

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No.284 of 2019

Ramanand Ram @ Ramannand Ram Appellant

Versus

The Union of India through C.B.I. Respondent

With

Cr. Appeal (SJ) No.444 of 2019

Md. Ilyas Hussain @ Md. Illiyas Hussain

.... Appellant

Versus

The Union of India through Central Bureau of Investigation
.... Respondent

With

Cr. Appeal (SJ) No.458 of 2019

Dhudheshwar Nath Singh @ Dudheshwar Nath Singh

.... Appellant

Versus

The Union of India through CBI/ SPE/Ranchi
.... Respondent

With

Cr. Appeal (SJ) No.469 of 2019

Md. Sahabuddin Baig Appellant

Versus

The Union of India through C.B.I./ SPE, Ranchi
.... Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants	: Mrs. Jasvindar Mazumdar, Advocate
	: Mr. Jitendra Shankar Singh, Advocate
	: Mr. Randhir Kumar, Advocate
	: Mrs. Pinki Kumari, Advocate
For the C.B.I.	: Mr. Prashant Pallav, A.S.G.I.
	: Mr. Navneet Sahay, AC to ASGI

Order No.27 Dated- 25.11.2022

I.A. No.1708 of 2022 (Cr. Appeal (SJ) No.444 of 2019)

Heard the parties.

It is submitted by the learned counsel for the petitioner-appellant that this interlocutory application has been filed invoking the jurisdiction

under Section 391 of the Code of Criminal Procedure with a prayer to allow the petitioner-appellant to get the following documents exhibited:-

- (i) Certified copy of the charge sheet of case R.C. 07 (A)/1997-Patna
- (ii) Statement of P.W.27 namely Ram Avtar Khetan in R.C. 04(A)/1997-(R)
- (iii) Judgment of Case No. R.C. 04(A)/1997-(R) dated 27.09.2018 passed by learned Special Judge, C.B.I., Ranchi

It is next submitted by the learned counsel for the petitioner-appellant that P.W.38, who is the I.O. of the case has stated that he has obtained all the documents connected to this appellant; from the I.O. of R.C. 07(A)/1997-Patna but it is pertinent to mention here that no such documents were in the list of exhibits in the charge sheet of R.C. 07(A)/1997-Patna, hence, it is necessary to bring the charge sheet of R.C.07 (A)/1997-Patna on record.

Mr. Jitendra Shankar Singh, learned counsel for the petitioner-appellant next submits that the petitioner-appellant-Md. Illiyas Hussain has already been convicted in R.C. 04(A)/1997-R on 27.09.2018 on the same evidence and upon examination of the same witnesses. It is next submitted that P.W.27 of R.C. 04(A)/1997-R has been examined as P.W.23 in this case and he has given similar statement with respect to the allegation against this petitioner-appellant and on that allegation, the petitioner-appellant has been convicted in R.C. 04(A)/1997-R. It is further submitted that the documents sought to be brought on record goes to the root of the case and indicate that for the selfsame occurrence and on selfsame allegation, the petitioner-appellant has already been convicted by the learned court below in R.C.04 (A)/1997-R. Therefore, he cannot be convicted for the same occurrence and for the same allegation, second time, as the same is barred in Article 20 (2) of the Constitution of India and under Section 300 of Code of Criminal Procedure. It is therefore, submitted that the said documents be marked exhibits.

Mr. Prashant Pallav, learned counsel for the C.B.I. submits that this appeal which has arisen out of R.C. 02(A)/1997-R, which case was originally registered with Chatra Sadar Police Station vide F.I.R. No.94/96 dated 23.06.1996 on the allegation of misappropriation of government fund by the officials and contractors of Road Construction Department, Government of Bihar, Patna relating to bitumen scam and during the pendency of the investigation of the said case, this case was re-registered on 20.03.1997 by C.B.I., A.C.B., Ranchi against the accused Dhudheshwar

Nath Singh, Bitumen Carriage Contractor and Akhileshwar Prasad Singh, the then Assistant Engineer, Road Division, Chatra and other unknown officials of R.C.D., Chatra and in compliance of the order passed by the Hon'ble High Court of Patna in C.W.J.C. No.10417 of 1996 dated 20.02.1997. It is then submitted that the charge is that Dhudheshwar Nath Singh, proprietor of M/s. D. N. Singh, Bitumen Transport Contractor was entrusted with transportation of bulk bitumen from I.O.C.L., Haldia from its delivery to R.C.D., Chatra against the supply orders for supply of the said huge quantity of bulk bitumen to R.C.D., Road Division, Chatra and the said contractor/transporter lifted 3266.640 MT of bulk bitumen against the aforesaid supply orders from the oil company, Haldia but delivered only 221.44 MT to the office of the consignee i.e. R.C.D., Chatra and misappropriated 3045.200 MT of bulk bitumen worth Rs.1,52,26,000/- in connivance with co-accused persons. During the investigation of the case, the involvement of the other accused persons came to light and the accused petitioner along with other accused persons defrauded the Government of Bihar to the tune of Rs.1,50,00,000/- (approximately) by way of fraudulent purchase of bulk bitumen by resorting to cheating, forgery, misappropriation and falsification of account during the year 1994 to 1996. It is then submitted by Mr. Pallav that the petitioner-appellant-Md. Illiyas Hussain being the Minister of Road Construction Department, Government of Bihar during the period 1991 to 1996 ordered for purchase of huge bulk bitumen without taking into consideration the factors such as actual need of bulk bitumen and availability of funds and he *suo-moto* decided the quantity of bulk bitumen to be purchased for R.C.D., Road Division and also decided which transporter will supply to which division after specifying the panel of transporter and in so doing, he accepted illegal gratification both in cash and kind from the transporters for favouring in respect of their empanelment and issuance of supply orders. It is then submitted that during the said process, the co-convicts who being the public servants and transporters facilitated commission of the crime. The investigation also establishes that in the instant case, supply orders for huge amount of bulk bitumen were issued by the R.C.D., Chatra upon order and final approval of petitioner-appellant- Md. Illiyas Hussain who was the Minister at that time and such amount of supply were far beyond the actual requirement of the R.C.D., Chatra as well as budgetary provision of R.C.D., Chatra and the same were issued as a result of criminal conspiracy to defraud government money. It is next submitted by

Mr. Pallav that upon completion of investigation, charge sheet was filed and during the course of trial, all the relevant evidences both oral and documentary were produced before the learned trial court and after considering all facts and circumstances of the case, the learned trial court passed the judgment and convicted seven accused persons including the petitioner-appellant- Md. Illiyas Hussain. It is further submitted by Mr. Pallav that the facts of the other case are entirely different and relates to a different set of facts and the case which has been registered as case no. 04 (A)/1997-R relates to R.C.D., Gumla in which the accused persons are different and the transactions are also different. It is next submitted by Mr. Pallav that R.C. 04 (A)/1997-R has arisen out of Gumla P.S. Case No.101 of 1996. Hence, the documents sought to be adduced by way of additional evidence are irrelevant for the purpose of this appeal and it is not the case of the petitioner-appellant that these documents were not in his knowledge during the trial nor there is any explanation as to why these documents were not produced before the trial court during the trial. Hence, it is submitted that the prayer ought not to be allowed.

Having heard the submissions of the counsels and after going through the facts of the case, it is pertinent to refer Section 391(1) of the Code of Criminal Procedure which reads as under:-

“391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.” (Emphasis supplied)

It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Rambhau & Anr. Vs. State of Maharashtra** reported in **AIR 2001 SC 2120** wherein the Hon'ble Supreme Court of India has observed that Section 391 of the Code of Criminal Procedure forms an exception to the general rule that an appeal must be decided on the evidence which was before the learned trial court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice.

Now coming to the facts of the case, it is not the case of the petitioner-appellant that these documents were not produced due to inadvertence.

After going through the materials in the record, the detail discussion of which is not being made keeping in view that the appeal is already *sub-judice* before this Court, this Court finds that the offences committed in connection with this case are not the same offences for which the petitioner-appellant has been convicted in R.C.04 (A)/1997-R to such an extent that it can be said that this conviction is in violation of the principle of double jeopardy or under Section 300 of Code of Criminal Procedure, 1973.

So far as the prayer to bring in record the charge sheet of R.C. 07(A)/1997-Patna, is concerned, the same certainly in the considered opinion of this Court be an evidence which is not necessary for disposal of the appeal and for that matter, the other documents sought to be adduced by way of additional evidence as already indicated above in this order are also not necessary for the purpose of this appeal and this Court do not find any reason to record; for exhibiting the said documents in record which is a condition precedent, for exercising the power under Section 391 of Code of Criminal Procedure.

Accordingly, the prayer for the petitioner-appellant to exhibit the documents in the considered opinion of this Court does not carry any merit hence the same is rejected.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

Cr. Appeal (SJ) No.444 of 2019

when the learned counsel for the appellant is asked to commence argument on the merits of the appeal, the learned counsel for the appellant submits that the appellant intends to challenge the order passed by this Court in I.A. No.1708 of 2022 today before the Hon'ble Supreme Court of India and submits that he will not advance argument on the merits of the appeal today and prays for time.

List this appeal along with analogous appeals after six weeks for hearing on the merits of these appeals.

(Anil Kumar Choudhary, J.)