

108. Rs.10
In the Court of the Ld. Addl. District & Sessions Judge, 1st Court
Raiganj, Dist. Uttar Dinajpur.

Case no - T.R. 02/2010

In the matter
Of

An application for -

- A. Supply of copies of seized documents and statements of witness, U/S- 161 Cr. P.C. not supplied to the accused Krishna Pada Sarkar along with records (Charge Sheet) prepared U/S - 173 Cr. P.C. recorded by his lawyer on 20.10.2015 and accordingly order no 38 passed by Ld ADSJ on 01.12.2015 and
- B. Issue of notice to all the Chairmen of the District Leprosy Society Cum District Magistrates for the year 1995 to 2001 to array them as accused u/s 319 of Cr. P.C.
- C. Passing on necessary order or orders as may deem fit and proper for commencing trial and there after day to day hearing to conclude the trial of the case.

Cops for P.P is attached herewith
since not received-

Attn: N.K. Roy.
Advocate
20/11/18

R/C
Narendra Sarkar
for P.P.

AND
In the matter
Of
TR-02/2010
GR Case No. 623/01

AND
In the matter
Of
State of West Bengal
Versus
Ramendra Nath Sanyal & Others
Humble application filed on behalf of
the accused Krishna Pada Sarkar.

Most Respectfully Sheweth :-

1. That, Krishna Pada Sarkar is the applicant accused No. 3 of the above noted case and through his Advocate Late Naba Kumar Roy he received the bundle of documents on which the prosecution intends to rely commonly known as Charge Sheet U/S-173 of Cr. P.C.
2. That, Advocate Late Naba Kumar Roy while receiving the bundle of documents recorded U/S - 173 Cr. P.C. endorse thereon that no copies of documents seized by the investigating agency as per the seizer list have been supplied, neither copies of statements of witnesses recorded U/S - 161 Cr. P.C. have been supplied to the accused. The endorsement is dated 20/08/2015.

EXAMINED BY

Petition No. 87 Dated 18/01/2016

Signature of H.C.C

22/11/18
22/11/18
ADORE AR. JHA
Advocate

3. That, the order 38 passed by Ld. Additional Sessions Judge of this court on 01.12.2015 for supply of the copy of 161 Cr.P.C. to defence has not yet been complied by handing over the said documents to the accused till date in spite of several order passed to that effect in this court.
4. That, the accused K.P. Sarkar is a Chartered Accountant and the allegation against him is conspiracy with accused No. 1 in preparing a false audit report knowing the same to be false as such it is imperative that all documents seized be supplied to the accused, so that he can prepare his defence. Without inspection of the said documents the preparation of the defence of the accused K.P. Sarkar shall be seriously prejudiced and no charge can be framed against him without the said documents placed on the record.
5. That your petitioner, a Chartered Accountant by profession and have a permanent place of residence as well as office at Raiganj for carrying on his profession since 1990 with reputation in the name of his proprietorship firm M/s K.P.Sarkar & Co approved by the Institute of Chartered Accountants of India, is on Court Bail granted as per the order dated 24.09.2004 of the Hon'ble Supreme Court of India and thereafter, have been appearing regularly before this Ld. Court in connection with the case as an accused person.
6. That your petitioner has reasonable belief that he has been falsely and purposefully implicated into the instant case ignoring the principle of natural justice and prosecution has no prima facie allegation against your petitioner but until and unless the trial is completed your petitioner could not avail the opportunity to prove the allegation raised in the charge sheet by the investigating officer as unlawful, false and also to bring to the forefront certain unlawful, untold, undisclosed, undiscovered facts which would reveal the corruption, blatant unscrupulous attitude and bureaucratic deceitful action taken in order to hide the corruption and scam involved during the course of unlawful vigilance enquiry where another illegal F.I.R was obtained from the accused of that vigilance case, Dr. Anuj Bhattacharjee, using the vigilance investigation as trap by the investigating officer of that vigilance case on the date of investigation on 02.08.2001 as per his own desire ill motive to develop the aforesaid GR-623 case for his own business and accordingly he also appointed as I.O of that case developed in own hand for own business and filed charge sheet on 30.09.2001.
7. That your petitioner being a fellow member of the Institute of the Chartered Accountants of India and empanelled with the C & AG of India had been appointed on 14.06.1996 as auditor for conducting the audit of the said District Leprosy Society for the year 1994-95 & 1995-96 and reappointed subsequently up to the year 2000-01.

EXAMINED BY

Petition No. 187 Dated 18/01/23
Signature of HCC

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20/11/18

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20/11/18

ALOK K. JHA
Advocate

Binagor, Rajshahi
En.No-43-10701577

8. That, as per the financial management guideline of the government of India and regulation of the respective Societies Act, the District Magistrate (DM) holds the post of chief office bearer as Chairman and the Chief Medical Officer of Health (CMOH) of the district holds the post of the Member Secretary of District Leprosy Society.
9. That the Ministry of Health & Family Welfare, Government of India released the grant-in-aid sanctioned by the President of India to the District Leprosy Society, Uttar Dinajpur in the year 1994-95-Rs.48.20 lacs, 1997-98-Rs.33.25 lacs, 1998-99- Rs.5.00 lacs, 1999-2000-Rs.15.03 lacs, 2000-01-Rs.11.00 lacs and in 2001-02 Rs.14.28 lacs. The government grant and interest earned thereon from bank account are the sources of fund the society for carrying on its activity and objectives.
10. That as per the usual procedure, the sanction letter for each grant along with the condition and guideline applicable thereon is issued addressing to District Magistrate & Chairman of the District Leprosy Society and the copy of the same are forwarded to the respective field offices headed by the Accountant General of the State and the Director of Audit, AGCR Building, New Delhi.
11. That as per the provision of section 15 of the West Bengal Societies Registration Act 1961 and also as per the condition of the grant to follow guideline of the Government of India for accounting procedure revised and drawn up in 1984 based on the recommendation of an inter-ministerial working group and approved by the C & AG of India, the society has to **maintain proper books of accounts, prepare the annual financial statements and get it approved at governing body meeting by putting the signature with seal of the respective Chairman and Member Secretary of the society and thereafter get it audited by the Chartered Accountants duly appointed as per rules applicable thereon.** The copy of the Audit Report along with the annual financial statement certified by the Auditor, Chairman and Member Secretary are furnished to the Government of India. A separate fund utilization certificate in Form GFR-19A duly signed by Chairman/Member Secretary with stamp is also furnished thereto. The term proper books of accounts has been well defined in section 209 of the companies Act, 1956 which means, the account books maintained in **double entry system and accrual basis.** The double system recognises the fundamental fact that a transaction is double-sided affairs debit and credit. Due to recording of both of both the aspect of each transaction, the debit part of transactions will always be found balanced by the credit part of the transactions. This system of accounting is defined as art of recording, classifying and summarising in a significant manner and in terms of money transactions and event which, in part at least, of a financial character, and interpreting the result thereof. Cash Book, Ledger Accounts Books, Journal and Trial Balance and Annual Financial Statement are the output of the double System of book keeping. Annual Financial Statement

EXAMINED BY

Petition No. 1087 Dated 18/01/23

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Signature of H.C.C.

(4)

includes mainly Balance Sheet, Income & Expenditure Accounts and Receipt & Payment Account.

ALOK K. JHA
Advocate

Bihar Bar Council, Patna
En. No. 108/1997

12. That your petitioner state that, as per the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI), the responsibility for preparation of financial statements and for adequate disclosure is that of the management of the enterprise. The Auditor's responsibility is to form his opinion and report on such financial statements. It is to be stated that ICAI is one of the member of the International Accounting Committee (IASC) Further the International Standards on Auditing (ISA) "Objective and Basic Principles Governing Audit" issued by the International Auditing Practices Committee (IAPC) categorically states that - "While the auditor is responsible for forming his opinion on the financial statements, the responsibilities for preparation of financial statements are that of management of the entity. Management's responsibilities include the maintenance of accounting records and internal controls, the selection and application of accounting policies and safeguarding the assets of the entity. The audit of the financial statements does not relive management of its responsibilities" Section 209, 210 & 217(2AA) of the Companies Act, 1956 also explained clearly maintenance of proper books of accounts and the responsibility of the management in this regard.
13. That your petitioner state that the Articles 149, 150 & 151 of the Constitution of India read with the section 14 of the Comptroller and Auditor General's (Duties, Power and Condition of Service) Act, 1971 specifies the duties and power to provide and approve the procedure and guideline of accounting and conduct the audit of the society or body avail grant in aid for Rs 25 lakhs or more from consolidated fund of the Government of India or from any state. Further, the C & AG of India have the right to lay down the guideline for selection of Chartered accountant (CA) for financial audit of that society or body, issue of directives to CAs about each audit if it think necessary on their review of the financial audit report and taking action for professional misconduct by blacklisting that CA firm from the panel of C & AG to debar from audit and report to Institute of Chartered accountants of India, New Delhi for initiating action as per the code of conduct of the Institute.
14. That your petitioner state that the General Financial Rule (GFR) of the Government of India, Rule-150 specified that all grantee institution shall be open to inspection by the sanctioning authority and the accounts shall be audited by C & AG under section 14 of the C & AG (DPC) Act, 1971. As per Rule 151 of that GFR, the grantee institution shall submit the actual fund utilization certificate the prescribed Form-GFR-19A and annual audited financial statement are to be submitted to the concerned department within the prescribed time which along with the internal audit/inspection report of the department and the report received from C & AG are to be examined while sanctioning further grant to the grantee institution. In the case of irregularities on non compliance of the laws, rules, regulation, and Govt.

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Petition No. 287 Dated 18/01/23

Signature of H.C.



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8/11/18
H. C. Jha

20/11/18


ALOK K. JHA

Admission
Enrollment
No. 10000

guideline, the department will be at liberty to take action for blacklisting such institution from future grant.

15. That your petitioner firmly state that the audit report on the financial statements comprising Balance Sheet, Income & Expenditure Accounts and Receipt & Payments Account for each year for alleged period of the District Leprosy Society, Uttar Dinajpur are absolutely correct which are in agreement with the proper books of accounts and authenticated records and document maintained and produced during the course of audit and annual financial statement reflect true & fair view of the state of affair of the Society.
16. That the Chairmen of the District Leprosy Society, Uttar Dinajpur, was the chief executive office bearer of to the Society. The chairman and member secretary jointly authenticated the day to day transaction of the society as well as annual financial statement of the society. The bank account of the society was also being operated under joint signature of the chairman and member secretary of the society. To attain the object of the society, advice the member secretary and other office bearer in case of urgent and important work of the society, maintain proper books of accounts (i.e books in double entry system and in accrual basis) of the society, develop internal control system in the society for better performance and proper uses of the resources and select and apply the appropriate accounting policy for preparation annual financial statement of the society are also the duties of the Society as per the law rules and guideline applicable thereon.
17. That the chairman of the society was person who also played other roll as District Magistrate (DM), District Vigilance officer (DVO), District Election Officer (DEO) and Chairman of several government aided societies of the Uttar Dinajpur district. Consequently all the public servants of the district are the subordinate staff of chairman of the society. Due to holding of enormous power he was in position to utilize such power for the purpose of putting anybody in trouble any time if he so think. Accordingly the vigilance enquiry (order dated 30/04/2001) against Ex-CMOH/Ex-Member Secretary of District Leprosy Society, Uttar Dinajpur, was issued and appointed Mr. P.C. Das, Vigilance Inspector for enquiry and instructed Dr. Shyamal Kr. Jha, CMOH of Uttar Dinajpur to supply cash book 1995 to 2000 to vigilance inspector. It was the joint responsibility of the chairman and member secretary for transacting the business of the society during the tenure of ex-CMOH, so how the chairman of that period was kept outside the per-view of the enquiry? Further, cash book was called for upto 2000 when the present CMOH Dr. Shyamal Kr. Jha and the vigilance officer himself was the chairman of the society, so question is that whether the chairman himself interrogated by the vigilance inspector or not? How the principle of natural justice and equality before the law as per Art 14 of the constitution of India was maintained?

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Petition No. X 87 Dated 18 Feb 18
Signature of H.C.


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8/11/18
[Signature]

Advocate
ATUL K. JHA

Baranagar, Kolkata-700019
Call No. 9830190119

18. That during the course of vigilance enquiry a cash register was built up which was maintained absolutely in single entry basis i.e. the books of accounts are written without following the fundamental principle of accounting and written whatever the accountant likes. Books of accounts once seized by the vigilance inspector on 23/05/2001 was handed over to the accounts clerk and sent by official order to the residence of Ex-CMOH at Barasat by providing office vehicle No -WB-60/ 4283 for signature on 26/05/2001 which is very surprising fact. The Chairman of the society hold enormous power due to playing roll as district magistrate, district vigilance officer as well as chairman of other Societies funded by GOI, all the public servant worked in the district administration are his subordinate worked silently without raising any question. It is also interesting DM/DVO in one hand silently charge sheeted the auditor of the District Leprosy Society on other hand being the Chairman of other societies appointed the same auditor without following guideline of GOI regarding audit and C.A Firms. Consequence of which case no.G.R-623/2001 has been developed without informing the same to C & AG and concerned department of Ministry of Health and Family Welfare of the Government of India and state Government. No action from the end of C & AG and concerned ministry of Government of India as per GFR 150 & 151 and state Government as section 23 of the W.B Society Registration Act, 1961 has been found due to this fact. Foul playing on the part of the chairman is very prominent. Therefore no justice to the case be provided without interrogating the chairman of the following period.
- Mr. Pawan Kr. Agarwal, I.A.S, Chairman of the District Leprosy Society, Uttar Dinajpur from 22.01.1996 to 23.03.1998. Present Charges-Chief Executive officer, Food Safety and Standards Authority of India (FSSAI), FDA Bhawan (Near Bal Bhawan), New Delhi-110002.
 - Mr. Prashant, I.A.S, Chairman of the District Leprosy Society, Uttar Dinajpur from 23.03.1998 to 11.12.1999, Present Charges-Not known as resigned GOI services.
 - Mr. Manoj Kumar Agarwal, I.A.S, Chairman of the District Leprosy Society, Uttar Dinajpur from 15.12.1999 to 28.06.2001, Present Charges-Food Commissioner & Principal Secretary, Government of West Bengal, Food & Supplies, Khadya Bhawan. Mirza Ghalib Street, Kolkata-700087.
 - Dr. Aariz Aftab I.A.S, Chairman of the District Leprosy Society, Uttar Dinajpur from 28.06.2001 to 11.10.2003. Present Charges-Chief Electoral Officer, West Bengal, 21, N.S. Road, Kolkata-700001.
19. That Scrutiny and analysis of the FIR cum complain & Charge Sheet, It has been observe that the entire complain-cum-FIR and charge-sheet are based on cash register unscientifically maintained ignoring the rule of accountancy in addition to the proper books of accounts i.e cash book, ledger book & journal.
- It is observed from both complain-cum-FIR and charge sheet that the said cash register was incomplete in respect of totaling & balancing.

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Signature of H.C.C



overwritten, cross written etc. and complainant cum secretary demanded in page 6 of FIR that there was no such cross writing, overwriting etc. during the period of his secretaryship, i.e. upto January, 2000 and the same have been done after his secretaryship.

- ii) In page 9 of the chargesheet, I.O. stated that payment to Caplet India (P) Ltd. by cheque mentioning number having no voucher recorded in the cash register page-73 dated 16.5.1997 Rs. 87000/=-, page no. 80 dated 29.6.1997 Rs. 29000/=-, page no. 100 dated 11.11.1997 Rs. 23200/=-, Rs. 17400/=- and Rs. 23925/=-.
- iii) It is also stated in page no. 9 of charge-sheet that on verification of stock register it was found that Caplet India (P) Ltd. did not deposit such medicine before CMOH, U/Dinajpur on mentioned in page 73 dated 16.5.1997, page 80 dt. 29.6.1997. So above-mentioned disbursement are totally false and misappropriation of fund. In the page 10 & 11 of the charge-sheet a list of date and page no. of cash register stating originally previous total payment and after forgery/misappropriation the amount stand have been given. The difference of the amount is about Rs. 5.10 lacs. In page-13 of the charge-sheet it is stated that Rs. 715820.60 has been defalcated as reported on 14.8.2001 by CMOH office on their own audit enquiry undertaken under order of DM/DVO, U/Dinajpur.

20. In this context of the fact stated here in above, the cash register which have not been found complete in respect of balancing, page totaling and also the payment by cheque have been treated like cash, cannot be considered as a proper books of accounts as per fundamental principle of accountancy and as per the provision of laws guideline applicable thereon as stated here above. Actually, it can be said a receipts and payments records maintained unscientifically on single entry basis. Accordingly the payments by cheques found in that cash register will not be found in properly maintained cash book but the said payment will be found in bank accounts. Further no cheque can be cleared from the bank account until the person authorized to operate the bank a/c i.e. Chairman and Member Secretary appropriately signed the cheque. So, it cannot be claimed that the payment by cheque to Caplet India (P) Limited or any party are without the knowledge and involvement of the cheque issuing person and cheque recipient. Vouchers reference for supply of goods and entry in stock register on the date of payment as stated here above are not relevant as the payment to the creditors may be made against old bill or as a part payment or consolidated payment. To justify the payment payee a/c was to be verified instead of the procedure adopted here above. Next thing the fraud of Rs. 5.10 lacs as stated here above have been confirmed by the I.O., on the basis of difference between original entry and entry after forgery without clarifying the mode of payment, by cheque or cash and verification of any supporting voucher, i.e. bill, cash memo, money receipts and finally the reconciliation of bank passbook figure with the bank balance reported in the balance sheet. Further from aforesaid single entry based cash register no Income & Expenditure Account and Balance Sheet can be prepared appropriately as per Principal of Accountancy. So the facts and figure of Income & Expenditure and Balance

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Petition No. 187 Dated 18/01/23
Signature of H.C.C.

ALDINE KR. JHA
Advocate

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- The above named accused therefor prays for –

- The above named accused thereafter prays for -
- A. Supply seized documents and statements of witness, U/S- 161 Cr. P.C. not supplied to the accused Krishna Pada Sarkar along with records (Charge Sheet) prepared U/S - 173 Cr. P.C. recorded by his lawyer on 20.10.2015 and accordingly order no 38 passed by Ld ADSJ on 01.12.2015 and
- B. Issue of notice to all the Chairmen of the District Leprosy Society Cum District Magistrate for the year 1995 to 2001 to array them as accused u/s 319 of Cr. P.C.
- C. Pass necessary order or orders as your Honour may deem fit and proper for commencing the trial of the instant case, charge sheet of which case has been filed on 30.9.2001, forthwith if possible day to day hearing to conclude the trial as your petitioner should have to be given liberty to prove his innocence as earliest as possible keeping it mind that a criminal case pending upon a person who wants to prove his innocence and pendency of the same without any development amounts to tarnishing his image and reputation and ultimately restraining to avail the professional opportunity and to enjoy peaceful life.

*Insufficiently
known:
(Kor Sankha Soma) to
distinguish b.
20/01/18*

ALOKE KR. JHA
Advocate

ALOKE KR. JHA
Adjunct

Filed on -

Date: 20/01/2018.

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Petition No. X 87 Dated 18/01/23

Signature of H.C.C.