

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

% **Judgment reserved on: 20.04.2010**
Judgment delivered on: 19.05.2010

+ **W.P.(CRL) NO.586/2010 & CrI. M.A. Nos.5017-18/2010**

SANJEEV KUMAR DANDONA Petitioner
Through: Mr. Sidharth Luthra, Sr. Advocate
with Mr. J.A. Khan, Advocate

versus

C.B.I. Respondent
Through: Mr. Vikas Pahwa, Standing Counsel
with Mr. Biswajit Kumar Patra,
Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner to seek quashing of the order of charge dated 04.09.2008 and the charge-framing order dated 17.10.2008 passed by Sh. V.K. Maheshwari, Special Judge, Delhi

in C.C. No.54/2002 at RC7(A)/2000/DLI/CBI/ACB/ND. The petitioner is one of the co-accused and is allegedly involved in the issuance of more than one TSR permit against one old condemned TSR in violation of the prescribed rules. The background relevant for present case may first be noted.

2. The Supreme Court, in writ petition No.13029/1985 (M.C. Mehta v. Union of India) vide order dated 16.12.1997 had directed that no fresh permit would be granted in respect of auto rickshaw (TSR), except by way of replacement of an existing working TSR with a new one. This was done with a view to reduce pollution levels in Delhi. Trading in permits was also not allowed by the Supreme Court. As a result of the aforesaid direction, Secretary (STA) issued a detailed order dated 02.01.1998 to the concerned officials including Motor Licensing Officer (AR), Burari prescribing procedures for maintenance of accounts of cancellation/registration of TSRs, monthly statement of TSR registrations cancelled or renewed, and format for "Certificate of Cancellation of Registration". Consequently, the Motor Licensing Officer (MLO), Burari issued a detailed order prescribing the procedure to be adopted for replacement of old TSRs with new ones.

3. A dealer could sell one TSR against one LOI as issued by the transport authority. Holder of such LOI had the option of purchasing a TSR from any authorized dealer. There were three authorized dealers at that relevant time in Delhi. Dealers had no say in the issuance of

LOI. Whenever a customer brought with him LOI, all that the dealer was supposed to do was to receive the amount of TSR and sell the same by delivering the respective TSR, while retaining a photocopy of LOI for the sake of his own records. For registration of such TSR with the transport authority, the purchaser was required to produce the dealers sale invoice, Form No.20, Form No.21, insurance of the vehicle and the permit. After scrutinizing and verifying all these documents, officials of the transport authority [the MLO (AR)] would register the vehicle.

4. On certain information received by officials of National Information Centre (for short NIC), investigation was carried out which revealed that 1157 auto rickshaws had multiple registration as on 17.06.1999 i.e. it was a case where two or more than two new TSRs were given permit against one old TSR permit. A vigilance team of the transport authority headed by their Deputy Director (Vig.) visited the Burari Transport Authority and were able to locate 150 such files just by physical search. It was also found that the files were grossly incomplete and were not containing the necessary documents.

5. FIR No.34/99 dated 15.09.1999 was registered at the instance of ACB, Government of NCT of Delhi. A total of only approx. 350 files could be located. The rest of the files which were supposed to be available at the office of MLO (AR) Burari, were incomplete and irregularities in registrations of several TSRs were clearly made out. It

was found that files/documents were fabricated to justify the existence of additional old auto rickshaws, so as to cover up the said crime.

6. The investigation revealed 10 specific cases of multiple registration during the year 1998 & 1999 (details whereof are found in the charge sheet) where, inter alia, Shri Shyam Sunder Dandona, owner of Pal Auto Deals, Paharganj provided new TSR to the prospective buyers as sub-dealer and most of the time he only arranged the old TSR or its papers from the market and got the new TSR registered either themselves or through, mostly, Shri Ashok Khyrana, a tout working in the Transport Authority.

7. Shri Shyam Sunder Dandona got finance approved for the prospective buyers through his nephew. Sh. Sanjeev Kumar Dandona, the petitioner herein, Director of M/s Dandona Finance Limited. **Shri Sanjeev Dandona, the petitioner was found to have financed almost every TSR of the 10 specific cases investigated through M/s. Dandona Finance Ltd. The petitioner was found to have provided blank, incomplete Form-20 having his signature over the stamp of his firm Dandona Finance Ltd. which led to creation of false files. It was found that the petitioner had an arrangement with M/s PRJ Enterprises for issuance of fake sale certificate (Form-21), which showed his connivance with others for getting maximum benefit through financing the TSRs. The petitioner was found to have signed more than one Form-21 as**

financier in respect of the same auto rickshaw, i.e. DL1RC 7959, which had been found in different files with same registration number.

8. Investigation revealed that Sh. Raj Kumar Jain owner of M/s. PRJ Enterprises, Dealer of Bajaj TSR in Delhi has given standing directions to his employees to issue Sale Certificate for new TSRs to the persons / employees sent by Sh. Shyam Sunder Dandona of M/s. Pal Auto Deals and Sh. Sanjeev Dandona of Dandona Finance Ltd. as per the details provided. Almost every file was having Sale Certificate with wrong details leading to formation of fake records. Invoices against purchase were not available for relevant TSR. More than one Form-21 (sale letter) in respect of same vehicle which have been located in different files bearing the same registration number (as part of cover-up operations). As the new permits were banned so in this way he helped himself to get more profits by selling more TSRs in connivance with his sub dealers / financiers. It was also found out that almost every recovered file had wrong/incomplete LOI (Letter of Intent) details, no pencil print of engine or chassis number. Even the copies of cancellation certificates, supposed to be issued to the concerned authorities, were still present in the TSR file. Various sale certificates in form 21 were having wrong details, TSR deposit slips were absent and so were the original TSR

permits etc. in most of the TSR files. Most of the cases were, inter alia, done by M/s. Pal Auto Deals, M/s Dandona Finance Ltd. (the proprietary firm of the petitioner herein) and M/s PRJ Enterprises. It was evident that the MLO/Head Clerk/MVI had not maintained any parameters for issuance of such permits.

9. With the aforesaid allegations, charge sheet dated 15.03.2000 was filed by the CBI:ACB:New Delhi before the competent court. By the impugned order dated 04.09.2008, the learned Special Judge, Delhi held that prima facie case for framing of charge for offence punishable under section 12B read with sections 420/468/471 IPC and offence defined under sections 13(1)(d) of Prevention of Corruption Act, 1988 is made out against all the accused. Prima facie case for framing charge for substantive offence punishable under section 420 IPC was held to have been made out against all the accused, i.e. A1 to A8. Prima facie case for framing charge for substantive offence as defined in sections 13(1)(d) and punishable under section 13(2) of the Prevention of Corruption Act is made against accused nos.1 to 3.

10. Vide order dated 17.10.2008, the Special Judge, Tis Hazari framed charges against, amongst other accused, the petitioner (accused no.5) herein. The specific allegations against the petitioner herein, as contained in the charge sheet read as under:

"5. Sanjeev Dandona, Proprietor M/s Dandona Finance Ltd.

- a) You affixed stamp of your firm alongwith your signatures on Form 20 which were not having any signature of TSR owners, with a notice to create fake TSR files showing vehicle hypothecation.
- b) You put your signature alongwith seal of your firm in Form 20 of the files D28, 29, 30, 31, 35, 36 and 37 showing hypothecation of the TSRs in question when the signatures of Madan Lal, Ashok Kumar, Gauri Shanker and Bakshish Singh were not available on the concerned papers and hypothecation papers were certified on papers having forged signatures of Madan Lal, Ashok Kumar, Gauri Shanker and Bakshish Singh.
- (c) You arranged fake sale certificate for creation of false documents for supporting claim for new TSR in place of old."

The charges framed qua all the accused reads as follows:

"Firstly, that during the year 1998-99 you A-1 Raghukant Bhardwaj, MLO Transport Depta., A-2 Chander Pal Singh, Head Clerk, Transport Dept., Govt. of NCT, A-3 Anoop Singh Dahiya, Motor Vehicle Inspector., Transport Dept. Govt. of NCT, while posted and working as public servants entered into a criminal conspiracy with A-4 Shyam Sunder Dandona, A-5 Sanjeev Kumar Dandona, A-6 Ashok Kumar Khurana, A-7 Raj Kumar Jain and A-8 Arun Kumar Maggo @ Kaloo with an object to cheat the Transport Deptt. Of GNCT of Delhi in the matter of issuing new permits and registration certificates under the Replacement Scheme of the Transport Deptt. in lieu of old Auto Rickshaws either by falsely showing deposit of old Auto Rickshaws (when in fact no such old auto rickshaw was deposited) or by repeatedly issuing, more than once, new permit and RC in lieu of one and the same old auto rickshaw, in violation of the guidelines issued by the Transport Deptt. and that in pursuance of the above criminal conspiracy documents were got forged and then used as genuine in order to justify issuance of new permit and registration certificates, although under the

guidelines of Transport Deptt. no fresh permit/RC could be issued in place of one old auto rickshaw more than once and that too when auto rickshaw in question was road worthy and permit/RC holder was himself plying the same in the NCT of Delhi and all of you A-1 to A-8 thereby committed an offence punishable U/s. 120-B r/w 420, 468, 471 IPC r/w sec 13(1)(d) of PC Act 1988 and within my cognizance.

Secondly, All of you misrepresented facts and/or acted in fraudulent manner by your acts of commission or omission (as mentioned in Annexure A), as a result of which Transport Authority of NCT of Delhi was cheated in the matter of issuing of Registration certificate and Permit in the name of various Auto Rickshaw Holders and all of you thereby committed an offence punishable U/s 420 IPC and within the cognizance of this court.

And I hereby direct that you all to be tried by this court for the above said charges”.

11. Mr. Sidharth Luthra, learned senior counsel appearing for the petitioner submits that the petitioner was merely acting as the financier of the TSRs which were being replaced in terms of the Supreme Court order. He submits that the petitioner had no role to play in the forgery or fabrication of any documents allegedly done by the other accused. Once the documents were presented before the petitioner, the petitioner merely provided finance to those persons who approached the petitioner for financing of the TSRs. He submits that the petitioner was not involved in the process of the registration of TSRs. He submits that there is absolutely no evidence collected by the investigating agency to link the petitioner with any conspiracy allegedly hatched by the other accused. He further submits that at the stage of framing of

charges under section 227 of Cr PC, the trial court has to find out whether or not a prima facie case against the accused has been made out. However, if two views are equally possible, and the judge finds that the evidence produced before him gives rise to some suspicion, but does not give rise to grave suspicion against the accused, he will be within his rights to discharge the accused. He places reliance in ***Union of India v. Prafulla Kumar Samal & Anr., (1979) 3 SCC 4***, in support of this submission. He submits that on a perusal of the charge sheet, at best, what is disclosed against the petitioner is an act of negligence in not filling up Form-20 properly, which may have been used by the other accused for the purposes of forgery and fabrication of records. He submits that there is no criminality involved in the acts and omission of the petitioner. That being the position, the equally possible view i.e. that the acts and omissions of the petitioner are a result of unintentional negligence, which is favourable to the petitioner, ought to have been adopted and the petitioner should have been discharged by the trial court.

12. Mr. Luthra submits that a judge while exercising jurisdiction under section 227 Cr PC, cannot merely act as a post office or a mouthpiece of the prosecution. He has to sift and weigh the evidence even if it is for the limited purpose of finding out whether a prima facie case has been made out or not. Where two views are equally possible and evidence give rise to some suspicion but not grave suspicion, he

can discharge the accused. In support of this submission, he places reliance on ***Dalwar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135.***

13. On the other hand, Mr. Vikash Pahwa, the learned standing counsel, while vehemently opposing the petition, submits that the active involvement of the petitioner in the forgery is clearly discernible from the charge sheet filed in the case. He submits that the arguments raised by the petitioner with regard to his non-involvement in the commission of the offence in question has been dealt with by the Special Judge in the impugned order dated 04.09.2008. He has referred to paragraphs 49 to 51 of the said order. He submits that conspiracy is an inference drawn from the circumstances and there cannot always be much direct evidence to establish the same. He submits that the trial court in paragraph 62 has quoted the attributes of a conspiracy and how the same has to be appreciated and viewed by the courts. He further submits that the learned trial judge has applied the correct principles in relation to the examination of the charge sheet for the purpose of evaluating the prima facie case for framing of charge. In this regard, he has drawn the attention to paragraphs 69 to 78 of the impugned order dated 04.09.2008. He further points out that the charge of forgery has been clearly made out against the petitioner, as is evident from the charge framed, which is extracted herein above.

14. While relying on the various case laws taken note by the trial court, Mr. Vikas Pahwa has further placed reliance on ***Mathura Dass & Ors. V. State, 2003 III AD (Delhi) 213*** to submit that the existence of a prima facie case may be found even on the basis of strong suspicion against accused. The assessment of prosecution evidence at the final stage is entirely on a different footing than it is at the stage of framing a charge. At the final stage, if two views are possible then the view which is favourable to the accused has to be accepted, but at the stage of framing of charge, the view favourable to the prosecution has to be accepted so that at the trial, prosecution may come up with its explanations with regard to drawbacks, if any, pointed out by the accused.

15. Having considered the rival submissions, and perused the charge sheet filed by the prosecution and the impugned orders, and upon application of the principles of law laid down by the court, I am of the view that there is absolutely no infirmity in either the order of charge dated 04.09.2008 or in the order dated 17.10.2008, whereby charges have been framed against, inter alia, the petitioner. There is no basis for the petitioner to contend that a prima facie case for framing of charge against the petitioner was not made out. Not only some suspicion, but grave suspicion arises with regard to the conduct of the petitioner who acted as financier for purchase of TSRs on the basis of allegedly forged and fabricated documents. The learned

Special Judge has dealt with the alleged involvement of petitioner in paragraphs 50 and 51, and the same read as follows:

“50. According to prosecution A-5 of M/S Dandona Finance Ltd in connivance and conspiracy of A-4 and other co-accused had financed most of TSRs mentioned in the charge sheet and provided blank or incomplete form-20 (Vehicle Inspection Form) having his signatures over the stamp of his firm M/S Dandona Finance Ltd which lead to creation of fake files. His arrangement with M/S PRJ Enterprises for fake sale certificate (Form-21) shows his connivance with others. He had signed more than one form-20 as financer, in respect of same auto rickshaw. Auto rickshaw having regd No.DL-IRC-7939 had been found in two files with the same regd number. In this regard PW19 S K Ray stated that D-24, D-27, D-28, D-31, D-34 and D-40 are fake or created files having stamp and signatures of A-5 as owner of M/S Dandona Finance Ltd on form-20 (Vehicle inspection form) Some form have forged signatures of owners. Some form have no MVI verification report. D-49 and D-50 are the the file of same regd No financed by A-5. Form No.20 of which having no MVI verification report, even signatures of owners are not available on the same. PW25 Chander Bhan has stated that files, D-24, D-27, D-28, D-31, D-34 and D-40 are totally fake files. Authority record shows that some new TSRs were replaced against the old TSRs. It has also been confirmed by PW 26, PW30, PW31, PW32, PW34 and PW50.

51. According to prosecution A-5 has put his signatures/stamp of company on form-20 showing hypothecation of TSR but with regard signatures of TSR owners. In this regard PW43 Madan Lal, PW44 Ashok Kumar PW45 Gauri Shanker, PW46 Bakshish Singh have stated that their signatures are forged on Form-20 in their respective files i.e. D-35, D-30, D-31, D-28, D-29, D-36 and D-37. PW56 Kirpal Singh

and PW 57 Vijit Lal Mathur have stated that they had signed Form-20 (Sales Certificate of New TSR) brought and filed by A-4 and A-5 according to the standing instructions of their employer A-8.”

16. The petitioner has been charged with conspiracy with the other accused in the commission of the offence. In the order framing charge, the learned Special Judge has rightly observed:

“62. A conspiracy is an inference drawn from the circumstances. There cannot be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. Since Conspiracy is often hatched up in utmost secrecy, it is most impossible to prove conspiracy by direct evidence. It has to be inferred from the acts, statements and conduct of parties to the conspiracy. Thus, if it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the court is at liberty to draw the inference that they conspired together to effect that object. This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whosoever is a party to the conspiracy, during the period for which he is charged, is liable under this section. Motive and economic loss are not a sine qua non for proving an offence of criminal conspiracy. If the actual evidence as to the actual commission of crime is believed then no question of motive remains to be established.”

17. The learned Special Judge has followed the guidelines issued by the Supreme Court and various other courts with regard to the framing of charge.

18. In ***State of Maharashtra & Ors. v. Som Nath Thapa & Ors***, 1996 (4) SCC 659, the Supreme Court has held:

“32.....if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

19. In ***Ms. Soma Chakravarty V. State (through CBI)***, 2006(1) JCC 152, the Court held as follows:

“It is settled law that at the time of framing of charge the court is not required to make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial. It is also well settled that where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing charge.” (**Union of India V. Prafulla Kumar, AIR 1979 Sc 366**).

20. In ***State of MP V. S.B. Johari and Others***, (2000) 2 SCC 57, the Court held as follows:-

“A. Criminal Procedure Code, 1973-Ss.227 and 228, 401 and 397 and 482- Discharge-Court has only to see whether prima facie there was sufficient ground for proceeding against the accused- It cannot appreciate the evidence to arrive at a conclusion in the matter- On facts, held, High Court in revision erred in quashing the charge framed against the accused by trial court by appreciating the material produced by the prosecution and on that basis deciding that accused was not guilty.”

21. In ***Supdt. And Remembrancer of Legal Affairs West Bengal V. Anil Kumar Bhunja and Others***, (1979) 4 SCC 274, it was held that:

“It is very well settled law that at the initial stage of framing of the charges, the prosecution evidence does not commence. At this stage, truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged. A strong suspicion founded on material before it, the court can form a presumptive opinion regarding the existence of factual ingredients, constituting the offence.”

22. In my view, the judgments relied upon by the petitioner are of no avail since it cannot be said in the face of the allegations made against the petitioner in the charge sheet, that prima facie it is merely a case of negligence on the part of the petitioner in his failure to properly fill up Form 20, signed and issued by him in blank. Prima facie, his involvement appears to be deep rooted. It cannot be said that on the basis of the allegations contained in the charge-sheet the petitioner

may not have been involved in the criminal acts attributed to him. Consequently, I see no merit in this petition and dismiss the same. The pending applications also stand dismissed.

(VIPIN SANGHI)
JUDGE

MAY 19, 2010
as/rsk/sr