

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ Crl. Rev. No. 812/2003**

Judgment reserved on: 25.09.2008

% Judgment delivered on: 09.02,2009

State ..... Appellant  
Through: Mr. Pawan Sharma, Addl. P.P.  
Mr. V.K. Malik for the police officials

versus

Arvind Kumar Sharma & others ..... Respondents  
Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. Anuraj Jain, Advocate for respondent Nos. 1  
& 2.

**CORAM:**  
**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

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|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not?                                        | Yes |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J.**

1. By way of this criminal revision petition filed under Section 397/401 of the Code of Criminal Procedure

read with Section 482 Cr.P.C. the State/revisionist seeks to challenge the order dated 13.08.2003 passed by the court of Sh. P.K. Bhasin, Special Judge, Delhi whereby the learned court has discharged respondent Nos. 1 and 2 and framed charges only against one Mr. Pawan Kumar, respondent No. 3. The State also seeks quashing of the said order so far as it has directed notice against the police officials under section 250 of the Code of Criminal Procedure. The State also seeks direction for framing of charge under Section 120-B of IPC against respondent No.3.

2. Brief facts relevant for deciding the present revision, are as under:-

3. On 30.12.1996 a raid was conducted on the basis of the complaint of Rakesh Kumar as the co-accused Pawan Kumar had raised a demand of Rs.500/- for getting the bus of the complainant cleared for the purposes of pollution. The statement of the complainant was recorded by Inspector Rajinder Singh, who was also part of the Surveillance Team. A trap was laid and a signed note of Rs.500/- was handed over to the complainant prior in hand for bribing the accused persons. In the Course of

pollution Check of the vehicle of the complainant the receipt in the sum of Rs.50/- was handed over to the accused Arvind Kumar Sharma and the accused Arvind Kumar gave that receipt to accused Rajan Thomas and a signal was made to the complainant and the complainant came there and the respondents gave original parchi/receipt of Rs.50/- to the complainant. The accused persons were thereupon challenged by the Surveillance Team as all the three accused persons conspired together and had taken the bribe of Rs.500/- for clearance of the bus of the complainant for pollution purposes and issuance of certificate in that regard. On personal search, the signed currency note of Rs.500/- was recovered from the possession of Sh. Pawan Kumar, the pollution check report was also seized and the carbon copy of the said receipt in the sum of Rs.50/- was recovered from the person of accused Rajan Thomas, on the back of which, the figure of 5 had been written encircled by accused Pawan Kumar.

4. The respondent accused persons were apprehended on the basis of the complaint received from Sh. Rakesh Kumar (complainant) in regard to the demand of the illegal gratification received by the accused persons for getting

his vehicle cleared and for issuance of pollution clearance certificate. The aforesaid act of taking of bribe and clearance of bus for pollution check and issuance of pollution certificate in that regard, was committed in conspiracy by all the accused persons. The statement of Panch Witnesses/Independent Witnesses, Investigating Officer and the supplementary statement of the complainant was recorded and on completion of the investigation, the charge sheet was submitted before the learned Trial Court. The learned Trial Court heard the arguments on the question of charge and after hearing, the learned Court had passed an Order dated 13.08.2003, whereby the respondent no. 1 and 2/accused persons have been discharged and charge against accused Pawan Kumar, respondent No.3 has been framed u/s 7/8/13 [1] [d] of the POC Act while Section 120-B IPC was dropped. The learned Trial Court while passing the order directed show cause notice under Section 250 Cr.P.C. against the ACP Rohtas Singh, who was incharge of the Surveillance Team and the Raid Officer/Inspector Rajinder Singh for awarding compensation to the respondents no. 1 and 2/accused

persons being responsible for their illegal arrest and prosecution without there being any reasonable ground.

5. Mr. Pawan Sharma, Additional Public Prosecutor for the State contended that learned trial court has not properly appreciated the statement of the witnesses wherein complicity of respondent Nos. 1 and 2 who were the concerned officials of the Transport Department has been clearly shown in the said corruption case but ignoring the clinching evidence on record, the learned trial court framed charges only against co-accused Pawan Kumar who was merely a conduit acting for and on behalf of the said two officials to collect the bribe money. Counsel for the State further submitted that a clear cut case of conspiracy was made out and recovery of receipt of Rs.50/- bearing a figure of "5" on its back from the possession of respondent No.2 Mr. Rajan Thomas clearly pointed to the fact that Mr. Pawan Kumar, co-accused had written the said figure "5" in acknowledgment of the receipt of bribe money of Rs.500/- on behalf of both the officials. Counsel thus urged that the said amount of Rs.500/- which was found in possession of Mr. Pawan Kumar was in fact meant to be shared amongst all the

accused persons and the same was not meant for Pawan Kumar alone, who had no authority to issue the pollution clearance certificate. Counsel for the State further submitted that in view of the settled legal position the trial court at the time of framing of the charge cannot enter into detailed analysis of the evidence and at that stage only *prima facie* view has to be taken based on the material on record disclosing commission of offence by the accused persons.

6. With regard to the other contention of trial court directing issuance of notice under Section 250 Cr.P.C. against the police officials counsel submitted that no such notice can be issued against the police officials. The said police officials at best could have been prosecuted under Section 340 of the Code of Criminal Procedure if they were found to have acted in excess of their powers or were found to have abused their powers in the course of committing raid on the accused persons. Counsel for the state also submitted that issuance of such a notice under Section 250 Cr.P.C. against the members of the raiding team would not only discourage and demoralize the diligent police officials but would also send a wrong signal

to the police force. Counsel also submitted that the trial court should have framed charge against respondent No.3 Pawan Kumar under Section 120-B IPC as all the co-accused persons had conspired together to take bribe from the complainant Rakesh Kumar.

7. Opposing the said revision petition Mr. Sandeep Sethi, Senior Counsel appearing for respondent Nos. 1 & 2 strongly contended that while exercising revisional powers the Court has a very limited scope to interfere with the order of the trial court framing charges or discharging the persons accused of offence. It is only where the order of trial court is totally perverse, irrational or illegal on the very face of it, then only the revisional court may interfere and not otherwise, the counsel contended. The other contention of the counsel for the respondent Nos. 1 & 2 was that even in the given facts and circumstances two possible views can be taken, then, the revisional court will not interfere merely if the other possible view which was not taken by the trial court could be the better or more preferred view. Counsel strengthening his argument further submitted that it is only in a case where the view taken by the trial court under any circumstance could not

be the permissible or possible view, then, only the same can be interfered by this court in exercise of its revisional powers. Referring to the impugned order on charge counsel also submitted that the complainant was known to the Incharge of the surveillance team, namely, ACP Rohtas Singh and he had complained to the said surveillance team only against Pawan Kumar, Home Guard who indulged in getting vehicles cleared after taking money from the owners/drivers. Counsel further submitted that in the statement given by the said complainant and recorded by the Inspector Rajinder Singh who was also member of the Surveillance team, the allegations made by him were only against Pawan Kumar and not against the other two officials of the Transport Department. Counsel further submitted that merely because the receipt of Rs.50/- was found to have been recovered from the possession of Mr. Rajan Thomas it could not prove his involvement in accepting the bribe money. Counsel also went to the extent of submitting that even insertion of figure "5" on the backside of the receipt by Mr. Pawan Kumar alone could not have been sufficient enough to establish the complicity of the said two officials of the transport department.

Counsel for the respondent further submitted that the surveillance team comprising of three persons had watched the entire episode and it is not the case of the said team that any money was demanded by either of the respondent Nos. 1 and 2 in their presence or they had noticed any signal being passed by Mr. Pawan Kumar to the other two Inspectors or any circumstance showing the conspiracy between Pawan Kumar and the other two transport officials. Counsel thus submitted that merely based on speculation or suspicion no charge could have been framed against respondent Nos. 1 and 2 and accordingly no illegality or perversity can be found in the order passed by the learned trial court in discharging respondent Nos. 1 and 2 from the said case.

8. I have heard learned counsel for the parties at considerable length and perused the record.

9. In a criminal trial, charges form the foundation of the accusation and therefore, the trial courts have to be very careful at the stage of framing charges. The Trial Court has to carefully see that prima facie evidence is available on record to proceed against a

person charged of an offence. If a prima facie material is not available on record, then the framing of charge amounts to illegal exercise of jurisdiction and conversely if prima facie material is available on record then not framing a charge or discharging a person would also amount to illegal exercise of jurisdiction.

10. It is a settled legal position that at the time of framing of charge the court is not to sift the evidence or to scrutinize the material on record so meticulously or critically to find as to whether the prosecution will ultimately succeed in the case or not. At the time of framing of charge, the allegations made and the evidence collected by the police are prima facie taken into consideration to see whether prima facie material exists for framing a particular charge. In this regard, the Hon'ble Apex court in **State Vs. S. Bangarappa-(2001) 1 SCC 369** observed as under:

21. Time and again this Court has pointed out that at the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its

worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further (vide *State of M.P. v. Dr Krishna Chandra Saksena*<sup>4</sup>).

11. The learned trial court in the present case came to the conclusion that there is absolutely no material against respondent nos. 1 and 2 justifying framing of any charges against them. To reach at this conclusion, the court found that the complainant never alleged that any of the two accused inspectors, respondent nos. 1 and 2 herein had demanded any money from the complainant directly and even the co-accused Pawan also did not mention the name of the said two inspectors to the complainant, that they would be sharing the bribe money with him. The court also found that there is no evidence collected by the surveillance team to show that the co-accused Pawan after taking Rs.500/- from the complainant had passed over any money to the said police inspectors as part of their share money, nor even any signal was given by the other co-accused Pawan to the two inspectors at

the time of the receipt of the said bribe money of Rs.500/-. No conversation between the co-accused Pawan and these two inspectors was also heard either by the complainant or the other witnesses. Even the pollution test was cleared in routine and merely because carbon copy of the deposited receipt of Rs.50/- was recovered from the possession of respondent no.2 the same would not infer that there was any kind of conspiracy or understanding between the co-accused Pawan Kumar and two police inspectors. Based on these facts the trial court found that there was no material available on record to frame charges against the respondent nos. 1 and 2.

12 . It is a matter of common knowledge that conspiracies are never hatched in the open, by their nature, they are secretly planned at some remote place or may be near the scene of the occurrence before the actual commission of offence. In this regard, the Hon'ble Apex Court in **Mohd. Khalid Vs.**

**State of West Bengal-(2002) 7 SCC 334**, observed

as under:

**24.** Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. (See *E.K. Chandrasenan v. State of Kerala*<sup>6</sup>.)

**25.** In *Kehar Singh v. State (Delhi Admn.)*<sup>7</sup> (AIR at p. 1954) this Court observed: (SCC pp. 732-33, para 275)

"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

Conspiracy can be proved by circumstances and other materials. (See *State of Bihar v. Paramhans Yadav*<sup>8</sup>.)

To establish a charge of conspiracy *knowledge* about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, *intent* of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a *particular* unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it

would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

13. The grant of pollution control certificates is a part of the routine duty of the staff of the transport authority comprising of pollution inspectors and other staff members and on any single day many vehicles pass through their hands for the grant of pollution certificates. The complainant Rakesh Kumar who had gone for the pollution check up of his bus bearing no. DL-1P 2703 at Sheikh Sarai Transport Authority had a bad experience with the staff of the said authority when earlier he had gone to obtain one such clearance for his vehicle. In his statement he said as under:

" Earlier, on one occasion, my vehicle had been declared failed on my not making the payment and I had suffered the losses of many days business."

14. With the said experience at the back of his mind he came across one Pawan who told him that on

payment of Rs.500/- his vehicle will be cleared of the pollution test and when the complainant said that the amount of Rs.500/- is a big amount the said co-accused retorted back by saying that there are 2-2 inspectors to share the said money. The portion of said statement of Rakesh Kumar is reproduced as under:

“In the last week when I got checked the Pollution check of my another vehicle, I had learnt that one person namely Pawan, who uses to assist the Pollution Inspector, uses to take money and get the vehicle passed. Today also this man is standing with the Pollution Inspector. On seeing me heading towards him, he questioned-do you want to get passed your vehicle's Pollution Test. On my saying yes, he asked that it will cost Rs. five hundred, I will get the vehicle passed. I asked him that five hundred is a big amount. On this, he asked that there was two-two Inspectors, what can be done in the amount less than it.”

15. The said background under which the complainant had approached the ACP who happened to come across the complainant on the morning of the same day and agreed to apprehend the culprits cannot be overlooked. After constituting the raiding party, Shri Rohtas Singh, ACP made his own signature on the one corner of note of Rs.500/-. It was then returned to the

complainant which was ultimately to be given to co-accused Pawan as a bribe money. The said note of Rs.500/- was delivered by the complainant to Shri Pawan after the same was kept in the relevant pollution checking papers, which was ultimately kept by the said co-accused Pawan in the left side pocket of his shirt. After checking the pollution, one slip was given to inspector Sharma with whom Pawan had some talk and thereafter the said slip was passed on to other inspector Ranjan Thomas with whom also Pawan had some conversation after drawing his attention towards the complainant. It is also not in dispute that said note of Rs.500/- was recovered from Pawan after his personal search and carbon copy of the deposit slip was recovered from Ranjan Thomas, Inspector/respondent no.2. On the reverse of this deposit slip word 'five' was found mentioned after it was encircled. This very slip was passed on after writing 'five' on the reverse of the same by Pawan to Inspector Sharma and then to Ranjan Thomas.

16. The effect of the document in which the complaint was made by the complainant, instant

constitution of a surveillance team, representation of the co-accused that the money will be shared with the two police inspectors, handing over of the signed currency note of Rs.500/- by the complainant to the co-accused Pawan Kumar who after receipt of the same acknowledged by writing word 'five' by encircling it on the back of the deposit slip to indicate the co-accused about the receipt of bribe money, some unheard communication between the co-accused with the other two inspectors and then recovery of the carbon copy of the deposit receipts from pollution inspector Ranjan Thomas, cannot be considered to be not constituting a prima facie case for not charging all the accused persons for the commission of the offences punishable under Section 7/8/13 (1) (d) of the Prevention of Corruption Act read with Section 120-B IPC. It appears that the trial Court had improperly under rated the value of the said evidence and therefore, illegally exercised the jurisdiction by discharging the accused Arvind Sharma respondent no.1 and Ranjan Thomas respondent no.2.

17. It is no doubt true that normally the revisional Court would not interfere, where the view taken by the

trial Court is one of the possible views and the revisional Court would interfere only where the order passed by the trial Court is perverse, irrational and illegal on the very face of it as argued by the counsel for the respondent. The object of the revisional jurisdiction very aptly defined by the Hon'ble Apex Court in **Jagannath Choudhary Vs. Ramayan Singh-(2002) 5 SCC 659** is as under:

**9.** Incidentally the object of the revisional jurisdiction as envisaged under Section 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of (*sic* or) apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. (See in this context the decision of this Court in *Janata Dal v. H.S. Chowdhary*<sup>4</sup>.) The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the Court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction.

18. In my considered view the aforesaid circumstances and the material placed on record by the prosecution at the stage of framing of charge was sufficient enough to form a prima facie view to frame charges against the accused persons and as already discussed above at the stage of framing of charges the trial Court is not to weigh the evidence in such a fine scale to ascertain whether such an evidence will ultimately result into conviction of the accused or not. The position would have been different had the material on record even if proved under no circumstance can result in the conviction of the accused. The trial court in such a circumstance can discharge the accused at the stage of framing of charge. The present case does not appear to be one such case where such a view could be formed. Indisputably, the Home Guard Pawan was not in a position to grant pollution certificate unless the pollution inspectors were in league with him. I also do not find any justification in the observation of the learned trial court stating that once the vehicle had qualified the test of pollution, therefore, where was

the need to bribe the officers. One cannot be oblivious of the fact that in most of the cases the corrupt officers indulge into corruption even where the citizens are legally entitled to get their job done. This is an irony of our Nation, where the citizens have to bribe unscrupulous and corrupt Govt. officials for seeking many types of certificates, licenses, allotments, clearances, etc. to which they are otherwise legitimately entitled to. The bribery and corruption are so rampant and with a view to avoid unnecessary harassment and delays the people are forced to grease the palm of corrupt officials and the licensing authorities working under the control of the transport department are no exception to this syndrome.

19. In the light of the above discussion, I am satisfied that the present revision petition filed by the State deserves to be allowed. The matter is remanded back to the learned trial court to frame charges against accused nos. 1 and 2 under Sections 7/8/13 (1) (d) of

the Prevention of Corruption Act. The trial court shall also frame charges against the respondent no.1 and the other respondents under Section 120-B IPC. I further set aside the order of the trial court directing show cause notice against respondent nos. 1 and 2 under Section 250 of the Cr.P.C. with the liberty to the trial court to take a view in this regard at the time of passing of the final order.

20. With these directions the present petition stands disposed of.

**February 09, 2009**  
Pkv/mg

**KAILASH GAMBHIR**  
**JUDGE**