

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

+ Crl.M.C.976/2009

% Judgment reserved on :20th May, 2011
Judgment delivered on:4th July, 2011

ASHWANI KUMAR BATRA Petitioner

Through: Mr.Rakesh Khanna,
Sr.Advocate with
Mr.Davender Grover,
Ms.Seema Rao and
Mr.Vishal Panwar,
Advocates

Versus

CBI Respondent

Through: Mr.Vikas Pahwa and
Mr.Naveen Matta with
Mr.Saurabh Savi, Advocates

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 Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J.

1. The petitioner in this petition has sought for quashing of charge-sheet and consequent proceedings pending before the Special Court of CBI, arising out of FIR

No.RC-DAI-2000-A-0043 dated 24.08.2000 under Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 and Section 120-B IPC in so far as the petitioner is concerned.

2. Order dated 13.07.2010 reveals that the petitioner sought time to amend the petition and same was allowed vide order dated 05.10.2010 accordingly, the petitioner amended the petition. By the aforesaid amendment the petitioner has also challenged the FIR No.RC-DAI-2000-A-0043.

3. The history of the instant case is old one. The facts of the case are that in the year 1996 a collaboration agreement was entered into between Smt. and Sh.Sarogi and J.K.Malhan Proprietor J.M.Constructions, that latter would pay ₹ 4.25 crores to Sarogis and after the completion of the construction the ownership of the right would vest to the latter.

4. On 14.03.1996 the property was divided in two portions. On 11.09.1996 the building plan was applied for the first time. Vide order/communication dated 05.12.1996 the sanction for the building plans was rejected.

5. Again, on 08.07.1997 Mr.Raj Sarogi/Mrs. Manju Sarogi submitted the proposed plan to MCD for construction of 3½ storey building at E23 Poorvi Marg, Vasant Vihar, New

Delhi. On 13.08.1997 Mr. Raj Sarogi/Mrs. Manju Sarogi submitted an application seeking sanction only for 2½ storey of the building for grant of sanction to the Executive Engineer (Building). Vide order dated 25.11.1997 the MCD sanctioned the building plans for 2 ½ storey and send the same to the owners.

6. On 10.12.1997 Raj Sarogi informed ZE(Building) MCD, South Zone about the start of constructions as per the sanctioned building plans. The ZE(B) was R.S.Mehta AE. He, however, transferred on 31.12.1997 and Sh.D.K.Gupta AE joined as ZE (B) and remained till 30.08.1998. On 07.08.1998 Mr.Ranjaj Shukla JE (B) submitted a false report for issuance of Form C that building was being constructed as per building bye laws. The said Form was applied and issued on the same day.

7. On 14.08.1998 Form D was also issued within 7 days of issuance of Form C by Sh. Ranjan Shukla JE (Building) and Sh.D.K.Gupta AE-Building on 21.08.1998 Mr.Raj Sarogi and Manju Sarogi submitted another plan for construction of basement, GF, FF, SF and third floor showing existing plan and proposed revised plan.

8. The petitioner took over as Assistant Engineer (Building) on 31.08.1998, very next day i.e. 01.09.1998 pursuant to the submission of the revised plan 21.08.1998 Mr.B.K.Garg JE inspected and submitted his report to the MCD. He reported that the covered area at the basement is

more than the sanctioned plan as on 2.11.1997. Owner claimed that the deviations are within the compoundable limit and they are ready to pay compounding fee. This proposal was considered by Sh.M.R.Mittal AE and Executive Engineer.

9. After considering the proposal and also after taking the compounding fee the revised plan was sanctioned by MCD, however, on 08.03.1999 Ranjan Shukla JE(Building) retired and Y.P.Singh joined as JE (Building), as alleged he also joined a criminal conspiracy with other co-accused. Y.P.Singh visited the site but did not take any action on the property.

10. Thereafter, on 01.07.1999 the petitioner was transferred from South Zone, whereas the property was booked for unauthorized constructions by Sh.Y.P.Singh JE (Building) on 01.12.1999, after the gap of 5 months of transfer of the petitioner, and the same was approved by Sh.Naveen Garg Executive Engineer.

11. On 03.12.1999 owners of the property in question had submitted the request for regularization after offering for some demolition. The said request was rejected and demolition order was passed on 03.12.1999.

12. The said property was again inspected on 22.02.2000 by Sh.Ranjan Shukla, JE, thereafter, he had submitted his report about unauthorized construction. Based on his report an order for sealing of the property was

passed on 13.03.2000. Instead of sealing the building, the DC South Zone assessed the said property. Mr.Ranjan Shukla marked the same to clerical staff. Thereafter, he deliberately did not take any action till 28.03.2000 and then he submitted his report. He tried to seal the premises on 28.03.2000 but could not do so due to large number of people gathered at the spot. This report was sent to AE (Building) who just put his signatures on it.

13. Finally, on 28.04.2000 sealing orders were passed by Sh.Naveen Garg JE (Building).

14. The learned counsel Mr.Rakesh Khanna, Senior Advocate appearing on behalf of the petitioner submits that the building plans of property No.E-23, Poorvi Marg, Vasant Vihar, New Delhi were submitted for sanction to the Building Headquarter of MCD at Town Hall, for sanction of a 3 ½ storied building. The aforesaid plans were rejected vide order dated 05.12.1996 for the reasons non-compliance of observations raised, by the petitioner.

15. Again, on 08.07.1997 fresh building plans were submitted for 3½ storied building by the petitioner as at the relevant time only 2½ storied building was permissible, the same was recommended for 2½ and approved on 25.11.1997, as per law.

16. The owner of the building applied for C Form, the same was issued on 07.08.1998. Subsequently, on 14.08.1998, he applied D Form which was also issued. The

learned Senior Advocate here pointed out that C Form and D Form can be applied upon completion for grant of recognition/completion of laying of the drainage line and water pipe line respectively. Further these C and D Forms were issued from zonal office (South Zone), and were issued before the petitioner joined in the said zone on 31.08.1998

17. Subsequent to obtaining C and D forms the owner of the building applied for revised sanction on 21.08.1998 for addition of one more story as per the norms existing at that time. As per MCD building bye laws, whenever, sanction for additional constructions is sought, inspection of the building has to be carried out and additional sanction can be granted to the building only in the case, where, there is no unauthorised construction in the building. Since, the building plan was sanctioned by Headquarter in this case as the plot of land was admeasuring 1200 yards, the building plans could be sanctioned only by Building, (HQ) Town Hall. The Engineers Building (HQ) inspected the building and sanctioned the revised plan vide order dated 06.01.1999.

18. In the meantime, the petitioner was posted as Assistant Engineer/Zonel Engineer in the South Zone on 31.08.1998 and building in question falls under Ward assigned to the petitioner. On 03.06.1999, the petitioner was transferred from that ward, therefore, the building seized to be under his area.

19. On 01.12.1999 the building was booked in MCD, under MCD Act by Junior Engineer of area. Here, Ld. Senior Advocate has pointed out that the concerned Junior Engineer was posted in the area w.e.f. 08.03.1999. The Assistant Engineer of area passed an order of demolition of unauthorised construction in the building on 2/3.12.1999. Pursuant to the aforesaid order of demolition, a notice for sealing of building was issued on 06.12.1999.

20. Deputy Commissioner of the area gave one month's time vide its order dated 07.12.1999 to the owner of the building to remove unauthorised construction. Subsequently, the owner of building was required to deposit Rs.1,55,925/- towards regularization charges for compoundable area and was required to remove the non-compoundable area. Thereafter, the CBI took over the investigation of the case and required the parties to maintain status quo.

21. The CBI registered FIR in which no role has been ascribed to the petitioner. The CBI investigated the matter and filed charge-sheet and in the said charge-sheet, charged the petitioner as under:-

"The investigation revealed that consequent upon transfer of Sh.D.K.Gupta, AE (B), Sh.A.K.Batra joined as AE (Building), MCD South Zone on 31.08.1998 and he also joined in criminal conspiracy with other accused person. In pursuance of his criminal conspiracy, Sh.A.K.Batra as AE (B) deliberately omitted to take any action against the unauthorized

construction carried out on property No.E-23, Poorvi Marg, Vasant Vihar, Sh.A.K.Batra intentionally omitted the inspection of the said building at various stages as required as per the orders of the commissioner, MCD, issued during 1988. During his tenure, the construction of the said building upto 3rd floor was sanctioned & constructed upto 3rd floor. He further did not inform Executive Engineer (Co-ordination) MCD Hqrs for inspection of the building. He deliberately omitted to take action as per the orders of the commissioner, MCD with a view to cause undue favour to the owners/builders as per his conspiracy."

22. The learned Senior Advocate has submitted the crux of the allegation in the charge against the petitioner is that he has deliberately omitted to take action in terms of the minutes [office order] of the MCD dated 31.10.1998 and did not report the matter to EE (Coord.) which he was duty bound under the said order. On perusal of order dated 31.10.1998 the MCD was to constitute three teams to carry out periodical checks of the buildings, one of which was to be headed by EE (Coord.) and the other two teams were to be headed by the EE nominated by E-in-C. As a matter of fact this order itself has not been placed on record in the trial Court. Be that as it may, none of the teams were constituted by MCD. Further, on perusal of that order it reveals as under:-

"(ii) The committee will inspect the building at following stages of construction.

On completion of foundation work.

In case of basement before laying of its roof.

Before laying roof of ground floor and all subsequent floors.

The members of the Committee will record a note of their inspection on the concerned building file of the same pointing out the deviation, if any, from the sanctioned plan at different stages of constructions. It will be the responsibility of the Zonal Engineer (Bldg.) to initiate action against the provisions of the DMC Act and to follow up these cases till the deviations/unauthorized constructions are removed/rectified. The Zonal Engineer (Bldg.) shall maintain proper files of these cases."

(iv) It was also decided that before release of sanction of building plans, a stamp shall be put on the plans that the applicant as well as his architect shall be responsible to inform the concerned Zonal Engineer (Bldg.) about the various stages of construction as given about to enable the Committee to carry out the inspections and on their failure to do so, the sanction to the building plan is likely to be revoked."

23. The learned senior counsel point out here that the petitioner never received any intimation from owner of the building or his architect. However, no order was ever issued assigning the work load to any committee, since none of them were constituted. The committee was to inspect the construction at different stage, firstly on completion of foundation work; secondly, in case of basement before laying its roof and thirdly, before laying roof of the ground floor and all subsequent floors. Further, this order shows

that before sanction of the building plans a stamp will be put on the plan that the owner of building as well as his architect shall be responsible to inform the concerned Zonal engineer about various stages of constructions as indicated above, to enable the committee to carry out the inspection and on their failure to do so the sanction of the building plan is likely to be revoked. It is only upon receiving such intimation that the Zonal Engineer (Building) was required to make list of all such cases reported by the owner of the building/architect to be inspected by the committee.

24. Learned senior Advocate further submits that it is nobody's case that at any point of time any intimation has been received from the owner of building and/or his architect. The petitioner was posted in the area between September 1998 to June 1999 has ignored to include the case in the list to be submitted to the committee, if at all any was constituted.

25. Further he submits that according to para 3 of said minutes, before issuance C and D Form, a building should be thoroughly checked for deviation and in case of serious deviation C and D Forms should not be issued. As submitted above, before joining of the petitioner in the area concerned on 31.08.1998. C and D Forms of the building were issued on 07.08.1998 and 14.08.1998 respectively.

26. He submits, therefore, the allegations levelled against the petitioner in the charge-sheet that he has

violated the order dated 31.10.1988, are without any basis, for the reasons, firstly, the committee contemplated under the said order were never constituted and secondly, the intimation from the owner of building/his architect as contemplated in the said order for the Zonal Engineer to include the building in the list of buildings to be inspected by the Engineer, if constituted, was never received. Further he submits, not only the committee as under the order dated 31.10.1988 was not constituted, the owner of the building/his architect did not inform the petitioner of the stage contemplated under the said order.

27. Learned counsel further states that it is pertinent to point out that the said order stood modified by subsequent order dated 09.09.1993, whereas this case pertains to year 1999, whereunder the task of inspection of building under construction in the area as assigned to the J.E.(Building) and they were required to maintain a building construction register. It is not the case in the charge-sheet that at any point of time any JE has brought any stage of the building to be inspected by the petitioner to his knowledge. Not only this, vide order dated 19.01.1996 the coordination cell of the MCD was ordered to be disbanded by Engineer-in-Chief of the MCD.

28. The learned senior counsel drawn the attention of this Court to the fact that the FIR was registered on 24.08.2000 and charge-sheet was filed on 17.02.2001. Ten

years have already gone by; no progress has been made in the case. The case is still pending at the stage of argument on charges, despite the two times intervention by the High Court, firstly, vide order dated 13.04.2009 and secondly vide order dated 03.02.2010 the trial Court was directed to file the status report, explaining why the charge has not been framed. Accordingly, concerned trial Judge filed the status report stating that the case in question stands transferred to the Court presided over by the undersigned on 15.01.2009. Further, it is submitted that there are 8 accused persons, who are represented by different advocates. Arguments on the point of charges are in process of being heard and very short dates are given for the said purpose.

29. He submits, one year has already been passed to this status report also. Till date the arguments on charge are going on. Order sheets of the trial court reveal that neither the learned counsels for the accused have concluded their arguments nor the CBI has closed their arguments. Some of the learned counsels have concluded their arguments, accordingly learned counsel for the CBI has also concluded in their response. But remainders are still continued to argue on charge.

30. On the other hand, the learned standing counsel for the CBI Mr.Vikas Pahwa raised strong objections that the instant petition seeking quashing of FIR/charge-sheet is not maintainable, since the charge-sheet in this case has already

been filed and the case is fixed for arguments on charge. He has relied upon the case of the Supreme Court of State of Bihar vs. P.P.Sharma, 1992 Suppementary, (1) SCC 222 has held that the Court should not exercise jurisdiction under Article 226 or 227 or Section 482 Cr.P.C. directing quashing of the FIR/charge-sheet since the trial Court has ample power to consider the case of the accused for discharge under Section 226/228 Cr.P.C. Further, the said quashing of FIR/charge-sheet at this stage amounts to killing a still born child. Since the trial Court was unable to expeditiously deal with the matter. Directions can be issued to trial Court for hearing the case for framing of charge in a time bound period.

31. First of all, I will deal with the aforesaid objections raised by the learned counsel for CBI that the charge-sheet was filed on 16.02.2001, thereafter, the trial Court has been hearing the arguments on charge. I note that the more than 10 years already gone by. During this long period of 10 years, this Court issued directions vide order dated 03.04.2009 to hear the matter on the next date of hearing i.e. 08.07.2009 and to decide as expeditiously as possible. Again, vide order dated 03.02.2010 the trial Court was directed to file the status report asking why the charge has not been framed. Pursuant to the aforesaid directions, the concerned trial Judge has filed the status report stating that the case in question stand transferred to the Court presided

over by undersigned on 15.01.2009. Further, he has submitted that there are 8 accused persons, who were represented by different advocates. Arguments on point of charge were in process of being heard and short dates were being given for the said purpose. However, next date fixed in this matter is 28.04.2010.

32. It is noted that more than one year has already been passed, till date the arguments on charge have not been concluded either by the learned counsel for the accused persons or by the learned counsel for the CBI.

33. Vide order dated 29.04.2011 the Registry of this Court was directed to call the TCR for perusal and the instant matter was listed on 06.05.2011. On perusal of the order sheets of trial Court show that the matter is pending before the Trial Court for arguments on charge since 12.11.2002. The present presiding officer is 4th in row, he took charge on 15.01.2009, thereafter, he posted the matter to conclude the arguments on charge on various dates. Somehow, neither the counsels for accused nor the learned counsel for CBI could conclude the arguments on charge. It seems that Sh.N.K.Matta learned special Public Prosecutor for CBI has been deputed especially for this case, as he is not a regular public prosecutor in the trial Court. Order sheet of the trial Court reflects that delay in concluding the arguments on charge is because of the learned counsel for both parties. It seems, both parties are not much interested in concluding

the arguments on framing the charges. Since, this Court has already intervened twice, in spite of endeavour of the trial Judge, somehow, the arguments on charge could not be concluded till date. The petitioner waited more or less 7 years from the date the matter was listed for arguments on charge, since 12.11.2002. Finally, the petitioner challenged the charge-sheet and FIR as well.

34. The learned senior counsel for the petitioner submits that in the whole charge-sheet only one para pertains to the allegation on the petitioner, therefore, he submits that he would satisfy this Court that petitioner has been dragged in this matter throughout without any fault.

35. On 06.05.2011 the learned counsels for the parties joined together, therefore, at their joint request the matter was listed on 13.05.2011 for final arguments. Accordingly, the arguments started and both the parties concluded their arguments on 20.05.2011.

36. Since, the matter was fixed for arguments on the joint request of both parties, therefore, I do not find any force in the arguments of the learned counsel for the respondents that quashing of FIR/charge-sheet at this stage by this Court would not be proper, therefore, the direction can be given to trial Judge to frame the charge expeditiously.

37. Learned counsel for the petitioner, strongly objected and has submitted that this Court has already tried twice and intervened in the matter, therefore, issuing

direction third time would not serve any purpose. On perusal of the trial Court order sheet I am satisfied that the argument on charge will take further substantial time.

38. On merit learned standing counsel for the CBI submits that in the instant case the allegations against petitioner are that while being posted as AE (Bldg.) MCD South Zone from 31.08.1998 till 01.07.1999. He conspired with other accused and deliberately committed the following acts:-

“While working as a probationer services of the petitioner have been terminated against which representation filed was rejected.

2.1 Intentionally omitted to take action against the unauthorized construction carried out in E-23 POORVI Marg Vasnt Vihar New Delhi.

2.3 Intentionally omitted the inspection of the said building as required in terms of the orders of MCD Commissioner issued on 31/10/1998 (Pg 250 of Paper book).

2.4 Intentionally omitted to take action against the unauthorized construction as required under the office order dated 2/6/1997(Pg 250 of Paper book).

2.5 Due to inaction of the petitioner, the construction of the said building reached up to 3rd floor and during this period, the revised plans were also sanctioned by MCD.

2.6 Deliberately did not inform the Executive Engineers (Coordination) MCD Headquarters for inspection of the building as contemplated in the office order dated 31/10/1998.”

39. Accordingly, the petitioner has been charged for committing offence under Section 120-B, by not taking appropriate action in accordance with law, he facilitated the unauthorized construction and thus causing undue advantage to the builder/owners of the property. The construction made on property is not in accordance with sanctioned building plan and there are major deviations which were not compoundable and were beyond permissible limits. The report of the expert committee further strengthen the case of prosecution as it specifically indicate the excess covered area which is non-compoundable, therefore, the wilful omission of any action of JE and AE of MCD against illegal construction was to cause wrongful gain to the builders/owners and others.

40. Further, he submits that petitioner deliberately ignored the inspection report by B.K.Garg (JE) on 01.09.1998 which mentioned unauthorized construction undertaken by the builder in comparison to the sanctioned plans. The petitioner was supposed to take this action, which he failed to do so, whereas Sh.Y.P.Singh JE (Building) South Zone took the action on 07.12.1999. The same was approved by Sh.Naveen Garg (JE) on same day.

41. The learned standing counsel for CBI has mentioned that since the petitioner was posted as AE (Bldg.) south range, no action was taken for unauthorised construction, property was booked for unauthorised

construction within 6 days of the transfer of the property. The petitioner after being transferred on 01.07.1999 was posted again as AE (Building) during the period 12.11.1999 to 25.11.1999 and then from 27.04.2000 till filing of instant case. Therefore, the property not booked deliberately during the period the petitioner was posted as JE (Building) South Zone.

42. Learned counsel for the respondent further submits that since the charge-sheet and the material relied upon by the CBI prima facie disclose the commission of offence punishable under Section 120B read with 13(1)(d) and 13(2) P.C.Act, therefore no case of quashing is made out in the instant case. He submits that inherent power under Section 482 Cr.P.C./Article 226/ 227 have to be exercised carefully and with great caution and only when such exercise is justified by the tests specifically laid down by such section itself. These matters can be examined only by the trial Court concerned after the entire material is produced before it on thorough investigation and evidence led. To support the aforesaid arguments he has relied upon the following judgments in this regard:-

- "-Mahesh Chaudhary/State 2009 (4) SCC 439*
- Ashabhai Manchindra Adhagale Vs. State 2009 (3) SCC 789*
- CBI v/s K.M. Sharan 2008 (4) SCC 471*
- State of HP v/s Prithi Chand 1996(2) SCC 37*
- State of Bihar v/s PP Sharma 1992 Suppl. 1 SCC 222*
- Lal Kamendra Pratap Singh / State 2009 (4) SCC 437*

-Vijeta Gajra / State 2010 CrI:J 2819
-K. Neelaveni / state 2010 CrI:J 370"

43. As already discussed in the foregoing paras that since the trial Court has failed to frame the charge in more than 10 years, therefore, in my opinion, the aforementioned pleas and judgements cited on this issue becomes irrelevant.

44. Additionally, the law relating to using of inherent powers by the High Court under Section 482 Cr.P.C. for quashing the FIRs and proceedings arising there from is very clear that this power can be used with caution and in exceptional circumstances in the cases, where, there is no case made out against the accused/petitioner from the FIR, the allegations contained therein, the material on record which is the charge-sheet and other documents. In case, the allegations and material does not fulfil the ingredients of the offences alleged against the petitioner, the High Court should quash the cases using its inherent powers under Section 482 Cr.P.C. On this issue, the law is also very clear that miscarriage of justice and abuse of process of law takes place if the trial is continued in these types of cases.

45. The learned senior counsel for the petitioner, in this regard, has also relied on the following judgments of the Supreme Court:-

"A) R.P. Kapur Vs. State of Punjab
AIR (1960) SC 866 (para6)

- B) *State of Haryana Vs. Bhajan Lal*
1992 (Supp) (1) SCC 335 (para 102-103, 105)
- C) *CBI Vs. A. Ravi Shankar Prasad*
2009 (2) SCC (Cri) 1063 (para 17 to 20)
- D) *Parminder Kaur Vs. State*
AIR 2010 SC 840 (para 19 & 20)
- E) *M.N.Ojha & Ors. Vs. Alok Kumar*
AIR 2010 SC 201 (para 16)
- F) *Madan Mohan Singh Vs. State of Gujarat*
2010 (8) SCC 628 (para 17)
- G) *Madhavroa Jiawajirao Scindia Vs. Sambhavjirao Chandrojirao*
1988 (1) SCC 692 (Para 7 & 8)
- H) *Inder Mohan Goswami & Ors. Vs. State of Uttranchal*
2007 (12) SCC 1 (para 24, 31 and 32-37)
- I) *Pratibha Vs. Rameshwari Devi*
2007 (12) SCC 369 (para 7, 12, 22)
- J) *Devendra & Ors. Vs. State of UP*
2009 (3) SCC (Cri.) 461 (para 24)
- K) *Jugesh Sehgal Vs. Shamsheer Singh Gogi*
2009 (14) SCC 683 (para 17 to 19, 21, 22)"

46. In the case of *State of Haryana & Ors. vs. Bhajan Lal & Ors. 1992 (Supp) (1) SCC 335 (para 102-103, 105)*, the Supreme Court has categorised in para 102, all cases where the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the high Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

“(1) Where the allegations made in the first information report or the 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

47. In para 103 of the aforementioned case Bhajan Lal(supra), the Hon’ble Court has also given a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

48. In para 104 of the aforesaid case the Supreme Court has noted the submission of Mr. Parasaran that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullyng his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The Supreme

Court has answered that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of Indian Penal Code-namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages.

49. In another case of M.N.Ojha & Ors. Vs. Alok Kumar Srivastav & Anr. AIR 2010 Supreme Court 201, in para 16 of the aforesaid judgment the Supreme Court has held that “in a case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realize and recover the amounts due to the bank from the borrower as well as the guarantors. The complaint obviously has been filed as counter blast to the proceedings already initiated by the bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM by mere asking to do so by the complainant. The High Court almost abdicated its duty in refusing to exercise its

jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. A clear case is made out requiring our interference to secure the ends of justice”.

50. In the instant case the Trial Court could not conclude the arguments on charge, therefore, till date the charges on the accused persons including the petitioner have not been framed. Therefore, I am fully convinced that this case requires the interference to protect the rights, liberty and reputation of the petitioner at this stage. Clause (5) of para 102 of Bhajan Lal (supra) is applicable, in the facts and circumstances of the instant petition. Allegations against the petitioner made in FIR and charge-sheet are absurd, therefore, no sufficient grounds are on record for proceeding against the petitioner.

51. As per the charge-sheet the role assigned to the petitioner is as under:-

“The investigation revealed that consequent upon transfer of Sh.D.K.Gupta, AE(B), Sh.A.K.Batra joined as AE(Building), MCD, South Zone on 31.08.1998 and he also joined in the criminal conspiracy with other accused persons. In pursuance of his criminal conspiracy, Sh.A.K.Batra as AE(B) deliberately omitted to take any action against the unauthorised construction carried out on property No.E-23, Poorvi Marg, Vasant Vihar. Sh.A.K.Batra intentionally omitted the inspection of the said building at various stages as required as per the orders of the

Commissioner, MCD, issued during 1988. During his tenure the construction of the said building upto 3rd floor was sanctioned and constructed upto third floor. He did not inform Executive Engineer (Co-ordination) MCD Hqrs. for inspection of the building. He deliberately omitted to take action as per the orders of the Commissioner, MCD with a view to cause undue favour to owners/builders as per his conspiracy."

52. On perusal of the above para, allegations against the petitioner emerges as under:-

- (i) Sh.A.K.Batra as AE(Building) deliberately omitted to take action against unauthorised construction carried out on the property in question.
- (ii) Sh.A.K.Batra intentionally omitted the inspection of the said property as per the orders of Commissioner, MCD, issued during 1998.
- (iii) During his tenure the construction of the said building up to third floor was sanctioned and constructed upto third floor.
- (iv) He did not inform Executive Engineer (Co-ordination) MCD Hqr for inspection of the building.
- (v) He deliberately omitted to take action as per the orders of the Commissioner, MCD with a view to cause undue favour to owners/builders.

53. Learned standing counsel for CBI, Mr. Vikas Pahwa argued extensively that the plea raised by the petitioner in his defence that the MCD did not constitute

three teams to carry out periodical checks of the buildings and zones were not assigned to the Officers as contemplated in the Office Order dated 03.01.1988 and thus, the petitioner did not check the unauthorized buildings in his area. His this defence cannot be looked by this Court at this stage of quashing of FIR and Charge Sheet. However, the pleas raised is baseless as the JE's/AE's under the office order dated 3.10.1988 and 02.06.1997 were duty bound to follow the test of the unauthorized constructions in their areas, in their individual capacity and were duty bound to inform the Executive Engineer-Coordination about the sale. Therefore, the instant petition is devoid on merits and liable to be dismissed.

54. Learned counsel for the petitioner, Mr. Rakesh Khanna, Senior Advocate, in rejoinder of his arguments referred to annexure P2 at page 46 which reads as under:-

"This change of building plan was done because there were certain clarification which were yet to be clarified in respect of MPD-2001 for allowing 3-1/2 storey. Simultaneously on the basis of this application of Mr. Raj Sarogi, Sh. M.R. Mittal, AE(Building) HQ MCD Town Hall sent one letter to Sh. Raj Sarogi and Mrs. Manju Sarogi mentioning therein to rectify certain errors/omissions. The copy of this notice was also sent to Sh. A.K. Ganjoo, Architect. The later on plan in respect of 2 ½ storey submitted by Sh. Raj Sarogi was dealt in File No. 749/B/HQ/97 and on 25-11-97, it was approved for 2 ½ storey building. The approved plan was sent to the owner of property No. E-23, Poorvi Marg, Vasant Vihar, New Delhi, vide letter No. 749/B/HQ/97/SW/176 dated 25/11/97

Sh. Raj Sarogi and Mrs. Manju Sarogi submitted another revised plan duly signed by them and Sh. A.K. Ganjoo Architect for the Construction of basement, Ground Floor, First Floor, Second Floor and Third Floor on the said plot on 21-3-93, showing the existing plan and the proposed revised plan. In pursuance to the revised plan submitted by Sh. Raj Sarogi, Sh. B.K. Garg, JE(Bldg.) HQ MCD inspected the site and gave his report on 1-9-98. He further reported that the covered area constructed at the site at basement floor is more than the covered area sanctioned vide File No. 749/B/HQ/97 dated 25-11-97. But the representative of the applicant clarified that the same is within the permissible limit and provision made in the Gazette notification dated 23-7-98 and he is ready to pay the compounding fee for the same as per the provision of the building Bye Laws, which may be taken in order. He submitted his note to AE(Building) for sanction of proposal subject to submission of other documents by the party. This proposal was considered by Sh. M.R. Mittal, AE and with his recommendations; he submitted the file to executive Engineer showing that the proposal is in order. In turn, Executive Engineer approved the building plan as proposed by the subordinate. After depositing the compounding fee and compliance of shortcomings, the revised proposed plan was sanctioned in 06-01-99 and sanctioned revised plan was sent to Sh. Raj Sarogi and Smt. Manu Sarogi vide letter no. 2/4/AE-I/V/HQ/99 dated 6-1-99".

55. On perusal of the aforesaid paras of Charge Sheet, it emerges that in pursuance to the revised plan submitted by Sh. Raj Sarogi, Sh. B.K. Garg, JE(Building) H.Q.,M.C.D inspected the site and gave his report on 01.09.1998, as per his report, the covered area constructed

at site at basement floor was more than the covered area sanctioned vide File No. 749/B/HQ/97 dated 25.11.1997 but the representative of the applicant clarified that the same is within the permissible limit and provision made in the Gazette notification dated 23.07.1998 and he was ready to pay the compounding fee from the same as per the provisions of Buildings Bye-laws. Accordingly, he submitted his note to AE(Buildings) for sanction of proposal subject to submission of other documents by the party.

56. Learned counsel for the petitioner pointed out that this proposal was considered by Sh. M.R. Mittal, AE and with his recommendation, he submitted the file to Executive Engineer showing that the proposal is in order. In turn, Executive Engineer approved the building plan as proposed by the subordinate. After depositing the compounding fee and compliance of short comings the revised proposed plan was sanctioned on 06.01.1999 and sanctioned revised plan was sent to Sh. Raj Sarogi and Smt. Manju Sarogi vide letter No. 2/4/AE-1/B/HQ/99 dated 06.01.1999.

57. Learned Senior counsel for the petitioner has referred page 50 of the petition and submits that on transfer of Sh. Ranjan Shukla, JE (Buildings), Sh. Y.P. Singh joined as JE (Buildings) MCD on 08.03.1999 and he joined the criminal conspiracy with other accused persons. Sh. Y.P. Singh made several visits during his tenure, the unauthorized construction was in progress E-23, Poorvi Marg, Vasant

Vihar, New Delhi and Sh. Y.P. Singh deliberately omitted to take actions with a view to cause undue favour to the owner/builder in pursuance of his criminal conspiracy.

58. Thus, the learned counsel for the petitioner submits that as per the MCD Regulations, the JE concerned would report to his AE concerned about any unauthorized construction, which, in the present case the JE, Sh. Y.P. Singh failed to do so, therefore, the petitioner cannot be blamed and implicated without any fault.

59. Learned standing counsel for the respondent submits that the petitioner was posted as an Asstt. Engineer in South Zone on 31.08.1998 and remained there upto 30.06.1999. Again he was remained on the same post w.e.f. 25.11.1999 to 04.05.2000 and 27.04.2000 to 27.09.2000 till the petitioner was booked in the present case. The charge-sheet in the present case was filed on 12.11.1999.

60. On the other hand, the learned counsel for the petitioner submits that from 12.11.1999 to 25.11.1999 the petitioner remained on leave again 27.04.2000 to 04.05.2000 remained on leave, whereas, the fresh building plans were submitted on 08.07.1997 for 3½ storied building but the plans were recommended for 2½ storied building by the petitioner as at the relevant time only 2½ storied building were permissible and the same was approved on 25.11.1997 for 2½ storied bldg. which was sanctioned as per the law. Further, he submits that the owner of the building

applied for C form which was issued on 07.08.1998. Subsequently, on 14.08.1998, D form was also issued. Therefore, the sanctioning of plan and form C & D were issued prior to petitioner's joining the area. As submitted by the learned counsel for the petitioner that there is no allegation of any misdeeds by the petitioner during this period.

61. The learned senior counsel for the petitioner pointed out that it will be pertinent to mention here, C form and D form can be applied upon completion, for grant of recognition/completion of the laying of the drainage and water pipeline respectively. Therefore, everything happened before he joined as AE, South Zone, on 31.08.1998. Further he made it clear that C and D forms are being issued from the Head Quarter office. In this case, since the building plans were sanction by the HQ. Since, the plot of land ad-measuring 1200 sq. yards, the building plans could be sanctioned only by the (Building) (HQ) located at Town Hall, Delhi. The engineers (Building) (HQ) inspected the building and sanctioned the revised plan vide order dated 06.01.1999, the same is part of the annexure P8.

62. Learned counsel for the petitioner has referred letter dated 02.06.1997 issued by Engineering Department of MCD. The para 3 at page 251 is reproduced as under:-

“ACTION AGAINST THE UNAUTHORIZED CONSTRUCTION:

Whenever, any unauthorized construction/deviation against sanctioned Building Plans is noticed by the Junior Engineer (Bldg.) in charge of the area, he will prepare the FIR and show cause notice under Section 343 and 344 of the DMC Act and put up to the Asstt. Engineer (bldg.). These notices will be issued under the signatures of the Asstt. Engineer (bldg.) in charge of the area. Similarly, Notice under Section 343 will be issued under the signatures of the Asstt. Engineer (Bldg.) after carefully examining the merits of the case. The orders for demolition will also be issued by the Asstt. Engineer (Bldg.). The Asstt. Engineer (Bldg.) will carry out the test check of 40% of unauthorized constructions booked in his jurisdiction and the test check for the Executive Engineer (Bldg.) will be limited to 20% during the particular month.”

63. On perusal of the aforesaid para, whenever, any unauthorized construction/deviation against the sanctioned building plans is noticed by Jr. Engineer (building) in charge of the area, he will prepare the FIR and show-cause notice under Sections 343 and 344/DMC Act and put up to the Asstt. Engineer (building). These notices will be issued under the signature of Asstt. Engineer (building). The learned counsel for the petitioner submits that the concerned Jr. Engineer never reported any unauthorized/deviation to the petitioner being his Asstt. Engineer.

64. Further, he submits that Sh. Y.P. Singh, Jr. Engineer, (building) South Zone, Delhi, submitted his report on 01.12.1999, same was approved by Sh. Naveen Garg,

Asstt. Engineer, but the aforesaid Naveen Garg has not been implicated as an accused in the present case, who is in fact the culprit, not the petitioner.

65. The learned counsel for the petitioner drawn the attention in this Court to the reply filed by CBI on 07.10.2009 in para 3 of the said reply which is at running page 83 of the instant petition that the inspection of the building was done before 12.09.1998 and the inspection report was submitted on the same day. On the basis of this inspection report, the revised sanctioned plan of the said building was approved on 06.01.1999. However, investigation has revealed that between the period when inspection report was submitted and sanctioned building plan was approved, unauthorized construction was carried out in the said building. The petitioner had joined the office of AE (building), South Zone, on 31.08.1998 and it was during his tenure, this unauthorized construction was carried out.

66. The learned counsel for the petitioner has referred charge-sheet which is at page 44 relevant at page 46 of the petition and submits that in pursuance to the revised plan submitted by Sh. Raj Sarogi, Sh. B.K. Garg, JE (bldg.) HQ MCD inspected the site and gave his report on 01.09.1998. He further reported that the covered area constructed at site at basement floor is more than the covered area sanction vide file No. 749/B/HQ/1997 dated 25.11.1997. But the representative of the applicant clarified

that the same is within the permissible limit and the provision laid in the gazette notification dated 23.03.1998 and he is ready to pay the compounded fee for the same as per the provisions of bldg. laws which may be taken in order. He submitted his note to AE (bldg.) for sanction of proposed subject to submission of other documents by the parties. These proposal was considered by Sh. M.R. Mittal, AE and with his recommendations, he submitted file to EE showing that the proposal is in order. In turn, EE approved the bldg. plan as proposed by the subordinate. After depositing compounding fee and compliance of short comings, the revised proposed plan was sanction on 06.01.1999 and sanctioned revised plan was sent to Sh. Raj Sarogi and Ms. Manju Sarogi vide letter No.2/4/AE-1/B/HQ/1999 dated 06.01.1999. Therefore, the petitioner is no-where in the chain of conspiracy or any carelessness on his part.

67. Accordingly, the learned counsel for the petitioner submits that similarly situated properties were booked and subsequently closing report was filed by CBI and same were accepted by Special Judge, New Delhi, which are part of the petition as Annexure P14 at Page Nos.318 to 378.

68. After hearing both the parties, it emerges that as per the MCD Regulations, the JE concerned had to report to his AE concerned about any unauthorised construction, which, in the present case, the JE, Sh. Y.P. Singh failed to do so. The petitioner joined as AE, South Zone on 31.08.1998,

whereas the C&D forms were issued on 07.08.1998 and on 14.08.1998 respectively. Prior to the petitioner had joined on 31.08.1998, the building plans were sanctioned by HQ being plot of land admeasuring 1200 square yards, the building plan was sanctioned filed by the Building (HQ) located at Town Hall, Delhi. However, the Engineers (Building) (HQ) inspected the building and sanctioned the revised plan vide order dated 06.01.1999.

69. The concerned Junior Engineer never reported any unauthorized construction or deviation to the petitioner being his Assistant Engineer. As per rules, regarding 'Action Against Unauthorized Construction', Sh. Y.P. Singh, Junior Engineer (Building) South Zone, Delhi, submitted his report on 01.12.1999 and the same was approved by Sh. Naveen Garg, Assistant Engineer who has not been impleaded as accused in the present case.

70. The CBI has admitted in their reply filed on 07.10.2009 in para 3 that the inspection of the building was done before 12.09.1998 and the inspection report was submitted on the same day. On the basis of this inspection report, the revised sanctioned plan of the said building was approved on 06.01.1999, whereas the petitioner had joined office of AE (Buildings) South Zone on 31.08.1998. More so, in pursuance to the revised plan submitted by Sh. Raj Sarogi, Sh. P.K. Garg, JE(Building) HQ, MCD inspected the site and gave his report on 01.09.1998 and mentioned that the

covered area constructed at site at basement floor is more than the area sanctioned on 25.11.1997. On being clarified by the Representative of the applicant that the same was within the permissible limit as per the provisions laid in Gazette Notification dated 23.03.1998. As per the said notification, he was ready to pay the compounded fee. This proposal was considered by Sh. M.R. Mittal, AE and with his recommendations, submitted file to E.E. (Executive Engineer) showing that the proposal was in order; in turn Executive Engineer had approved the Building plan as proposed by the subordinate.

71. Accordingly, the revised proposed plan was sanctioned on 06.01.1999 and sanctioned revised plan was sent to Sh. Raj Sarogi and Smt. Manju Sarogi vide a communication dated 06.01.1999.

72. Vide order dated 19.01.1996, the Coordination Cell of MCD was disbanded by Engineer-in-Chief of the MCD. Therefore, the question does not arise to report the aforesaid cell.

73. The MCD did not constitute three teams to carry out periodical checks of buildings, one of which was to be headed by E.E.(Coord.) and the other two teams were to be headed by E.E. nominated by Engineer-in-Chief as per the order dated 31.10.1988. Therefore, neither the owner of the Building nor the concerned JE has ever recorded or indicated

any of the unauthorized construction/deviation to the petitioner.

74. I am of the view as per the discussion above, it does not amount to any carelessness or lack of his attention towards duty assigned to the petitioner, therefore, he cannot be responsible in conspiracy with other accused, therefore, the FIR No.-RC-DAI-2000-A-0043 and charge-sheet thereto, is hereby quashed qua Sh. Ashwani Kumar Batra, the petitioner in the instant case.

75. Accordingly, Crl.M.C.No.976/2009 is allowed.

76. No order as to costs.

77. Personal bonds of the petitioner and surety bonds are cancelled herewith.

**SURESH KAIT
(JUDGE)**

JULY 4, 2011
mr/neelam/j