

“REPORTABLE”
*** HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. M. C. No. 2812/2007 & Crl M. A. No. 9992/2007

Date of decision : 29.04.2008

SHAGUFTA SHAMAS Petitioner
! Through : Mr. C.L. Raina, Adv.

Versus

\$ C.B.I. Respondent
^ Through : Mr. Harish Gulati, Adv.

And

+ Crl. M. C. No. 3248/2007 & Crl M. A. No. 11697/2007

ARIF-UD-DIN Petitioner
! Through : Mr. C.L. Raina, Adv.

Versus

\$ C.B.I. ANTI CORRUPTION BRANCH, NEW DELHI
^ Respondent
Through : Mr. Harish Gulati, Adv.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Since both the petitions have been filed by respective petitioners seeking quashing of order on charge dated 13.8.2007 and consequent charge framed on 29.8.2007 and also the proceedings in C.C. No. 21/03 titled CBI v. S.Z. Fazil etc. pending in the court of Special Judge CBI, Patiala House Courts, Delhi, both the petitions shall be disposed of by me vide this common order.
2. First Information Report being Crime No. R.C.-DA1-2000-A-0071 was registered at Delhi Special Police Establishment C.B.I. on 14.12.2000 at about 5.15 p.m. under sections 420/467/471/120B IPC and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act. After completion of the investigation chargesheet has been filed in the court.
3. The prosecution case as against the present petitioner is that Sh. S.Z. Fazil, Assistant Station Director, CPC Doordarshan, Asiad Village, New Delhi, entered into

criminal conspiracy with co-accused Asgar Khan and sanctioned and paid Rs. 8.90 lacs as TA/DA, transport charges, boarding/costume charges, coordinator fees on the basis of false, forged and fabricated receipts prepared by Sh. Asgar Khan the coordinator of the programme "Sham-e-Kashmir" without verifying their genuineness. Out of total payments made a sum of Rs. 1,52,400/- was submitted as a receipt by petitioner Shagufta Shamas regarding a contract entered with her to provide two times meals with breakfast to 127 artists for six days, from 11.1.1999 to 16.1.1999. Against this receipt a cheque for the said amount was issued in favour of Shagufta Shamas which was collected by co-accused Waheed Jeelani on the basis of an authority letter and the said cheque was encashed by her by depositing the same in her saving bank account No. 29264 maintained by her in Jammu & Kashmir Bank Ltd. Srinagar. The investigation revealed that the receipt of the said amount on the basis of which payment was received was fabricated.

4. Allegations against the other petitioner Arif-ud-din are that a cheque for Rs. 1,35,000/- was issued in his

name which was actually collected by Sh. Waheed Jeelani co accused on the basis of an authority letter which was got encashed by him by opening an account in the Jammu and Kashmir Bank Ltd. Lajpat Nagar Branch, New Delhi bearing No. 6728 in his name (Arif-ud-din). These amounts were subsequently withdrawn by co accused Waheed Jeelani.

5. Learned counsel for Shagufta Shamas has urged that prosecution has relied upon a receipt issued by Director CPC Doordarshan, Asiad Village, New Delhi, in respect of cheque No. 071534 dated 15.1.1999 for an amount of Rs. 1,52,400/- which purportedly bears the signatures of the petitioner. Similarly prosecution has relied upon reply sheet allegedly bearing signatures of the petitioner and the authority letter allegedly issued by the petitioner in favour of Sh. Waheed Jeelani. But the prosecution did not send the signatures appearing on these documents with the specimen and admitted signatures of the petitioner for comparison purposes specially when the petitioner disputed her signatures on the said documents. This

is a deliberate omission on the part of the CBI so as to frame the petitioner falsely in this case.

6. Similar are the arguments addressed by the learned counsel for the petitioner Arif-ud-din and therefore, it is prayed that the order of the court dated 13.8.2007 and consequent charge framed by the court on 29.8.2007 finding sufficient material to frame charge against the petitioners under Sections 419/420/468/471/120 B IPC read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act be quashed.

7. CBI has challenged the maintainability of these petitions, on the grounds that an alternative relief by way of revision was available with the petitioners but instead they have invoked the inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code (Cr.P.C.). Inherent jurisdiction of this Court can be invoked where no other remedy is available to the petitioners. I find much force in these submissions.

8. Section 397 of the Cr.P.C. empowers the High Court

or a Sessions Judge to call for and examine the record of any proceedings before inferior Criminal Court within its jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such Court and after calling record the court can direct the execution of any sentence or order be suspended and if the accused is in confinement, it can order for his release on bail pending the examination of the record. Section 401 of the Cr.P.C. speaks of High Courts's discretionary powers of revision conferred on a court of appeal.

9. Thus, it is clear that the petitioners have challenged the order of the trial court passed on charge and also the charge framed consequent thereon including the proceedings conducted by the court. Therefore, the appropriate remedy available to the petitioners was to file a revision petition before this Court rather than to invoke the provisions of Section 482 of Cr.P.C. In *Kavita v. State*, 2000 Cr. LJ 315 (Delhi) this Court observed that extraordinary powers under Section

482 of Cr.P.C. have to be exercised sparingly and should not be resorted to like remedy of appeal or revision. This amounts to abuse of process of the court. However, this power can be exercised by the court when there is no other remedy available to the aggrieved party. Powers being extraordinary one, these powers are to be exercised sparingly and therefore whenever other remedy is available, the court should restrain itself in exercising its inherent powers under Section 482 of Cr.P.C. It is not disputed that some times to avoid abuse of the process of the court this court in exercise of its inherent powers can quash the proceedings but its interference is justifiable only when the complaint or the FIR does not disclose any offence or is frivolous, vexatious or oppressive.

10. In the present case, I do not find any abuse of law which may need any interference by this court in exercise of its power under Section 482 of Cr.P.C.. Therefore, the petitioners have chosen a wrong forum for challenging the court's orders under Section 482 of Cr.P.C.

11. Coming to the merits, the learned trial court has considered all the objections of the petitioners in detail in her order dated 13.8.2007. The court has taken serious view about the conduct of the investigation agency in not sending documents for necessary comparison of the disputed signatures with admitted signatures of Shagufta Shamas but at the same time she discussed the other evidence available on the record against her which includes the evidence collected to establish her identity. The court also took notice of the fact that Shagufta Shamas made a complaint at Police Station Kothi Bagh Srinagar on 1.7.2006 and FIR 65/2007 was registered under the orders of Srinagar Court on her complaint. This complaint was filed by Shagufta in July 2006 i.e. much after she had been arrested in this case on 27.4.2006. Under these circumstances, the CBI could not collect the original documents as directed by this Court in its earlier order dated 12.7.2006 as the documents were already seized by the investigating agency of Police Station Kothi Bagh Srinagar in the above said FIR. Court also found on assessment of prima facie

evidence various discrepancies regarding her identity and her age which the petitioner has been disputing since after her arrest. The trial court has rightly assessed the prosecution evidence prima facie to find out if any charges were made against Shagufta Shamas. I find no infirmity or illegality in the order of the trial court.

12. Allegations as against the petitioner Arif-ud-din who according to the Court is probably the brother of Shagufta are almost similar in nature. Both these persons have opened accounts in their names in Jamma and Kashmir Bank one at Srinagar and the other at Delhi and authorized Waheed Jeelani to collect these cheques from accused No. 1 S.Z. Fazil, Assistant Station Director, CPC and deposited in their accounts and these amounts were withdrawn by them from their respective banks. Therefore, prima facie, there appears to be conspiracy on the part of Shagufta Shamas as well as Arif-ud-din with other co-accused persons in the entire transaction and the court therefore rightly proceeded to frame charges against Shagufta Shamas and Arif-ud-din under

Sections 420/467/471/120B IPC read with section 13(2) and 13(1)(d) of the Prevention of Corruption Act. The order of the court is reasonable and is based on prima facie evidence after proper appreciation of evidence collected by the CBI during investigation.

13. I find no infirmity or illegality in the order dated 13.8.2007 and consequent charge framed on 29.8.2007. Hence, petition being without merits is hereby dismissed.

14. Registry is directed to place copy of the order in both the files.

15. Attested copy of the order be sent to the trial court as well as to the CBI.

**ARUNA SURESH
(JUDGE)**

**April 29, 2008
jk**