

Spl.Case-6/17

11-06-2019

Accused Biraj Hojai and Simanta Pratim Bora are present.

However, accused Piku Majumdar and Susanta Kumar Paul are absent with steps.

Accordingly, absentee accused persons are allowed to be represented by their Ld. advocates.

No PWs are present.

Seen the petition No.370/2019 dated 02-05-2019 filed by Ld.counsel on behalf of M/S R.L.Construction U/S 451 r/w Sec 457 of the Cr.PC with the prayer to grant Zimma / return certain documents seized by CBI in connection with the instant case.

Register the said petition as Misc.(J) case and put up along with the petition and reply filed by the CBI.

Post the case to **16-07-2019** for evidence.

Summon the required witnesses. Prosecution side shall take necessary steps accordingly.

11-06-2019

Petitioner M/S R.L. Construction is represented by its Ld. engaged counsel. CBI is also represented by Public Prosecutor.

By this order, I would like to dispose of the Petition No.370/19 dated 02-05-19 filed by the petitioner M/S R.L. Construction U/S 451 r/w Sec 457 of the Cr.PC with the prayer to grant Zimma / return certain documents seized by CBI in connection with the instant case. By way of this said petition, it is also prayed that the petitioner may be allowed to obtain certified copies of some documents seized by the CBI. As a reply, CBI has also submitted a petition with the prayer to handover unrelayed upon documents to the person /department concerned from whom such documents were seized during the course of investigation.

Heard both the sides.

Perused records carefully.

It appears that the prosecution case in brief is that the CBI had received source information with the allegation that the accused Simanta Pratim Bora of N.F.Railway entered into criminal conspiracy with accused Biraj Hojai, a Contractor and other unknown persons and in pursuance with the criminal conspiracy, accused Simanta Pratim Bora abused his official position and have prepared false water supply log book purportedly showing supply of huge quantity of potable water through accused contractor on daily basis to various places during the period March, 2015 to June, 2016 in connection with certain contract agreement. On receipt of information, CBI registered a case and conducted an investigation into it. After completion of investigation, CBI submitted chargesheet against four accused persons to stand trial for commission of offences U/S 120B/201/420 IPC and U/S 13(2) r/w 13(1) (d) of the P.C.Act. During the investigation, the CBI had seized several documents from various sources in connection with the instant case. The contention of the Ld. Counsel for the petitioner M/S R.L.Construction is that the petitioner has executed certain works allotted by N.F.Railway and they have also

submitted running bills from time to time to the Railway authority for payment and payments were also received by them. The petitioner has no connection with the instant case and moreover, the subject matter of the instant case is no way connected to the petitioner. Since the petitioner has completed the work allotted to them, petitioner is required to prepare and submit the final bill before the Railway Authority. But the Railway Authority intimated the petitioner about the instant case and further informed that as per the instruction of CBI, they have sent the following documents to the CBI :-

- 1) Original Measurement Book No. (1) 14100 (2) 21483 (3) 18561 (4) 18665 (5) 17739 (6) 19341.
- 2) Log Book :Nil
- 3) Site Inspections by Higher Officials (Site Order Book) : 1(One) No in original.
- 4) File No. W/362/CON/Tank staging/LMG/III, Containing from page No.SN-01 to 2/361.

As the petitioner had already executed the work in question which was recorded in the measurement book, the petitioner could not submit the final bills due to seizure of measurement books and relevant files by the CBI. In that view of the matter, it is prayed by the petitioner for release of the documents seized as mentioned in Annexure- 2 and also mentioned in Schedule A to the petition, which are as follows:-

Annexure-2

- 1) One Register of N.F.Railway,Lumding Div., Labeled of "Water Supply Scheme at New Haflong. Contractor-M/S R.L.Construction"; SITE ORDER BOOK; AP.4/19/91/10/269 SEP. '07 100 lvs .,pertaining to work at New Haflong construction of RCC tank staging---water supply at New Haflong; Contract Agt.No.LMG/CON/LS/III/126 Dtd.21/02/2015.(Pg.No.1 to Page No.8 written and rest blank and cancelled).

- 2) File Case No. W/362/CON/Tank Staging/LMG/III/, of N.F.Railway (Engineering Branch), Lumding Div., containing documents pertaining to Tender No. DY. CE/CON/III/LMG/Water Supply/2014/96.;Contract Agt.No.LMG/ CON/LS/III/126 Dtd.21/02/2015. (Pg.No.SN-01 TO 2/361 & Note Sheet Pg.No.01 to Pg.No.16).
- 3) Measurement Book No. Con 18651 of N.F.Railway, pertaining to Contract Agt.No. LMG/CON/LS/III/126 Dtd.21/02/2015.(Sheet Nos. 1 to 100 plus 2 Nos. of cancelled extra sheets which are un-numbered)
- 4) Measurement Book No. Con 18665 of N.F.Railway, pertaining to Contract Agt.No. LMG/CON/LS/III/126 Dtd.21/02/2015.(Sheet Nos. 1 to 100 plus 2 Nos. of cancelled extra sheets which are un-numbered)

On the other hand, the contention of the CBI is that admittedly they have seized several documents from different sources during the investigation of the instant case. However, some of the seized documents are relied upon by the prosecution in support of the instant case, have been listed in the chargesheet. But some are unrelieved upon documents and same are kept in custody. The unrelieved documents are as follows:

(i) M.R.No.4/2017

Item No.4.Attendance Register of Labours.

Item No.6 One Log Book of Vehicles.

(ii) M.R.No.21/2017

Certified Account Statements of A/C No.
0763010197546 in r/o Shri Sankar Das, UBI, Haflong
Branch.

(iii) M.R.No.22/2017

Item No.7:- Statement of A/C No. 11878961500 in r/o Shri Biraj Hajoi, SBI, Maibang Branch.

(iv) M.R.No.132/2017

Item No.9:-Cheque No.475143 Dt.12/05/2016 for Rs.55,200/- issued by Sh.Suman Ch.Paul
Ac.No.11285074475 pay to Imtiyanger Ao.

Item No.10:- Transfer credit voucher
dtd.12/05/2016 credit in the AC.No.20137210549 of Shri Imtiyanger Ao.

(v) M.R.No.138/2017

Item No.3:- Measurement Book No. Con 18651 of N.F.Railway, pertaining to Contract Agt. No. LMG/CON/LS/III/126 Dtd.21/02/2015.

Item No.4:- Measurement Book No. Con 18665 of N.F.Railway, pertaining to Contract Agt. No. LMG /CON/LS/III/126 Dtd.21/02/2015.

(vi) M.R.No.141/2017

Item No.7:- Cheque No.454760 dt.11/12/2015 for Rs.60,000/- issued by Piku Majumder pay to Tarak Das.

The documents mentioned in Para (V) are required by the petitioner M/S R.L.Construction. As such, it is submitted by the CBI that aforesaid unrelayed upon documents be handed over to the person/ department concerned from whom such documents were seized with the condition that it may be kept under safe custody and same be produced before the court as and when required.

Having regard to the above, and taking note of the submissions of the parties that the CBI have seized the aforesaid documents mentioned in Para (V) from the authorities of N.F.Railway and the necessity of retaining such documents does not arise as the same are unrelayed documents, this Court made it clear that the CBI shall return the seized documents referred to in Para (V) to the person/ department concerned forthwith on condition of executing a bond of undertaking to produce the said documents before the Court as and when required.

So far, the prayer of the petitioner to obtain certain certified copies of documents is concerned, the CBI did not raise any objection. Therefore, liberty is granted to the petitioner to obtain certified copies of such documents mentioned in item 1 and 2 of Annexure 2 and Schedule-A, within a week from the date of depositing requisites with the concerned office/departments.

Accordingly, this Misc.(J) Case stands disposed of.