

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

+ **Crl. MC No.3694/2011**

Date of Order: 09.11.2011

Pradeep Dhingra

.....Petitioner

Through: Mr.Jayant Bhushan, Senior
Advocate with Mr. Gurpreet
Singh, Advocates

Versus

State & Anr.

..... Respondents

Through: Ms. Fizani Husain, APP for
State
Mr. Aman Lekhi, Senior
Advocate with Mr. Mohit
Mathur for R-2

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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

M.L. MEHTA, J. (Oral)

Crl. MA 17611/2011 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Crl. MC No.3694/2011 & Crl. MA 17610/2011 (stay)

1. Notice. Learned APP and Mr. Aman Lekhi, Senior Advocate
accepts notice on behalf of the State and respondent no.2 respectively.
In view of the urgency explained by learned Senior Counsel for the

petitioner, I have heard the matter finally with the consent of the parties.

2. This petition under Section 482 Cr.P.C read with Section 483 Cr.P.C challenges the order dated 15.09.2011 passed by learned MM, Dwarka, New Delhi whereby summons have been ordered to be issued against the petitioner and also Mr.Satyapal Gupta under Section 380,411,120B IPC in FIR No.315 of 2005 and the matter has been listed for their appearance before the learned MM on 16.11.2011. A prayer is also made for declaring the FIR No.315 of 2005 Police Station Naraina and the investigation conducted therein as illegal, unlawful and unwarranted. Further prayers have also been made to cancel the charge-sheet filed in the aforesaid FIR.

3. The main contention of the learned Senior Counsel appearing for the petitioner is that the investigation in the aforesaid case is going on and was not complete and so the charge-sheet as filed was illegal and unlawful. It is submitted by learned Senior Counsel that the charge-sheet could only be filed after the completion of investigation. Reference was made to Page 26 of the charge-sheet wherein it was stated that further investigation was still going on to ascertain the circumstances under which the record of Ministry of Cooperate Affairs went missing from the concerned office and whether there was any connivance on the part of the official concerned. Learned Senior Counsel for the petitioner further submitted that in the absence of any

evidence regarding filing of the relevant documents against the petitioner, he could not have been charge-sheeted or summoned. Learned Senior Counsel appearing for the petitioner relied upon the cases of *Kapil Garg v State* [2003 (107) DLT 228 and *Tunde Gbaja v Central Bureau of Investigation* [2007 (2) JCC 1306.

4. On the other hand, the submissions of learned Senior Counsel appearing for respondent no.2 and learned APP for the State are that it was only after completion of the investigation in respect of alleged offences under Sections 380/411/120B IPC that the charge-sheet was filed against the petitioner and against the co-accused Mr. Satyapal Gupta. They further submitted that the learned senior counsel for the petitioner has read only one line of para 2 of page 26 of the charge-sheet and that in any case the petitioner had no locus to say as to whether the charge-sheet was complete or not since it was the job of the investigating agency. Learned Senior Counsel for the respondent and the learned APP submitted that in the present proceedings neither the defence of the petitioner nor any roving enquiry could be conducted to see as to whether or not there was sufficient evidence against the accused persons. Learned senior counsel for the respondent no.2 also submitted that earlier also similar application was filed by the petitioner mentioning his name as Pradeep Kumar, but the same was dismissed by this Court on 4.3.2010.

5. At the outset, it would be noted that in the present proceedings neither the defence of the accused could be examined nor any roving

enquiry could be made to ascertain the evidentiary value of the prosecution evidence. In the case of **Kapil Garg** (supra), relied upon by the petitioner, this Court held as under:

“13. As is apparent from the aforesaid provisions of Section 169, 173 and 190 Cr.P.C, the Magistrate has the following options whenever a final report under Section 173 Cr.P.C is submitted to him:-

- (i) In case the report concludes that an offence is made out, he may either accept the same and take cognizance of the offence or disagree and drop the proceedings.*
- (ii) In case the report concludes that offence is not made out, he may agree with it and discharge the accused.*
- (iii) If he finds that the investigation is incomplete and unsatisfactory, he may direct the police to further investigate the matter. “*

6. In the case of **Tunde Gbaja** (supra), relied upon by the petitioner, reliance was placed by this Court on the judgment of **S.M. Purtdo v Dy. S.P. CBI, Cochin** [1996 CrI.L.J. 3042] to which reference has been made by learned senior counsel for the petitioner and wherein it was held as under:

“10. The investigation under section 167 of the Code can be one involving one or more offences against the accused persons. The investigation of a case cannot be split up in such a way to file piece-meal reports before Court. Section 173 of the Code does not stipulate a piece-meal

investigation and filing of incomplete charge sheet before Court. It contemplates filing of a charge/refer report after completion of the entire investigation of the case in respect of all offences and where several offences are involved in a case, a charge report could be laid before Court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused. Admittedly, for the offence under section 3 of the Official Secrets Act, 1923, in maximum punishment prescribed is 14 years of imprisonment. Therefore, under section 167(2) of the Code, the maximum period the accused could be detained in custody is 90 days. That period was over on 10-4-1996, the date on which the CBI had filed a report in Court in respect of offences other than the one under the Official Secrets Act. Admittedly, the petitioners are even now in custody and now more than 130 days even elapsed since then.

11. In the decision reported in Vijayaraghavan v. CBI, 1984 Ker LT 522 :

(1984 Cri LJ 1277), this Court held that the investigation of a case relates to the entire transaction of which information is given and not merely one of the offences committed in the course of the transaction. In paragraph 10, this Court held thus :

"10. The expression 'case' used in the provisions under examination has to be understood in the general sense and not in a narrow or technical way. The words 'offence' and 'case' are not synonymous, though an offence always leads to a case and a case would always involve an offence or offences. An occurrence or transaction may involve commission of only one offence; or it may involve several offences. When a police officer receives information about the commission of a cognizable offence, and records the same, he is said to register a case, sometimes called a crime case. 'Case' understood in this general sense means that the case before the police officer arising from the information placed before him regarding an occurrence in which an

offence or offences are committed. 'Case' relates to the transactions of which information is given and not merely one of the offences committed during the course of the transaction".

This Court further held that when Section 173 speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences and a final report or charge sheet under section 173 could be filed only after completion of the investigation in the case relating to all the offences arising in the case. We are in respectful agreement with the said finding arrived at by U. L. Bhat, J., as he then was. Viewed in that light, it must be held that the 'charge report' stated to have been filed by the CBI on 10-4-1996 cannot be said to be a final report as contemplated under section 173 of the Code and we must say that the prosecution was not justified in making piece-meal charge report in respect of various offences alleged to have been committed by the petitioners. In the absence of completion of the investigation of the case against the petitioners, we hold that the Magistrate cannot take cognizance of the case as contemplated under section 309 of the Code.

7. There cannot be any dispute with regard to the propositions of law as held in the aforesaid cases. Before proceeding to deal with the rival submissions, it may be noted that in **S.M. Purtado** (supra), the matter before the Court was regarding bail wherein it was held that the filing of charge-sheet in respect of the some offence, without reference to others, mentioned in the FIR did not specify the requirement of filing of charge-sheet within the prescribed period and, therefore, the accused acquired indivisible right to be let on bail.

8. In the case of ***Kapil Garg*** (supra) it was clearly laid down that if the Magistrate finds the investigation incomplete and unsatisfactory, he may direct the police to further investigate the matter.

9. In the present case, there was nothing on record to show that the investigation was being spilt up and was filed in piecemeal or that the charge-sheet filed was incomplete. Para 2 of the Page 26 of the charge-sheet to which reference was made by learned Senior Counsel for the petitioner and out of which only one line was referred to as noted above, reads as under:

“During investigation of this case, it was revealed that Ministry of Corporate Affairs had conducted an internal enquiry and an enquiry was concluded vide report dated 25.11.2004. But Ministry of Corporate Affairs could not arrive at any logical conclusion as to how these files (subject matter of this case) reached in the hands of Shri S.P. Gupta’s family and also could not identify the officials responsible for passing on the files in question to the members of Shri Gupta’s family. Further investigation is still going on to ascertain the circumstances under which the record of Ministry of Corporate Affairs went missing from the concerned office and whether there was any connivance on the part of the officials concerned. If any evidence emerged in this regard during further investigation of this case, the same will be filed through supplementary Final Report.”

10. Reading the aforesaid para as a whole would make it clear that some initial enquiry was conducted by the Ministry of Corporate

Affairs and on which no logical conclusion could be arrived at as to how the files, subject matter of this case, reached in the hands of the co-accused S.P. Gupta and his family and also who was the official responsible for passing of the files. In my view, the investigation which was stated to be going on was to ascertain the circumstances under which the files went missing and as to whether there was any connivance on the part of the officials concerned. It was also mentioned therein that if any evidence emerged in this regard during further investigation, the same would be submitted through supplementary final report. On reading the aforesaid para as a whole, I do not find any force in the submissions of learned senior counsel for the petitioner who had tried to read only one line out of the whole paragraph to contend that the investigation was incomplete. It was the prerogative of the investigating agency and particularly that of the Investigating Officer to see as to whether there was sufficient evidence to charge-sheet the accused persons. Reading charge-sheet as a whole, it could be seen that the IO had submitted the final charge-sheet after being satisfied about the sufficiency of the evidence against petitioner and co-accused Satyapal Gupta under Sections 380/411/120B IPC. If the investigating agency finds any further evidence during the investigation, it was within its right to file supplementary charge-sheet under Section 173 (8) Cr.P.C reads as under:-

“173. Report of police officer on completion of investigation.

(1)xxxxx

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

11. The plea was also taken by learned senior counsel for the petitioner that it was Pankaj Srimali who was the accused, and not the petitioner herein. On going through the charge-sheet, it has been seen that there is prima facie evidence sufficient to proceed against the petitioner herein for the offences under Sections 380/411/120B IPC. However, it was for the trial court to see as to whether or not there was sufficient evidence against the petitioner for framing charges against Pankaj Srimali.

12. The petitioner had earlier filed a writ petition being W.P.(Crl.) No.2008 of 2006 in his name as “Pradeep Kumar” and not as “Pradeep Dhingra”, as he has done in the present case. The said petition was filed by him for quashing the aforesaid FIR wherein his case was that since the investigation was almost complete, the prosecution was in a position to file the charge-sheet. It is to be noted that the said petition was filed by the petitioner in his name as “Pradeep Kumar” whereas

the present petition has been filed by him as “Pradeep Dhingra”. Though, it was explained by learned counsel for the petitioner that his name was Pradeep Kumar Dhingra, but it could not be satisfactorily explained as to why he had chosen to file two petitions in different names. That would apparently point finger towards his conduct in filing two petitions in two different names and trying to abuse the process of law. In the earlier petition also, relief for quashing of aforesaid FIR was sought and it was his plea that the investigation was almost complete. It was on this submission that he was granted anticipatory bail by this Court vide order dated 4.3.2011 in the said case. In the aforesaid case also, on the request made by petitioner, liberty was granted to him to raise all the issues which were raised by him in the said case before the concerned trial court at the appropriate stage of framing of charges after the charge-sheet was filed. Now that liberty having already been so granted to him to raise all those issues which are sought to be raised in the present case, the petitioner has, in his different name, tried to mislead this Court in order to obtain a favourable order to escape the proceedings before the trial court where the case was listed for 16.11.2011. The impugned order of summoning is dated 15.09.2011, but the present petition has been filed only a few days prior to the date fixed for appearance before the learned MM. This conduct also points finger to the malafide intention of petitioner in trying to procure some favourable order from this Court. The present petition is nothing but an abuse of process of the court. The entire conduct of the petitioner is bereft of bonafide. The petition is hereby

dismissed with cost of Rs.25,000/- to be deposited with Delhi High Court Bar Library Fund.

13. Ordered accordingly.

M.L. MEHTA
(JUDGE)

November 09, 2011

rd