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LALU PRASAD @ LALU PRASAD YADAV

v.

STATE THROUGH C.B.I. (A.H.D.) RANCHI, JHARKHAND

AUGUST 26, 2003

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[S.N. VARIAVA, P.VENKATARAMA REDDI AND ASHOK BHAN, JJ.]

Code of Criminal Procedure, 1973; Sections 223 and 407:

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Trial of cases of corruption/conspiracy by the Special Judges at two places—Transfer petition for trial at one place/joint trial—Rejected by the trial Court and the High Court—On appeal, Held, In the absence of consent of other accused for joint trial/amalgamation in all the cases, it is not appropriate to permit the appellants to obtain consent from the remaining accused by-passing the trial Court—The cases are being disposed of

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expeditiously—Transfer of the cases to one Court may prejudicially affect other accused—The High Court has rightly held that since the charges had not been framed in all the cases, it was not appropriate to decide on the joint trial/amalgamation of the cases—Transfer of the cases not allowed—Application for using the evidence of common witnesses recorded in one case to other case could be considered by the Special Judge/trial Court on merit—Penal Code, 1860—Conspiracy—Prevention of Corruption Act.

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Appellants - two Ex-Chief Ministers of Bihar and others have been accused of charges under the Prevention of Corruption Act and of the offence of conspiracy under the Penal Code and the cases against them were pending before the Special Judge at Patna. Later, pursuant to the judgment of the Supreme Court in *CBI v. Braj Bhushan Prasad*, [2001] 9 SCC 432, some of the cases have been transferred to the Courts of Special Judges, Jharkhand. A petition was filed in the cases pending before the Special Judge at Patna for joint trial at Jharkhand, which was rejected. Appeals were also rejected by the High Court. Thereafter, the High Court at Jharkhand rejected the writ petition and transfer petition for amalgamation/transfer of the cases in one Court for trial. Hence the present appeals.

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In support of the petitions/appeals for transfer of all the cases at one place, it was contended for the appellants that though the High Court at

Patna dismissed the petition for joint trial but held that there was a single conspiracy in all the cases; that the object of the alleged conspiracy was to withdraw money from treasuries presently located in the State of Jharkhand; that large number of common witnesses/documents would be examined; and that the evidence of common witnesses if examined separately in all the cases, there was strong probability of their evidence being different. A B

Dismissing the appeals, the Court

HELD: 1.1. The High Court has rightly held that the question of joint trial could be decided only when the other connected cases are also ready and reach the stage of framing of the charges. Since all the cases have not reached the stage of framing of the charges, the application was premature. Moreover, the joint trial is likely to result in delay in trial of another connected case at Patna which has been progressing considerably. The High Court has rightly held that it is the trial Court which would have to consider the stand of other accused persons who have not prayed for joint trial. Most of the other accused persons have not applied for joint trial. This Court does not know what their stand was. Consent had to be obtained before the application for amalgamation was made. It was for the Special Judge to consider whether it was expedient and in the interest of justice that all accused persons, in all the cases, be tried jointly. It is neither expedient nor proper that the Appellants be permitted to bypass the trial Court to obtain consent from all the accused for joint trial at this stage. [1040-D, E, F, G] C D E

1.2. Earlier, this Court held in a connected case that the main offences were under the Prevention of Corruption Act and that the offence of conspiracy is an allied offence to the main offence under the Prevention of Corruption Act. The cases are before the Special Judges because the main offences are under the Prevention of Corruption Act. The main offences under the Prevention of Corruption Act in each case is in respect of the alleged transaction in that case. As conspiracy is only an allied offence it cannot be said that the alleged overt acts are in the course of the same transaction. This Court is bound by this decision. There exists no reason to take a different view. Hence, these cases could not be amalgamated. [1042-D, E, F] F G

A 1.3. The High Court has rightly held that the cases cannot be transferred to one Court as at present all the Courts are functioning smoothly and fairly and the cases are being disposed of very expeditiously; that transfer of the cases to one Court may prejudicially affect the other accused persons. However, if the Appellants or any of them feel aggrieved as being forced to hear the same evidence number of times, and if they desire so, they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit may be used as evidence in other cases also. The same would be considered by the Special Judge on its merit. [1042-H; 1043-A-C]

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C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1068 of 2003.

From the Judgment and Order dated 10.9.2002 of the Jharkhand High Court at Ranchi in W.P. (Crl.) No. 142 of 2002.

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Crl. A. Nos. 1066 and 1067 of 2003.

E P.S. Mishra, Ram Jethmalani, Manu Shanker Mishra, Tathagat Harsh Vardhan, Nityanand Jha, Ms. Swarupa Reddy, Amitesh Chandra Mishra, Rajesh Prasad Singh, B.B. Singh, C.R. Sinha, Kumar Rajesh Singh, Ajit Kumar Sinha for the Appellants.

Mukul Rohtagi, Additional Solicitor General, A. Mariarputham, A.D.N. Rao, Meenakshi Sakhardande, P.Parneswaran and Irshad Ahmad for the Respondent.

F The Judgment of the Court was delivered by

S. N. VARIAVA, J. Leave granted.

Heard parties.

G All these Appeals can be disposed of by this common Order even though the prayer made in Dr Jagannath Mishra's case is only for transfer whilst in the other Appeals the prayer is for amalgamation of trials.

Briefly stated the facts are as follows:

H Dr Jagannath Mishra and Laloo Prasad Yadav are Ex Chief Ministers

of the State of Bihar. They and the other Appellants have been accused of charges under the Prevention of Corruption Act and of the offence of conspiracy to defraud the Government exchequer of large sums of money. A large number of complaints have been filed and the cases are being prosecuted by CBI before various Special Courts both in the State of Jharkhand as well as the State of Bihar. We are concerned with 6 such cases which are pending before Special Courts in the State of Jharkhand.

It must be mentioned that earlier the cases were before the Special Judge at Patna. However pursuant to a Judgment of this Court in the case of *CBI v. Braj Bhushan Prasad* reported in [2001] 9 SCC 432 these cases have been transferred to the Courts of Special Judges, Jharkhand. When two of these cases namely RC. 20 (A)/96 and RC. 64 (A)/96 were pending before the Special Judge at Patna, an application was made for joint trial of these cases. This was rejected by the Special Judge. The High Court rejected the Criminal Appeal which was filed against the order of rejection. This Judgment is reported in 2000 (3) Patna Law Journal Reports 357.

Thereafter Writ Petitions (Criminal) and a Criminal Misc. Petition were filed before the High Court of Jharkhand at Ranchi for amalgamation of 5 cases. Dr Jagannath Mishra, by his Transfer Petition applied for transfer of 5 cases to one Court. Dr Jagannath Mishra's Petition was dismissed by the impugned Order dated 6th August, 2002. The other Writ Petitions and CrI. Misc. Petitions were dismissed by the impugned Order dated 10th September, 2002. Hence these Appeals. Before us all are applying for amalgamation of 6 cases.

It was submitted, on behalf of the Appellants, that even though the Appeals were dismissed by Patna High Court it has been held that there was a single conspiracy. It was submitted that the application for amalgamation was filed pursuant to the liberty granted by the Patna High Court while dismissing the Appeals. It was submitted that, according to the prosecution, there was a large conspiracy involving the then Chief Ministers and other officers of the Animal Husbandry Department. It was submitted that according to the prosecution the object of the conspiracy was to withdraw/siphon out government monies from various Treasuries which were earlier in the State of Bihar and now fall in the State of Jharkhand. It was submitted that the overt acts are alleged to have been committed in pursuance of this large conspiracy. It was submitted that in the overt acts there would be local people who are not part of the larger conspiracy. It was submitted that offences

A committed in pursuance of one conspiracy are offences committed in the course of the same transaction. It was submitted that the main accused namely the Appellants have been charged only on the basis of the large conspiracy. It was submitted that in all the cases, as against the Appellants, there would be same witnesses and same documents. It was submitted that there are 58 witnesses who would be common in all the 6 cases. It was submitted that there are approximately 100 documents which are also common in all the 6 cases. It was submitted that the prosecution had admitted, in paragraphs 10 to 12 of the affidavit in reply filed before the Special Judge, that there was a single conspiracy and that the above-mentioned witnesses and documents were common. It was submitted that if these witnesses have to depose separately in all the 6 cases, there was a strong possibility of their evidence being different and of their being conflict of decisions. It was submitted that the Appellants would have to hear the evidence of the same witnesses in 6 trial

D In support of the submission that offences committed in pursuance of one conspiracy are offences committed in the course of the same transaction reliance was placed on the case of *K. Kunhammad v. The State of Madras*, reported in AIR (1960) Supreme Court 661. Reference was also made to the cases of *Babulal Chaukhani v. King-Emperor* reported in AIR (1938) PC 130, *S. Swamirathnam v. State of Madras etc.* reported in AIR (1957) SC 340, *Mohan Baitha v. State of Bihar* reported in [2001] 4 SCC 350, *Balbir v. State of Haryana* reported in [2000] 1 SCC 285 and *State of Bihar v. Ranchi Zila Samta Party* reported in [1996] 3 SCC 682. There can be no dispute with the proposition of law. It is however to be seen whether the proposition has any application to this case.

F At this stage it is necessary to set out details and particulars of the 6 cases sought to be amalgamated. These are as follows:

Sl. No.	Case No. RCs	P.S. Case No.	Amount involved	No. of accused persons	Treasury	Stage
1.	20(A)96-Pat	12/96 Chaibasa P.S.	37.7 Crores	56	Chaibasa	Evidence (A total of 174 PWs examined)

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2.	38(A)/96- Pat	16/96 Dumka P.S.	3,76,38,853/-	48 + 1 = 49	Dumka	Appearance	A
3.	47(A)/96 Pat	50/96 Doranda P.S.	183 Crores	171 + 69 = 240	Doranda	Appearance	
4.	63(A)/96- Pat	Complaint received from State	45,96,048/-	44	Bhagalpur & Banka	Appearance	B
5.	64(A)/96- Pat	Source Information	97 Lakhs	34 + 4 = 38	Deoghar	Charge framing	
6.	68(A)/96- Pat	Source Information	37.62 Crores	75 + 1 = 38	Chaibasa	Charge framing	C

The application for amalgamation of cases is under Section 223 of the Criminal Procedure Code which reads as under:

“223. What persons may be charged jointly.- The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in

A respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply in all such charges:

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C Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

D It is thus to be seen that irrespective of the applicability of clauses (a) to (g), Section 223 gives to the Magistrate a discretion to amalgamate cases. The Magistrate has to be satisfied that persons would not be prejudicially affected and that it is expedient to amalgamate cases. As has been set out hereinabove, on a prior occasion the application for amalgamation has been rejected by the Special Judge. The High Court has also rejected the Appeal. Under the circumstances, a fresh application for the same relief would not normally lie.
E Faced with this situation it had been submitted that the present application for amalgamation had been made as the High Court had already held that there was a single conspiracy and had given liberty to apply for amalgamation at a later stage. It is thus necessary to see what the High Court held in the case of *Lalu Prasad v. State of Bihar* reported in 2000 (3) Patna Law Journal
F Reports 357. Paragraphs 28 to 32 read as follows:

G "28. The fact that separate cases have been registered and are being investigated separately and also the fact that this Court during investigation while considering the question as to whether remand in one case will mean the remand in all other cases, has held that some of the cases form different transactions, are not decisive to the question involved in the case. This court made observations during the course of investigation while deciding the question of remand only. The separate investigation by itself is not decisive to the fact that all the cases are separate. It is only after investigation that the question has to be decided as to whether they are part of the same transaction or
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not. Similarly, the fact that the accused persons in both the cases are not common is also not an important fact as even in the cases of single transaction, different offences are committed by different set of the accused persons. The relevant question that was to be considered by the trial court was whether the series of the acts committed by the accused persons forming different offences at different times and at different places were with a view to fulfill one common purpose and there was a community of criminal intent so as to form a single transaction or different offences were committed independently with a view to fulfill different purpose or object though there was similarity between the purpose and object in the cases. Even if the trial court would have found that the offences alleged to have been committed did not form one transaction, it should have also considered the cases of the petitioners in terms of proviso to section 223 of the Code whether it was expedient in the ends of justice to hold a joint trial on such prayer being made in writing by the accused persons and the same was not causing any prejudice to any of the accused persons. The trial court has also not made any effort to find out as to what is the view of the other accused persons facing the trial. For all these reasons, the order passed by the trial court suffers from legal infirmity.

30. The next question is as to what order should be passed in this case after having come to the conclusion that the order passed by the Special Judge suffers from legal infirmity. Whether the matter is to be remanded for fresh consideration at this stage or some other direction is to be given taking into consideration the facts and circumstances of the case.

31. During the course of argument and in the written argument filed on behalf of one set of the accused, it was submitted on behalf of the petitioner that the offences committed in these two cases and other cases are the part of the same transaction, but they have not given the details of other cases. In other cases either charge-sheets have been submitted or the same are still to be submitted. In that circumstance, this question cannot be decided by taking into consideration the allegation made in these two cases only. If this question is decided only after taking into consideration the allegations in these two cases then that matter will not come to an end as this question will be re-agitated time and again by the petitioners and other accused persons as and when the other cases will be ripe for

A framing of the charges and the result would be that the trial will not proceed in any case.

B 32. Taking into consideration the peculiar facts and circumstances of the case arising out of the Animal Husbandry Scam, I am of the view that the said question is to be decided only when other cases are also ready and reach the stage of framing of the charges. At that stage, if a proper application is filed by the accused persons or by some of the accused persons, the trial court will consider the said question. While considering the question if some of the accused persons have not prayed for joint trial, then the trial court will also consider their stand in the light of the legal positions indicated above. The trial court will also consider whether it will be possible or practicable to dispose of all the cases or some of the cases jointly or they should be tried separately. It is to be clarified that the paramount consideration should be the cause of justice.”

D It is thus to be seen that the High Court has not concluded that there was a single conspiracy. The High Court has correctly held that this question can be decided only when the other cases are also ready and reach the stage of framing of the charges. As has been indicated above all the cases have not reached the stage of framing of the charges. Three of the cases are still at the appearance stage. Two of the cases are at the stage of framing of charge.

E Thus in any case the application was premature. Moreover, the present attempt is likely to result in delay in trial of Case No. 20(A)96-Patna which has progressed considerably. The High Court has also correctly held that it is the trial court which would have to consider the stand of other accused persons who have not prayed for joint trial. It is to be seen that apart from the

F Appellants there are a large number of other accused persons. Most of the other accused persons have not applied for joint trial. This Court does not know what their stand is. When this was pointed out to Counsel for the Appellants it was stated that affidavit of consent, for joint trial, by all the accused in all the cases would be filed before this Court. In our view this is not the stage where such affidavits could be filed. The consent had to be

G obtained before the application for amalgamation was made. It was for the Special Judge to consider whether it was expedient and in interest of justice that all accused persons, in all the cases, be tried jointly. It is neither expedient nor proper that the Appellants be permitted to bypass the trial court in this manner.

H There is another more important reason why these Appeals cannot be

allowed. This Court, in the case of *CBI v. Braj Bhushan Prasad* reported in [2001] 9 SCC 432 considered the question whether these cases stood transferred to the State of Jharkhand by virtue of the Bihar Reorganisation Act. Opposing a transfer it was submitted that the cases related to an alleged single conspiracy which had taken place in Patna. It was submitted that the trials thus had to continue in Patna. This Court considered what were the main offences in those cases. Admittedly these 6 cases are part of the cases considered by this Court. Paragraphs 34 to 37 read as follows:

“34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13(1)(C) and also Section 13(1)(d) of the PC Act. The first among them is described thus:

“13. (1) A public servant is said to commit the offence of criminal misconduct,-

* * *

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other persons so to do;”

The next offence is described like this:

“13. (1) A public servant is said to commit the offence of criminal misconduct,-

* * *

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;”

35. We have no doubt in our mind that the hub of the act envisaged in the first of those two offences is “dishonestly or fraudulently

A misappropriates". Similarly the hinge of the act envisaged in the second section is "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

B 36. The above acts were completed in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Section 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

C 37. Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences that ensued."

D Thus it has already been held, by a three Judge bench of this Court, that the main offences were under the Prevention of Corruption Act. It has been held that the offence of conspiracy is an allied offence to the main offence under the Prevention of Corruption Act. The cases are before the Special Judges because the main offences are under the Prevention of Corruption Act. The main offences under the Prevention of Corruption Act in each case is in respect of the alleged transaction in that case. As conspiracy is only an allied offence it cannot be said that the alleged overt acts are in the course of the same transaction. We are bound by this decision. In any case we see no reason to take a different view. As it has already been held that the charge of conspiracy is only an allied charge and that the main charges (under the Prevention of Corruption Act) are in respect of separate and distinct acts i.e. monies siphoned out of different Treasuries at different times, we fail to see as to how these cases could be amalgamated.

G At this stage it must be mentioned that Dr Jagannath Mishra had merely applied for transfer of all the cases to one Court. His application was thus under Section 407 of the Criminal Procedure Code. We are informed that all the Special Courts in Jharkhand are housed in one building. We see no infirmity in the reasoning given, in the impugned Judgment dated 6th August 2002, that the cases cannot be transferred to one Court as at present all the H Courts are functioning smoothly and fairly and the cases are being disposed

of very expeditiously. We are also in agreement with the observation that transfer to one Court may prejudicially affect other accused persons. This even if we had been inclined to allow the other Appeals, which we are not, the Appeal filed by Dr. Jagannath Mishra would have had to be dismissed. A

For all the above reasons we see no reason to interfere. All the Appeals stand dismissed. B

Before we part it must be mentioned that it had been complained that the Appellants would be forced to hear the same evidence 5/6 times. If the Appellants or any of them feel aggrieved by this and if they so desire they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit in one case be used as evidence in other cases also. This would obviate their having to hear the same evidence in 5/6 different cases. We are sure that if such an application is made the same will be considered by the Special Judge on its merit, after hearing all the other accused. C

S.K.S.

Appeals dismissed. D