

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

Judgment reserved on: August 10, 2010.
Judgment delivered on: August 16, 2010

+ **CRL. M.C.NO. 2008/2009 & Crl. M.A.No. 7452/2009**

JAGDISH KUMAR DHINGRA

....PETITIONER

Through: Mr. Dinesh Mathur, Sr. Advocate with Dr.
A.K.Gautam, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATION (CBI)...RESPONDENT

Through: Mr. Harish Gulati, Advocate with Mr.
Anindya Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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 Digest ?

AJIT BHARIHOKE, J.

1. Jagdish Kumar Dhingra, the petitioner herein vide this petition under Section 482, Code of Criminal Procedure (for short 'the Code') is seeking quashing of charge sheet No. 03 dated 23.12.2008 as regards him in C.C.No. 115/2008 under Sections 120-B IPC read with Section 7, 8, 9, 10, 11, 12 & 13(2) read with Section 13(1)(d), P.C.Act, 1988 filed in the court of Special Judge, CBI (P.C.Act), Patiala House Courts, New Delhi titled as CBI Vs. Yoginder Kumar & Ors. as also the cognizance

order dated 29th January, 2009 passed by the Special Judge, CBI, on the ground that there is no material in the charge sheet which could prima facie justify the involvement of the petitioner in the commission of the either of the aforesaid offences.

2. Learned Sh. Dinesh Mathur, Sr. Advocate appearing for the petitioner submitted that the petitioner has been arrayed as an accused in the charge sheet filed under Sections 120-B IPC read with Section 7, 8, 9, 10, 11, 12 & 13(2) read with Section 13(1)(d) P.C.Act, 1988. It is submitted that admittedly, the petitioner is not a public servant, as such Section 7, 11 and 13(2) read with Section 13(1)(d) P.C.Act are not applicable to the petitioner as those provisions are specific to the corrupt acts committed by a public servant and there is no material on record to prima facie show that the petitioner either abetted the commission of any of aforesaid offences or he entered into a criminal conspiracy to commit these offences with his co-accused persons, including the public servant Yoginder Kumar, Inspector, CBI and despite of that, the learned Special Judge, without due application of mind, has routinely taken cognizance of the offences mentioned in the charge sheet. Learned counsel submitted, since there is no prima facie evidence against the petitioner to show his involvement in either of the offences mentioned in the charge sheet, he is entitled to quashing of charge sheet as well as of the order taking cognizance against him.

3. Learned Shri Harish Gulati, Advocate appearing for the respondent CBI has, at the outset, raised a preliminary objection that the present petition under Section 482 of the Code is misconceived for the reason that the charge sheet against the petitioner has already been filed in the court where the matter is listed for arguments on charge. Learned counsel submitted that as per Section 239 of the Code, the petitioner has a legal right to make his submissions before the court concerned against the framing of charge and if the court, on consideration of the material on record and his submissions, considers the charge against the petitioner to be groundless, he would be discharged. Thus, it is argued that the present petition is an endeavour on the part of the petitioner to short circuit the procedure for prosecution in a warrant trial as provided in the Code. Learned counsel contended, since an equally efficacious remedy is available to the petitioner to press for his discharge in the trial court, there is no justification for exercising the inherent powers under Section 482 of the Code. In support of this contention, he has relied upon the judgment of Supreme Court in the matter of **State of A. P. Vs. Gaurishetty Mahesh & Ors** in Criminal Appeal No.1252 of 2010 arising out of an S.L.P. (Crl.) No.3061 of 2008.

4. Learned Sh. Dinesh Mathur, Sr. Advocate appearing for the petitioner submitted that the above argument of learned counsel for the respondent is misconceived. He contended that Section 482 of the

Code provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. He submitted that in exercise of its inherent powers, the High Court is competent to quash the proceedings in a trial if it is of the view that allowing such proceedings to continue would be an abuse of process of the court or that the ends of justice require such proceedings to be quashed. Learned counsel has placed reliance upon the judgments of the Supreme Court in the matters of **State of Karnataka Vs. L. Muniswamy & Ors.**, 1977 SCC (Cri) 404, **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate and Ors.**, (1998) 5 SCC 749, **G.Sagar Suri & Anr. Vs. State of U.P & Ors.**, 2000 SCC (Cri) 513, **Adalat Prasad Vs. Rooplal Jindal & Ors.**, (2004) 7 SCC 338, **Subramaniam Sethuraman Vs. State of Maharashtra & Anr.**, 2005 SCC (Cri) 242, **Suresh Kumar Tekriwal Vs. State of Jharkhand & Anr.**, (2006) 1 SCC (Cri) 553, **N.K.Sharma Vs. Abhimanyu**, (2006) 2 SCC (Cri) 135, **Bholu Ram Vs. State of Punjab & Anr.**, (2008) 3 SCC (Cri) 710, **Keki Hormusji Gharda & Ors. Vs. Mehervan Rustom Irani & Anr.**, (2009) 2 SCC (Cri) 1113, **V.Y.Jose & Anr. Vs. State of Gujarat & Anr.**, (2009) 3 SCC 78, **Devendra & Ors. Vs. State of Uttar Pradesh & Anr.**, (2009) 7 SCC 495 & **M.N.Ojha & Ors. Vs. Alok Kumar Srivastava & Anr.**, 2009(11) SCALE 573.

5. I have carefully considered the rival contentions and perused the judgments relied upon by the respective parties. There can be no dispute with the proposition of law enunciated in above judgments that the inherent powers conferred upon the High Court under Section 482 of the Code are wide enough to encompass almost all situations in order to prevent the abuse of process of any court or to otherwise secure the ends of justice.

6. The question, however, is when and under what situation, the High Court should step in and pass appropriate orders in exercise of its jurisdiction under Section 482 of the Code in a criminal trial. The Supreme Court, in the matter of **State of A.P. Vs. Gaurishetty Mahesh & Ors. (supra)**, has analysed the scope of exercise of jurisdiction by the High Court under Section 482 of the Code. In the aforesaid judgment, Supreme Court has, inter alia, observed thus:

“12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may

exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482."

On reading of the above referred judgments relied upon by the rival parties, it is clear that the law relating to Section 482 of the Code, as enunciated in the aforesaid judgments is that the High Court, in exercise of its powers under Section 482 of the Code is competent enough to quash the criminal proceedings pending against the accused in a court in order to prevent the abuse of process of court or to secure the ends of justice. However, said powers should be exercised sparingly and Section 482 of the Code should not be allowed to be

used an instrument handed over to the accused to short-circuit the prosecution and bring about its closure without due enquiry. If the procedural law provides for an equally efficacious remedy to the party concerned, then naturally High Courts would be reluctant to invoke powers under Section 482 Cr.P.C.

7. It is not disputed that the petitioner, along with others, has been challaned in a warrant trial case under Sections 120-B IPC read with Section 7, 8, 9, 10, 11, 12 & 13(2) read with Section 13(1)(d) P.C.Act, 1988. Chapter XIX of the Code deals with the procedure to be followed in a trial of a warrant case by the Magistrate. Part-A of this Chapter deals with the procedure to be followed in a warrant trial case instituted on a police report. Section 238 of the Code provides that in any warrant case instituted on police report, when the accused puts in appearance or is brought before the Magistrate at the commencement of the Trial, the Magistrate shall ensure the compliance of provisions of Section 207 of the Code i.e., he shall satisfy himself that the accused has been supplied with the complete set of charge sheet filed against him. Sections 239 and 240 deal with the next step i.e. framing of charge against the accused or his discharge, which provisions read thus:

“239. When accused shall be discharged.-If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an

opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.-(1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. A conjoint reading of the above provisions of the Code makes it clear that at the stage of framing of charge, the Magistrate/court concerned is under obligation to hear the parties on the point of charge and on consideration of the submission made in light of the material placed on record, to form an opinion whether there is a sound basis for framing of charge and if he finds no sufficient ground to substantiate the charge, he can always discharge the accused under Section 239 of the Code. Thus, an equally efficacious remedy is available to the petitioner under Section 239 Cr.P.C. to make his submissions against framing of charge before the Trial Court where entire record of investigation is available. By moving the instant petition under Section 482 of the Code seeking quashing of the charge sheet, the petitioner is obviously trying to short-circuit the procedure for trial provided in the Code, which in my considered view cannot be permitted unless very strong reasons are pointed out to show that the charge sheet filed by

the respondent is an abuse of process of court motivated by mala fide considerations, which is not the case.

9. Learned counsel for the petitioner also contended that there is no provision in the Code to confer the power of review of order or inherent powers upon the subordinate criminal courts. Therefore, once the Trial Court has taken cognizance of the offence and issued process for appearance to the petitioner-accused, in absence of any power to review its own order or inherent powers, the court cannot review the order of cognizance and issuance of process and as such, Court has no option but to frame charge against the petitioner and proceed with the trial. Thus, it is contended that there is no equally efficacious remedy available to the petitioner and only remedy available to him lies in invoking inherent powers of High Court under Section 482 of the Code. In support of this contention, he has relied upon the judgment of Supreme Court in the matter of **Adalat Prasad Vs. Rooplal Jindal & Ors.**, (2004) 7 SCC 338.

10. I am not in agreement with the above submissions of learned counsel for the petitioner. The facts in the case of Adalat Prasad (supra) are quite distinct from the facts of this case. In that matter, Rooplal Jindal had filed a complaint under various provisions of the I.P.C. against the appellant Adalat Prasad and other respondents. The Metropolitan Magistrate, taking cognizance of the said complaint, summoned the appellant and the other accused by issuing process

under Section 204 of the Code for the offences confined to Section 420 read with Section 120-B IPC. Being aggrieved by the said order of issuance of process, the appellant Adalat Prasad and some of the accused moved the High Court for quashing of the said order. The High Court in the said petition directed the petitioners therein to move the Trial Court against the order of summoning. Pursuant to the said order of the High Court, the appellant Adalat Prasad of the said case filed an application under Section 203 of the Code in the court of Magistrate and the learned Magistrate, after hearing the parties recalled the summons issued by him.

11. Aforesaid order of learned Metropolitan Magistrate recalling the summons originally issued by him was challenged before the High Court on the ground that the Magistrate had no jurisdiction to recall the summons issued under Section 204 of the Code. The High Court allowed the revision petition, holding that the Trial Court was justified in taking cognizance of the offence under Section 420 IPC read with Section 120-B IPC but it erred in recalling the consequential summons issued after enquiry because the subordinate court did not have powers to review its own order. It was said order of the High Court, which was challenged in the Supreme Court and the Supreme Court, after analysing the relevant provisions of the Code observed thus:

“15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material

implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code”.

12. From the aforesaid facts, it is apparent that question for determination before the High Court in Adalat Prasad case (supra) was whether a subordinate court can review its own order and the said question was answered by the Supreme Court in the negative.

13. In the case in hand, the charge sheet has been filed in a warrant trial case on the strength of the police report. The procedure for warrant trial is provided in Chapter XIX, Part-A of the Code comprising of Sections 238 to 243. Section 239 of the Code specifically provides that at the stage of framing of charge, it is obligatory upon the Magistrate to hear the prosecution as well as the accused and if, after hearing the parties and taking into consideration the material on record, the Magistrate finds that there is no ground for substantiating the charge against the accused, he can always be discharged by the Magistrate. Thus, this is not a case in which an equally efficacious remedy is not available to the petitioner.

14. In view of the above, it is apparent that Section 239 of the Code of Criminal Procedure provides an efficacious remedy to the petitioner

to make his submissions against the framing of charge against him before the Trial Court. Thus, I find no reason to short-circuit the procedures prescribed by the Code of Criminal Procedure for prosecution of warrant cases based upon the police report, by invoking the inherent powers under Section 482 of the Code.

15. Petition is dismissed accordingly.

(AJIT BHARIHOKE)
JUDGE

AUGUST 16, 2010
akb/pst