

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

+ Crl.M.C.3587/2008

% Reserved on: 22nd October, 2009
Date of Decision: 24th November, 2009

KUMAR SUMAN SINGH @ RANJEET SINGH.....
PETITIONER

! Through: Mr. Anup George Chaudhary,
Sr. Advocate, Ms. June Choudhary,
Sr. Advocate with Mr. Ashok
Mehta, Mr. Anil Kumar Chopra and
Mr. Samir Ali, Advocates

Versus

\$ THE STATE THR. CBI RESPONDENT

Through: Mr. Anindya Malhotra with SI
Rajneesh Kumar, EOW/Crime
Branch, Delhi Police.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers
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 u/s 482 of the Code of Criminal Procedure, for quashing RC-DA1-2003-A-0058 CBI/ACB, Delhi stated to have been registered by CBI under Section 120-B read with Sections 380/408/411/511 of IPC.

2. On 22.11.2003, a secret information was received by Crime Branch of Delhi Police by one Rajiv Saxena, about the leakage and sale of question paper of CAT examination to be held on 23.11.2003. The police officer, who received the information, contacted Rajiv Saxena who agreed to sell the question paper to him for Rs. 5.00 lacs and asked him to contact his associate Rajesh Suchan on his mobile No. 9810931435. The Police officer contacted both of them a number of times on telephone and it was agreed that Rajesh Suchan would meet him at Outer Ring Road, near Munirka. Thereupon he organized a raiding party and reached the appointed place. Rajesh Suchan met him and negotiated with him. He contacted Rajesh Saxena who directed them to reach near Radisson Hotel. When the police official reached there along with Rajesh Suchan, the complainant Natwar Meena and his friend Virender Kumar approached them. The police officers disclosed their identity to the complainant and his friend Virender Kumar who explained all the circumstances and the complainant also showed his CAT identity card to them. On inquiry, police officials came to know that the candidates were being taken to hotel Shanti Palace on NH-8. Two police officers were deputed to inquire and verify at hotel Shanti Palace. Those police officials reported that CBI had already raided Hotel Shanti Palace and their action was still

going on. Thereupon, statement of complainant Natwar Meena was recorded, who stated that at about 6 pm he received a telephone call from one Guruji, who inquired as to whether he wanted question paper of CAT exam 2003. He received another call from Guruji at about 6.45 pm and was asked to come near Radisson Hotel at about 9.30 pm. He along with his friend Virender Kumar took chance to get the question paper of CAT and made telephone call to Guruji on his mobile, number of which had already given on the mobile of the complainant. Guruji asked for Rs. 1.00 lac for the question paper. When they were waiting for Guruji, 3 persons namely Mahender, Arvind Kumar and Bharat Bhushan reached there and asked the complainant whether he had brought Rs. 1.00 lakh for the question paper. When he replied in negative, they asked the complainant and his friend to wait till Guruji came there. In the mean time the police party reached there along with Rajesh Suchan. All the four persons, referred above were arrested. During interrogation by police Rajesh Suchan disclosed the name of Santosh Kumar, who, in turn, disclosed that Rajesh Saxena was residing in a hostel in Janakpuri. Rajesh Saxena was arrested from there. He informed the police that Rajesh Suchan had introduced him to one Ashutosh Kumar who during conversation revealed to him that Dr. Ranjit Singh of Patna had

the paper of CAT examination and that all the candidates will reach petrol pump, near Radisson Hotel from where they shall be taken to Hotel Shanti Palace where solved question paper of CAT examination would be shown to him. Accordingly, he directed Rajesh Suchan to take the candidates to petrol pump, where Bharat Bhushan, Arvind Kumar, Rahul and Mahender etc. were to meet and take them to Hotel Shanti Palace. During further investigation, officers of the Crime Branch discovered that Kumar Suman Singh @ Ranjit had already been arrested by the CBI.

3. According to Delhi Police, it was established during investigation that Kumar Suman Singh @ Ranjit was the leader of the gang who got the question paper stolen and brought Ashutosh Kumar, Ashok Kant, both of whom could not be arrested, and Bharat Bhushan, Arvind Kumar, Rajeev Saxena, Rajesh Suchan and Rahul to Delhi for arranging candidates. Accused Arvind Kumar was also promised some payment. As per the chargesheet filed by Crime Branch, the accused persons made an attempt to cheat the complainant and other genuine candidates by stealing the question paper and then selling the same on hefty price. It has been further alleged that accused Rajeev Suchan tried to destroy the evidence by taking out the

SIM card of his mobile phone and concealing them in a verandah. Arvind Kumar and Alok Kant could not be arrested during investigation. The charge sheet by Delhi Police has been filed under Section 120 B of IPC read with Section 379/420/511 and 201/511 of IPC.

4. In the charge sheet filed by CBI, it has been alleged that a reliable information was received to the effect that Suman Kumar Singh and his associates either pilfered during transit or misappropriated the question paper of CAT for admission to various Management Institutes during the period between printing and preparation of the question paper and were delivering the question paper to prospective candidates appearing for the exam to be held on 23.11.2003, in Hotel Shanti Palace, after taking lacs of rupees from each candidates. A surprise check was conducted in hotel Shanti Palace and they found Arun Kumar Sinha, Kumar Suman Singh @ Ranjit, Manoj Kumar, Hari Shankar Chaudhary along with Sanish Kumar, Proful Chandra Jha, Anurag Thakur and K. Rishi were staying in room No. 122 and 123 of the Hotel. Different sections of question paper were recovered from the possession of Manoj Kumar, Hari Shankar Chaudhary, Sanish Kumar and Proful Chandra Jha, whereas identity cards of the candidates were

recovered from the possession of Kumar Suman Singh. The candidates confirmed that they were assured by accused No. 1 Arun Kumar, accused No. 2 Kumar Suman Singh, accused No. 3 Manoj Kumar and accused No. 4 Hari Shankar Chaudhary that question papers given to them was a copy of question paper of CAT 2003 examination to be conducted on 23.11.2003 for which they had to pay an amount of Rs. 2 to 4 lakhs to them.

5. During surprise check by CBI, accused No. 1 Arun Kumar Sinha, accused No. 2 Kumar Suman Singh, accused No. 5 Sanish Kumar and accused No. 7 Anurag Kumar Thakur were found sitting in room No. 122 of Hotel Shanti Palace, whereas accused No. 3 Manoj Kumar, accused No. 4, Hari Shankar Chaudhary, accused No. 6 Praful Chandra Jha and accused No. 8, K.Rishi were found sitting in Room No. 123. Original Admit Card of A.K. Thakur, Sanish Kumar, K.Rishi and Praful Chand Jha were found in right hand of accused No. 2 Kumar Suman. Four sheets from question No. 64 to 97, with tick mark on the answers, were found in the hands of Manoj Kumar. 8 sheets from question No. 30 to 112, with tick mark on most of the answers, were found in the hands of Hari Shanker Chaudhary. 6 sheets from question No. 51 to 75 and photocopy of hand written sheet from serial No. 1 to 64 were found in the hands of A.K. Thakur. 9 sheets from

question No. 1 to 50, with tick mark on most of the answers, along with hand written photocopy of paper were, found in the hands of Sanish Kumar. 4 sheets from question No. 130 to 150, with tick mark on most of the answers, alongwith one hand written photocopy of paper were found in the hands of Praful Chandra Jha.

6. During investigation it was revealed that photocopies of question bank recovered during the course of surprise check was an exact replica of series 222 of question paper of CAT 2003 examination paper and was distributed to various candidates. Recovered question bank also matched with series 111, 333 and 444 of the question booklets, though the sequence of the question was different.

7. During investigation, CBI found that question paper for CAT 2003 examination was printed at IBPS press in Mumbai. Accused No. 1 Arun Kumar Sinha, accompanied by accused No. 4 Hari Shankar Chaudhary, had visited Mumbai on 27.10.2003 and stayed in Hotel Highway Inn where he met accused No. 9 Sanjeev Kumar. Accused No. 9 was working in IBPS press as daily wager worker with the binding contractor Shri Vishal Shati Ram Gaurav. It was accused Sanjeev Kumar who handed over the question paper to Arun Kumar Sinha in a house in Kalyan

(East), District Thane, where he was staying with accused NO. 1 Arun Kumar Sinha and accused No. 4 Hari Shankar Chaudhary. Arun Kumar Sinha paid a sum of Rs. 18.00 lacs to accused No. 10 Yogendra Prasad who is father of accused No. 9 Sanjeev Kumar and paid another sum of Rs. 3.25 lacs to Sanjeev Kumar at Mumbai. Arun Kumar Sinha took the help of one Mohd. Shahin for solving the question papers. Statement of Mohd. Shahin has been recorded u/s 164 Cr. P.C. It was found during investigation that a number of persons were contacted by accused Arun Kumar Sinha and Manoj Kumar for selling the question paper and requested them to provide candidates who could purchase the question paper. On comparison with the hand written sheet recovered during investigation, it has been found that the specimen hand writing of accused Manoj Kumar and Arun Kr. Sinha tallied with the hand writing of those hand written sheets. It was also revealed that the rooms in hotel Shanti Palace were booked by accused Arvind Kumar in the name of Vimal Kumar.

8. The CBI has, therefore, chargesheeted Arun Kr. Sinha, Kumar Suman Singh @ Ranjit, Manoj Kumar, Hari Shankar Chaudhary, Sanish Kumar, P.C. Jha, A.K. Thakur, Qutub Rishi, Sanjeev Kumar and Yogesh Kumar under section 120B of IPC

read with Section 380, 408 and 411 thereof read further with section 511 of IPC. Accused Sanjeev Kumar has also been charged for substantive offence under Section 380 and 408 of IPC whereas accused Sanish Kumar, PrafulChander Jha, Anurag Kumar Jhakar and K. Rishi have been charged for substantive offence under Section 411 of IPC.

9. The petitioner Kumar Suman @ Ranjit Singh has sought quashing of FIR registered by CBI, and the proceedings arising therefrom, on the ground that since an FIR had already been registered by the Crime Branch of Delhi Police before registration of FIR by the CBI, and investigation had also been carried out by it, second FIR registered by CBI and the proceedings arising therefrom are liable to be quashed. The plea taken is that petitioner can't be exposed only once to the criminal proceedings in respect of the same allegation and a second or successive FIR on the same allegation could not have been registered. The contention of the petitioner is also that the parallel proceedings in 2 different courts would culminate in double jeopardy, which is not permissible in law.

10. In support of his contention, the learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in T.T. Antony Vs. State of Kerala & Ors (2001) VI SCC

181. In the case before the Hon'ble Supreme Court, 5 persons died and a number of persons were injured during a firing by police on November 25, 1998. A few police officers also sustained injuries. The firing was opened by the police at two places, in the proximity of Town Hall on the Order of Executive Magistrate and DSP and in the vicinity of a police station on the order of Suptt. Of Police. Crime No. 353/94 was registered in respect of occurrence which took place near Town Hall and Crime No. 354/94 was registered in respect of occurrence which took place in the vicinity of the police station.

11. The incidents having given rise to public outcry, an inquiry under Commission of Enquiry Act was ordered by the Kerala Government. It was found during inquiry that the police firing was not justified and three persons including Shri T.T. Antony, who was former Deputy Collector, were responsible for the firing. On receipt of the report of Enquiry Commission, the Govt. issued orders for registration of a case and investigation by a Senior Officer. Crime No. 268/97 was thereupon registered against the persons named in inquiry including Shri T.T. Antony. The case registered as Crime No. 353 of 94 and 354 of 1994, which were mainly against the workers, came to be closed after registration of Crime No. 268/97. Three writ petitions were filed,

one by Mr. T.T. Antony, second by one Mr. Chandrashekhar and the third by some Constables seeking quashing of FIR registered vide Crime No. 268/97 or in the alternative for investigation by CBI. A learned Single Judge of the High Court directed re investigation by CBI. In appeal a Division Bench of the High Court directed fresh investigation by state police. Being dissatisfied T.T. Antony and some others came to the Hon'ble Supreme Court, where the learned counsel for the petitioners questioned the legality of the second FIR registered as Crime No. 268/97 and the investigation that followed it, when two FIRs pertaining to the same occurrence had already filed and registered as Crime No. 353/94 and 354/94. The contention was that registration of fresh FIR in respect of the very same incident was not followed and therefore all the steps taken pursuant thereto were illegal and liable to be quashed.

12. The Hon'ble Supreme Court noted that an information given under Sub Section (1) of Section 154 of Cr. P.C, which is commonly known as FIR, is the earliest and the first information of a cognizable offence, which sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr. P.C. as the case may be, and forwarding of a police report under

Section 173 thereof. It was observed that some time more information than one are given to a police officer in respect of same incident, but, in such a case he need not enter every one of them in Station House Diary and such information received after commencement of investigation will be statements falling under Section 162 of the Code of Criminal Procedure and cannot be treated as an FIR as treating such information as an FIR would, in fact, be a second FIR which is not in conformity of the scheme of the Code of Criminal Procedure. It was observed that if in an FIR regarding the offence under Section 307 or 326 of IPC, the Investigating Officers received a fresh information that the victim has died, no fresh FIR under Section 302 needed to be registered and in such a case alteration of the provision of law of the First FIR is the proper course to adopt. Taking another example, the Hon'ble Court observed that in a situation where a person H having killed his wife W, informs the police that she had been killed by some unknown person but later on it is detected that the murder was committed by H, it does not require filing of fresh FIR against H. It was further observed that if after sending report u/s 173 of Cr. P.C. the police officer comes into possession of further information or material, he need not register a fresh FIR since he is empowered to make further investigation and the further information which he

collects during further investigation is required to be sent to the Magistrate under sub section (8) of section 173.

13. The Hon'ble Court, inter alia, held as under :

From the above discussion it follows that under the scheme of the provisions of Sections 154 155 156 157 162 169 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

14. The Hon'ble Supreme Court further observed as under:

However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.

15. On comparison of the FIRs in Criminal No. 353/94 and 354/94 on one hand an FIR in crime No. 268/97 and on the other hand the hon'ble Supreme Court noted that date and place of occurrence were same and narration of facts were almost the

same and therefore in truth and substance, essence offence in Crime No. 353/94 and 354/94 was the same as in Crime No. 268/97. It was noted that on the day crime No. 268/97 was registered, investigation in Crime No. 353 and 354 of 94 was in progress and in these circumstances registration of Second FIR in regard to the same incident and making of a fresh investigation was not permissible.

16. Learned counsel for the petitioner has also referred to the decision of a learned Single Judge in this court in *Shyam Sunder Vs. MCD* 2007 III AD (Crl.) 444. In this case, the information was received by BIS Bureau of Indian Standard, from one D. Gupta, that the manufacturer of a water proof compound was using raising of product manufactured in the month of February, 2002, despite expiry of the certificate given to it by BIS. The manufacturer and its Director were alleged to be guilty of offence under Section 11 and 30 of BIS Act 1986. The complainant had also given some information to the police which had led to registration of an FIR resulting in filing of a charge sheet for the offence under section 11/33 of BIS act. It was noted by the learned Single Judge that the material collected by BIS were undisputedly used by Delhi Police and test report annexed to the charge sheet filed by the police also formed the

basis of complaint filed by BIS. Admittedly, no other incident relating to any other product had been mentioned in the complaint. In these circumstances, it was held that since charge sheet had already been filed by the police, a complaint by BIS could not be allowed to proceed since that would expose the petitioner to the rigorous of second trial on the same facts.

17. In *Nirmal Singh Kalhon Vs. State of Punjab* (2009) 1 SCC 441, an advertisement was issued by Punjab Government for recruitment of 190 Panchayat Secretaries. Though written test was held, the posts could not be filled up. In the mean time, 545 Panchayat Secretaries were appointed on adhoc basis. One of the applicants, who had applied in response to the advertisement of 190 posts, challenged the ad-hoc appointments by filing a Writ Petition in Punjab and Haryana High Court, which directed completion of the selection process. Two more advertisements were issued for filling up 700 and 800 posts of Panchayat Secretaries. Another writ petition was filed in the High Court in which selection for the post of Panchayat Secretaries was directed to be completed within one month. 190 candidates were selected after the interview. Their selection was challenged by filing yet another writ petition whereupon an inquiry was ordered by the High Court into the selections made

by the department. It was recommended in the inquiry that matter required investigation by Vigilance Department. Pursuant thereto an FIR was registered against several persons including Sh.Nirmal Singh Kahlon u/s 420/467/468 and 120 B of IPC and Sections 13(1)(d)(d) and 13(2) of Prevention of Corruption Act. A charge sheet was filed against Nirmal Singh Kahlon and J.P. Singhla.

Pursuant to a direction given by Punjab and Haryana High Court, Punjab Government issued notification for investigation by CBI into the alleged scandal in appointment of Panchayat Secretaries. The notifications issued by the Government were challenged on various grounds including that since an FIR has already been lodged by Vigilance Department, another FIR for the same cause of action could not have been lodged by the CBI in view of the decision of Hon'ble Supreme Court in the case of T.T. Antony (Supra).

It was noted by the Hon'ble Supreme Court that the first FIR referred to the acts of omissions and commissions during the tenure of the appellant as a Former Minister, relating to recruitment of various posts of Tax Collectors, Patwaries, Clerks as well as with regard to filling up of vacancies in handicapped category of Gram Sewak in which appellants were said to have

accepted heavy amount of bribe, whereas the High Court, which directed investigation by CBI, was concerned only with appointment of Panchayat Secretaries and the only allegation in the Public Interest Litigation before the High Court was with regard to appointment of favourites who did not have the qualifications.

18. The Hon'ble Supreme Court in para 44 of the judgment held as under :

The second FIR lodged by the Central Bureau of Investigation (CBI), however, was on a wider canvass. It was lodged after holding a detailed preliminary inquiry. CBI collected a large number of materials. It had also recorded the statements of a large number of persons. Whereas the first FIR dated 14.06.2002, thus, contained the misdeeds of individuals, the second one depicts a crime committed in course of selection process of Panchayat Secretaries involving a large number of officers.

The second FIR dated 26.06.2003 enumerates as many as fifteen categories of irregularities committed by various persons involved in the said selection process. Responsibility has not only been fixed upon the appellant but also upon Shri Mandeep Singh, Shri C.L. Premmy, Shri

J.S. Kesar, Shri Joginder Singh as also the then Additional Deputy Commissioners of Bhatinda, Ropar and Muktsar. The number of accused who were involved as per preliminary report of the CBI were as many as fourteen.

The first FIR pointed out offences under Sections 420, 467, 468, 120B of the Indian Penal Code and Sections 13(1)(d)(e) and 13(2) of the Prevention of Corruption Act but no allegation of conspiracy was made. In the second FIR dated 26.06.2003, the persons involved were not only the then Minister but also the then Director, the then Division Deputy Director, the then Deputy Directors, the then Additional Deputy Commissioners, the then Block Development Officers, etc

It may be true that in both the FIRs Kahlon was named. He was considered to be the prime accused. But, it is one thing to say that he acted in his individual capacity and it is another thing to say that he conspired with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains.

Even in Ram Lal Narang (supra), we have seen that two of the accused, viz., Mehra and Malik, were common. When two conspiracies are alleged; one is larger than the

other, there may be some common factors but the nature of offence would differ. An offence committed would not be judged by mere mentioning of the sections but the mode and manner in which the same was committed as also the nature thereof.

We must also bear in mind the distinction between crime committed by an individual or a group of persons vis-à-vis a scam which means "to get money or property from, another, under false pretences, by gaining the confidence of the victim, also includes; swindle; defraud.

The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/ or the High Court to direct investigation

in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.”

19. In *Ram Lal Narang vs. State*, **1979 2 SCC 322**, two precious antiques were deposited in the court of a Magistrate as stolen property. One NN Malik took custody of those antiques on the pretext of making their detailed study. After about 3 months, he deposited those antiques back in the court of the Magistrate. It was thereafter discovered that antiques deposited by him were not original but were fake ones. An FIR was registered against Malik and one Mehra at whose instance the antique were delivered to Malik. Charge sheet was filed by CBI after carrying out investigation. Ultimately the case was withdrawn on the request of the public prosecutor and the accused was discharged. Later on, the original antiques were found in London which led to registration of an FIR in Delhi against three persons. The charge against them was that they, along with Mehra and Malik conspired together to obtain custody of genuine antiques and got duplicates made and had them substituted with a view to smuggle out the original antiques to London. An application was filed by Narangs for dropping the proceedings against them on the ground that the entire second investigation was illegal as the case on the same

facts was already pending before the Ambala Court. They also filed a petition under Section 482 of the Cr. P.C. to quash the proceedings. When the matter reached the Supreme Court it was contended that subject matter of two FIR and two charge sheets being the same, there was an implied bar on the power of the police to investigate into the subsequent FIR. The Hon'ble Supreme Court held that the conspiracies in the two cases were not identical and the first one was smaller conspiracy whereas the second one larger conspiracy, as had eventually turned out.

20. The Hon'ble Court, inter-alia, observed as under:

“The offences alleged in the first case were Section 120B read with Section 420 and Section 406 IPC, while the offences alleged in the second case were Section 120B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. It is true that the Antiquities and Art Treasures Act had not yet come into force on the date when the FIR was registered. It is also true that Omi Narang and Manu Narang were not extradited for the offence under the Antiquities and Art Treasures Act, and, therefore, they could not be tried for that offence in India. But the question whether any of the accused may be tried for a contravention of the Antiquities and Art Treasures Act or under the corresponding provision of the

earlier Act is really irrelevant in deciding whether the two conspiracies are one and the same. The trite argument that a Court takes cognizance of offences and not offenders was also advanced. This argument is again of no relevance in determining the question whether the two conspiracies which were taken cognizance of by the Ambala and the Delhi Courts were the same in substance. The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions. We are clear, in the present case, that the conspiracies which are the subject-matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link

between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known.”

21. *In Saran Das Vs. Ram Singh; (1997) 2021 CrL. L. J.*, the Magistrate took cognizance of an offence on a police report. A complaint was thereafter filed in respect of the same offence. It was noted that original genesis of the prosecution case, as laid down in the complaint, was mere elaborate in details regarding the alleged previous conduct of the accused persons. The allegations contained in the complaint differed from the texture of the averments made in the FIR, although, leading to the commission of same offence. In these circumstances, it was held that it could not be said that the complaint was not maintainable. It was held that where there are two cases triable by the court of sessions, one instituted on police report and the other instituted on a criminal complaint arising out of the same transaction, both the cases should be tried by once and the same court simultaneously to avoid conflicting findings.

22. Admittedly, FIR by CBI was registered on the same day on which FIR was registered by Delhi Police. In fact, a perusal of the chargesheet filed by Delhi Police would show that before registering FIR, two police official, who visited hotel Shanti Palace to verify information received by Delhi Police,

found that a CBI team has already raided the hotel and their action was still going on. The statement of the complainant Natwar Meena on which the FIR has been registered by Delhi Police was recorded only after these police officials had returned to the office of Crime Branch from hotel Shanti Palace. Thus, it is evident that inquiry by CBI was already going on when the FIR was registered by Delhi Police, though FIR by Delhi Police was registered at 2.00 am, whereas the FIR by CBI was registered at 3.00 am on 23rd November 2003. Quite possibly, inquiry by CBI had started before Delhi Police swung into action.

23. Admittedly, barring petitioner Kumar Suman Singh @ Ranjeet Singh, no accused is common in the two chargesheets. CBI has chargesheeted 10 persons, namely, Arun Kumar Sinha, Kumar Suman Singh, Manoj Kumar, Hari Shankar Prasad, Sanish Kumar, Prafful Chand Jha, Anurag Kumar Thakur, Kaustubh Rishi, Sanjeev Kumar and Yogender Prasad. Delhi Police has, on the other hand, chargesheeted Ashutosh Kumar, Alok Kant, Kumar Suman Singh, Rajesh Suchan, Rahul, Bharat Bhushan, Arvind Kumar and Rajiv Gupta. Out of 10 persons chargesheeted by the CBI, no one except petitioner Kumar Rajesh Singh @ Ranjeet Singh has been chargesheeted by Delhi police. Out of the persons chargesheeted by the Delhi Police, no

one except petitioner Kumar Suman has been chargesheeted by CBI.

24. A comparison of the chargesheet filed by Delhi Police with the chargesheet filed by CBI would show that the following aspects of the criminal conspiracy have not been investigated by the Delhi Police.

(i) Investigation by CBI has revealed that the question paper for CAT, 2003 examination were printed at IBPS Press in Mumbai and were handed over to the contractor Sh. Vilas Shantaram for binding and accused Sanjeev Kumar, who was working in IBPS Press as a daily wage worker with the Binding Contractor, committed theft of the question paper and handed it over to the accused Arun Kumar Sinha at house No. 13, D-Wing, Amrut Kumbh Cooperative Group Housing Society in Kalyan where accused Sanjeev Kumar was staying. This aspect has not at all been investigated by Delhi Police.

(ii) CBI found during investigation that accused Arun Kumar Singh accompanied Hari Shankar Choudhary, went to Mumbai on 27.10.2003 and stayed in a hotel where accused Sanjeev Kumar visited them and stayed with them overnight. This aspect has not been investigated by Delhi Police.

(iii) CBI found that a sum of Rs.18 lakhs was paid by Arun Kumar Sinha to accused Sanjeev Kumar and another sum of

Rs.3.25 lakh to his father accused Yogender Prasad. Again, there is no investigation by Delhi Police on this aspect.

(iv) CBI found that accused Arun Kumar Sinha took the help of Mohd. Shaheen for solving the question papers and also asked him to arrange prospective candidates for sale of the question paper. Delhi Police has not gone into the question as to who had solved the question papers.

(v) CBI got the compared the hand writing on the hand written sheets recovered by it with the specimen writing of accused Manoj Kumar and Arun Kumar Sinha and it was opined by the hand writing experts that they were author of hand written sheets. Delhi Police has not recovered any hand written sheet and has not at all gone into this aspect of the case.

(vi) CBI found at the time of surprise checking that accused Arun Kumar Sinha, Kumar Suman Singh, Sanish Kumar and Anurag Kumar Thakur were found sitting together in one room whereas, accused Manoj Kumar, Hari Shankar Choudhary, Prafful Chand Jha and Kaustubh Rishi were found sitting together in another room. Original admission cards of Anurag Kumar Thakur, Sanish Kumar, Kaustubh Rishi and Prafful Chand Jha were found in the hand of accused Kumar Suman. These facts do not form part of investigation by Crime Branch of Delhi Police. CBI found sheets with different questions alongwith tick mark on answers

in possession accused Manoj Kumar, Hari Shankar Choudhary, Anurag Kumar Thakur, Sanish Kumar and Prafful Chand Jha. There is no investigation by Delhi Police in respect of the offence committed by these persons.

(vii) CBI found during investigation that the photocopies of question bank recovered during surprise check was exact replica of series 222 of question paper of CAT, 2003 examination to be distributed to the candidates appearing in South Delhi Public School, Defence Colony, New Delhi and that question bank also matched with series 111, 333 and 444 of the question booklets at the test centre. Again, there is no investigation at all by Crime Branch on this facet of the case.

25. No one has been chargesheeted by Delhi Police for the offences committed under Section 408 and 411 of IPC.

26. CBI has filed charge-sheet after extensive investigation spread over more than one cities, whereas the investigation by Delhi Police was confined to Delhi and covers only an attempt to cheat certain individual candidates. The conspiracy unearthed by CBI is much larger than the conspiracy, which is subject matter of charge-sheet filed by Delhi Police and in fact it does include within its ambit the offences that were committed in Delhi. The conspiracy which CBI has been able to uncover is on a much larger canvass, with broader ramification and,

therefore, cannot be equated with conspiracy uncovered by Delhi Police which covered a much smaller field with narrower dimensions. The two conspiracies, one subject matter of the charge-sheet filed by the CBI and the other subject matter of charge-sheet filed by Delhi Police cannot be said to be identical despite the subject matter of the conspiracy investigated by Delhi Police being a part of the conspiracy uncovered by CBI. The ratio of the decision of the Hon'ble Supreme Court in Ram Lal Narang's case (Supra), therefore, squarely applies to this case and the judgment of the Hon'ble Supreme Court in the case of T.T. Antony (Supra) does not apply to the facts of this case.

27. If the chargesheet filed by CBI is quashed and consequently, the oral and documentary evidence collected by it is not produced during trial, the result would be that out of 10 accused chargesheeted by it, nine would go away scot-free, and in fact, even the case against those, who have been chargesheeted by Delhi Police, may not be that strong as it would be if the documentary and oral evidence collected by CBI is produced during trial. If chargesheet filed by Delhi Police is quashed, the same would be the position in respect of those except Kumar Suman Singh, who have been charge-sheeted by it.

28. If the charge-sheet filed by CBI is quashed, there will be no trial and consequently can be no conviction for the offence committed u/s 408 and 411 IPC, neither of which finds mention in the charge-sheet filed by Delhi Police.

29. The rule of criminal procedure have twin objectives; the first being to ensure that no innocent person is punished and the other, which is equally important being that a guilty person does not go scot-free. To safeguard the interest of the society at large, it is necessary that both these objectives are adequately met while administering criminal justice. It is the society at large which would suffer if those who are guilty of committing serious crimes are allowed to get away, using the technicalities of procedure laws. Therefore, the Court while interpreting the rules of procedure has to maintain a fine balance between the interest of the accused on the one hand and the interest of society at large on the other hand. An interpretation, which would thwart the course of justice and would result in the perpetrators of such crimes getting away scot-free, will neither be just nor fair and reasonable.

30. The next question which comes up for consideration is what exactly should be the order of this court, which would, while ensuring that none of the accused is able to go away scot free will also ensure that the petitioner, Kumar Suman Singh @

Ranjeet Singh, who is the only common accused in both the charge-sheets is not subjected to more than one trials in respect of the offences alleged to have been committed by him in this case and there is no possibility of his being convicted twice, once in the prosecution initiated by CBI and secondly in the prosecution initiated by Delhi Police. In my view, the most appropriate course of action would be to club both the charge-sheets, have a common trial against those who have been charge-sheeted by CBI as well as those who have been charge-sheeted by Delhi Police and a common decision after taking oral as well as documentary evidence collected by CBI as well as Delhi Police. If such a course of action is adopted, there will be no prejudice to the petitioner, Kumar Suman Singh @ Ranjeet Singh as he would neither be tried nor convicted twice for the offences committed by him in this case. Simultaneously, It will also ensure that none of the accused goes scot free, without even facing trial and without an opportunity to the prosecution to prove the charges attributed to them. It has also to be ensured that the prosecution is conducted by one agency which examines the witnesses cited by both the agencies and presents the case of both of them to the court during trial.

31. It was contended by the learned counsel for the petitioner that such a proceeding, if adopted by the court would not be in consonance with the scheme of Code of Criminal Procedure. In support of his contention, the learned counsel for the petitioner has referred to the decision of the Constitution Bench of the Hon'ble Supreme Court in *Supreme Court Bar Association Vs. Union of India*, (1998) 4 SCC 409, where it was held that the Supreme Court, in exercise of its plenary power under Article 142 of the Constitution cannot ignore any substantive statutory provisions dealing with the subject. It was held that the power conferred by Article 142 cannot be construed as powers which authorize the court to ignore the substantive rights of litigants and cannot be used to supplant the substantive law applicable to the case and Article 142 cannot be used to build a new edifice, where none existed earlier, by ignoring an expressed statutory provision dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. It was held that these powers are not meant to be exercised when their exercise prescribed comes directly in conflicting with what has been statutorily prescribed.

32. In my view, reference to the aforesaid decision of the Hon'ble Supreme Court is totally misplaced. The procedure

being proposed by the court does not contravene any particular provision of the Code of Criminal Procedure. During the course of arguments, it was expressly stated by the learned Addl.P.P. representing Delhi Police/Government of NCT of Delhi that it had no objection if Central Bureau of Investigation prosecutes those who are accused in the charge-sheet filed by CBI as well as those who have been charge-sheeted by Delhi Police and produces, before the trial court, oral as well as documentary evidence collected by it as well as by Delhi Police. In any case, as is evident from a bare perusal of Section 482 of the Code of Criminal Procedure, the power of the High Court u/s 482 of the Code of Criminal Procedure can be exercised notwithstanding anything contained elsewhere in the Code, the only requirement for exercise of such a power being that it should be exercised to give effect to any order made under the Code or to prevent abuse of the process of a court or otherwise to secure the ends of justice. In my view, this procedure would not only prevent an abuse of the process of the court by scuttling any attempt to get away scot free and without facing trial using the technicalities of procedural laws but would also be able to secure the ends of justice as it would, while ensuring that no one is tried and/or convicted twice for the same offence would also ensure that no one who is guilty is able to go away scot free. Since, CBI is a

central agency having wider reach and commanding better resources as compared to Delhi Police, jurisdiction of which is confined to Delhi, it is CBI, who in my view, should be given command of the prosecution. As noted earlier, the learned Addl.P.P. who represents the State Government/Delhi Police expressly stated during arguments that CBI should be the prosecuting agency for both the charge-sheets, once they are clubbed together, a joint trial takes place in respect of those who have been charge-sheeted by Delhi Police & those who have been charge-sheeted by CBI.

33. For the reasons given in the preceding paragraphs, the charge-sheet filed by CBI as well as charge-sheet filed by Delhi police are clubbed together. CBI will be the sole prosecuting agency and will examine the witnesses cited by it as well as the witnesses cited by Delhi Police. Documentary evidence collected by both the agencies shall be proved by CBI. Delhi Police will render full cooperation and assistance to CBI in all respects of the case. The cases shall be tried in the court in which charge-sheet has been filed by CBI. The record of charge-sheet filed by Delhi Police will be immediately transmitted by the court in which it is pending to the court in which charge-sheet has been filed by CBI. Both the courts shall forthwith comply with the

directions contained in this order. The court in which charge-sheet filed by Delhi Police is pending will also direct the accused who appear before it to appear in the court in which charge-sheet filed by CBI is pending. If any of those charge-sheeted by Delhi Police does not appear in the court in which charge-sheet filed by CBI is pending, that court will take appropriate steps to secure their presence. The petition stands disposed of with these directions. The parties are directed to appear before the court in which charge-sheet filed by CBI is pending, on 7th December, 2009 for further directions.

One copy of this order be sent to the court in which the charge-sheet filed by the CBI is pending and another copy of this order be sent to the court in which the charge-sheet filed by Delhi Police is pending.

(V.K. JAIN)
JUDGE

November 24, 2009

‘acm/sk’