

\$~13

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

%

Date of Decision: 03.10.2012

+ CRL.M.C. 3232/2012

KRISHAN KUMAR MARWAH Petitioner
Through: Mr.Amit Sharma, Advocate.

versus

GOVT. OF NCT OF DELHI Respondent
Through: Ms.Rajdipa Behura, APP

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

%

1. This petition under Section 482 Cr.P.C has been filed by the petitioner, who is an accused in case FIR No.209/1998 under Sections 420/467/468/471 IPC P.S. Adarsh Nagar (Crime Branch), praying for quashing of the chargesheet as well as the order on charge dated 19.03.2012.
2. In brief, the case of the prosecution is that on 05.05.1998, the complainant Pawan Kumar Agarwal made a complaint that an account payee cheque No.508735 dated 17.04.1998 for Rs.2,62,036/- was received

by his firm Bansal Industries from NSIC. The cheque was deposited by him in his current account No.2371 with Oriental Bank of Commerce, Azadpur Branch, Delhi. It is further stated that when the amount of the cheque was not credited in his account, he made an enquiry and came to know that the payment of the said cheque has been made on the counter of State Bank of Saurashtra, Nehru Place on 21.04.1998 by changing the account payee cheque to a bearer cheque by committing forgery. Initially, case FIR No.209/98 was registered by Police Station Adarsh Nagar, but the case was sent as 'untraced'.

3. Thereafter, the complainant filed a Civil Suit against the Oriental Bank of Commerce as well as State Bank of Saurashtra which was decreed in his favour, making both the Banks equally liable to make the payment. Against the said decree, the Oriental Bank of Commerce preferred an appeal before this Court and the Division Bench of this Court vide order dated 27.07.2006 directed the Dy. Commissioner of Police, Economic Offences Wing, Crime Branch to investigate the matter, which resulted in re-investigation in FIR bearing No.209/1998 and thereafter chargesheet was filed in the Court of learned ACMM, charging the petitioner for committing the offences punishable under Sections 420/467/468/471/120-B IPC.

4. After hearing the prosecution and the accused on the point of charge, vide detailed and well-reasoned order, the learned ACMM formed a view that prima facie case for committing the offences under Section 120-B read with Sections 420/467/468/471 IPC was made out against the present petitioner for framing of charge under the aforesaid sections.

5. Aggrieved by the said order, the petitioner has invoked the inherent jurisdiction of this Court, impugning the order of learned ACMM on various

grounds.

6. On behalf of the petitioner, it has been submitted that in the departmental inquiry held by Bank of Saurashtra, one Ashutosh Swami was also found guilty, but he has not been chargesheeted, rather he has been kept in Column No.2. Further, opinion on the questioned documents was sought repeatedly, but from the same examiner thereby defeating the very purpose of seeking re-examination. It has been urged that the petitioner has also got the said documents examined by a forensic document expert, who is a retired Government Examiner of questioned documents, Government of India, Bureau of Police Research & Development, Ministry of Home Affairs, Shimla and the opinion given by him is to the effect is that the person who wrote the questioned handwriting did not match with the admitted handwriting. It has been submitted that in view of this opinion, the petitioner deserves to be discharged and the criminal proceedings against him may be quashed. Learned counsel for the petitioner has relied upon on the decision ***Rukmini Narvekar vs. Vijaya Satardekar and Others (2008) 14 SCC 1*** in support of his contention that in rare cases where the defence produces some material which convincingly demonstrate the prosecution case to be absurd, the Court can look into the material produced by the defence even at the time of framing of the charge.

7. On behalf of State, the role of the present petitioner in the whole episode has been highlighted, wherein an account payee cheque was converted into a bearer cheque and payment made at the counter, which has been thoroughly investigated. Not only that, the scientific evidence prima facie show the involvement of the present petitioner, hence he has been rightly ordered to be charged by the learned ACMM. It has been further

submitted by the learned APP for State that once chargesheet has been filed and order for framing charge has been passed by the learned ACMM, the petitioner cannot pray for quashing of the chargesheet. On this, learned counsel for the petitioner submitted that he is limiting his prayer to the extent that the order dated 19.03.2012 passed by the learned ACMM may be quashed in view of the fact that another opinion obtained by the petitioner proves his innocence and that the co-accused Ashutosh Swami who had the main role was not made an accused in this case.

8. I have considered the submissions made on behalf of the petitioner. Just because Ashutosh Swami was kept in Column No.2 for the reason that no direct evidence was available against him, the petitioner cannot raise this issue before this Court in this petition while impugning the order on charge. If the learned ACMM felt that the material on record is sufficient to summon Ashutosh Swami as an accused, the learned ACMM could have summoned him as an accused in this case.

9. The prayer of petitioner to consider the reply obtained by him from retired GEQD Officer at the stage of charge is liable to be rejected in view of the decision of the Apex Court in ***State of Orissa vs. Debendra Nath Padhi (2005) 1 SCC 568***. It was held by the Supreme Court:-

“It is well settled that at the stage of framing of charge, the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge, if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage

of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well-settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

10. At the stage of framing of charge, the Court is to only consider whether the material placed before the Court was sufficient to prima facie disclose the constituents of the offence for which the accused has been charged. The opinion sought by the present petitioner from the retired Government Examiner remains an expert opinion which by its very nature is a weak piece of evidence and at the most can be put forward by him during trial as his defence. The opinion so obtained by the petitioner does not fall in the category of the document as envisaged in the case of ***Rukmini Narvekar (supra)*** by the Apex Court. Seeking such opinion in itself does not make the prosecution case as absurd or a concocted one. At the most it is an opinion of one expert against the opinion of another expert.

11. In the case of ***Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar 1979 SCC (Crl.) 1038***, the Supreme Court observed:-

"The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Sec.227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the

factual ingredients constituting the offence alleged may justify the framing of charge.....”

12. In ***State of Bihar vs. Ramesh Singh 1977 SCC (Cri) 533***, scope of ***Sec. 227 and 228 Cr.P.C.*** was discussed by the Hon’ble supreme Court and it was held as under:-

“Reading Sec.227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at the stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Sec. 227 or 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in the conviction.”

“Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.”

13. While passing the impugned order, the learned ACMM, after considering the material submitted before the Court formed the view that a prima facie case is made out against the accused observing:

“It is undisputed fact that the handwriting appearing on the back side of the cheque in question (which has been marked Q-12) has been opined to be matching with the specimen as well as admitted handwriting of the present accused. The said endorsement reads as under:-

“Crossing cancel, please pay Rinku Bansal in favour of this cheque”

Although, it is argued on behalf of present accused that there is no sufficient evidence against him to frame charges by the Court but at the same time, there is no explanation whatsoever as to how and under what circumstances, he made the aforesaid endorsement of cancelling the account payee crossing on the cheque in question. The perusal of written complaint dt. 05.05.98 lodged by the complainant namely Sh. Parveen Kumar Bansal as well as the statements U/s. 161 Cr.P.C. of various witnesses prima facie goes to show that the complainant neither made any such endorsement on the cheque in question nor authorized any other person to make such endorsement so as to authorize the release of proceeds against the cheque in question either to Rinku Bansal or to any other person. That being so, the said endorsement is prima facie shown to be false endorsement having been made on the cheque in question.”

14. It is further observed that:

“....The handwriting appearing in the forged endorsement on the basis of which payment has been released against the said cheque by State Bank of Saurashtra is prima facie shown to be duly matched with the handwriting of present accused. Thus, prima facie present accused is shown to be in active conspiracy with other offenders in commission of offences involved in this case. It is well settled law that whenever two views are possible on the basis of material available on record at the stage of framing of charge then the view favouring the prosecution should be adopted.”

15. The learned ACMM, while passing the impugned order, has taken into consideration the manner in which the account payee cheque was converted into a bearer cheque and the proceeds thereof amounting to Rs.2,62,036/- were released from the Bank counter to a person who did not had any authority or right or any interest therein. It was rightly observed that on the basis of material on record *prima facie* case for commission of offence under Section 120-B read with Sections 420/467/468/471 IPC is made out

against the present petitioner.

16. In the case of *State of Andhra Pradesh vs. Golconda Linga Swamy and Anr. AIR 2004 SC 3967*, it was observed:

“The powers possessed by the High Court under Section 482 of the Code of Criminal Procedure, are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court, being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.”

17. There is no merit in the present petition and the same is hereby dismissed.

18. Any observations made hereinabove shall not prejudice the case of either party during the trial of the case.

(PRATIBHA RANI)
JUDGE

OCTOBER 03, 2012
‘dc’