

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 17<sup>th</sup> November ,2009*  
*Judgment Delivered on: 19<sup>th</sup> November, 2009*

+ CRL.REV.P.403/2003 & CRL.M.A.717/2003

STATE THROUGH CENTRAL BUREAU OF INVESTIGATION

..... Petitioner

Through: Mr.Vikas Pahwa, ASC with  
Mr. Biswajit Kumar Patra,  
Mr.Sarthak Nayak, Advocates.

Versus

INDER KUMAR SHARMA

..... Respondents

Through: Mr.Manish Vashist &  
Mr.Sameer Vashist, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers 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

INDERMEET KAUR, J.

1. Central Bureau of Investigation (CBI) has impugned the order dated 31.1.2003 passed by the Special Judge, CBI wherein the non-applicant Inder Kumar Sharma had been discharged on the ground of an invalid sanction under Section 197 of the Cr.P.C.

2. Petitioner at the relevant was the Deputy Director (Lands) in the Delhi Development Authority (DDA). Allegations, in short, against him are that he i.e. Inder Kumar Sharma along with three other co-accused namely D.P.Bahuguna, Om Prakash Saklecha and

Satbir Singh Tyagi had conspired with each other during the month of August 1978 to show the unauthorized possession of co-accused Om Prakash Saklecha S/o Sh.V.K.Saklecha, the then Chief Minister of Madhya Pradesh over DDA land i.e. a 150 square yards plot in Ashok Nagar, Block D, Naiwala Estate. In furtherance of the common object of this conspiracy the co-accused along with the present petitioner had manipulated false proceedings, assessed damages and initiated proceedings for eviction so as to allot a commercial plot to Om Prakash Saklecha.

3. On 16.8.1978 Sh. Prakash Chand Gupta, Tehsildar posted in the DDA was summoned in the room of D.P.Bahuguna where L.K.Joshi and the present petitioner were also present. A slip containing the name of Saraswati Devi Bolya and Ravinder Kumar was given to him by Mr.Bahuguna with the direction to get a complaint prepared showing the unauthorized possession over the said DDA land by those persons and to initiate eviction proceedings against them as also to impose damages against them. The presence of the petitioner in this meeting was the first allegation levelled against him.

4. The second allegation leveled against him is that on 16.10.1978 Sh.Om Prakash Saklecha had appeared before Estate Office and produced a power of attorney dated 12.10.1978 purported to have been issued by Sarsawati Devi in his favour wherein it had been claimed that she was in possession of 150 sq.

yards of land of which 50 sq. yards had been built up and 100 sq.yards of land is vacant; signatures of Saraswati Devi appearing on this power of attorney were forged by O.P.Saklecha; this power of attorney was attested by Mr.R.S.Khanna, M.M. Inder Kumar Sharma the present petitioner had made a false endorsement to the effect that Saraswati Devi had signed on this power of attorney in his presence.

5. This was the sum and substance of the allegations which had been leveled against the present petitioner.

6. The fate of the other three co-accused is as follows :-

Sh.D.P.Bahuguna stands discharged vide a judgment of this Court reported in 1996 II AD( Delhi) 293 Dwarika Prasad Bahuguna vs. The State; he has also died. Sh.Satbir Singh Tyagi has also since died. The present petitioner stood discharged by the impugned order. O.P.Saklecha was the only person facing trial and vide judgment dated 31.8.2005 he also stands acquitted.

7. Counsel for the petitioner has drawn the attention of the Court to the order dated 08.3.1984 passed by the Special Judge. This was the first round of the litigation vide which the petitioner stood discharged for an invalid sanction under Section 6 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C.Act). It had been held that the petitioner being an employee of the Government of Madhya Pradesh the Sanctioning Authority was the State Government and not the Central Government; the

sanction qua the petitioner was invalid; he was accordingly discharged.

8. Supplementary charge sheet dated 11.12.1995 had thereafter been filed against the petitioner. He had retired from service on 31.12.1993; in these circumstances the charge sheet had been filed without a sanction because as per the Department no sanction for prosecution was required for a retired public servant.

9. On behalf of the petitioner it is submitted that under Section 197 of the Cr. P.C. a sanction is required for a past government employee as well; for the offences punishable under the Indian Penal Code a sanction is pre-requisite for an erstwhile public servant as well but the supplementary charge sheet had been filed without the requisite sanction which itself invalidates the charge-sheet ipso facto. Even otherwise the charge of conspiracy under Section 120-B of the IPC could not have been proved in the absence of any other co-accused; a conspiracy has to be between one or more persons and a single person by himself/herself cannot enter into a conspiracy; this is evident from the definition of criminal conspiracy as contained in Section 120 A of the IPC; for this proposition reliance has been placed upon AIR 1956 SC 33 Topandas vs. State of Bombay. On merits also no case is made out against the present petitioner as the judgment dated 31.8.2005 while acquitting co-accused O.P.Saklecha had disbelieved the

allegedly forged document i.e. the power of attorney Ex.PW-7/C purported to have been forged by O.P.Saklecha and verified by the present petitioner; this document having been disbelieved by the Court of Special Judge against which no appeal has been preferred by the department; it is clear that that the same document cannot be looked into qua the role of the present petitioner. Apart from this the only other allegation against the petitioner that he had participated in the meeting on 16.8.1978 which circumstance had also been disbelieved qua the co-accused and would not have any bearing qua the role of the present petitioner. The incident relates to the year 1978 i.e. the more than 31 years old and even on account of delay this petition is liable to be dismissed. Reliance has been placed upon JT 2008(8) SC 109 Pankaj Kumar vs. State of Maharashtra & Ors. to support this submission.

10. Counsel for the CBI has not disputed the factual position as detailed above. It is not in dispute that out of the four persons who had been charged sheeted two had died, one i.e. Om Prakash Saklecha stands acquitted and the present petitioner had stood discharged vide order dated 31.1.2003 which order has become the subject-matter of this revision petition. It is also not in dispute that the disputed document i.e. power of attorney Ex.PW-7/C purported to have been forged by O.P.Saklecha was not relied upon by the Special Judge. The Court had disbelieved this document; this was primarily for the reason that the specimen handwriting of

O.P.Saklecha had been obtained during the course of investigation by the Investigating Officer without prior permission of the Court; in view of the judgment of the Supreme Court reported in 1994 5SCC 152 Sukhvinder Singh & Ors. vs. State of Punjab such a specimen was disregarded. On merits also the power of attorney had been disbelieved as no witness i.e. either Saraswati Devi, the executant of the document or Shri R.S.Khanna, M.M. who had identified the deponent of this power of attorney had been produced by the prosecution as a witness.

11. This being the scenario, it is clear that the revision petition filed by the Department also has to meet the same fate. The acquittal of Om Prakash Saklecha while disbelieving this power of attorney which is the substantial allegation leveled against the petitioner where he had fraudulently verified the presence of Sarsawati Bolya having been disbelieved by the Special Judge and the matter having attained finality; the CBI not having filed any appeal against the said order, it is clear that this allegation cannot be proved by the prosecution against the petitioner as well. The other allegation of the petitioner having participated in the meeting dated 18.8.1978 has also to necessarily fall as this meeting was a pre-requisite which had culminated in the alleged forgery of this power of attorney. These circumstances have been disbelieved in the judgment of the Special Judge. In this view of the matter, even assuming that the order dated 31.1.2003 discharging the petitioner

for an invalid sanction is liable to be set aside, it would have no purpose as the substance of the allegation against the petitioner stands disproved. As such it is not necessary to go into either the question of a valid sanction qua the petitioner or on the impact of delay as on merits this court feels that in the factual matrix which has been built up the impugned order dated 31.1.2003 calls for no interference.

12. Revision petition is accordingly dismissed.

(INDERMEET KAUR)  
JUDGE

19<sup>th</sup> November, 2009  
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