfilling the pre-requisite condition of experience. Thus, Respondent No.2 - Santosh Kumar Choudha was the ultimate beneficiary of the allotment of the said tender.

14. Learned counsel for Respondent No.2 - Santosh Kumar Choudha also submitted that admittedly the project was complete, the work allotted to him under the said project was complete and there was no objection raised by the Government in respect of the work. Since no objection was recorded against the work, the Government paid the amount to the Respondent No. 2 - Santosh Kumar Choudha, due and payable to him under the contract.

15. This Court in a series of judgements has held that while exercising inherent jurisdiction under Section 482 of Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini trial. A profitable reference can be made to the

judgment in the case of ***CBI vs Aryan Singh (2023 SCC Online SC 379)***.

Relevant paragraph from the judgment is extracted here under:

“Para 10...As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.

At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

16. In the instant case, the High Court has delved into an aspect which was absolutely not warranted and has exceeded its jurisdiction. The aspect about complicity of a person who was involved in the forgery is a disputed question of fact and the same will have to be addressed after a proper appreciation of evidence which can be done only during trial and not at such a nascent stage when summons is served. The Magistrate while considering the fact that the Respondent No. 2 - Santosh Kumar Choudha, was a beneficiary and after considering the scope of summons order had rightly observed that a prima facie case is made out and the same required an adjudication through a trial.

17. The High Court ought to have considered the complicity of the accused in case of forgery, which will have to be addressed after a proper appreciation of evidence and such appreciation of evidence can be done only by undertaking the initial process i.e. by conducting the trial on the aspect of forgery. The summons

order was only at an initial stage and at such a nascent stage, the High Court ought not to have recorded the finding on the aspect of forgery.

18. At the cost of repetition, we state that admittedly respondents are the beneficiaries and merely because the appellant was an equal mischief player and/or a person having criminal antecedents at his credit by itself will not absolve respondents from the criminal liability as alleged against them. Least to say, “***Two wrongs do not make a right.***”

19. Accordingly, in our opinion, the present case warrants interference by this Court, and we do so. We hereby quash and set aside the Judgments passed by the High Court of Jharkhand and remand back the matter before the Ld. Judicial Magistrate for proceeding with the trial in accordance with law. The accused persons are to face trial for offences in which they are charge sheeted. However, it is observed that all the contentions and defences, which are available to the respective parties are kept open, to be considered by the learned Trial Court during the trial.

20. Thus, both the appeals are allowed accordingly.

.....**J.**
[VIKRAM NATH]

.....**J.**
[PRASANNA B VARALE]

NEW DELHI;
AUGUST 6, 2024.