

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CrI. Misc. Application (C-482) No. 1037 of 2006

1. Vijay Moses Das

S/o late Sri J.N.P. Das

R/o 23, Kalidas Road,

Dehradun, District Dehradun.

2. M/s Das & Taucher GMBH Munchan

Germany through its Owner Dr. V.M. Das

C/o 23, Kalidas Road, Dehradun.

... . Petitioners

Versus

Central Bureau of Investigation

Through Superintendent of Police,

CBI / SPE / ACU (V), New Delhi.

... . Respondent

Mr. Lokendra Dobhal, Advocate for the petitioners. Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Shobhit Saharia, Advocate for the respondent C.B.I.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), the petitioners have sought quashing of the proceedings of Criminal Case No. 1504 of 2002; State Vs. V.M. Das, pending in the court of Special Judicial Magistrate (CBI), Dehradun.

2

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the case are that the petitioners (accused) were the suppliers of material to M/s Oil and Natural Gas Corporation Ltd. (for short ONGC). The prosecution case is that between the years 1985-89 under contract / tender No. MATOP / IMP-IIIrd / 45 (R) / 85 dated 20th of August 1986, certain Production Tubing alongwith PUP joints and crossover substitutes were to be supplied to ONGC after the same are purchased from A.O.W.S.R. Stoffner, Austria. The allegations against the petitioners are that sub-standard items were supplied by the petitioners and that too at wrong Port. It appears that the ONGC got the matter investigated through Central Bureau of Investigation (for short CBI), who submitted charge sheet against the petitioners in the year 1997. In the year 2003 / 2006, charge was framed against the accused / petitioner No. 1 V.M. Das.

4) It is pleaded on behalf of the petitioners that the offences alleged to have been committed by the petitioners are punishable under Section 420, 468 and 471 (read with Section 468 of I.P.C.) All the three offences are punishable with maximum imprisonment for a period of seven years, as such, provisions contained in (Chapter XXIA, as inserted vide Act No. 2 of 2006 w.e.f. 05.07.2006) in the Code of Criminal Procedure, 1973, are applicable to the present case. An application was moved on 3

15.12.2009 (during pendency of this petition) by the petitioners for 'plea bargaining' before the trial court. The trial court heard the prosecuting agency (CBI) and also the ONGC (victim). Both CBI and ONGC endorsed their no objection to 'plea bargaining' sought by the accused / petitioners. However, the Magistrate vide its order dated 10.03.2010 (copy of which is annexed as Annexure 5 with the affidavit, filed with Misc. Application No. 244 of 1010, in this petition) rejected the application on two grounds, namely (i) the petitioner has not filed affidavit that he is not a previous convict and, (ii) that compensation has not been fixed. Both these objections were not raised either by the prosecuting agency or by the victim.

5) Learned counsel for the petitioners submitted that it was mentioned on behalf of the accused / petitioner that he is not a previous convict. Said fact is not denied by CBI or the ONGC before the learned Magistrate, nor any compensation is claimed by the victim, as a condition for accepting the 'plea bargaining'. It is argued that the Magistrate has erred in law by rejecting the 'plea bargaining' sought by the accused.

6) Section 265A of Cr.P.C. (as inserted vide Act No. 2 of 2006) provides that an application for 'plea bargaining' would lie in respect of offences not punishable with death sentence, imprisonment for life, or imprisonment for a term exceeding seven years. In the 4

present case alleged offences, said to have been committed by the petitioners, are Section 420, Section 468 and Section 471 of I.P.C. (read with Section 468 of I.P.C.), and all the three are not punishable with imprisonment for a period more than seven years. Section 265B of Cr.P.C. provides that an application for 'plea bargaining' can be moved either by the accused or by the prosecutor. It requires that if the application is moved by the accused it shall be accompanied with the affidavit that he (accused) had made application voluntarily and that he has not been previously convicted. After receiving such application, the Magistrate is required to issue notice or hear public prosecutor and the complainant (victim). Under sub-section (4) of Section 265B of Cr.P.C., accused is to be heard 'in camera' by the court, to satisfy it that the accused has voluntarily moved such an application. It is nobody's case that the application is not voluntary. As to the compensation required to be paid by the accused to the victim, there is no such demand or condition raised by the prosecuting agency (CBI) or by the victim (ONGC) for accepting the 'plea bargaining'. Rather, before this Court on behalf of the parties it is pleaded that arbitration proceedings are already going on as to the civil liability of the accused / petitioners. That being so, it appears that the trial court has erred in law in rejecting the application of the petitioners for 'plea bargaining'. In Para 14 of the affidavit filed before this Court with Misc. Application No. 244 of 2010, it is categorically stated that the petitioner 5

V.M. Das is not previous convict. Therefore, this Court is of the view that after following the guidelines mentioned in Section 265C of Cr.P.C., the Magistrate should have disposed of the case after accepting the 'plea bargaining', as provided under Section 265E of Cr.P.C. It is pertinent to mention here that no useful purpose would be served by sending the accused / petitioner to jail by rejecting the application for 'plea bargaining' moved by the accused, who is a heart patient, aged 60 years, as mentioned in the affidavit, particularly, in view of the fact that out of the 60 witnesses only 03 witnesses could be examined after the trial began in the year 2002.

7) For the reasons as discussed above, this petition under Section 482 of Cr.P.C. is disposed of directing the trial court to accept the 'plea bargaining' sought by the accused to which the prosecuting agency (CBI) and the victim (ONGC) have endorsed no objection, and to pass appropriate orders in the light of the observations made above. The order dated 10.03.2010 passed by the trial court rejecting the application for 'plea bargaining' is set aside. (Application No. 244 of 2010 and all other pending applications in this petition stand

disposed of).

(Prafulla C. Pant, J.)

Dt. March 29, 2010.

H. Negi