

HIGH COURT OF DELHI: NEW DELHI

+ CRL. REV. P. No. 674/2005

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DR. SADACHARI SINGH TOMAR Petitioner

Through: Mr.Prashant Bhushan,Adv.
with Mr.Sumeet Sharma, Adv.

Versus

**DIRECTOR, CENTRAL BUREAU OF
INVESTIGATION & ORS. Respondents**

Through: Mr. Vikas Pahwa, Standing
Counsel with Mr.B.K.Patra, Adv.
Mr.A.B.Dial,Sr. Adv. with
Mr.S.S. Lingwal, Adv. for
Respondent Nos. 2 to 4.

Judgment reserved on: 17th December, 2010

Judgment delivered on: 22nd February, 2010

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J.

1. Petitioner has filed this petition under Section 397 of Code of Criminal Procedure (Cr.P.C.) against the order dated 19th February, 2004 passed by learned Special Judge, Delhi, thereby accepting the closure report filed by respondent No. 1.

2. Impugned order reads as under:-

“Closure report perused along with statements and relevant documents. I find no malafides could be pin pointed against any of the proposed accused except an irregularity regarding the mode of payment made as the instalment to the purchase of the requisite goods. No material found whereunder the proposed accused need be prosecuted. I, therefore, accept the closure report and cancel the case. The seized documents be returned to the persons/departments wherefrom these were taken in possession by the CBI during investigations.”

3. Briefly stated, facts of the case are that respondent No. 1, Central Bureau of Investigation (CBI) registered FIR bearing No. RC-20(A)/2000/DLI on 26th April, 2000 under Sections 120-B/420/468/471 IPC and Section 13(2) read

with Section 3(1)(d) of Prevention of Corruption Act, 1988 (P.C. Act), on the basis of source information, regarding irregularities committed in purchase of computes and allied equipments worth Rs. 12 crores, by Indian Council of Agricultural Research (ICAR). It was alleged that the officials of ICAR had entered into a criminal conspiracy with officials of M/s HCL-HP Ltd. and pursuant thereof, terms of payment incorporated in the bid document i.e. 50% against the “shipping document” was changed to 50% against the “order/shipping document”, thus resulting into undue pecuniary advantage to M/s HCL-HP Ltd. and corresponding financial loss to the Government. It was further alleged that remaining 50% of the contract amount of about 6 crores was also released to M/s HCL-HP Ltd. without obtaining installation-cum-successful commissioning certificate from ICAR, inasmuch as, payment was released on 29th March, 1997, whereas installation continued up to 30th June, 1999.

4. Matter was investigated by the CBI but it did not find any material in support of allegations that the officials of ICAR had entered into a criminal conspiracy with the officials of M/s HCL-HP Ltd. and pursuant thereof, changed the terms of payment, thereby causing financial loss to the Government and corresponding pecuniary gain to M/s HCL-HP Ltd. It was observed that the responsibility of inserting the word 'order' for making the payment of first instalment of 50% could not be pinpointed as contract was awarded after following due procedure. Contract was awarded on the basis of recommendations of Purchase Committee comprising of nine members holding senior positions in the organisation. Bid Evaluation report was prepared by Sh. K.K. Bajpai, Dy. Secretary (N), Sh. A.S. Sood, Sr. Finance and Accounts Officer and Dr. Gaya Prasad wherein the word 'order' was substituted in the payment terms. This report was discussed in the meeting dated 21st December, 1995 of the Bid Evaluation Committee comprising of seven members and was

approved. Later, the said report was also accepted and approved by the World Bank as the project was financed by it. CBI concluded that though the payment terms had been found to be changed but no malafidies on the part of any ICAR official could be established; no tangible loss was found to have been caused to the government except that the first installment of about Rs. 6 crore was released couple of months in advance, inasmuch as, the second installment was withheld for about five months awaiting the supply of the goods. Final payment was released only after the supplies had been effected. No material could be collected during investigation to show that there was short supply of equipments. In view of this, CBI categorically mentioned in the closure report that the evidence was insufficient to substantiate the allegations.

5. Learned Special Judge considered the closure report and also the relevant documents that were filed along with the said report and was of the view that no sufficient

material was available to prosecute the accused, consequently, accepted the closure report.

6. Learned senior counsel for the petitioner has vehemently contended that petitioner, while working with ICAR, noticed irregularities in the purchase and maintenance of computer networking equipments in the year 1998. This project was funded by the Government of India and World Bank. Petitioner had submitted a report indicating the irregularities in the supply and maintenance of computer systems at various centres. CBI had conveniently ignored the report of petitioner. In the closure report itself, CBI has observed that payment term had been altered substantially, which had resulted in the payment of 50% of the contract amount immediately on placing the order with M/s HCL-HP Ltd. As per the learned senior counsel, due to this change in payment terms, Government lost considerable amount towards interest, while M/s HCL-HP Ltd. gained financially as it received

payment in advance even before commencing the supply. Learned senior counsel further contended that as per the closure report, Sh. K.K. Bajpai had changed the terms of payments, obviously to give benefit to supplier, therefore, at least a prima facie, case under Section 13(2) read with Section 13 (1) (d) of the P.C. Act was disclosed against him. There was no reason for Sh. K.K. Bajpai to have changed the terms of payment unless he had gained some pecuniary benefit from the supplier. Admittedly, CBI recommended departmental action against the erring officials, connected with the project, for having committed irregularity, by changing the terms of payment, this by itself, shows that CBI was convinced regarding gross irregularities in the purchase of material and this was sufficient enough for launching the prosecution, by filing a charge sheet, instead of a closure report. In nutshell, it has been contended that learned Special Judge ought not have accepted the closure report.

7. As against this, learned counsel for respondent No. 1 has vehemently contended that no material could be collected during the investigation to show the culpability of respondent Nos. 2 to 5 or to prove that they had entered into a criminal conspiracy to cause financial loss to the Government and corresponding financial gain to themselves. Purchase Committee had finalised the bid which later on was even approved by the World Bank, thus, no malafides can be attributed either against the private respondents or any other officer of ICAR. Mere suspicion was not sufficient to continue with the prosecution. It was further contended that no cogent ocular evidence coupled with documentary evidence could be collected during the investigation to indicate that the terms of payment, were changed for malafide reasons. No material was found to attract the criminality, in the changing of the terms of payment, which otherwise had not resulted into any financial loss to the Government and corresponding gain to M/s HCL-HP Ltd.

8. Learned senior counsel for the private respondents Nos. 2 to 4 has contended that respondent Nos. 2 to 4 had retired from their services long ago and by now they all are senior citizens. Purchase of computers was made more than twelve years ago as such the matter had become stale. He has further contended that the word 'order' was substituted along with word 'shipping documents' probably because respondent No. 5 was based in India and no supplies were to be shipped from a foreign land, which usually takes considerable time to reach the Indian shores. As the equipments had domestic origin and supplies could have been effected without loss of time in transit, it appears that terms of payment were modified by incorporating the word 'order' along with the condition on "shipping documents". He has further contended that, admittedly, no irregularity could be found in awarding the contract to respondent No. 5 as its bid was the lowest. That by March, 1997, entire supplies had been effected and only thereafter, the balance payment of remaining

amount was released, which show that no irregularity had been committed by any of the official of the ICAR. It has been further argued that in absence of any cogent material having been collected during the investigation, chances of conviction of respondent Nos. 2 to 4, otherwise, were bleak and for this reason also, no fruitful purpose would have been served by not accepting the closure report and ordering for further investigation. Reliance has been placed on ***Dalip Kumar vs. State & Anr.*** reported in **132 (2006) Delhi Law Times 578.**

9. Learned senior counsel further contends that petitioner, who is an employee of ICAR, is a chronic litigant and has filed about 10 cases against its employer. He has filed this petition only to harass the present respondents.

10. It is well settled that the jurisdiction of High Court cannot be invoked merely because lower court has misappreciated the evidence on record. Revisional jurisdiction can be exercised by the High Court in

exceptional cases, only when there is some glaring defect in the procedure or manifest error on the point of law resulting in flagrant miscarriage of justice.

11. In the backdrop of above legal position, I have considered the facts of this case and I do not find any material illegality, irregularity, impropriety or any infirmity in the finding of the learned Special Judge thereby accepting the closure report.

12. In the closure report, CBI has concluded that no sufficient material could be collected during the investigation to show malafides on the part of any of the official of the ICAR more particularly, that of respondent Nos. 2 to 4 having conspired with officials of respondent No. 5 M/s HCL-HP Ltd. with regard to purchase of computers and accessories or their connivance in changing the terms of payment by incorporating the word 'order' with regard to initial 50% payment. There has to be substantial and cogent evidence on record to indicate the

culpability of accused for continuing their prosecution. Invitation of tender for supply of computers and its accessories by ICAR was invited from the companies situated in India as well as from those situated outside. It appears that keeping in mind this fact, in the invitation of tender, against the term of 50% initial payment, word 'at the time of shipping' was prescribed. However, subsequently, when it was proposed to award the contract to M/s. HCL-HP Ltd. having its office in India, being the lowest bidder, it appears this word 'order' was added. It is not the case, that the word "order" was added in a clandestine or surreptitious manner. Before awarding contract whole process was followed scrupulously. Bid evaluation report was considered by seven senior officials of the Purchase Committee who approved the same. It was further approved by the World Bank. For this reason also, it is difficult to conclude, that terms of payment were changed for malafide reasons. As per CBI, no material was there to show that supplies were inordinately delayed on

receipt of payment of 50% in terms of contract. No other irregularity was noticed during the investigation. Prosecution cannot be launched or continued on mere suspicion as it requires proof and in this regard sufficient material has to be collected during the investigation to show the culpability of accused. As per CBI no such material could be collected during the investigation, therefore, no useful purpose would have been served in ordering reinvestigation. Thus it would be a futile exercise in flogging a dead horse only on the ground of mere suspicion and without there being any substantive material on record.

13. I also do not find any force in the contention of learned counsel for the petitioner that since CBI had recommended departmental action against the erring officials that by itself, was sufficient to show that terms of payment had been changed for malafide reasons and extraneous consideration. In *Gian Prakash Sharma vs.*

Central Bureau of Investigation & Anr. reported in 2004 CriLJ 3817. Investigating agency, while filing closure report had recommended departmental action against the erring officials. However, in view of lack of sufficient evidence collected by the CBI, it was held that it would be a futile exercise as well as an abuse of process of law to order re-investigation.

14. In Dilip Kumar's case (supra) this Court held as under:-

“In view of the material that has been placed before me, I have no hesitation in holding that the case of CBI, even if it is taken on its face value to be correct, still the chances of conviction of appellant are meek. I am further of the view that it would not be worthwhile to send the case for trial as the incident has become two decades old”

15. In the present case also, incident is almost twelve years old. CBI has already concluded that no material, worth the name has been collected to show culpability of respondent Nos. 2 to 5. Merely because payment term was

altered, by itself, would not be sufficient to suggest that the same was done for extraneous consideration, as such, in my view, chances of conviction of respondent Nos.2 to 5 were, otherwise, meek. In view of above discussion and in the facts of this case, I do not find any manifest error and/or irregularity in the impugned order.

16. Dismissed.

A.K. PATHAK, J

February 22, 2010
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