

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

Reserved on : January 23, 2013

Pronounced on : February 04, 2013

+ **CRL.REV.P. 401/2005**

**THE CENTRAL BUREAU OF
INVESTIGATION**

.... Petitioner

Through: Mr. P.K. Sharma, Standing
Counsel for CBI with Mr. Uday
Prabhu Yadav, Advocates.

Versus

P.K.THUNGON

..... Respondent

Through: Mr. Gurdial Singh and Mr. K. K.
Patra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT

1. In this petition, learned counsel for the petitioner challenges the impugned order of 24th January, 2005 discharging the respondent/accused in disproportionate assets case.

2. The operative portion of the impugned order reads as under:-

“37. After considering the entire material produced by the prosecution and presuming that if the entire material is accepted by this Court before it is challenged in cross examination or rebutted by the defence, it does not show that accused was found in possession of assets disproportionate to his known

sources of income. Rather prosecution's own material shows that the income of the accused was much more than the assets found in his possession. The prosecution cannot be allowed to pick and choose its own self contradictory inspection reports and rely on D-12 only for the purpose of framing of charge. When both the reports are before the Court, this Court for the limited purpose sift the evidence as the court is not expected to accept all that the prosecution states as gospel truth even if it is opposed to common sense. There cannot be any dispute regarding the legal principles laid down in the various judgments relied upon by ld. Spl. PP but their applicability to the facts of the present case are to be considered by the Court specially keeping in mind that both the inspections have been carried out by the CBI team and inspector D.K. Singh was in both the teams and inspections were carried out with the assistance of experts."

3. The Trial Court in the impugned order has considered the horticulture and agricultural income of the respondent/accused while holding as under:-

"33. In respect of horticulture income also if the two reports i.e. D-22 (first report) and D-12 (second report) is considered, the difference in the two reports comes out to Rs.2,52,11,300/-. It is not understandable as to how the total number of trees which were mentioned as 7834 in the first report (D-22) could be reduced to 806 during the second report (D-12) especially when the counting has been done by the CBI inspector in presence of the witnesses with the help of experts of the field.

34. Similarly, in respect of the agricultural income as per the first report, the income is Rs.42,00,287/- while as per the second report the income is Rs.15,05,015/- leading to the difference in income from agriculture to the tune of Rs.26,95,272/-. Thus, the two inspection reports produced by the prosecution itself shows that despite having knowledge of the sources of the income at the time of inspection, while submitting the charge sheet only second report has been made the basis, though first report has also been placed on record and if both the reports are considered, as per the first report the income of the accused comes out to Rs.4,18,91,769/- while as per the second report, the income has been assessed as Rs.92,75,847/- leading to the difference of approximately Rs.3,26,00,000/-. The extent of disproportionate assets have been mentioned in the charge sheet at Rs.1,08,16,532/- and if the income of the accused from the known sources even as per prosecution's own documents is considered, it is a case where income of the accused was much more than the disproportionate assets attributed to him."

4. Learned counsel for the petitioner assails the impugned order on the ground that the second report D-12 has been discarded merely on the ground that it contradicts the first inspection report D-24 and it cannot be done at the stage of framing of charge. It is argued on behalf of petitioner that the first report D-24, pertaining to agriculture income, was on the basis of estimation and this fact is noted in a note, which reads as under:-

"Note: Since there was no standing crop in the field

on the date of spot verification i.e. on 31st January 1997 and this office does not maintain any records regarding the produce/yield from farmer fields, the above estimates were prepared solely on the basis of inquiry from the farmer/farm labourers”

5. The precise submission of learned counsel for petitioner is that a *prima facie* case for calling upon respondent – accused to face the trial in this case is made out in the face of second inspection report and the question as to which of the two inspection reports is to be relied upon finally, is a matter which has to be determined at the trial after evidence is recorded and the witnesses are given an opportunity to explain both the reports. It is so asserted because petitioner’s witnesses ought to be given an opportunity to explain as to why the second inspection report was called for and as to why the first inspection report deserves to be discarded. Thus, it is prayed on behalf of petitioner that impugned order be set aside and petitioner be afforded an opportunity to prove its case, as *prima facie* case is made out on the basis of the material on record.

6. To controvert the aforesaid stand of petitioner, learned counsel for respondent – accused drew the attention of this Court to Observation Memos of Gardens, Dairy etc. (D-11, D-20, D-23 and D-24) as well as to Observation Memos of Dairy (D-15, D-16 and D-22) to point out that the first inspection report is based upon physical verification and the horticulture income for the check period was reasonably assessed which has been unfairly ignored by the prosecuting agencies, who had obtained

self serving second inspection report (D-12) with a view to secure conviction of respondent – accused. Not only this, according to respondent’s counsel, petitioner had tried to influence the witnesses by writing a letter to the Government of Arunachal Pradesh for initiating action against officers who had prepared the first inspection report (D-20). Further, respondent - accused had to initiate contempt proceedings against petitioner, whose Joint Director had tendered unqualified apology and had desisted to follow up proposed inquiry against officers who had prepared the first inspection report (D-20). Thus, it is submitted that the trial court has rightly discarded the self procured second inspection report and has rightly relied upon the first inspection report (D-20) to arrive at the truth of respondent’s income not being disproportionate to his assets. Furthermore, during the hearing, it was pointed out by respondent’s counsel that the second inspection report cannot be relied upon because it has been obtained at the back of petitioner and so, it cannot be made the basis of prosecution of petitioner by calling upon him to face the trial in this case. So, dismissal of this petition is prayed for.

7. Apex Court in *State of Orissa vs. Debendra Nath Padhi*, (2005) 1 SCC 568 has authoritatively outlined the parameters within which it is to be determined as to whether a *prima facie* case is made out or not, in these words:-

“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 his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that

event it is not open to say that there is no sufficient ground for proceeding against the accused.”

8. The considerations which ought to weigh with the court at the stage of framing of charge have been reiterated by the Apex Court in *Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)*, (2009) 16 SCC 605, in the following words:-

“It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

9. The submissions advanced by both the sides have been duly considered and the material on record is carefully perused and thereupon it emerges that trial court in the impugned order has embarked upon a detailed analysis of the two inspection reports and has meticulously compared these two reports with precision in the light of the numerous decisions cited before it and has also placed reliance upon number of decisions but unfortunately, the afore-noted conclusion drawn by the trial

court in its detailed impugned order is contrary to the settled legal position defining the parameters within which discretion to call upon an accused to face the trial or not have been delineated as noted hereinabove.

10. This Court is reminded of the apt observations made in *Mathura Dass vs. State*, 104 (2003) DLT 147 on this aspect. That is to say, the assessment, evaluation and weighing of prosecution evidence in a criminal case at the final stage is entirely different than at the stage of framing of charge and it has been aptly observed that the standard of test, proof and judgment to be applied to the prosecution evidence at the final stage is not to be applied at the stage of framing of charge and the court can form a presumptive opinion also regarding the existence of factual ingredients constituting the offence alleged and order framing of charge.

11. Suffice it would be to *prima facie* point out that the factual position as noted in the second inspection report (D-12) makes it worthy of reliance at least to be tested at trial. Certainly, this second inspection report (D-12) cannot be discarded out-rightly as it would be pertinent to note as to what has been said in the second inspection report (D-12). It is as follows: *The management of the Farm was poor which was the main cause of low production and poor quality of fruits.* It also finds mention in the second inspection report that some photographs of the fruit trees were also taken to show the actual condition of the trees and the rates of fruits were verified from the wholesale market and accordingly the calculations were made. The second inspection report of October, 1997 was prepared by Project Coordinator of ICAR Research Project and was approved by the Joint Director of ICAR and is detailed one. Although the

first inspection report of February, 1997 was also signed by one Inspector of CBI but it appears to be prepared by the local authorities i.e., Horticultural Officer and was counter signed by District Agricultural Officer and though the first inspection was carried out in the presence of respondent – accused, but it does not disclose that as to on what basis the rate of produce/yield has been calculated and as to whether the inspection proceedings were photographed or not. But it *prima facie* appears that the first inspection report is by local authorities whereas the second inspection report is by a specialized Agency i.e., ICAR and it appears to have a scientific basis. Therefore, trial court was not justified in ignoring the second inspection report and to solely rely upon the first inspection report to discharge the respondent - accused.

12. In view of the aforesaid *prima facie* observations, I am of the considered opinion that the trial court had erroneously ignored the second inspection report (D-12) and had implicitly relied upon first inspection report (D-20) as if the scrutiny is being done at the final stage of trial without these two reports being tested at trial, which renders the impugned order nugatory and hence unsustainable.

13. In the light of the aforesaid narration, the impugned order is set aside with direction to trial court to make all earnest efforts to expeditiously proceed with the trial of this case by preferably giving shortest possible dates. Records of this case be transmitted to trial court forthwith and the parties through their counsel are directed to appear before the trial court on 14th February, 2013 for framing of charges as

certainly *prima facie* case is made out to call upon respondent - accused to face the trial in this case.

14. This petition is disposed of while refraining to express any opinion on merits of this case to avoid any reflection on the merits of the case.

(SUNIL GAUR)
Judge

February 04, 2013
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