

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

% **Reserved on : 13th May, 2013**
Pronounced on : 22nd May, 2013

+ W.P.(CRL) 545/2003

R.P.MALIK

..... Petitioner

Through : Mr.Aman Lekhi, Sr. Advocate
with Mr.J.K.Chawla, Advocate.

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through : Mr.Saleem Ahmed, Addl.
Standing Counsel for the State
with ACP Sheel Nidhi.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J.

1. In the year 2003, the petitioner R.P.Malik filed this Criminal Writ Petition No.545/2003 invoking the jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 CrPC for issuance of appropriate writ or direction for quashing the FIR No.60/2000 under Section 12 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act') as well the chargesheet and the proceedings arising therefrom. In addition, the petitioner has also prayed for issuance of appropriate writ or direction to the respondent to pay a sum of Rs.10 lacs (in prayer clause (iii) the amount of compensation is given in numbers as Rs.10,00,000/-, but in words as Rupees Fifty Lacs)

as compensation to the petitioner as a public law remedy.

2. Case FIR No.60/2000 was registered on 28.11.2000 under Section 12 of P.C. Act against the present petitioner at Anti Corruption Branch, Govt. of NCT of Delhi on the basis of complaint made by ACP Rajeev Ranjan who was posted as ACP/HQ/OPS/East. After completion of investigation, chargesheet has already been filed in this case. However, the chargesheet was consigned to Record Room by learned Special Judge (ACB), Delhi vide order dated 08.02.2011 extracted below :

'08.02.2011

Present : Shri B.S. Kain, Ld. APP for the State.

Accused on bail.

Accused submits that the appeal filed by him has been admitted by Hon'ble High Court of Delhi.

In these circumstances, let the file be consigned to the record room to be revived as soon as the records are received from the Hon'ble High Court.

Special Judge (ACB)

Delhi/08.02.2011'

3. This criminal writ petition was admitted on 08.12.2010 and ordered to be listed in due course before the Roster Bench.

4. Before this criminal writ petition could come up for hearing in due course, Crl.M.A. No.4991/2013 was filed by Naveen Soni for direction to the Trial Court for adjudication and trial of the case. In the application, while giving the background of the litigation between him and the petitioner R.P.Malik, it was brought on record that due to the pendency of this writ petition, Trial Court has also stopped the proceedings against the petitioner despite the fact that there is no order to

stay the proceedings before learned Trial Court. The case being under Prevention of Corruption Act, in view of Section 19(3)(c) of P.C. Act, there cannot be any stay of proceedings before the Trial Court. Thus, the trial against the petitioner should proceed.

5. CrI.M.A. No.4991/2013 was listed before this Bench alongwith the record of Criminal Writ Petition No.545/2003. Noticing that writ petition of the year 2003 seeking quashing of FIR and chargesheet is pending for a decade, efforts were made to expedite the hearing.

6. Reference to the background in which this writ petition has come up for hearing has been necessitated in view of the statement made on behalf of petitioner to point out the motive of the applicant Naveen Soni behind moving this application that resulted in the writ petition being taken up for final hearing and disposal.

7. In order to appreciate the contentions and the grounds on which the quashing of FIR and chargesheet has been sought by the petitioner, it is necessary to give in brief the facts leading to registration of FIR No.60/2000 under Section 12 of P.C. Act at ACB, Govt. of NCT of Delhi.

8. The case of the petitioner is that he was retired Chief Administrative Officer of District Court, Delhi and also a former Executive Magistrate, Delhi having high reputation, goodwill and status in the society. The petitioner is associated with a renowned Educational Society running number of public schools in East Delhi and is a well known personality of the area for his social, charitable and philanthropic activities. He is an income tax payee showing high income in his income tax returns.

9. The petitioner claims that he is a victim of conspiracy hatched by Naveen Soni, his parents and brother Vikas Soni and their associates including their well wishers in Delhi Police.

10. The petitioner and Naveen Soni entered into an agreement dated 14.01.1998 for sale of property bearing No.3, DLF Industrial Area, Moti Nagar, New Delhi for a sum of Rs.30 lacs. Since the parties to the agreement were having old association, the petitioner paid Rs.15 lacs as part consideration on 14.01.1998.

11. On 05.03.1998 Naveen Soni expressed his inability to honour the agreement and handed over a cheque No.722832 dated 10.03.1998 for a sum of Rs.15 lacs which was refund of the part sale consideration paid by the petitioner. The cheque, on presentation, was dishonoured resulting into filing of a complaint case under Section 138 NI Act by R.P. Malik against M/s New Gayatri Cork Industries and Ors. wherein Naveen Soni and his mother Asha Soni as well as the firm M/s New Gayatri Cork Industries were summoned as accused. The application filed by the accused persons for recalling the summoning order dated 09.03.1999 was dismissed.

12. Giving history of the previous litigations between the petitioner and Naveen Soni, his family and their firm, it is stated in this petition that with a view to blackmail the petitioner and to frustrate the order dated 09.03.1999, a false case was engineered after four years of the alleged loss of cheque. Case FIR No.270/2000 was registered against the petitioner in collusion with the police officials of PS Kirti Nagar and ACP & DCP (West District) at the instance of the then Commissioner of Police. Although the petitioner submitted detailed representation

alongwith the supported documents running into 52 pages, despite that he was arrested, tortured and harassed.

13. The petitioner also filed a complaint case No.139/1 (new number 25/2000) before learned MM and on the basis of direction in that complaint case, case FIR No.220/2000 was registered at PS Preet Vihar against Naveen Soni and his family.

14. Sh.Anoop Minocha, son-in-law of the present petitioner R.P.Malik was criminally intimidated, hence case FIR No.187/2000 under Sections 341/323/506/34 IPC was registered against Naveen Soni and Vikas Soni at PS Shakar Pur, Delhi and chargesheet had been filed in this case.

15. The case FIR No.187/2000 PS Shakar Pur is relevant for our purpose as it is in connection with investigation and chargesheet of this FIR that the complainant ACP Rajeev Ranjan was allegedly approached by the petitioner and offence under Section 12 of P.C. Act was allegedly committed, resulting into registration of FIR No.60/2000 at ACB, Delhi at the instance of Rajeev Ranjan against the present petitioner.

16. The petitioner has also given details of other litigations between him and Naveen Soni and his family but the same are not relevant for purpose of disposal of this writ petition.

17. The petitioner is seeking quashing of FIR No.60/2000 under Section 12 of P.C. Act registered as ACB, Govt. of NCT of Delhi on the following grounds :

(i) Charge-sheet has been filed in case FIR No.187/2000, P.S. Shakarpur, Delhi against Naveen Soni and others which establishes the truthfulness of the accusation made by Mr.Anoop Minocha, son-in-law of the petitioner in that case.

- (ii) This Court in exercise of jurisdiction under Section 482 Cr.P.C can look into the documents of litigation between the parties which are of sterling quality, while considering the prayer of the petitioner to quash the proceedings.
- (iii) Case FIR No.60/2000 has been registered in conspiracy with Naveen Soni and unscrupulous police officials to pressurize the petitioner not to continue with the legal proceedings against them;
- (iv) The material placed on record by the prosecution does not disclose the commission of offence under Section 12 of P.C. Act;
- (v) Nothing incriminating had been recovered from the petitioner or at his instance;
- (vi) Making request to a senior police officer to send the case to the Court is not an illegal act;
- (vii) FIR has been registered to settle personal scores and falsity of the case can be gathered that ACP/OPS even did not know which police official or agency is competent to register a case which was fabricated by the ACP;
- (viii) Fabrication and falsity is apparent because :
 - (a) Complainant, who is Asstt. Commissioner of Police, tampered with the case property and did not call the police immediately on his arrival at his residence;
 - (b) The case property was also tampered with by the wife and servant of the complainant and it was discovered after almost four hours of leaving the house of complainant by the petitioner.
 - (c) The complainant, after taking the case property from his residence, kept on roaming here and there without lodging the report or produce the

case property before the DCP (East) who was informed about the incident.

(d) The complainant did not take any step to deposit the case property at PS, ACB, Civil Lines, rather went to Addl. Commissioner of Police for issuance of order for registration of FIR because he knew that his case was false;

(e) The complainant admittedly called the petitioner at about 2.00/3.00 pm on 28.11.2000 in his office but neither produced him before DCP nor arrested the petitioner with the case property either himself or in presence of other witnesses like SHO, Farsh Bazar, SHO Anand Vihar or DCP (East).

(vii) The prosecution has fabricated some statement as supplementary statements after about one year of registration of FIR just to plug the loopholes in its case;

(viii) FIR had been registered with oblique motive to pressurize the petitioner to enter into compromise with Naveen Soni and also to withdraw the contempt case as well the revision petition filed by him against his false custody and to withdraw the criminal complaint cases;

(ix) No fruitful purpose will be served by continuation of the proceedings against the petitioner which are otherwise abuse of process of law.

18. The prayers made in the writ petition are to the following effect :

(a) to call for the records of case FIR No.60/2000, PS ACB, NCT of Delhi pending before the Court of learned Special Judge;

(b) to quash the FIR No.60/2000 under Section 12 of the P.C. Act, chargesheet and the proceedings emanating therefrom;

(c) to grant writ of mandamus and/or any other writ, and/order or direction directing thereby the respondents to pay a sum of Rs.10,00,000/- (Rupees Fifty Lacs) as compensation/damages to the petitioner, as remedy under the public law.

(d) to pass such other/further order or direction as may be deem fit and proper to do justice to the petitioner and facts and the circumstances of the case; and

(e) to grant cost of proceedings, in the interest of justice.

19. Mr.Aman Lekhi, Senior Advocate appearing on behalf of the petitioner has taken this Court through the complaint which formed basis of registration of case FIR No.60/2000 under Section 12 of P.C. Act, PS ACB, NCT of Delhi as well the statements recoded during investigation. He also referred to the copies of the litigations between petitioner and his son-in-law on the one hand and Naveen Soni and his family on the other hand.

20. Learned Senior Advocate of the petitioner has relied upon *S.N.Sharma vs. Bipen Kumar Tiwari & Ors. 1970(1) SCC 653*, *P.V.Jagannath Rao & Ors. vs. State of Orissa & Ors. 1968 SCR 789*, *Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors. (1988) 1 SCC 692*, *Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors. (1998) 5 SCC 749*, *Harshendra Kumar D. vs. Rebatilata Koley & Ors. (2011) 3 SCC 351*, *Anita Malhotra vs. Apparel Export Promotion Council & Anr. (2012) 1 SCC 520*, *Sanju alias Sanjay Singh Sengar vs. State of M.P. (2002) 5 SCC 371*, and *Om Prakash vs. State of Haryana (2006) 2 SCC 250* in support of his contentions.

21. First I would like to deal with the case law cited by learned Senior Advocate for the petitioner in support of his plea that the chargesheet against him is required to be quashed in view of the legal position laid down in the above noted cases.

22. The case law *S.N.Sharma vs. Bipen Kumar Tiwari & Ors., P.V.Jagannath Rao & Ors. vs. State of Orissa & Ors., Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors., Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors., Harshendra Kumar D. vs. Rebatilata Koley & Ors., Anita Malhotra vs. Apparel Export Promotion Council & Anr.* (Supra) relied upon by learned Senior Advocate for the petitioner deal with the powers of the High Court under Articles 226 & 227 of the Constitution of India and under Section 482 CrPC and when such power can be exercised.

23. Here it is to be noted that it appears to have escaped the notice of learned Senior Advocate for the petitioner that the principle stated by Supreme Court in the case of *Madhavrao Jiwajirao Schindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors.* (Supra) was reconsidered in two subsequent judgments reported as *State of Bihar & Anr. vs. Shri P.P.Sharma & Anr. AIR 1991 SC 1260* and *M.N.Damani vs. S.K.Sinha & Ors. AIR 2001 SC 2037*. In the case *State of Bihar & Anr. vs. Shri P.P.Sharma & Anr.* (Supra), it was observed that :

‘Madhaorao J. Scindhia v. Sambhaji Rao MANU/SC/0261/1988 : AIR 1988 SC 709, also does not help the Respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of Trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120B I.P.C. which the High Court refused

to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offences were made out. On those facts and also due to the relation of the settler, the mother, the Appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet.'

24. The case of **Madhavrao Jiwajirao Schindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors.** (Supra) was further dealt in the case of **Padal Venkata Rama Reddy @ Ramu vs. Kovvuri Satyanarayana Reddy & Ors. JT 2011(8) SC 646**) and the observation made is :

'Thus, the judgment in Madhavrao Jiwaji Rao Scindia (supra) does not lay down a law of universal application. Even as per the law laid down therein, the Court can not examine the facts/evidence etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of Madhavrao Jiwaji Rao Scindia (supra) is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes etc. etc. The superior Courts have been given inherent powers to prevent the abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the court to hold a full fledged inquiry or to appreciate the evidence, collected by the Investigating Agency to find out whether the case would end in conviction or acquittal.'

25. Report *Sanju alias Sanjay Singh Sengar vs. State of M.P.* (Supra) has been relied upon by learned Senior Advocate for the petitioner to explain that for purpose of Section 107 IPC what ‘instigation’ means.

26. This decision relates to offence under Section 306 IPC wherein the appellant was charge-sheeted for abetment to commit suicide on the basis of suicide note left by his sister’s husband. While quashing the charge-sheet, the Supreme Court observed that the deceased was under great stress and depression and he alone was responsible for his death. The ratio of this case has no applicability to the facts of case FIR No.60/2000, P.S. Anti Corruption Branch being under Section 12 of P.C Act.

27. The case law *Om Prakash vs. State of Haryana* (Supra) is on the effect of delay in lodging the FIR.

28. The petitioner has prayed for quashing of the FIR which has already culminated into chargesheet. The Trial is yet to commence in this case and suffice it to say that whether a case of abetment for the purpose of offence punishable under Section 12 P.C. Act is made out, is required to be dealt with by the Trial Court at the appropriate stage. Similarly, the effect of delay of few hours in registration of FIR cannot be taken into account while considering the prayer for quashing of charge-sheet. Thus placing reliance on *Om Prakash vs. State of Haryana* (Supra) is of no help to the petitioner.

29. Mr.Aman Lekhi, learned Senior Advocate for the petitioner submitted that a bare perusal of the complaint would reveal that it is fabricated after a well planned move and the motive was to enable

Naveen Soni and his family to settle score with the petitioner who had been litigating with them. Learned senior counsel referred to the statement under Section 161 Cr.P.C. of the servant Ashok Kumar as well as wife of the complainant, ACP Rajiv Ranjan to highlight that their version is at variance. While the complaint which is in English refers to some sentences in Hindi also like '*MAIN JANAB KI SEWA KARNE AAYA HOON, AAP I.O. KO KEH KAR MERA CASE COURT BHIJWADO*', statement of servant Ashok Kumar is to the effect that the entire conversation was in English. Not only that despite being holding a high position i.e. ACP, he was hopping from one Police Station to another Police Station for getting the FIR registered. The currency notes kept in sweet box were counted at various stages and being taken to different places which had the effect of tampering with the case property. Attention of this Court was also drawn to the fact that though R.P.Malik on being called to the office remained present there, but he was not arrested on the same day. Rather, later on supplementary statements of the SHOs, P.S.Farsh Bazar & Anand Vihar have been recorded to show the presence of R.P.Malik in the office. It has been urged that in ordinary course if a person visits the senior police officer and offers to pay bribe to which the officer takes offence, natural conduct would be to turn out that person ensuring that he leaves the house immediately by showing him the door immediately which did not happen in this case. Rather, the sweet box with the envelope containing the currency notes remained lying the ante room to the drawing room till it was noticed by the servant while dusting the room. On getting telephonic information about the sweet box and the currency notes, as a police officer, the

complainant should have informed the local police station instead of visiting and informing other senior officers and talking to the SHOs of Police Stations Farsh Bazar & Anand Vihar before finally reporting the matter to Anti Corruption Branch. While urging this Court to take into account the fact that the litigation in respect of dishonoured cheque of Rs.15 lacs was going on between the petitioner and Naveen Soni and others, the case FIR No.187/2000 was ultimately sent for trial, thus, vindicating the stand of the petitioner that the complaint lodged by his son-in-law Anoop Minocha was not false and if all these documents are taken into account along with the conduct of the complainant and the manner in which the FIR has been recorded at Anti Corruption Branch after an inordinate delay, this is a fit case where charge-sheet is required to be quashed to save the petitioner from undue harassment and protracted trial and humiliation.

30. I have considered the submissions made by learned Senior Advocate for the petitioner and also perused the record including statements and supplementary statements of the witnesses recorded under Section 161 Cr.P.C.

31. The proposition of law pertaining to quashing of criminal prosecution initiated against the accused, by High Court in exercise of power under Section 482 Cr.P.C. has been dealt with by the Supreme Court in a recent report ***Satish Mehra vs. State of NCT of Delhi 2013 CriLJ 411*** as under:-

“14. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the

Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred Under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in R.P. Kapur v. State of Punjab MANU/SC/0086/1960 : AIR 1960 SC 866 wherein the parameters of exercise of the inherent power vested by Section 561A of the repealed Code of Criminal Procedure, 1898, (corresponding of Section 482 Code of Criminal Procedure, 1973) had been laid down in the following terms:

(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a

pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed.”

32. In yet another report ***Rajiv Thapar and Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330***, the Supreme Court had the occasion to consider the jurisdiction of the High Court to quash the prosecution at the initial stage. Various parameters to be considered by the High Court while exercising the discretion under Section 482 Cr.P.C. to quash the proceedings have been laid down in the above-noted case. It would be apposite to refer to paras 21 to 23 of the said Report which crystallize the factors to be considered by the High Court in recording its satisfaction while considering the prayer for quashing of the prosecution:-

“21. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to

succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Code of Criminal Procedure, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Code of Criminal Procedure the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would

persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Code of Criminal Procedure to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious

court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

33. Now, it is time to examine the accusations made against the present petitioner and whether on the basis of grounds stated in the petition, the FIR which has already culminated into charge-sheet, satisfies the above parameters laid down by the Supreme Court in ***Satish Mehra vs. State of NCT of Delhi and Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*** (Supra).

34. The complainant in this case Shri Rajiv Ranjan ACP Headquarters has addressed the complaint to DCP, Anti Corruption Branch, NCT of Delhi. In order to appreciate the contention of the petitioner, it is necessary to reproduce the complaint and also examine statement under Section 161 Cr.P.C. recorded during investigation of this case to find out whether it is a fit case for quashing of proceedings against the petitioner. The complaint reads as under.

“MOST IMMEDIATE

No.196 IQ.ACP-HQ-East Distt, dated Delhi, dt. 28.11.2000

ACP Sh.D.S.Sandhu

Register a case

Sd/-

28/11/2000

The Deputy Commissioner of Police

Anti Corruption Branch

Govt. of NCT, Delhi

Subject: Regarding complaint for registration of a case against Shri R.P.Malik former Executive Magistrate and Chairman of Lovely Public School, Secondary School, Priyadarshini Vihar, Delhi-110092, under Prevention of Corruption Act.

Sir/Madam,

A case was registered with Shakarpur Police Station vide F.I.R. No.187/2000 under Section 323/341/506 IPC on the complaint of Shri Anoop Manocha son-in-law of Shri R.P.Malik against Naveen Soni and Vikas Soni who were arrested.

The Soni brothers have filed a complaint with the D.C.P. East that they were falsely implicated by Shri Anoop Manocha at the behest of Shri R.P.Malik with whom he has huge accounts to settle. The D.C.P. transferred the enquiry as well as the case, F.I.R. in question to operation cell which is headed by the undersigned. Shri R.P.Malik had come to my office requesting for filing of the Charge-Sheet against Soni brothers. He was told that Charge-Sheet will be filed after all the facts are ascertained. In the event the Charge-Sheet was not filed, Shri R.P.Malik stands to loose. Today in the morning Shri R.P.Malik came to my residence at about 8.00 A.M. when I was getting ready to an arrangement duty. My domestic help Ashok had opened the door and finding a gentleman in suit and Tie politely had him seated in the drawing room and then informed that somebody has come to meet me. When I saw Mr.R.P.Malik I asked him why have you come here? He said MAIN JANAB KI SEWA KARNE AAYA HOON, AAP I.O. KO KEH KAR MERA CASE COURT BHIJWADO. I told Mr.R.P.Malik that what he is trying to tell me is absolutely illegal. He wanted to plead further but I told him to leave immediately as he started walking out of my drawing room I retreated to the interior. There is a small guest room before drawing room, which has a bookshelf and a few books by its side, while dusting the room, the domestic help discovered a packet of sweet at about 12.00 noon and took the packet to my wife who asked him to open it. The box of sweets had another brown paper bag of Madhuban

Sweets, Madhuban Road, Shakarpur, within which there was white envelope of a firm Architects the living Anil Mehra, 18, Ansari Road, Daryaganj, New Delhi at top of the envelope it was written Shri R.P.Malik in green ink. The white envelope contains Rs.15,000/- (Fifteen Thousand) in cash. The packet of 100/- notes which is bound by red paper and stapled at one end. Another pack of 100 currency notes of Rs.50/- denomination. The box of sweet is also of Madhuban Sweets. It is wrapped in green decorative papers which is also of Madhuban Sweets and the box was kept in a white polythene packet again of Madhuban Sweet and the box of sweets also had a Visiting Card of Mr.R.P.Malik in it. To confirm it, I called Mr.R.P.Malik to my office and he came here and admitted that he had left the packet in my house while going out in the morning. He apologized for it and said 'HUMEIN KHALI HATH JANE KI AADAT NAHIN HAI'.

I am sending all the above mentioned items as they were left to you for your goodself for registration of a case against Mr.R.P.Malik and appropriate report action against him. The action taken may kindly be informed.

Thanking you,

*Time of occurrence 8.00 AM
Add: E-15, Type-IV
NEW POLICE LINES
KINGS WAY CAMP
DELHI-9
7248685
NPL/5523*

*Yours faithfully

sd/-
DCP/HQ/OPS/East
28/11/2000*

Copy to DCP/East for info."

35. Ashok Kumar working as servant at the house of the complainant was examined under Section 161 Cr.P.C. and the gist of his statement is that he was working as servant at the house of Rajiv Ranjan and

addressed him as 'Papa' and his wife as 'Mummy'. On 28.11.2000 at about 8/8:30 a.m one guest came who was wearing coat and tie carrying white colour polythene bag which appeared to be containing sweet box. He disclosed his name as R.P.Malik and enquired about 'Sahab'. He said yes he was at home and asked him to sit in the drawing room by gesture and went inside to inform 'Papa'. His 'Papa' came to drawing room to meet the guest. His 'Papa' was angrily talking to Mr.Malik in English and thereafter that man left through the door of that guest room and after some time his 'Papa' left for his office. Thereafter, no other guest came. Ashok has further stated that at around 12 or 12:30 p.m when he was cleaning the house, he noticed white colour polythene bag containing sweet box lying on the chair in the small guest room, which he had seen in the hands of the person who paid visit in the morning. He informed 'Mummy' who asked him to open the box. On opening the sweet box, Rs.15,000/- (100 x 100 and 50 x 100) with one visiting card were found. 'Papa' was telephonically informed and when he reached home he again made enquiries, took the box, money and other things with him and left.

36. Statement of Smt.Anupam Ranjan, wife of the complainant ACP Rajiv Ranjan is also to the effect that at about 12/12:30 p.m, servant informed her about the packet of sweet lying on the chair in the small guest room and she asked him to open the same. On opening the same, it was found containing Rs.15,000/- kept in an envelope on which R.P. Malik was written in green ink and visiting card of R.P.Malik was also there. She got scared and informed her husband telephonically, who reached home at about 1:30 p.m and took the box and other things with him and left.

37. The contents of the complaint by ACP Rajv Ranjan which formed basis of FIR as well the statement of witnesses recorded under Section 161 CrPC, disclose :

(i) The petitioner R.P.Malik visited the house of ACP and inquired from his servant Ashok about the availability of ACP at home.

(ii) At the time of visit, the petitioner was carrying a packet appeared to be containing a sweet box.

(iii) The servant made the petitioner sit in the drawing room and informed ACP.

(iv) ACP met the petitioner and on being questioned about the purpose of petitioner to his house, the reply given was '*MAIN JANAB KI SEWA KARNE AAYA HOON, AAP I.O. KO KEH KAR MERA CASE COURT BHIJWADO*'.

(v) The petitioner was made to leave the place immediately.

(vi) Around noon, the servant noticed the packet, which had seen in the hand of petitioner when he visited house of ACP, lying on a chair in the small guest room which was before drawing room. No other visitor had visited the house of ACP in the intervening period.

(vii) The packet was opened and contents were checked which was found containing Rs.15,000/- in an envelope bearing the name of petitioner with a visiting card.

(viii) On getting the information from his wife, ACP rushed home and after taking charge of the packet, left home.

(ix) ACP makes a call to R.P.Malik about the packet left by him at his house at the time of his (R.P.Malik) visit in the morning.

(x) R.P.Malik apologised saying '*HUMEIN KHALI HATH JANE KI*

AADAT NAHIN HAI'.

(xi) Complainant ACP Rajiv Ranjan takes various steps by informing the senior officers and getting the FIR registered against the petitioner R.P.Malik.

38. For an offence under Section 12 of P.C. Act, offer to bribe would amount to abetment irrespective of the fact whether cash was placed before the public servant or not and whether he agrees to accept the same or not. The *mens rea* of the bribe giver is relevant consideration for purpose of offence under Section 12 of the P.C. Act.

39. On perusal of the complaint, I find it difficult to agree with the submissions made by learned Senior Advocate for the petitioner that the chargesheet does not disclose commission of offence under Section 12 of P.C. Act. It is not discernible from the record that ACP Rajiv Ranjan filed a frivolous and vexatious complaint at the behest of Naveen Soni and his family members with whom the petitioner is litigating.

40. The contention of learned Senior Advocate for the petitioner is that this case has been foisted on the petitioner by the ACP in nexus with Naveen Soni and others. When this Court asked learned Senior Advocate for the petitioner to show from record to even derive the inference of so-called nexus, none could be pointed out. The question that arises for consideration is what axe the complainant had to grind in the dispute between R.P.Malik and Naveen Soni and his family or Shri Anoop Minocha, son-in-law of R.P.Malik and Naveen Soni and others. The petitioner claims himself to be a respectable person of the area being Chairman of reputed educational institution as well as Executive Magistrate and Chief Administrative Officer of District and Sessions

Court. The conduct of the ACP Rajiv Ranjan in asking R.P.Malik why he has come and his reply *“Mein To Janab Ki Sewa Karne Aaya Hun, Aap I.O Ko Kah Kar Mera Case Court Bhijwa Do”*, leading to the reaction that the ACP asked him to leave immediately, without ensuring that he escort upto the main gate, cannot be termed as unusual when he is stating that thereafter R.P.Malik started walking out of the drawing room and he retreated to the interior. The subsequent conduct of the ACP on getting information from his residence about the packet left and the currency notes recovered, cannot be judged on the basis of probabilities at this stage, as it is the subject matter of trial. There is no hard and fast rule as to how a person would react in a given situation for the reason that everybody has his own way to react in the given situation and circumstance. The fact remains that the FIR was registered at Anti Corruption Branch, Delhi in the evening though R.P.Malik visited his house at about 8 a.m. in the morning. But it can be inferred from the complaint that the ACP had tried to incorporate the events in the sequence they took place. In case of well planned false implication of the petitioner under Section 12 P.C. Act, the version of the complainant would have been foolproof to the extent that the petitioner would have been got arrested then and there. At the cost of repetition, it can be noted that the basic dispute between R.P.Malik and Naveen Soni was over a property deal which could not materialize and root of the problem was Rs.15 lacs which was paid as advance by R.P.Malik to Naveen Soni and others, but when the transaction could not be completed, it was sought to be refunded through cheque which got bounced. Litigation under Section 138 N.I. Act being initiated by the petitioner, police had hardly any role

to play in that dispute. Subsequent disputes between the petitioner and his son-in-law with Naveen Soni and others cannot be said to be of that magnitude so that to help Naveen Soni, the ACP himself would become complainant against the petitioner for the offence under Section 12 P. C. Act. Whether the complaint by the ACP is probable is subject matter of trial and whether ingredients of Section 12 P.C. Act are satisfied so as to warrant trial in the case, the stage is yet to come and it shall be for the Trial Court to hear on this aspect at the stage of charge.

41. Issue requiring appreciation of evidence cannot be dealt with under Section 482 CrPC. In the case ***Chand Dhawan (Smt.) vs. Jawahar Lal & Ors. 1992 CriLJ 1956***, it was observed that

‘When the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved.’

42. The Apex Court in the case ***State of A.P. vs. Gourishetty Mahesh and Ors. (2010) 11 SCC 226*** has laid down the guidelines as to when the powers under Section 482 CrPC can be exercised by this Court. In para 12 of the report is extracted as under :-

‘12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing

process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short circuit a prosecution and brings about its closure without full fledged enquiry.'

43. It may be noted that in the ongoing litigation between the petitioner and his son-in-law on the one hand and Navin Soni and others on the other hand, mere filing of chargesheet in case FIR No.187/2000 PS Shakar Pur or FIR in other cases is not sufficient to draw any kind of interference about the correctness of the accusations unless proved during trial.

44. Thus, the submissions made on behalf of the petitioner that filing of chargesheet in case FIR No.187/2000 PS Shakar Pur is sufficient to prove the correctness of the allegations, has to be rejected.

45. The contention of the petitioner that request to the ACP for filing of charge-sheet in case FIR No.187/2000 against Naveen Soni and others could not be termed as illegal is not the issue in this case. The grievance referred to in the complaint of the ACP is that the petitioner brought the sweet box containing an envelope in which Rs.15,000/- were kept and left at the house of ACP. On consideration of the facts and circumstances narrated in the complaint and the statements of the witnesses recorded during investigation, I am of the considered view that the steps delineated in *Rajiv Thapar's* case (supra) remains unsatisfied.

46. Since on examining the chargesheet and the material available on record, it is clear that none of the test laid down in *Satish Mehra vs. State of NCT of Delhi* and *Rajiv Thapar and Ors. Vs.*

Madan Lal Kapoor (Supra) are satisfied, this petition is bound to be dismissed.

47. However, before parting, it is necessary to note that for the last 10 years, the trial could not proceed for the reason that Trial Court Record was got consigned to Record Room on the basis of submissions made by the petitioner which were factually incorrect.

48. The observation made by the Apex Court in para 15 of the report **Santosh De & Anr. vs. Archana Guhar & Ors. (1994) 2 SCC 420**, describes such litigants and approach of the High Court towards such litigations. Para 15 of the report read as under :

‘15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.’

49. The offshoot of foregoing discussion is that there is no merit in

this writ petition. Hence, W.P.(Crl.) No.545/2003 is hereby dismissed with no order as to costs.

50. It is informed that LCR is still lying in the Registry. The Registry is directed to send the LCR immediately alongwith copy of this order.

51. The Trial Court shall now proceed with the trial expeditiously. Petitioner is directed to appear before the Trial Court on 29th May, 2013.

PRATIBHA RANI, J

May 22, 2013
'st' / 'dc'