

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

% **CrI. M.C. 2955/2009**

+ Date of Decision: 2nd February, 2011

R.C. BANSAL ...Petitioner
! Through: Mr. S.K. Mittal, Advocate

Versus

\$ **CBI & ORS.** ...Respondents
^ Through: Mr. Harish Gulati, Advocate for R-1
Mr. Ajay Burman, Advocate for R-4

WITH

CRL.M.C. 3779/2009

SUJATA CHAUHAN ...Petitioner
! Through: Mr. Rakesh Tikku & Mr. Satyanarayan,
Advocates

Versus

\$ **CBI & ANR.** ...Respondents
^ Through: Mr. Harish Gulati, Advocate for R-1
Mr. P.N. Dhar, Advocate for R-2

AND

CRL. REV. 575/2009

INSP. SURENDER SINGH THR.
S.V. RAMAN SUPDT. OF POLICE CBI/BSF ...Petitioner
! Through: Mr. Harish Gulati, Advocate

Versus

\$ **R.N. AGGARWAL & ANR.** ...Respondents
^ Through: Mr. O.P. Wadhwa, Advocate for R-1

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

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

JUDGMENT

P.K.BHASIN, J:

These petitions arise out of the order dated 10th July, 2009 passed by the learned Special Judge (CBI), Rohini Courts, Delhi in CC No. 48/2008. Since common questions were stated to be involved in these petitions the same were heard together and are now being disposed of by this common judgment.

2. The petitioners R.C. Bansal and Ms. Sujata Chauhan were cited as prosecution witnesses by the Central Bureau of Investigation ('CBI' in short) in its charge-sheet filed in the Court of Special Judge appointed under the Prevention of Corruption Act against some public servants and some private persons for their having committed the offence of cheating and forgery of documents in conspiracy with each other and Section 13 (1) (d) of the Prevention of Corruption Act was also invoked. This case came to be registered on 8th November, 2006 by the CBI after it had been directed by a Division Bench of this Court in Civil Writ Petition no. 10066/2004 vide order dated 2nd August, 2005 to investigate the functioning of several dormant Co-operative Group Housing Societies. The Society involved in the present case was known by the name of 'Maharani Avanti Bai Co-operative Group Housing Society Limited' (hereinafter to be referred as 'the Society').

3. As per the investigation conducted by the CBI through Inspector Surinder Singh, who is the petitioner in Crl. Revision Petition no.575 of 2009, the Society was formed sometime in the year 1983 and from time to time members were enrolled by its Managing Committee. Up to the year 1989 there were 90 members of this Society and further enrolment of members was stopped. However, no land to this Society was allotted for many years and in the meantime its members became disinterested in the running of the Society as the cost of the flats to be constructed had gone very high and beyond their reach. The Society thus became dormant.

4. It appears that some persons who were not members of the Society but were far-sighted and clever minded also became interested to take over its management and get the land allotted from Delhi Development Authority to be utilized for the benefits of their own persons. With that object in view those persons forged certain records of the Society to show that many of the original members of the Society had resigned and a new Managing Committee had been constituted. By forging resignation letters of the original members of the Society new members were shown to have been enrolled and those forged records were submitted in the office of the Registrar of Co-operative Societies after entering into some kind of criminal understanding with the officials in that office. Based upon the forged documents which included minutes purporting to be of the illegally constituted Managing Committee of the Society comprising of all new members and also of General Body meetings, which were never held, DDA was approached for allotment of land and in that process the officials in the office of the Registrar of Co-operative Societies rendered full assistance to the new Managing Committee members by certifying that all the meetings were duly held and a list of new members of the Society was forwarded to DDA by

the officials of the Registrar of Co-operative Societies. Accepting the same, the DDA allotted a plot measuring 6500 sq. meters to the Society in Dwarka for the benefit of the 90 members of the Society sometime in the year 1998. All these facts emerged during the investigation by CBI.

5. On completion of investigation the CBI filed a charge-sheet in the Court of Special Judge against six persons out of whom two were public servants while other four were the members of the bogus Managing Committee of the Society who had taken over the dormant Society by resorting to forgeries etc.

6. After the charge-sheet was submitted in Court the Special Judge after pursuing the material submitted by the CBI took cognizance of the offences punishable under Sections 120-B, 420, 468 and 471 of the Indian Penal Code as well as Section 13 (1) (d) of the Prevention of Corruption Act on 23rd July, 2008 and ordered summoning of six persons who had been named by the CBI in its charge-sheet as accused persons who had committed the aforesaid offences in conspiracy with each other. From the perusal of the proceedings of the case recorded by the Special Judge, copies of which were shown to me during the course of hearing of these petitions, it appears that after all the six accused persons had entered appearance the Special Judge had furnished them, the copies of all the documents as per the requirement of Section 207 of the Code of Criminal Procedure and thereafter the case was adjourned to 9th March, 2009 for hearing arguments on charge. However, before that date, accused R.N. Aggarwal moved an application under Section 190 read with Section 193 Cr.P.C. before the Special Judge for summoning three more persons as accused who had been cited by the CBI as its witnesses. Those persons were PW-21 Madan Sharma, PW-23 Sujata Chauhan and PW-30

R.C. Bansal. The learned Special Judge kept that application for consideration on 9th March, 2009. However, on 9th March, 2009 the Special Judge adjourned the matter to 5th May, 2009 for arguments on charge without mentioning anything about the application which had been moved by the accused R.N. Aggarwal in the proceedings of 9th March, 2009. On 5th May, 2009 arguments on charge were not heard but instead the case was adjourned by the Special Judge to 5th June, 2009 for consideration of the application of accused R.N. Aggarwal for summoning of additional accused. On 5th June, 2009 the Special Judge heard arguments on that application and then vide order dated 10th July, 2009 running into 23 pages not only allowed that application and summoned the prosecution witnesses Madan Sharma, Sujata Chauhan and R.C. Bansal but he also directed the Director of CBI to get a case registered against the investigating officer of the case under Section 217 IPC for letting off these three persons.

7. Feeling aggrieved by the order dated 10th July, 2009 prosecution witnesses Mrs. Sujata Chauhan and R.C. Bansal approached this Court by filing separate petitions under Section 482 Cr.P.C. read with Article 227 of the Constitution of India. The CBI also felt aggrieved by the direction given by the Special Judge in the impugned order for registration of a criminal case against the investigating officer and therefore, it also filed a revision petition (being Criminal Revision Petition no. 575/2009).

8. Mr. Rakesh Tikku and Mr. S.K.Mittal, advocates argued for the petitioners Sujata Chauhan and R.C.Bansal respectively. Their submissions were almost common. It was strongly contended by them that the stage at which these two prosecution witnesses were summoned as accused by the

learned Special Judge was not the stage at which Section 190 Cr.P.C. could be invoked. In support of this submission reliance was placed on a decision of Single Judge Bench of this Court in **“Anirudh Sen vs State”, 2006(3) JCC 2081** wherein the impugned order of the trial Court summoning additional accused after the case had been fixed for arguments on charge was set aside on the ground that at that stage of the proceedings Section 190 Cr.P.C. could not be invoked. Counsel also argued that, in any event, the impugned summoning order cannot be sustained for the reason that the prosecution witnesses had been summoned by the learned Special Judge relying upon their own statements made to the investigating officer under Section 161 Cr.P.C. which were to be utilized by the prosecution against the originally charge-sheeted accused persons and since other than their own statements there was no other material referred to by the Special Judge in the impugned order the same is liable to be set aside in toto.

9. Mr. Vikas Pahwa, learned counsel representing the investigating officer of this case against whom the Special Judge has ordered registration of FIR, had submitted that the Special Judge had no authority to direct the CBI to register an FIR. In support of this submission reliance was placed on a judgment of the Supreme Court in **“Sakiri Vasu vs State of Uttar Pradesh”, (2008) 2 Supreme Court Cases 409**. It was also submitted that the investigating officer after properly conducting the investigation had found the case made out only against six persons and had not let off any guilty person and particularly the three persons who now stand summoned were honestly found to be not involved in the commission of any offence. In any event, contended Mr. Pahwa, the impugned direction to the CBI could not be given at

the stage of consideration of charge against the originally charge-sheeted six accused persons.

10. Mr. Harish Gulati, learned counsel for the CBI had submitted that only those accused had been charge-sheeted against whom the CBI had found incriminating evidence given by the witnesses including the three persons who now stand summoned as accused and against them the CBI had no evidence which could implicate them also.

11. Mr. O.P.Wadhwa, Mr. Ajay Burman and Mr. P.N. Dhar, learned counsel for accused Ram Narain Aggarwal at whose instance three witnesses have been summoned as accused by the Special Judge vide impugned order submitted that the material which was used against the originally charge-sheeted accused implicated the three prosecution witnesses also equally who have now been summoned as accused and the Special Judge could very well summon additional accused in exercise of the powers under Section 190 Cr.P.C. Reliance on some decisions of the Supreme Court cited in the impugned order by the Special Judge also was placed while supporting the impugned order. In addition to those judgments, reliance was also placed on an unreported decision of a learned Single Judge Bench of this Court in Criminal M.C. No. 1021/2009, "*Sashi Kant Vs. State*" decided on 2nd July, 2009 wherein the impugned order passed by the trial Court summoning some additional accused after cognizance had been taken and charge-sheeted accused had been summoned was upheld and in that judgment, the learned Judge had taken note of the decision in Anirurudh Sen's case (supra) also.

12. I have gone through the various judgments relied upon by the learned Special Judge in the present case while summoning the three prosecution

witnesses as accused and also other judgments cited at the bar from both the sides. In my view, the present case is squarely covered by the decision of Single Judge Bench of this Court in Anirudh Sen's case (supra), which had been cited by the learned counsel for the petitioners Sujata Chauhan and R.C. Bansal. That was a case where some accused had been charge-sheeted by the police for offences which were triable by a Magistrate. After the accused had put in appearance they were supplied the documents as per the requirement of Section 207 Cr.P.C. and thereafter the case was fixed for hearing arguments on the point of charge against the charge-sheeted accused. However, before any order on charge could be passed by the Magistrate he decided to summon one other person also as an accused who had earlier been kept in column no. 2 of the charge-sheet. That person challenged the order of the Magistrate before this Court by filing a Revision Petition which was allowed and the impugned order of the Magistrate summoning the petitioner was set aside. The reason given in that decision for setting aside the summoning order was that it being a case of an offence triable by a Magistrate in accordance with the provisions applicable to trial of warrant cases by Magistrate the stage of Section 190 Cr.P.C. was over when the accused had been furnished with the copies of the documents etc. relied upon by the prosecution and thereafter the trial stood commenced even though the case had been fixed for consideration of charge. The relevant portion of the judgment is being reproduced below:-

"29.....In the present case the facts disclose that the case had proceeded beyond the stage of Section 207 inasmuch as the documents had already been supplied. Since this was a case of a trial by a Magistrate, the next stage would be that prescribed under Chapter XIX, i.e., trial of warrant cases by Magistrates. The first section that appears in the Chapter is Section 238 which requires that when any warrant case instituted on a police report, when the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall

satisfy himself that he has complied with the provisions of Section 207. In other words, the commencement of the trial is signalled by the production of the accused before a Magistrate after the stage of Section 207 of the Code has gone by. It is, at this stage, that the Magistrate will satisfy himself as to whether the provisions of Section 207 have been complied with or not. After satisfying himself that the provisions of Section 207 have been complied with, the Magistrate will then consider the questions which arise for consideration under Section 239 of the code, which require him to consider the police report and the documents sent with it under Section 173 and to make such examination of the accused, if any, as the Magistrate thinks necessary. After giving the prosecution and the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for doing so. On the other hand, in view of the provisions of Section 240 of the Code, if upon such examination, if any, and hearing, the Magistrate is of the 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 his opinion, could be adequately punished by him, he shall frame, in writing, a charge against the accused. If, at this stage, the accused pleads guilty, in view of the provisions of Section 241 of the Code, the Magistrate is required to record the plea and may, in his discretion, convict him thereon. If such a step is undertaken then the trial ends there. However, if a plea of not guilty is taken then the further proceedings under Section 242 (evidence for prosecution) and Section 243 (evidence for defense) etc. shall ensue till the conclusion of the trial. A resume of these provisions clearly indicates that the trial of warrant cases by Magistrates commences the moment the accused appears or is brought before the Magistrate, after the conclusion of proceedings under Section 207. Therefore, even at the stage where the question of discharge and framing of charge is being considered, it is a stage where trial has commenced.

(emphasis supplied)

13. In the present case the Special Judge was required to follow the procedure prescribed for trial of warrant cases by Magistrates, as provided under Section 5(1) of the Prevention of Corruption Act, 1988 and therefore, with the compliance of the provisions of Section 207 Cr.P.C. when the case was fixed for hearing arguments on charge and the accused had appeared in Court on the date fixed for arguments on charge the trial had begun as per the aforesaid decision in Anirudh Sen's case. At this stage it may be significant to note that the Hon'ble Supreme Court had in the case of "**A.R. Antulay Vs. Ramdas Srinivas Nayak and Anr.**", **AIR 1984 SC 718** held that a Special Judge while trying offences under the Prevention of Corruption Act acts as a Court of original criminal jurisdiction and wherever the word 'Magistrate' appeared in various

sections of Cr.P.C. relating to trial of warrant cases as well as in Section 190 Cr.P.C.

14. The expression 'Special Judge' could be read for 'Magistrate'. The decision of this Court in Sashi Kant's case (supra) relied upon on behalf of the originally charge-sheeted accused is not applicable in the facts of the present case. In that case the question as to what stage the trial begins in a warrant case was not considered as was specifically considered and decided in Anirudh Sen's case (supra).

15. I am, therefore, of the view that without going into the question as to whether there was any sufficient material against the prosecution witnesses who had been summoned as accused by the learned Special Judge or not, the impugned order summoning them is liable to be quashed for the reason that that order was passed at a time when the case had already been fixed for arguments on charge and the stage of summoning additional persons as accused had gone by and the stage of Section 319 Cr.P.C. had not yet reached. Consequently, even the direction given for registration of a case against the investigating officer has also to be set aside.

16. All the three petitions are accordingly allowed and the impugned order dated 10th July, 1998 passed by the learned Special Judge is set aside in entirety but it is made clear that this order shall not debar the learned Special Judge for passing any appropriate orders at the stage of Section 319 Cr.P.C., as and when it arises, if there is any evidence brought on record by the prosecution from which it could be said that some persons other than the originally charge-sheeted accused were also required to be summoned as accused and further that in case after the conclusion of the trial the learned

Special Judge would still feel that some offence had been committed by the investigating officer it would be open for the Judge to pass any appropriate order which would be permissible for him to pass in law.

P.K. BHASIN,J

FEBRUARY 02, 2011/pg