

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

+ **W.P.(CRL) 1296/2010**

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Reserved on: 17th February, 2012

Decided on: 29th February, 2012

S M BATRA

..... Petitioner

Through: Mr. Harish Salve, Sr. Adv. with Mr. Anadi Chopra, Mr. Ashish Garg, Mr. Kripa Pandit, Mr. Girish, Mr. Surjeet Singh, Advs.

versus

CBI

..... Respondent

Through: Mr. P.K. Sharma, Standing Counsel for CBI.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner seeks setting aside of order dated 21st August, 2003 directing framing of charge against the Petitioner and other co-accused under Section 120B IPC read with Section 9 of the Prevention of Corruption Act, 1988 and the charge framed on 3rd September, 2003.

2. Learned counsel for the Petitioner contends that even taking the allegations on their face value, there is no allegation that the Petitioner misused his official position as OSD to the then Governor of the Haryana. Section 9 of Prevention of Corruption Act, 1988 (in short 'PC Act') is not attracted to the facts of the case. Further the allegations against the Petitioner are on the basis of the statement of O.P. Sahni, who is an

accomplice, and the statement of this witness is primarily hearsay. There is no other independent evidence. Entire role has been attributed to Anup Shrivastava, who was close to the family of the then Minister of Urban Development Smt. Sheila Kaul. The Petitioner was a stranger and was neither close to the family of Smt. Sheila Kaul nor had any role to play in the matter. Further there is no evidence on record to show that the Petitioner was benefited in any manner. The act alleged was not connected with the office of the Petitioner and thus it can be said to be an act of any other ordinary person and Section 9, PC Act is not attracted. The necessary ingredients of Section 9, PC Act involve the exercise of personal influence over the public servant for doing or forbearing to do an act. From the evidence on record, there is no allegation of favour or disfavour by the Petitioner.

3. Learned counsel for the CBI on the other hand contends that OP Sahni is a prosecution witness. As per OP Sahni, the Petitioner was an acquaintance as OSD to the Governor of Haryana. In view thereof Anup Srivastava and the Petitioner came to the Society's office where Anup Shrivastava and the Petitioner stated to them that they will have to give membership to the family members of Smt. Sheila Kaul and Rs. 5 lakhs in

cash to the accused Rattan Kaul. The co-accused Anup Shrivastava further stated that they would go to the residence of Smt. Sheila Kaul in the evening and there money could be paid to Rattan Kaul. Thus, R.P. Gupta and Hawa Singh decided to pay the money in the interest of society. R.P. Gupta and his son I.P. Gupta arranged money and then they all went to 9, Moti Lal Nehru Marg where the Petitioner and Anup Shrivastav took Hawa Singh, who was carrying Rs. 5 lakhs in a bag, inside the house and after sometime Hawa Singh came out and informed that the money had been given to Rattan Kaul as directed by Anup Shrivastava and that they will have to pay more money in future. Despite payment, Anup Shrivastava, the Petitioner and Rattan Kaul failed to get the society's work done. According to O.P. Sahni, deal was struck with Rattan Kaul and S.M. Batra and pursuant to which an amount of Rs. 10.94 lakhs was paid to Rattan Kaul. Thus, there is ample evidence on record. At this stage, the Court is only required to see whether there is prima facie evidence to proceed against the Petitioner. Further there being no illegality or gross abuse of the process of the Court, the scope of consideration in the present petition is limited in view of the decision of Hon'ble Division Bench of this Court in *Anur Kumar Jain vs. CBI*, 178 (2011) DLT 501.

4. I have heard learned counsel for the parties.

5. Briefly the prosecution case is that Jagjivan Cooperative Group House Building Society (in short the 'society') after acquiring some land in 1989 in Vasant Kunj had applied to the DDA in 1991 for No Objection Certificate (NOC) for starting construction of houses. However, the DDA did not issue the NOC as the land had already been acquired in 1986. In 1993 the Society represented to the then Minister of State of Urban Development for issuance of NOC. The State Minister recommended the case on 25th November, 1993 and sent the file to the Union Urban Development Minister Smt. Sheila Kaul for her approval, which remained pending till second week of February, 1994. Co-accused R.P. Gupta, I.P. Gupta, Hawa Singh and A.K. Gupta were office bearers of the society. The Petitioner was working as OSD to the then Governor of Haryana. Thus R.P. Gupta, who was well known to the Governor, met him along with O.P. Sahni then treasurer of the society. According to the witness they used to request the then Governor for help in getting necessary NOC issued to the society for starting the construction of houses from DDA and Ministry of Urban Development. According to O.P. Sahni, Smt. Prem Batra wife of the Petitioner was also made member of the society. He further stated that sometime during

February, 1994 he was introduced to one Anup Shrivastava. As per the witness, who looked at the accounts of the society, he met Anup Shrivastava at the site office at Vasant Kunj. In February 1994 Anup Shrivastava was introduced to O.P. Sahni by some executive member whom he did not recognize. S.M. Batra the Petitioner herein also accompanied Anup Shrivastava. At that time R.P. Gupta, Hawa Singh and I.P. Gupta were also present. During discussion Anup Shrivastava stated that he was very close to the family of Smt. Sheila Kaul and he could help them in getting the necessary NOC issued to the society from Smt. Sheila Kaul with whom the file was at that time pending for decision. Both Anup Shrivastava and the Petitioner stated them that they would have to give membership to the society of the family member of Smt. Sheila Kaul. Thereafter they told them to pay Rs. 5 lakhs in cash to Rattan Kaul. Although O.P. Sahni was against making any payment for getting the NOC issued yet R.P. Gupta and Hawa Singh decided that in the larger interest of the members of the society, the payment can be made. Shri R.P. Gupta took upon himself to arrange the amount through his own sources. Anup Shrivastava told them that they could come to the residence of Smt. Sheila Kaul at 9, Moti Lal Nehru Marg in the evening when the amount can be paid to Rattan Kaul. R.P. Gupta and his

son I.P. Gupta arranged the amount and they along with O.P. Sahni and Hawa Singh went to 9, Moti Lal Nehru Marg in the evening where Anup Shrivastav and S.M. Batra took Hawa Singh inside the house along with Rs.5 lakhs whereas others waited outside. After some time Hawa Singh returned and told that the bag containing Rs. 5 lakhs had been given to Rattan Kaul. He further stated that as directed by Anup Shrivastava, they will have to pay some other amount in near future if they were to get the NOC for the society. Sometime in April, 1994 R.P. Gupta and Hawa Singh told that Anup Shrivastava has told them to pay another sum of Rs. 5-6 lakhs. With the assurance of the members of the executive body of the society they decided to pay the amount by way of demand draft/bankers cheques. This amount was also arranged by R.P.Gupta from his own sources and paid to Rattan Kaul by way of demand drafts/banker's cheque in the favour of six persons, that is, Rattan Kaul, Vivek Kaul, Ashish Kaul, Shantanu Kaul, Manju Madan and Suresh Butani within five-six day.

6. Thus it is apparent that the demand of money to be paid to Rattan Kaul was made by the Petitioner along with the co-accused. Further at the time when money was given, the Petitioner was present along with Anup Shrivastava at the residence of the Minister. The Petitioner and Anup

Shrivastava accompanied Hawa Singh inside the house, who gave the amount of Rs. 5 lakhs to Rattan Kaul. From the statement of this witness, it cannot be said that there is no evidence against the Petitioner. Prima facie there is sufficient evidence on record for framing charge against the Petitioner.

7. The contention of the Petitioner that Section 9 of the PC Act is not attracted is fallacious. Section 9 of the PC Act does not apply to public servant alone. The word “whoever” has not been qualified to be a public servant in Section 9 as in Section 10, PC Act. Further the alleged person may accept or agree to accept or agree to obtain, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise, to do or to forbear to do any official act or in the exercise of the official functions of such public servant to show favour or disfavour to any person. It is thus apparent that the word ‘whoever’ does not qualify the public servant who has to perform or forbear from doing the official act. Thus ‘any person’ who accepts or admits or agrees to accept or attempts to obtain for himself or any other person would be liable to be prosecuted under Section 9, PC Act. The Petitioner has been charged for offence under

Section 120B IPC read with Section 9 of the PC Act. From the statement of the witness on record, it is apparent that the Petitioner was a conspirator in demand and handing over the money to the son-in-law of the then Minister for her to perform the official function of granting NOC to the society. I find neither any illegality in the impugned order nor any abuse of the process of the Court, warranting interference of this Court in exercise of its writ jurisdiction.

Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 29, 2012
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