

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

+ **CRL.M.C. 4042/2011 & Crl.M.A. 18875/2011 (stay)**

% Reserved on: 13th January, 2012
Decided on: 30th January, 2012

SANJAY TRIPATHI Petitioner
Through Mr. Sidharth Luthra, Sr. Adv. with
Mr. Keshav Mohan, Mr.Arshdeep
Singh, Advs.

versus

CBI Respondent
Through Ms. Sonia Mathur, SC for CBI with
Mr. Vipin Kumar, I.O.

+ **CRL.M.C. 4059/2011 & Crl.M.A. 18956/2011 (stay)**

SURESH M HEGDE Petitioner
Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Ms. Smiriti Sinha, Mr. Bhuvan
Mishra, Adv.

versus

CBI Respondent
Through: Ms. Sonia Mathur, SC for CBI with
Mr. Vipin Kumar, I.O.

+ **CRL.M.C. 4171/2011 & Crl.M.A. 19323/2011 (stay)**

PRAKASH K.SHETTY Petitioner
Through: Mr. Amit Desai, Sr. Adv. with Mr.
Shri Singh, Mr. Gopal Shenoy, Advs.

versus

CBI Respondent
Through: Ms. Sonia Mathur, SC for CBI with
Mr. Vipin Kumar, I.O.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present petitions lay a challenge to the common impugned order dated 5th November, 2011 passed by the learned Special Judge, CBI whereby he did not accept the closure report filed by the CBI and took cognizance of offences under Section 120-B IPC read with Section 12 of the Prevention of Corruption Act, 1988 (in short 'PC Act') and substantive offence under Section 12 PC Act against the Petitioners and M/s. Videocon Industries Limited through its Managing Director.

2. Learned counsel appearing for Sanjay Tripathi contends that the learned Special Judge took cognizance of the offences punishable under PC Act despite no sanction was granted by the competent authority. Section 11, PC Act is the fulcrum of the offence of which the abetment and conspiracy is alleged. In the absence of cognizance for offence under Section 11 PC Act, no cognizance for offences under Section 120-B IPC read with Section 12 of PC Act and Section 12 PC Act could have been taken. The Petitioner is a public servant and in the absence of sanction since no cognizance for offence under Section 11 PC Act could be taken, the cognizance for offence under Section 12 PC Act is also bad in law. Further the Petitioner could not have abetted the alleged offence committed by himself. On the facts of the case, even a case for abetment as defined under Section 107 IPC is not made out as neither there is an overt act nor instigation on the part of the Petitioner. Reliance is placed on *M.S. Lamba Vs. State, (CBI) 1995 (33) DRJ 58* to contend that once sanction is not granted, the investigating agency could not have resorted to IPC offence by resorting to camouflage.

3. On behalf of the Petitioner Suresh Madhav Hegde in CRL.M.C.4059/2011 it is contended that Section 107(2) IPC requires an overt act or a manifestation thereof to perform the illegal act under Section 11 PC Act. Section 12 is not a stand alone offence and in the absence of cognizance for offence under Section 11 PC Act, no cognizance for offence under Section 12 PC Act could have been taken. The Petitioner is the authorized signatory of M/s. Videocon Industries Limited and in the usual course of business cheques come to him for signing after the concerned department in the company has applied its mind, and the duty of the Petitioner is only to sign the cheques and invoices on the basis of documents prepared by the concerned department. While signing the cheque the Petitioner was not even aware as to for which transaction the cheque was being signed, as M/s Videocon Industries Limited was regularly using the services of M/s. Prakash Packers and Movers, Mumbai for transporting the goods from one place to another. No vicarious liability can be fastened on the Petitioner in the absence of the same being specifically provided in the Statute. Reliance is placed on *Maksud Saiyed Vs. State of Gujarat* (2008) 5 SCC 668; *Maharashtra State Electricity Distribution Co. Ltd. Vs. Datar Switchgear Ltd.* (2010) 10 SCC 479 and *Ashok Sikka Vs. State* 147 (2008) DLT 552.

4. Relying on *Kehar Singh and Ors. Vs. State* (1988) 3 SCC 609 it is contended that abetment of an offence is not an independent or stand alone offence. Thus, no cognizance could have been taken for the offence of abetment under Section 12 PC Act. The offence of abetment created under Clause (2) of Section 107 IPC requires that there must be something more

than a mere conspiracy. There must be some act or illegal omission in pursuance of the conspiracy. Without a charge of the substantive offence, no offence of abetment can be made out. Further the necessary ingredients of an overt act or instigation essential for abetment are absent. It is well settled that what cannot be done directly cannot be done indirectly.

5. On behalf of the Petitioner Prakash Kitta Shetty in CRL.M.C.4171/2011 it is contended that the reliance of the learned Special Judge to summon the Petitioner on the decision of *M/s. India Carat Private Ltd. Vs. State of Karnataka 1989 CrL.L.J. 963* is misconceived. The present is not a case where the closure report has been filed for want of evidence and thus there is a difference of opinion between the Investigating Officer and the learned Special Judge. In the present case the closure report was filed for want of sanction. The sanctioning authority after applying its mind came to the conclusion that the facts of the case do not warrant a criminal action but only a disciplinary action. The grant of sanction has a statutory purpose which permits the senior officers to consider whether the case is fit for prosecution or not. Learned Special Judge could not have relied upon *M/s. India Carat Private Ltd.* (Supra) and come to a conclusion contrary to that of the sanctioning authority. The FIR was registered only under Section 11 PC Act. However when the sanction was not granted, resort was taken to provisions under Section 120-B IPC read with 12 PC Act. There is no allegation that Sanjay Tripathi took the claim of reimbursement from the Government. There is further no allegation that while assessing *M/s. Videocon Industries Limited*, Sanjay Tripathi abused his official position and thus, even the sanctioning authority thought that the same was at best a case

of indiscretion. In the absence of sanction, the investigating agency and the learned Special Judge picked up ancillary and incidental offences. In fact, the investigating agency had even submitted a closure report for offences under Section 120-B read with Section 12 of the PC Act as it was conscious that it could not achieve indirectly what it could not achieve directly. Relying upon *In Re: N. Swaminatha Iyer and Ors. AIR 1952 Madras 727* it is contended that Courts have to be conscious of the “growing conspiracy disease”. The essential ingredient of Section 107(2) IPC is a conspiracy followed by an act. In view of the overlap charge not surviving, the entire order on cognizance is illegal. If the intention of the Department is not to prosecute a person, the learned Special Judge cannot overreach the same and hold that the prosecution is essential. Relying on *Kehar Singh* (supra) it is contended that the incidental offences should be dealt with the principal offences and not that in the absence of principal offences prosecution for the incidental offences should be initiated.

6. It is further contended that the learned Special Judge had no territorial jurisdiction to take cognizance of the offence in terms of Section 4 PC Act. According to Section 4(2) PC Act the offence can be tried only in the area within which it was committed. No part of offence has been committed in Delhi, as the officer was never posted at Delhi. The assessments of M/s Videocon Industries Limited were done at Mumbai. The cheques in question were issued at Mumbai. Further the officer was transferred from Mumbai to Bangalore and thereafter to Ghaziabad. Reliance is placed on *CBI AHD. PATNA Vs. Braj Bhushan Prasad and Ors. 2001 (9) SCC 432* to contend that Section 4 of the PC Act overrides Section 181 Cr.P.C. and an offence under

PC Act can be tried only by the Court of Special Judge appointed for the areas within whose jurisdiction such offences were committed. It is thus prayed that the impugned order be set aside. Replying to the contentions of the learned counsel for CBI, it is stated that there is no dispute that an offence of conspiracy is a continuing offence, however, a conspiracy comes to an end on the completion of the acts. The offending act in the present case is not the transportation of goods but the payments made for the transportation of the goods. A perusal of Sections 11 and 12 PC Act and 120B IPC reveals that the offending act comes to an end in Mumbai and no offence has taken place in Delhi. Even for conspiracy the acts either took place at Mumbai or Bengaluru or Meerut. According to the learned counsel, in fact two independent acts have been clubbed as one conspiracy. Relying on *Union of India v. B.N. Anantha Padmanabhiah*, AIR 1971 SC 1836 it is contended that this Court has no jurisdiction to transfer the case to another State and can only quash the order of cognizance.

7. Learned counsels for the Petitioners further contend that the present proceedings are an abuse of the process of the Court, initiated against the Petitioners to overcome the bar of Section 19 PC Act. Thus applying the principle laid down in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the proceedings deserves to be quashed. The disciplinary authority has already taken a view that the ends of justice would be met by conducting departmental proceedings against the Petitioner Sanjay Tripathi for major disciplinary action and thus the present proceedings be quashed in the interest of justice.

8. Learned Counsel for the CBI on the other contends that Section 12 of the PC Act is a substantive offence and the cognizance under Section 11 PC Act is not essential for it. Adverting to the FIR it is stated that there are clear allegations against the Petitioners for abetment of offence under Section 11 punishable under Section 12 of the PC Act for which no sanction under Section 19 PC Act is required. The statements of the witnesses recorded during investigation show that the Petitioner Sanjay Tripathi a public servant was posted as Deputy Commissioner, Income Tax Central Circle 17, at Mumbai and while working as such had made an assessment of income tax vide order dated 30th March, 2004 for the assessment year 2001-2002 of M/s. Videocon International Limited which is a Videocon Group company. Sanjay Tripathi joined Enforcement Directorate on deputation at Mumbai on 3rd June, 2004 from where he was transferred to Bengaluru on promotion and thereafter to Meerut Division. On both the occasions, the household goods of Sanjay Tripathi were transported by M/s. Prakash Packers and Movers Mumbai and for this purpose the Petitioner Prakash Kitta Shetty contacted Shri S.P. Gupta of M/s. Prakash Packers and Movers for packaging and transporting the household goods of Sanjay Tripathi and bills thereof were raised on M/s. Videocon Industries Ltd. The Petitioner Suresh Madhav Hegde issued the cheques and thus Sanjay Tripathi, Suresh Madhav Hegde, and Prakash Kitta Shetty of M/s. Videocon Industries by entering into a conspiracy committed an offence under Section 12 of the PC Act. It is stated that there is sufficient evidence on record to show that the Petitioners were conspirators and they are not being fastened any liability vicariously. It is further contended that for an offence under Section 12 of the PC Act which punishes the abetment of an offence under Section 11, no misconduct is

required. Mere association of the public servant is sufficient. Further Section 12 PC Act is a substantive offence and is not dependent on Section 11 PC Act as held in *State through CBI v. Parmeshwaran Subramani*, (2009) 9 SCC 729.

9. Learned counsel for CBI relying on *R.S. Nayak v. A.R. Antulay*, 1986(2) SCC 716, *Ajay Aggarwal v. Union of India & Ors.*, 1993 (3) SCC 609 and *P.K. Thungon and others v. Central Bureau of Investigation*, 2009 II AD (Delhi) 674 contends that the offence of conspiracy is a single transaction which terminated at Delhi and thus the Delhi Courts have jurisdiction to try the same. In the alternative it is urged that the trial can be transferred to a Court of competent jurisdiction, however, the proceedings cannot be quashed.

10. I have heard learned counsel for the parties. Briefly the case of the prosecution in the charge-sheet is that Sanjay Tripathi while functioning as a public servant had obtained wrongful pecuniary advantages from M/s. Videocon Industries Limited during the years 2007 & 2008 with whom he had official dealings and thus committed misconduct. Sanjay Tripathi was working as Deputy Commissioner of Income-Tax, Central Circle 17, Mumbai and in the said capacity he had assessed the income-tax of M/s. Videocon International Limited vide order dated 30th March, 2004 for the assessment year 2001-2002. The company was represented by C.P. Suresh before Sanjay Tripathi. M/s. Videocon Industries Limited is another company of the same Group having the same Chairman-cum-Managing Director and auditors. While Sanjay Tripathi was transferred to Bengaluru, his household goods were transported by M/s. Prakash Packers and Movers

Mumbai vide goods receipt No. 1714 dated 11th May, 2007. Though the invoice for Rs. 46,967/- was raised in the name of Sanjay Tripathi but the address of the invoice was that of M/s. Videocon International Limited. Further this amount was paid by M/s. Videocon Industries Limited from their account at Federal Bank Branch Mumbai by cheque No. 568676 dated 5th June, 2007. Further on Sanjay Tripathi being repatriated and posted as Joint Commissioner of Income Tax U.P. (West) Ghaziabad, his household goods were again transported by M/s. Prakash Packers and Movers vide goods receipt No. 2052 dated 25th June, 2008 signed by Tripathi as consigner to Flat No. 8082, Part II Sector-B, Vasant Kunj, New Delhi. The invoice was issued by M/s. Prakash Packers and Movers in the name of M/s. Videocon Industries Limited. Further the payment of Rs. 52,822/- was made by M/s. Videocon Industries from their account at Indian Bank, Nariman Branch Mumbai. Thus, Sanjay Tripathi was found accepting valuable goods in the form of transportation charges from M/s. Videocon Industries. In this regard statements of relevant witnesses have been recorded which show that on both the occasions Prakash Kitta Shetty spoke to S.P. Gupta and arranged transportation and Suresh Madhav Hegde signed the cheques. Statement of witness S.P. Gupta has been recorded who has stated about the role of the Petitioner Prakash Kitta Shetty. Gev Framroz Kaklia, Officer Accounts M/s. Videocon Industries Limited stated that while authorizing the payments Suresh Madhav Hegde used to see whether the payment is genuine and in this context verify the same from the concerned officer who passed the bill and thereafter the bill came to him for issuing the cheque.

11. The Petitioners have raised the following issues for consideration in the present petition:

- (i) Whether the Court at Delhi had the jurisdiction to try the offence in terms of Section 4(1) of the PC Act.
- (ii) Whether a person who has committed the main offence can be charged for abetting the said offence as well.
- (iii) Whether in the absence of any allegations that Tripathi abused his position thus giving any undue advantage to M/s. Videocon Industries Limited at the time of assessment an offence for abetment under Section 12 PC Act is made out.
- (iv) Whether there is prima facie evidence to show that the Petitioners have entered into a conspiracy to instigate an offence under Section 12 of the PC Act or have been made liable vicariously.

12. The principal contention of the Petitioners is that in a case for offence under the Prevention of Corruption Act 1988, the jurisdiction to try the offence would lie with the Court where the offence is committed. In view of Section 4(2) of the PC Act, the PC Act being a special enactment, the provisions relating to jurisdiction of the Trial Court would be governed by the Special Act and not by the provisions of the Criminal Procedure Code. In *CBI Vs. Braj Bhushan Prasad 2001 9 SCC 432* similar question came up for consideration before the Hon'ble Supreme Court wherein trials pending in the State of Bihar were transferred to the State of Jharkhand, in view of Section 89 of the Bihar Reorganization Act 2000 as the offence under the PC

Act were committed within the jurisdiction of the State of Jharkhand. Their Lordships held:

“31. Section 4 of the PC Act relates to the jurisdiction of the court for trial of offences under that Act. The first sub-section of Section 4 declares that notwithstanding anything contained in the Code or in any other law, the offences punishable under the PC Act can be tried "only" by the Special Judge, appointed under Section 3(1) of the PC Act. Now sub-section (2) of Section 4 is the important provision and it is extracted below:

"Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government."

32. Thus, the only court which has jurisdiction to try the offences under the PC Act is the court of Special Judge appointed for the areas within which such offences were committed. When such an offence is being tried sub-section (3) enables the same Special Judge to try any other offence which could as well be charged against that accused in the same trial. So the pivot of the matter is to determine the area within which the offences was committed.

33. For that purpose it is useful to look at Section 3(1) of the PC Act. It empowers the Government to appoint Special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to commit that offence are only to be linked with the main

offence. When the main offence is committed and is required to be tried it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For our purpose it is unnecessary to consider that aspect because the charge proceed on the assumption that the main offence was committed.

34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13(1)(c) and also Section 13(1)(d) of the PC Act. The first among them is described thus:

"A public servant is said to commit the offence of criminal misconduct,-

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so."

The next offence is described like this:

"A public servant is said to commit the offence of criminal misconduct,-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

35. We have no doubt in our mind that the hub of the act envisaged in first of those two offences is "dishonestly or fraudulently misappropriates". Similarly the hinge of the act envisaged in the second section is "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

36. The above acts were complete in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Section 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

37. Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences ensued.

38. In this context it is useful to refer to Section 181 of the Code which falls within Chapter XIII, comprising of provisions regarding jurisdiction of the criminal courts in inquiries and trials. Section 181 pertains to "place of trial in case of certain offences". Sub-section (4) thereof deals with the jurisdiction of the courts if the offence committed is either criminal

misappropriation or criminal breach of trust. At least four different courts have been envisaged by the sub-section having jurisdiction for trial of the said offence and any one of which can be chosen. They are: (1) the court within whose local jurisdiction the offence was committed; (2) the court within whose local jurisdiction any part of the property which is the subject of the offence was received; (3) the court within whose local jurisdiction any part of the property which is the subject of the offence was retained; and (4) the court within whose local jurisdiction any part of the property which is subject of the offence was required to be returned or accounted for, by the accused.

39. Now, observe the distinction between Section 181(4) of the Code and Section 4(2) of the PC Act. When the former provision envisaged at least four courts having jurisdiction to try a case involving misappropriation the latter provision of the PC Act has restricted it to one court i.e. the Court of the Special Judge for the area "within which the offence was committed". No other court is envisaged for trial of that offence. We pointed out above that when the charge contains the offence or offences punishable under the PC Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the court within whose local jurisdiction the main offence was committed alone has jurisdiction.

40. Shri Kapil Sibal, learned senior counsel contended that Section 4(2) of the PC Act does not override the provisions of the Code regarding jurisdiction because among the four sub-sections included in Section 4 of the said Act, only first and the last sub-section are tagged with the non obstante words "notwithstanding anything contained in the code of Criminal Procedure". In his submission the fact that sub-section (2) is freed from the non obstante words would indicate that the provisions of the Code can as well be read with that sub-section. In that context learned Senior Counsel invited our attention to Section 178 to 180 of the Code, showing that different courts having domain over different local areas have

concurrent jurisdiction to inquire into or try the offences and hence the trial is permissible in any one of them.

41. Absence of a non obstante clause linked with Section 4(2) of the PC Act does not lead to a conclusion that the sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not PC Act) gives the definite indication that the legal position is the other way round. Section 4 of the Code is regarding trial of offences under the Indian Penal Code and other laws. Sub-section (1) of it relates only to offences under the Indian Penal Code. Sub-section (2) relates to "all offences under any other law". It is useful to read the said sub-section at this stage:

"All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

42. Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed."

13. In view of the law laid down by the Hon'ble Supreme Court it is thus settled that cognizance of an offence under Section 12 PC Act and 120B IPC read with 12 PC Act will have to be taken by the Court within whose jurisdiction the offence under PC Act has been committed. Learned counsel for the CBI has strenuously contended that in the present case since the goods of Petitioner Sanjay Tripathi were transported to Delhi and unloaded

at Vasant Kunj i.e. the consequences of the conspiracy ensued at Delhi, this Court will have jurisdiction to try the same. In *Ajay Aggarwal (supra)* the Hon'ble Supreme Court was dealing with offences under the IPC. In *P.K. Thungon (supra)* while dealing with an offence under PC Act, this Court held that since receipt of illegal gratification which is the essence of the offence took place at Delhi, the Courts in Delhi had jurisdiction to try the offences.

14. The abetment of an offence under Section 7 or 11 of the PC Act is a substantive offence under Section 12 of the PC Act for which no sanction is required. However, in view of Section 4(1) of the PC Act and 4(2) of the Indian Penal Code, the Court competent to enquire and try the offence under Section 12 of the PC Act would be the Court where the offence of abetment took place. There can be no dispute that transportation of goods from Bengaluru to Delhi is not an offence. The offence is the payment for the said transportation by the Petitioners Suresh M. Hegde and Pakash K. Shetty on behalf of the Videocon Industries Limited at Mumbai. The cheques were issued at Mumbai, received at Mumbai and encashed at Mumbai. It may be further noted that the Petitioners have not been charged for the substantive offence of conspiracy but with Section 120-B IPC read with 12 PC Act. Thus, the only Court which has the jurisdiction to try the offence under Section 12 PC Act read with 120B IPC and Section 12 PC Act is the Competent Court at Mumbai.

15. Since the petitions succeed on the first issue, this Court is not required to advert to the remaining issues. Learned counsel for the Petitioners have stated that this Court has no jurisdiction to transfer the trial from a Court at

Delhi to a Court at Mumbai. Though this Court has no such power to direct transfer but it has the jurisdiction to direct the learned Special Judge, Delhi to return the closure report for being presented before a Court of competent jurisdiction at Mumbai.

16. In view of the aforesaid discussion, the order dated 5th November, 2011 passed by the learned Special Judge taking cognizance for offences under Section 120-B IPC read with Section 12 PC Act and Section 12 PC Act in RC No.AC2 2009 A 0002 is set aside. The learned Special Judge will return the closure report to the CBI to be presented to the Court of competent jurisdiction at Mumbai.

Petitions and applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2012
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