

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(Crl) 631/2008**

Reserved on: October 5, 2009

Pronounced on: October 9, 2009

SHRI PRATAP NARAYAN. Petitioner

! Through: Mr. Arvind K. Nigam, Sr.
Advocate with Mr. Sampat Kumar
Nigam, Advocate

Versus

\$ STATE THROUGH CBI Respondent

^ Through: Mr. Vikas Pahwa, Advocate,
Standing Counsel for CBI with
Advocate BIs wajit Kumar Patra.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

This is a petition under Article 226 of the Constitution,
read with Section 482 of the Code of Criminal Procedure,

seeking quashing qua the petitioner of R.C. No.11/88, pending in the Court of Special Judge, Delhi.

2. At the relevant time, the petitioner was working as Executive Director of Fertilizer Coordination Committee (hereinafter referred to as 'FICC'), which was constituted by Government of India, Ministry of Chemical & Fertilizers, to administer and operate the Retention Price Scheme of the government for fertilizers. The functions to be performed by F.I.C.C. included fixation of ex-factory price of fertilizers and payment of subsidy to the manufacturers of fertilizers. One Shri P.K. Parmar, Managing Director of Punjab Phosphate Private Limited submitted claims for grant of subsidy for the fertilizers alleged to have been produced by the Company during the period from December 1980 to July 1981. The case of CBI, as disclosed in the charge-sheet and the reply filed in this court is that the petitioner was party to a criminal conspiracy, pursuant to which Shri P.K. Parmar, Managing Director of Punjab Phosphate Private Limited and others submitted bogus subsidy claims, by falsely showing production and sale of Single Super Phosphate (hereinafter referred to as 'SSP') and fraudulently and dishonestly cheated Government of India of a sum of Rs. 3,33,45,282/- by

way of bogus / fake subsidy claims. According to the CBI, the petitioner in criminal conspiracy with Shri P.K. Parmar and others abused his official position as a public servant and facilitated Shri P.K. Parmar in obtaining bogus subsidy claims.

3. The scope of exercise of power under Section 482 Cr. P.C. and the categories of cases where the High Court may exercise power under it, relating to cognizable offences, to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in *State of Haryana v. Bhajan Lal*; AIR 1992 SC 604. The illustrative categories indicated by the Hon'ble Supreme Court are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section [156\(1\)](#) of the Code except under an order of Magistrate

within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

4. In *R. Kalyani v Janak C. Mehta & Others*; (2009) 1 Supreme Court Cases 516, the Hon'ble Supreme Court summarized the proposition of law on the subject as under:

“(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an

order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

5. While exercising jurisdiction under Section 482 of the Code, the High Court should not normally embark upon an enquiry to find out whether the evidence sought to be produced by the prosecution is reliable or not or whether it would be possible to sustain the accusation on a reasonable appreciation of the evidence. Appreciation of evidence is the function of the Trial Court and not of the High Court exercising jurisdiction under Section 482 of the Code. Though the powers of the High Court under Section 482 of the Code are quite wide, they need to be exercised with due caution and should not be used to stifle a legitimate prosecution. It is not appropriate for the High Court to analyse the case of the prosecution on probabilities and to come to a particular conclusion, an assessment of the material produced by the prosecution. The purpose of empowering the High Court, to quash FIR and/or charge-sheet/complaint is that the court proceedings should not be

allowed to be used as a tool of harassment or persecution. If on a consideration of the allegations it appears to the High Court that ingredients of the offence or offences alleged to have been committed by the petitioner are made out and there is no material to show that the prosecution is mala fide, frivolous or vexatious, there would be no justification for interference by it. Of course, if the allegations made against the petitioner even if taken on their face value do not constitute the offence of which cognizance has been taken or do not disclose essential ingredients of the offence with which he is charged or are ex facie absurd or inherently improbable, it is open to High Court to quash the same in exercise of inherent powers under Section 482 of the Code.

6. Ordinarily, an accused against whom criminal proceedings are instituted should be tried in accordance with the procedure prescribed under the Code of Criminal Procedure and the High Court should be reluctant to interfere with such proceedings at an interim stage. It is only the extreme cases which warrant interference by the High Court in exercise of the powers u/s 482 of the Code of Criminal Procedure. The Court would normally interfere only where it is satisfied that continuance of criminal proceedings

would amount an abuse of the process of the court or that the quashing of the impugned proceedings are likely to result in securing the ends of justice. In *M/s. Medchl Chemicals & Pharma Pvt. Ltd. Vs. M/s. Biochemical E. Ltd.* 2000 (3) SCC 269, the Hon'ble Supreme Court held that exercise of jurisdiction as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a Rule and cases for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. Undue expansion of this jurisdiction is neither practicable nor warranted. While exercising power u/s 482 of the Code, the court is required to examine the allegations in their entirety and has no authority or jurisdiction to examine their correctness. Whatever appears on the face of the charge-sheet should be taken into consideration without any critical examination of the same.

7. The charge attributed to the petitioner is sought to be proved by the following evidence.

- (i) No Single Super Phosphate was actually produced by Punjab Phosphate Private Limited during the period in question and this fact was very much in the knowledge of the petitioner as

Chief Agriculture Officer, Amritsar had been regularly informing FICC that this company was not manufacturing and selling any SSP fertilizer and was in fact submitting Bogus claims for obtaining subsidy.

- (ii) The Chief Agriculture Officer was the Verifying Authority on behalf of the state government in respect of subsidy claims and Directorate of Industries was not competent to verify such claims. Despite that, the petitioner directed processing of the very same subsidy bills, which had earlier been returned by FICC for want of verification by Chief Agriculture Officer, without the bills having been verified by the Verifying Authority.
- (iii) Though the letter dated 28.10.82 was not addressed to the petitioner, it was accepted directly by him, bypassing the regular office procedure for receipt of such documents. The letter dated 28.10.82 was not received through regular office channel and was brought directly by Shri P.K. Parmar, Managing Director of

Punjab Phosphate Private Limited to the petitioner.

- (iv) Initially the petitioner wrote “please discuss” on the letter, but, later on he changed the mind and directed processing of the claims.
- (v) The petitioner directed the processing on urgent basis pursuant to which the matter was processed and the payment was made on the very same day.

8. According to the petitioner in June, 1982, Joint Director (F & A) sought his guidance as to whether payment of bills could be made on the basis of certificate of Industries Department, as Agriculture Department had reported that the firm had not manufactured or supplied any SSP and he advised that considering the view of Agricultural Directorate the subsidy could not be paid. The bills were therefore returned to the firm, intimating it about the adverse report of Agricultural Directorate. Since the representative of the firm kept pressurizing his claims, a reference was made in July, 1982 by Joint Director (F & A) to Chief Secretary, Government of Punjab, requesting him to resolve the contradictory position taken by Industries Department, which

had certified the bills and Agricultural Department which had taken the stand that the firm has not manufactured or supplied any SSP. This reference, according to the petitioner, was made under his advice. In response to the aforesaid reference, Deputy Secretary (Agriculture), Government of Punjab, vide his communication dated 28.10.82 advised FICC to release subsidy for the period December 1980 to July, 1981. The communication dated 28.10.82 was brought to the petitioner, who marked the same to Joint Director (F&A) (who was officer concerned for settling the claims), to have it processed urgently. The case was not put up again to the petitioner and the payment was finally approved by Joint Director (F&A). His contention is that he had no reason to go behind the letter dated 28.10.81 from Govt. of Punjab and to withhold the subsidy.

9. This is not the case of the petitioner that he was not aware of the communications received from the Chief Agriculture Officer informing FICC to the effect that M/s. Punjab Phosphate Private Limited had not manufactured any SSP during the period in question and was claiming bogus subsidy. The petitioner himself has stated in para 13 of the petition that he had advised against the payment of subsidy,

as Agricultural Department had reported that this firm had not manufactured or supplied any SSP. In para 14, he has stated that the bills were returned to the firm intimating them about the adverse report of Agriculture Directorate. Thus, the petitioner was fully aware of the stand taken by the Chief Agriculture Officer.

Annexure P-8, which is a document filed by the petitioner himself, records that under letter dated 29.9.81 Shri P.K. Parmar wrote to the Executive Director, FICC (petitioner herein) enclosing a copy of letter dated 9.3.81 stating that the Chief Agriculture Officer was the authorized officer for verifying the subsidy bills. If this is true, then the petitioner cannot dispute that Chief Agriculture Officer was the authorized officer for verifying the subsidy bills. The learned counsel for the petitioner has pointed out that vide OM dated 6th December, 1996 (Annexure P-9), Government of India, Ministry of Chemicals and Fertilizers has specifically noted that instructions of the department did not specify the authority of the state government which had to counter sign such claims. The contention is that since there was no instructions from the government as to who was the Verifying Authority in respect of the subsidy bills, it cannot

be said that Chief Agriculture Officer was the verifying authority of the State Government for this purpose. At this stage, it is not permissible for this court, exercising jurisdiction under Section 482 of Code of criminal Procedure, to go into this question and take a view as to whether Chief Agriculture Officer was the Verifying Authority in respect of subsidy claims as is the case of prosecution or there was no particular officer nominated by the State Government for this purpose, as is stated in the OM dated 6th December, 1996. At this stage, the court has to take the case of the prosecution on its face value and then see whether any offence is made out against the petitioner, assuming the allegations to be correct. CBI has specifically alleged in para 12 of the charge sheet that the claims submitted by Shri P.K. Parmar had not been verified by proper and competent authority i.e. Chief Agriculture Officer, Amritsar, who had been regularly informing FICC that this firm was not manufacturing and selling any SSP and was submitting bogus claims for obtaining subsidy. As per para 17 of the charge sheet, as per the existing instructions, the claims for subsidy were to be routed through Chief Agriculture Officer, Amritsar. In para 26 it has been alleged that FICC officials knew fully well that the subsidy claims were required to be forwarded only by

Chief Agriculture Officer, Amritsar, as per procedure laid down by the department, but, they sanctioned the subsidy only on the recommendation of official of DIC Amritsar, which was against the laid down procedure. As noted earlier, Annexure P-8 records that the petitioner knew, from a letter sent to him by Shri P.K. Parmar, that Chief Agriculture Officer was the Verifying Authority for subsidy bills. Admittedly, when the letter dated 28.10.1982 was submitted by Shri P.K. Parmar directly to the petitioner, it was accompanied by subsidy bills which were not verified by the Chief Agriculture Officer, Amritsar. Despite that the petitioner chose to direct the processing of the claims. Prima facie this would indicate connivance between Shri P.K. Parmar and the petitioner. it is true that Deputy Secretary (Agriculture) had advised payment of subsidy bills on the basis of verification by Directorate of Industries, but, since the petitioner knew that the competent authority to verify the subsidy bills was Chief Agriculture Officer and not Directorate of Industries, had he been acting in a bonafide manner instead of directing processing of the claim, he would have advised his officers to request Department of Agriculture to direct the Chief Agriculture Officer to verify the subsidy bills instead of asking them to make payment on

the basis of verification by Directorate of industries. FICC was not subordinate to Government of Punjab and therefore was not duty bound to act upon the letter written by Deputy Secretary (Agriculture), Govt. of Punjab, if under the scheme subsidy bill was required to be verified by Chief Agriculture Officer. This is, more so, when the Chief Agriculture Officer had been consistently writing to them that this firm was not manufacturing or selling SSP during the relevant period and was claiming bogus subsidy. In the normal course, a senior officer would not direct processing of the subsidy bills on the strength of such a letter. The court cannot lose sight of the fact that this was not a case merely of dispute as to who was competent to verify the bills. Here, Chief Agriculture Officer, was regularly writing to FICC, that this firm was not at all manufacturing or selling any SSP and was claiming bogus subsidy. In the background of such an official information, coming from a senior officer, it was not expected of the petitioner to direct processing of such dubious claims, particularly when the letter dated 28.10.82 did not say that in fact this firm was manufacturing or selling SSP during relevant period or that the information given to FICC by Chief Agriculture Officer was not correct. Not only that, the copy of letter dated 28.10.82 was not even endorsed to Chief

Agriculture Officer. It would be noteworthy here, that the Deputy Secretary, who wrote the letter dated 28.10.82, is also a co accused with the petitioner.

10. Admittedly, letter dated 3rd July, 1982 was written by Joint Director (F & A) of FICC to the Chief Secretary, Government of Punjab and not to the Agricultural Department. The letter dated 28.10.82 does not contain any endorsement that it was issued with the approval of the Chief Secretary. The letter was not issued by the Office of Chief Secretary, Government of Punjab. If the letter is written to the Chief Secretary, the response also should come from his office or with his approval. In a case of this nature, where a senior officer of the court has been saying that the claims were bogus, a person acting bona fide would, in such circumstance, have requested Deputy Secretary (Agriculture) to place the matter before the Chief Secretary for his decision and would not have gone by the recommendation made by the Deputy Secretary. This is, yet, another circumstance which points out towards complicity of the petitioner in the matter.

11. The letter dated 28.10.82 is addressed to Deputy Director (Administration) of FICC. Copy of the letter was not

endorsed to the Chief Secretary, Govt. of Punjab, though the letter of FICC, referred in this communication, was sent to the Chief Secretary and not to the Agricultural Department. The petitioner accepted the letter directly from Shri P.K. Parmar, though it was not addressed to him. At this stage, there is no plausible explanation for the petitioner accepting the letter directly from Shri P.K. Parmar. In the normal course of office procedure, the letter would have been delivered either to the Deputy Director (Administration), to whom it was addressed, or would have been delivered in the receipt section of the organization. This also is a circumstance pointing towards the petitioner acting in connivance with Shri P.K. Parmar. It is true that the petitioner was senior to Deputy Director (Administration), to whom the letter was addressed, but, in normal course, such a senior person would not personally receive a letter addressed to his subordinate, particularly when it pertains to a case of this nature, where one department of the Govt. was claiming that the subsidy claims were bogus.

12. Not only did the petitioner accept the letter addressed to his subordinate, directly from Shri P.K. Parmar, he also directed urgent processing of the matter. The direction for

urgent process has to be viewed in the background that earlier these claims were returned for want of verification by the Competent Authority. When they were brought to the petitioner along with letter dated 28.10.82, they were still not verified by the Chief Agriculture Officer. Copy of the letter was not endorsed to the Chief Agricultural Officer or to the Chief Secretary. Therefore, directing immediate urgent processing of such a matter cannot be appreciated in this backdrop. The petitioner needs to explain why he directed urgent processing of such a matter. It is not as if the claim for subsidy was getting delayed on account of any inaction on the part of FICC officials. The subsidy claims had been returned to the claimant as they were not verified by the competent authority. Therefore, there was hardly any ground for directing immediate processing of such claims.

13. One more reason why the conduct of the petitioner in dealing with this matter becomes suspicious is that the letter addressed by Deputy Secretary, Govt. of Punjab to Deputy Director (Administration) was brought directly by the claimant. In normal course, such a letter would have been sent by Deputy Secretary (Agriculture) to Deputy Director (Administration) of FICC by post or through a messenger. A

Senior Officer like petitioner should have got suspicious when such a letter in a tainted case like this one was brought directly by the beneficiary and if he directs immediate processing of such a claim, it may be difficult to accept that he was acting without any ill motive.

14. As is evident from the endorsement made by the petitioner on the letter dated 28.10.82, he first decided to discuss the matter but later on changed his mind and directed its urgent processing. At this stage, there is no explanation for this change of mind on the part of the petitioner. The possibility of Shri P.K. Parmar prevailing upon the petitioner to direct urgent processing instead of discussion is a distinct possibility in these circumstances. Presumably, it was felt that if the matter is discussed, there may be objection to the admissibility of the claim since it was not verified by the Chief Agriculture Officer.

15. The court cannot lose sight of the fact that there will hardly be a case in which there would be direct evidence of criminal conspiracy. It is only by connecting and putting into place various facts and circumstances that a conspiracy can normally be unearthed.

16. At this stage, it cannot be said that even if all the allegations against the petitioner are accepted as correct, no offence of being a party to a criminal conspiracy is made out against him. As noted earlier, it is not open to the court to appreciate evidence at this stage and take a view on its reliability or otherwise. This is a function of the trial court and has to be left to it. In my view, in the facts and circumstances of the case, it cannot be said that it would be manifestly unjust to allow the process initiated against the petitioner to be continued. This is not a case of no evidence or no legally admissible evidence in support of the case of the prosecution. The facts and circumstances of the case do not warrant interference by this court, in exercise of jurisdiction under Section 482 of Code of Criminal Procedure. The petition is hereby dismissed.

The observations made in this order being tentative, made only for the purpose of deciding this petition, shall not, in any manner, affect or influence the decision of the trial court on charge or on merits of the case.

(V.K. JAIN)
JUDGE

October 9, 2009/_{acm}