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

% *Judgment Delivered on: August 25th 2011*

+ **CRL.M.C. 40/2011 & CrI.M.A. No.166/2011**

SHAYAM MOHAN GUPTA & ANR. Petitioners
Through: Mr.Sakal Bhushan &
Mr.Sumit Gupta, Advs

versus

CBI Respondent
Through: Mr.A. K. Gautam,
Additional Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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 YES
Digest?

SURESH KAIT, J. (Oral)

1. Vide this petition, the petitioner has challenged the impugned order dated 25.11.2010 passed by learned Trial Judge, whereby, charge under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act and Section 420 read with Section 120-B Indian Penal Code ordered to be framed against the petitioner.

2. The first issue before this Court is whether against the *interlocutory* order passed in the offences including under Prevention of Corruption Act, the petition under Section 482 Cr P C is maintainable or not.

3. No notice has been issued till date in this matter, and initially it was listed for the first time on 10.01.2011, because of the fact that similar issue was pending for adjudication before the Division Bench of this Court, on reference, in Writ Petition (Criminal) No.80/2010. The same has been decided on 29.03.2011 in case of **Anur Kumar Jain Vs. CBI** reported as Manu/DE/098/3/2011.

4. The Division Bench of this Court has answered the reference in para No.33 on following terms:-

“(a) An order framing charge under the Prevention of Corruption Act, 1988 is an interlocutory order.

(b) As Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable.

(c) A petition under Section 482 of the Code of Criminal Procedure and a writ petition preferred

under Article 227 of the Constitution of India are maintainable.

(d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act.

(e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh (supra), Vishesh Kumar (supra), Khalil Ahmed Bashir Ahmed (supra), Kamal Nath & Others (supra) Ranjeet Singh (supra) and similar line of decisions in the field.

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a "cloak of an appeal in disguise" or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice."

5. The issue involved in the instant petition is squarely covered under clause 'C' as reproduced above.

6. Keeping the aforesaid decision into view;
Notice issued.

Mr.A. K. Gautam, learned Additional Standing Counsel accepts notice, on behalf of respondent.

7. With the consent of counsel for parties, the matter is taken up for disposal.

8. Learned counsel for petitioners submits briefly the facts of the case that vide indent No.IND/AD/OS/M3/36/92 dated 08.07.1992, the COD (Central Ordnance Depot), Jabalpur had placed the requirement for 3028 cylinders before the DGOS (Directorate General of Ordnance Services) New Delhi. This indent has been included in the list of documents filed by the CBI as D-3 at page Nos.3 – 1 thereof. A copy of the same is being annexed with the petition as Annexure-C. A copy of the said supply order dated 04.02.1994 (Annexure-H) was sent to the Controllerate of Quality Assurance (Weapon) CQA(W) Jabalpur, which, was the Inspecting Authority in the matter. That inspecting authority i.e. CQA(W) Jabalpur had raised an objection against the said supply order and requested for amendments including one to delete 'with forged end caps welded to seamless pipe' from the same vide its letter dated

12.03.1994, included in the List of Documents, filed by the CBI as D-4 at pages 235-233 thereof, a copy thereof is annexed as Annexure-I to the petition. The inspecting authority CQA(W) Jabalpur had itself later on withdrawn the said objection/vetting remarks vide its letter dated 10.05.1994 included in the list of documents filed by respondent as D-4 at page Nos.249-248 and annexed as Annexure-J to the petition.

9. After more than 5 ½ months since the withdrawal of the objection/vetting remarks by the inspecting authority CQA(W) Jabalpur on 10.05.1994, the supplies were made by the petitioners to the indenting consignee i.e. COD (Central Ordnance Depot) Jabalpur between 29.10.1994 to 21.12.1994 as per supply order dated 04.02.1994 (annexure-H). This is the admitted position as stated by CBI at page No.14 of the challan (Annexure-B). That after a lapse of eleven years since the supplies had been made, a complaint (included as D-1 in the list of documents filed by the CBI at page No.2-1) thereof and being annexed herewith as Annexure-L was filed by the government in the matter with CBI on 12.12.2005, which,

came to be registered as FIR No.RC DAI 2005-A-0066 dated 13.12.2005 under Section 420 Indian Penal Code and Section 13(2) r/w Section 13(1) (d) PC Act. Thereafter, a further lapse of about 04 years, the CBI presented the challan dated 13.07.2009, before learned Special Judge. The case of the CBI set up in the concluding portion of the challan at page No.14 (Annexure-B) is that the CQA(W) Jabalpur had raised an objection against the said supply order and requested for amendments including one to delete “with forged end caps welded to seamless pipe” from the supply order, but the accused persons did not do the same resulting in the supply of the store between 29.10.1994 to 21.12.1994 and the release of 95% payment for the cylinders which were not indented by the COD. Though both the later letters (Annexure J & K) were available with the CBI and were included by it in the list of documents as D-4 respectively as stated above, yet intentionally no reference was made by the CBI to the same in the concluding part of the challan at page No.14, wherein, the emphasis was laid merely on the objection raised by the CQA(W) Jabalpur which had already been withdrawn by

CQA(W) Jabalpur itself, after vetting by its superior authority, i.e. DQA (A), New Delhi as submitted above. And admittedly, the supplies were made by the petitioners between 29.10.1994 to 21.12.1994 i.e. much after the withdrawal of the objection by CQA (W) vide its later letter dated 10.05.1994 (included in the list of documents filed by the CBI as D-4 at pages 249-248 and annexed with the petition as Annexure-J).

10. Learned counsel for petitioner had drawn the attention of this Court to the letter dated 04.02.1994 issued by the Government of India, Army Headquarters/MGO Branch, Directorate General Ordnance Services, New Delhi to the proprietorship firm M/s.Perfect Drop Pins Mfg. Co.

11. In column Nos.16 and 16A the description of the stores are given as under:-

"16. Description of Stores

<i>Cat/part No.</i>	<i>Description</i>	<i>Qty</i>	<i>Rate per unit (Rs.)</i>	<i>Total cost</i>
<i>M-3/CM-512A</i>	<i>Reservoir Compressed Air 5½" dia MK-2A Seamless type (with Forged</i>	<i>3028 Nos.</i>	<i>2500/-</i>	<i>Rs.75,70,000/-</i>

	<i>end caps welded to seamless pipe)</i>			
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(Rupees Seventy Five Lakh and Seventy thousands only)

*16A Drawing/Specification : CM 512A and DC(I) 16080-w
Dated 7.12.83 and the
following drawings
i) CM 3349 ii) CM 2106
iii) CM 3175 iv) CM 3334
v) CM 3348 vi) CM 3342"*

12. Further, learned counsel for petitioner has drawn the attention at page No.72A of the petition which is the drawing of Reservoir compressed air 140 mm DIA MK 2 & 2A issued by the Contrallerate of Quality Assurance (Weapon) CQA(W) Jabalpur, which, is the part of the tender documents and supply order. Learned counsel for petitioner submits that as per the supply order the petitioner has supplied the cylinders and the drawing and the specifications given in the order.

13. Learned counsel for petitioner further drawn the attention of this Court to the communication dated 12.03.1994

to Directorate General of Ordnance Services (DGOS), New Delhi wherein it was recommended as under:-

“3. In view of the above following amendments are considered necessary which may please be issued to the Schedule to Supply Order:-

Sl.No. 15 Inspection : *a Inspection Authority*
FOR : Existing Entries
READ : CQA(W) JABALPUR for
end store CQA (Met) Ichapore
for Metal.

Sl. No.16 Description of Store

Under Column ‘Description’
Delete:- (with forged end caps welded to seamless pipe)

Sl. No. 16A Drawings/Specification

<i>a) For :</i>	<i>i) CM 3349</i>
<i>READ:</i>	<i>i) CM 3339</i>
<i>b) Delete:</i>	<i>ii) CM 2016”</i>

14. Learned counsel for the petitioner has further relied upon the letter annexure J dated 10.05.1994 issued by the same authority which reads as under:-

"2. In this connection it is once again submitted that through the drawings for both welding design of Cylinder (CM 3349) & seamless Cylinder (CM 3339) exist, the later drawing was proposed in our vetting weapons of the supply order in accordance with the COD JABALPUR specified requirement which was based on the department of Explosive, Nagpur letter earlier intimated to you."

15. Learned counsel for the petitioners submitted that the letter dated 10.05.1994 was issued on the basis of the letter dated 25.04.1994 written by higher officer which reads as under:-

"2. The subject SO has been placed for Reservoir Compressed air on the firm based on the decision arrived at the TFC meeting held on 31.12.93 and 31.1.94. As per your letter dated 20 Aug ... under reference, this design drawing No.CM2106 and CM 3349 exist and have not been supersede and, therefore, the said SO placed, besides other reasons.

3. Amendment to drawing details at this stage would lead to violation of the contract. Therefore,

no amendment to the drawing details is considered necessary by this HQ. However, we agree to your contention of amendment to clause 15, and 19 of the subject SO.”

16. Learned counsel for the petitioner further submitted that in the charge-sheet the letter dated 04.02.1994 mentioned as:-

“Investigation has further revealed that a formal Supply Order No.SO PROC/TS/58032/45 dated 4.2.94 was issued by Directorate General of Ordnance Services (DGOS) to M/s. Perfect Drop Pins Mfg. Ltd to supply 3028 nos. of Reservoir Compressed Air 5 ½” dia MK2A seamless type (with forged end caps welded to seamless pipe cylinders @ Rs.2500/- per unit costing total Rs.75,00,000/-. On receipt of the copy of the above Supply Order, CQAO objected to the same and requested for amendments including to delete “with forged end caps welded to seamless pipe”. But the accuse dpersons deliberately did not do the same. Thus the entire quantity of the faulty store was supplied between 29.10.94 to 21.12.94 and 95% payment for the said cylinders

(which were basically neither required nor indented by COD, Jabalpur) was released.”

17. Learned counsel for petitioner further submitted that in the charge-sheet no reference was made of the aforesaid two communications dated 25.04.94 and 10.05.94.

18. In addition, there is no reference in the charge-sheet regarding the arbitration award dated 18.03.2005 which is Annexure-M at page No.82 to the petition.

19. I note that the Trial Court has passed a detailed and reasoned order. The Trial Court has noted the contention of the petitioner, which has been recorded in the order on charge in para No.9, however, the Trial Court has not dealt with the same in any manner in the operative part thereof.

20. Learned counsel for petitioner has referred to the Annexure-J at page Nos.249-248 as D-4 with the list of documents and Annexure-K which is available at page Nos.242-241 of the Trial Court Record. It has also been submitted that the copy of the arbitration award dated 18.03.2005 is also on the Trial Court Record.

21. Learned counsel for petitioner submitted that had/if these communications and the arbitration award had been considered by the Trial Court, the order would have been in a reverses position.

22. Mr. A. K. Gautam, Additional Standing Counsel for CBI submits that under Section 227 Cr. P. C. the Court has to see whether *prima facie* the case is there against the petitioners and it is not required to pass a detailed order. He has drawn the attention of this Court to the impugned order whereby the Trial Court has come to the conclusion as under:-

“11. I have carefully considered the rival submissions in the light of material on record. Let me consider the evidence on record against the accused persons.

12. PW4 Col. Keshav Singh (retired), who was a member of tender purchase committee has stated that Lt.Col. M. K. Ganju briefed that M/s.Perfect Drop Pins Manufacturing Company was registered for supply of seamless cylinders and, therefore, had the capacity to supply seamless cylinders. He further states that he told that the company had certified that the cylinders

would be made of seamless pipe. He further states that since he was technical man and competent to decide this matter, they took his remarks on face value and agreed to place order on M/s.Perfect Drop Pins Manufacturing Company in good faith, as they were told by Maj. Genl. R. K. Chopra and Lt.Col.M.K. Ganju.

13. PW5 Sh.Girish Prahlad Manoli, Sr. Scientific Officer CQA(W) Jabalpur, has stated that a seamless cylinder is a joint less cylinder whereas in a welded cylinder, only the pipe is seamless and ends are welded to it. He further states that the requirement of COD, Jabalpur was for seamless cylinders, that is, cylinders without joints or welds. He further states that in the instant case, the requirement of COD, Jabalpur was seamless cylinders and not welded cylinders.

14. PW17 Col. Satveer Singh Yadav, who had signed the indent dated 08.07.1992, states that only seamless and not welded cylinders were required.

15. PW16 Col. Rajan Bakshi states that he had made a lot of correspondence regarding emphasizing that welded cylinders should not be

procured and only seamless cylinders should be procured.

16. PW15 Sh.V. I. Sharma, Director (TS) Proc., has narrated the entire sequence of events relating to the purchase of the cylinders and he has also stated that only seamless cylinders were to be purchased and the cylinders purchased were not seamless and as per the specifications.

17. PW14 Sh. M. Vellai Swami, who was also a member of the TPC has stated that the technical specifications were to be decided by Maj. Gen. R. K. Chopra and Lt. Col. M. K. Gnaju, who were technically competent to certify a product. He further states that Lt. Col. M. K. Ganju was a representative of DGQA.

18. Statements of other witnesses are also on record. A bare perusal of the aforesaid statements would reveal that the cylinders supplied were not seamless type and were not to the technical specifications of the indenter, COD, Jabalpur. It is also clear that cylinders are lying unused. As per the FIR, the Government has suffered a lost of about Rs.75 lacs.

19. I may add that it is clear on the face of the record that more than one person was involved in the purchase of 3028 number of cylinders, which were not as per the requirement of the indenter. As such, existence of a conspiracy is *prima facie* clear. In case of conspiracy, the acts done or words spoken by one of the conspirators during the existence of conspiracy are read against other conspirator/accused on the principle of mutual agency. As such, a conspirator cannot get away by saying that he did only a small part of the act, as the acts of others shall also be read against him. In the instant case, it is claimed by accused Brigadier M. K. Ganju (retired) that he only signed the file in token of seeing the documents and his role was only advisory. However, this is contrary to the evidence referred to above. Misuse of official position by the public servants is *prima facie* apparent on record. Same is the case as far as accused Shyam Mohan Gupta and accused firm is concerned. On account of above discussion, the submissions of the accused are without merit.

20. In view of the above incriminating material, which is glaring and self-explanatory, the

*submissions made by the accused persons are of no value in the eyes of law. Accordingly, no more elaboration is required as a Court is not required to write detailed orders at the time of charge. In this regard, it is instructive to quote an authority reported as **Kanti Bhadra Shah Vs State of West Bengal (2001) SCC 722** wherein on the point of charge, Hon'ble Supreme Court observed as under:-*

If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measure to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order had been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing

process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.

21. Similarly, in an authority reported as **Union of India Vs Prafulla Kumar Samal and Anr. AIR 1979 SC 366**, while dealing with the question of charge, it was observed by Hon'ble Supreme Court, in paragraph 10, as under:

"Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the

Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

23. Further, learned counsel for respondent has referred to the final report filed by the CBI under Section 173 Cr P C. At page No.39 in the heading of charge, it is clearly mentioned that *"Only seamless and not welded cylinders are required"* because Chief Controller of Explosives, Nagpur, in his letter dated 12.12.91, addressed to the Commandant; COD Jabalpur had specifically mentioned that as per Rule 19 of the

Gas Cylinder Rules, 1981, welded cylinders were not permitted for filling with any permanent or high pressure liquefiable gas inclusive of compressed air, in the interest of safety.”

24. Accordingly, vide letter dated 25.1.1993 M/s.Perfect Drop Pins Mfg. Co. wrongly informed the department that, they were past suppliers of the tender items to the Indian Army. The answer of the said firm to the query of Shri Ram Chander was evasive and not direct because they did not specifically mentioned that the cylinders they were offering were welded ones and seamless ones. Moreover, said firm is registered only for manufacturing and supplying Reservoir Compressed Air 5½” dia MK2A to drawing No.CM512A. At the time of award of the contract in question, this registration was in force.

25. Learned counsel for respondent submitted that the petitioner has misled and cheated the department to the tune of ₹75lacs, therefore, these allegations are sufficient to consider at this stage.

26. Learned counsel for petitioner has asserted that the judicial pronouncement of the arbitral award dated 18.03.2005

is in their favour, whereby, it is clearly stated that so far as the technical aspect is concerned, in view of the clarifications given by Mr.Negi and in view of the inspection notes issued by the Inspecting Authority nominated by the respondent, it is fully established that the store supplied by the claimant was as per the required and specification supplied by the respondent to the claimant. Claimant was not to supply "Seamless cylinders". Claimant was to supply only "seamless type" cylinders with forged end caps welded to seamless pipes as shown in the drawings bearing No.512A and its sub-drawings Ex.P29 and Ex.P30. The sole learned arbitrator opined that the respondent has failed to prove that the claimant committed breach of the contract.

27. I find force in the submissions of learned counsel for petitioner. Learned counsel for petitioner has drawn attention of this Court to the list of witnesses annexed to the charge-sheet and stated that CBI has cited as many as 43 witness, just to harass the petitioner and to prolong the trial; whereas in the list of witnesses itself, witness at Sr.Nos.18 to 39 are the

witnesses, whose statement under Section 161 Cr. P. C. has not been recorded by the IO. Moreso, the charge-sheet has been filed just to protect certain officers of the concerned department.

28. In view of above, in the interest of justice, I hereby quash the impugned order on charge dated 25.11.2010, whereby, formal charge ordered to be framed against the petitioner. Learned Trial Court is directed to consider the effect of only three documents viz Annexures J, K & M and pass the order on charge afresh.

29. Accordingly, Criminal M.C. No.40/2011 is allowed in above terms.

30. No order as to costs.

Crl.M.A. No.166/2011

Since the main petition has been disposed of, this application has become infructuous.

Dismissed as infructuous.

SURESH KAIT, J

August 25th 2011

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