

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

+ CRL.M.C. 964/2007

% **Date of decision : 13.09.2010**

SURESH KUMR PATHRELLA Petitioner
Through Mr. Siddharth Luthra, Sr. Advocate with Mr.
Anurag Ahluwalia, advocate.

versus

STATE THROUGH CBI Respondent
Through Mr. Harish Gulati and Mr. Anindya Malhotra,
advocates for CBI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

O R D E R

Central Bureau of Investigation (hereinafter referred to as CBI, for short) on 24th December, 1999 filed a charge-sheet under Sections 120B/420/467/468/471 of the Indian Penal Code, 1860 (IPC for short) and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act for short) against the petitioner and others. However, along with the charge-sheet, documents and statements of witnesses were not filed. On 24th December, 1999 the Presiding Officer was on leave and the matter was adjourned to 27th January, 2000. On 27th January, 2000, the prosecution- CBI was directed to file original statements of witnesses on record within 15 days and the matter was fixed for 17th February, 2000. On 17th February, 2000, the following Order was passed :

“17-2-2000 Pt. : Shri Thakur Dass, Sr. PP for CBI.

Despite of the opportunity given to the prosecution, relied upon documents and statements of witnesses have not been filed on record. In absence of those, report u/s 173 Cr.P.C. filed by prosecution has no meaning. As a result cognizance in this case cannot be taken. File be consigned to record room. Prosecution may file fresh charge sheet if it so desire, alongwith documents and statements of witnesses.

Sd/- Special Judge 17-2-2000”

(emphasis supplied)

2. On 8th July, 2005 a chargesheet was filed by the prosecution-CBI before the Court. Vide an Order on the same date, the Court summoned the earlier file from the record room and fixed the matter for 15th July, 2005. On 15th July, 2005, the Court passed a detailed order on certain other aspects. The matter was adjourned on some dates for clarifications and for examination of the chargesheet. It appears thereafter the documents as well as statements of witnesses were filed. On 8th February, 2007, the Court took cognizance and summoned the accused by passing the following Order:

“Present : Shri S.Islam, Ld.PP for CBI.

An application has also been filed by the IO alongwith letter no. HO/Vig/CBI-19/V 1156 dated 7.2.07 of Asstt. General Manager (Vig.) Oriental Bank of Commerce stating that accused SK Pathrella was removed from service of the bank on 28.5.98. The order of Single Judge was reversed by the Division bench of Delhi High Court vide order dt. 7.12.05 and SLP filed by the accused SK Pathrella against the judgment dated 7.12.05 has been dismissed on 19.10.06.

I have perused the report U/s. 173 Cr.PC., some of the relied upon documents and statements U/s. 161 Cr.PC. There is sufficient material on record for summoning the accused persons for the offences complained of. I, therefore, take cognizance. Accused nos. 1 to 8 may be summoned.

Put up for appearance on 21.3.2007.

Sd/ Special Judge:Delhi:8.2.07”

3. The petitioner who is ex-Chief Manager, Oriental Bank of Commerce, New Friends Colony Branch, New Delhi was summoned to appear and has challenged this Order dated 8th February, 2007. It is contended that the prosecution-CBI is

not entitled to file the second chargesheet for the same offences and the first order dated 17th February, 2000 should be read as an order refusing to take cognizance and therefore the learned Trial Court was not competent to take cognizance on the basis of the second chargesheet vide order dated 8th February, 2007. It is submitted that the allegations in the two chargesheets i.e the first chargesheet which was subject matter of the Order dated 17th February, 2000 and the second chargesheet which was subject matter of the Order dated 8th February, 2007 are virtually identical except for one additional witness i.e. the new Investigating Officer. It is further stated that the prosecution-CBI has filed 12 extra/additional documents with the second chargesheet and ten additional documents relate to findings on specimen signatures and two additional documents are CFSL reports.

4. The contentions raised by the petitioners are without merit.

5. The Order dated 17th February, 2000 has been quoted above. The chargesheet which was filed was not taken on record and was not registered as the prosecution-CBI did not file the documents and the statements of the witnesses. The court refused to apply its mind on the allegations made and go into the merits/demerits of the chargesheet, one way or the other. There was no application of mind by the court to decide whether or not cognizance should be taken or the accused should be summoned. The file was directed to be consigned to the record room. Liberty was however specifically given to the prosecution-CBI to file a fresh chargesheet if it so desires along with documents and statements of witnesses. This order dated 17th February, 2000 cannot be construed and regarded as an order dismissing or declining cognizance on merits.

6. In plain and simple language, the court permitted the prosecution-CBI, if it so desired, to file a fresh chargesheet with documents and statements of witnesses.

7. It is pursuant to this liberty in the Order dated 17th February, 2000 that the so-called second chargesheet was filed. The prosecution-CBI did not conceal any fact and in the second chargesheet it was specifically mentioned that a chargesheet was earlier submitted to the court on 24th December, 1999 but vide Order dated 17th February, 2000 was ordered to be consigned to the record room with liberty to the prosecution-CBI to file fresh chargesheet along with

documents and statements of witnesses. As noticed above, vide order dated 8th July, 2005 the earlier file was summoned by the Special Court (CBI) from the record room and thereafter vide order dated 8th February, 2007 cognizance was taken and the accused were summoned.

8. In the prayer clause, the petitioner has challenged both Orders dated 17th February, 2000 and 8th February, 2007. However, during the course of arguments it was submitted that the petitioner does not want to challenge the Order dated 17th February, 2000 and restricts his challenge to the Order dated 8th February, 2007. The petitioner cannot challenge Order dated 8th February, 2007 without challenging the liberty which was granted to the prosecution-CBI in the Order dated 17th February, 2000. If the liberty was granted and the Order dated 17th February, 2000 stands, then no fault or legal flaw is present in the subsequent order dated 8th February, 2007.

9. The reason why the petitioner has given up the challenge to the Order dated 17th February, 2000 is apparent. In case the Order dated 17th February, 2000 is set aside or quashed then the matter has to be remanded back to the learned Trial Court for fresh application of mind on the question of cognizance and summoning of the accused. This is precisely what the trial court has undertaken vide Order dated 8th February, 2007. Thus in either case, whether or not the petitioner challenges the Order dated 17th February, 2000, he cannot succeed in the present petition.

10. In these circumstances, the following judgments relied upon by the petitioners on the points mentioned below are not relevant:

Title and Citation

A. Option available before the Magistrate on receipt of report under Section 173 Cr.P.C.	
1.	<i>Abhinandan Jha and others versus Dinesh Mishra</i> <u>AIR 1968 SC 117</u>
2.	<i>H.S. Bains versus State</i> <u>(1980) 4 SCC 631</u>
3.	<i>Dr.Kapil Garg versus State</i> <u>107 (2003) DLT 228</u>
B. Report under Section 173 Cr.P.C. should contain all details required in sub-section (2) and should also accompanied by the document and the statements required under sub-section (5).	
1.	<i>Satya Narain Musadi & others versus State of Bihar</i> <u>(1980) 3 SCC</u>

152,
C. After the submission of Report under Section 173 Cr.P.C. on completion of the investigation, the police has a right of further investigation under sub-section (8) but not fresh investigation.
1. <i>K. Chandrashekhara versus State of Kerala and others</i> (1998) 5 SCC 223
2. <i>State of Andhra Pradesh versus A.S. Peter</i> (2008) 2 SCC 383
D. Second charge sheet cannot be filed
1. <i>Suresh versus State</i> 1988 MLW (CrL.) 1047
2. <i>Jeevan Singh versus State of Rajasthan</i> 2004 CrL.J. 3469
E. Supplementary charge sheet cannot be filed without further investigation
1. <i>Kunjilata Dei versus State of Orissa</i> 1985 CrL.J. 1047
2. <i>Abdul Qayyum Akhtar & another versus State of Rajasthan</i> 2004 CrL.J. 2764

11. It is well settled that a decision is a binding precedent on the question raised and decided and words and sentences in a judgment cannot be read in isolation dehors the controversy and the question raised and decided. Ratio and the legal reasoning has to be understood and then applied. The factual matrix and the issue raised in the present petition is peculiar and rather unique.

12. It may be relevant to state that when the cognizance was taken by the trial court on 8th February, 2007, both the chargesheets were before the court. As per the case of the petitioners, both the chargesheets are identical in all material aspects except for the two immaterial aspects pointed out above i.e. additional witness and some documents.

13. The second contention of the petitioner that along with the second chargesheet, the prosecution-CBI has not filed original documents and therefore cognizance should not have been taken is also without merit and cannot be accepted. The court had taken cognizance and issued summons after filing of statements of witnesses and perusing the said statements. Photocopy of the documents were filed. It is not alleged that the charge sheet did not comply with section 173(2) of the Code. Cognizance is taken on the basis of the police report and material submitted therewith. Section 190(1)(b) of the Code provides that the magistrate has power to take cognizance upon a police report of such facts as provided therein on being satisfied that it is a fit case for taking cognizance of the offence. It is not a fatal illegality but an irregularity.

14. Learned counsel for the petitioner has submitted that the prosecution-CBI took nearly five years to file documents and statements of witnesses. This is unfortunate and there is a lapse. However, this cannot be a ground to quash the Order dated 8th February, 2007 taking cognizance and summoning the accused. The allegations are serious and pertain to P.C. Act. It is not the case of the petitioner that the chargesheet was filed beyond any prescribed period of limitation.

15. Learned counsel for the petitioner has stated that at present they do not press their contention/argument based upon the settlement between the Oriental Bank of Commerce and the borrowers and the effect thereof. This question has not been examined and considered. It will be open to the petitioner to raise this question at an appropriate stage and in accordance with law.

16. In view of the above, I do not find any merit in the present Petition and the same is dismissed. Observations made above are for the disposal of the present Petition and will not be construed as observations on merit binding on the trial court.

SANJIV KHANNA, J.

SEPTEMBER 13, 2010
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