

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

% W.P. (Crl.) No. 1658 of 2010

+ Date of Decision: 26th April, 2013

RAVINDER CHADDHA Petitioner

! Through: Mr. Sunil K. Mittal, Advocate with
Mr. Jagdish Prasad, Mr. Kshitij
Mittal, Mr. Anshul Mittal &
Mr. Saurabh Balwani, Advocates

Versus

\$ STATE NCT OF DELHI Respondent

! Through: Mr. Dayan Krishnan, ASC

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

The petitioner, by way of the present petition filed under Articles 226 and 227 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure, 1973 has sought setting aside of the order dated 19th July, 2010 passed by the learned Special Judge in a corruption case arising out of FIR No. 34/2008 registered by the Anti- Corruption Branch

against the petitioner, who is a practicing advocate, and three police officials for their having entered into a criminal conspiracy to extort lacs of rupees from one Abhinav Kishan Aggarwal, the complainant of the present case whose father had been arrested by the accused police officials in a murder case arising out of FIR No.356/2007 registered at Hauz Qazi police station, for showing favour to his father in that murder case by taking a soft stand on behalf of the investigating agency and to help him to get bail easily. The allegation against the petitioner herein was that he had been engaged by the complainant as a counsel for his father on the recommendation of one of the accused police official K.G.Tyagi so that he could act as a conduit for the recovery of the bribe money from the said complainant and which role he(the petitioner) did play as per the case of the prosecution.

2. Upon completion of the investigation charge-sheet under Sections 7/8/13(1)(a)(d) read with 13(2) of the Prevention of Corruption Act,1988(in short the Act of 1988) and Sections 384/120-B/34 IPC was submitted in the Court of the Special Judge constituted under the Act of 1988 to try corruption

cases, against three police officials and the present petitioner. The charge sheet was registered as Corruption Case No.111/09.

3. Upon receipt of the charge-sheet the learned Special Judge had passed the following order on 22/04/2009:-

"C.C.No.111/09

State vs K.G.Tyagi etc.

22/04/2009

Present: Shri Rajiv Mohan, APP for the State.

Heard.

Charge sheet perused. On the perusal of the charge-sheet, sufficient material is on record to take cognizance of the offence under section 7/13(1)(d) of Prevention of Corruption Act,1988 against accused.

Accused be summoned for 26/05/2009.

Sd/-

Special Judge(PC Act)-6

22/04/2009"

4. Thereafter, all the four accused, including the petitioner herein, appeared before the Special Judge and then proceedings for supply and scrutiny of prosecution documents continued for quite some time. The petitioner had been participating in those proceedings. Suddenly on 7th July, 2010 the petitioner moved an application before the Special Judge alleging therein that since the Court had taken cognizance of

the offences under Sections 7 and 13(1)(d) of the Act of 1988 which were attracted only against a public servant and he being not a public servant should not be asked to appear in Court as an accused and summons to him appeared to have been issued inadvertently. After hearing the counsel for the petitioner-accused and the APP for the State the learned Special Judge passed the following order on the said application of the petitioner-accused on 19/07/2010:-

*“CC No. 03/2010
State Vs K.G.Tyagi etc.*

19/07/2010

*Present : Sh. Rakesh Kumar, Chief PP for state.
All accused on bail.*

An application has been moved wherein it is stated that no cognizance had been taken against the accused Ravinder Chaddha as he is a private person and not being a public servant sections 7 & 13 do not apply. Legally the said assertion is correct. However, it has been observed that the charge sheet filed manifests complicity between accused K.G. Tyagi and Ravinder Chaddha.

At this juncture, when charge has not been framed and the accused has not been discharged, the inadvertent omission is hereby rectified and accordingly, I take cognizance of the offence

u/s 7,8,13(1)(d) r/w 13(2) POC Act and 384, 120B/34 against all the accused persons.

Application moved by Ravinder Chaddha becomes redundant in view of the fact that this Court has taken cognizance of the offence against him. No notice is required to be served as the accused is already appearing.

Documents have been filed by the accused.

To come up on 07.08.2010 for remaining arguments as well as order on application u/s 19 of POC Act.

*Sd/-
Special Judge
Delhi/19.07.2010"*

5. The petitioner felt aggrieved by this order by the learned Special Judge and so he approached this court by filing the present petition.

6. It was submitted by Mr. Sunil Mittal, learned counsel for the petitioner that once the learned Special Judge had decided on 22nd April, 2009, when the charge sheet was taken for consideration to find out whether the offences specified therein were made out or not, to take cognizance only of the offences under Sections 7 and 13(1)(d) of the Act of 1988 it was clear that all other offences mentioned in the charge sheet

stood dropped and the petitioner-accused stood discharged even though no specific observation to that effect was made by the Special Judge in the order of cognizance. Therefore, Mr. Mittal submitted, subsequently the Special Judge could not have passed another order on 19th July, 2010 that he was taking cognizance of all the offences mentioned in the charge sheet afresh since earlier there was an inadvertent omission in the order dated 22nd April, 2009 because that decision amounted to review of the earlier decision to the effect that he was taking cognizance of only the two offences under the Act of 1988 and in criminal law no review of an order passed by a criminal court is permissible. In support of this submission Mr. Mittal placed reliance on the judgment of the Supreme Court in **'Adalat Prasad vs Roop Lal Jindal', 2004 VIII Apex Decisions (S.C.) 533.**

7. Learned counsel further argued that since the petitioner was not a public servant at the relevant time no cognizance could be taken against him for the offences under Sections 7 and 13(1)(d) of the Act of 1988 and that legal position even the learned Special Judge himself also had accepted in the

impugned order but in order to avoid being alleged that earlier order was a result of non-application of mind by him he took the shelter of 'inadvertent omission' on his part in the impugned order which was wrong since in such like situations any Judge can say to the prejudice of an accused that some earlier decision was as a result of inadvertent omission. And if at all there was any inadvertent omission in the earlier order dated 22nd April, 2009 the prosecution could have got that infirmity removed by challenging that order but the Special Judge could not do that since inadvertent omission, if at all there was any in the earlier order, cannot be considered as a clerical mistake which could be corrected at any stage. Thus, counsel submitted while concluding his submissions, this court should hold that the petitioner stood discharged vide order dated 22nd April, 2009 of the Special Judge.

8. On the other hand Mr. Dayan Krishnan, learned counsel for the State submitted that this petition should not be entertained as the impugned order is only an interlocutory order and there are no exceptional circumstances existing in the matter justifying exercise of writ jurisdiction by this court

which has been invoked by the petitioner only to avoid the bar against the challenge to an interlocutory order created under Section 19(3) of the Act of 1988. In support of this submission Mr. Krishnan cited one judgment of a Division Bench of this Court in **“Anil Kumar Jain vs C.B.I.”, 2011(178) Delhi Law Times**. It was also submitted that in the said judgment the division Bench had held that the order of framing of charge in cases under the Act of 1988 is an interlocutory order and so no revision lies against that order though a writ petition under Article 227 of the Constitution of India can be filed as also a petition under Section 482 Cr. P.C. but resort to these provisions should be allowed by the High court very sparingly to prevent grave miscarriage of justice which is not the situation in the case in hand. It was also contended that, in any case, no illegality was committed by the learned Special Judge in clarifying by way of the impugned order that earlier there was an inadvertent omission in the order dated 22nd April, 2009 which he was correcting. It was also submitted that there is no implied discharge of an accused in such like situations and so the impugned order did not amount to review of the earlier

order dated 22nd April, 2009. Lastly, it was contended that in any event the impugned order can be said to be a procedural or technical irregularity which has caused no prejudice to the petitioner-accused and there has not been any miscarriage of justice since the petitioner had appeared before the trial court in response to the summoning order and had never challenged that summoning order on the ground that he being not a public servant could not be summoned for the offences under Sections 7 and (13)(d) of the Act of 1988 and that he did not do since he being a practicing advocate very well knew that there were allegations against him that he was in conspiracy with his co-accused police officials for extorting huge amount of money from the complainant whose father was in deep trouble being arrested in a murder case and so absence of Sections of conspiracy, extortion etc. in the order dated 22nd April, 2009 did not amount to his implied discharge of those offences.

9. During the course of hearing I was informed that the case was still at the stage of charge before the trial Court and it was contended from both sides that in such like cases when an accused appears before the Court of Special Judge on being

summoned he has to be first of all supplied the entire material relied upon by the prosecution and then comes the stage of consideration of the case by the Special Judge to find out whether a prima facie case is made out for framing of any charge(s) against the summoned accused and if no case is found to be made out for framing of any charge against the accused the court has to discharge the accused.

10. In the present case, the charge stage had not reached when the petitioner-accused moved the application seeking his discharge from the case on the ground that he being not a public servant could not be called upon to meet the charges under Sections 7 and 13(1)(d) of the Act of 1988 and that summons to him had been issued by the ahlmad of the Court mechanically. In my view, at the stage when the petitioner moved the application for his discharge it should not have been entertained and all the submissions which the petitioner wanted to make should have been taken up for consideration at the stage of hearing on the point of charge. At the stage of charge the petitioner could have sought his discharge on any ground which he considered to be available to him including

the one that he already stood discharged of the IPC offences and so he could not be charged for those offences even if the prosecution wanted him to be charged for those offences. Similarly, the question whether earlier there was any inadvertent omission on the part of the Special Judge in not taking cognizance of all the offences and its effect, if any, on the prosecution case should also have been left for consideration at the stage of consideration of charge.

11. This petition is accordingly disposed of with the direction to the Special Judge to take appropriate decision in accordance with law on all the aforesaid aspects while considering the case on the point of charge including the effect of all the offences not being mentioned in the order dated 22nd April, 2009. It is made clear that this Court has not gone into the merits of any of the submissions advanced in the present petition and, therefore, the Special Judge shall be liberty to take any decision in accordance with law.

P.K.BHASIN, J

APRIL 26, 2013