

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

Reserved on: 04th September, 2014
Date of Decision: 3rd November, 2014

+ CRL. M.C. 1518/2014

ATUL GOEL Petitioner
Through: Mr. R.K. Handoo, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Narender Mann, Spl. P.P. for CBI.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner has preferred the present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against order dated 27.01.2014 passed by learned Special Judge-IV, CBI (PC Act), Tis Hazari Courts, Delhi whereby order on charge was passed and, accordingly, charges for the offence under Sections 120B/109 IPC read with Section 13(1)(e) and 13(2) of Prevention of Corruption Act (hereinafter referred to as 'PC Act') were framed.

2. Brief facts of this case as borne out from the charge sheet are that accused Ashok Kumar, the then Deputy Commissioner, MCD, Sadar Paharganj Zone, New Delhi during the course of his service had

amassed assets disproportionate to his known sources of income. The accused had done so in conspiracy with other co-accused persons who had also abetted commission of the said offence. During the check period of 06.07.1979 till 20.09.2000, accused Ashok Kumar had amassed disproportionate assets to the tune of Rs.2,86,99,670.60 (Rupees Two crores eighty six lakhs ninety nine thousand six hundred seventy and sixty paise) and the percentage of disproportionate assets was 1831.4%. The accused had purchased two flats in Delhi in the name of his wife Smt. Maya at a cost of Rs.40,00,000/- (Rupees Forty lakhs) as per sale deed which was grossly undervalued. As per Land & Development Office notified rates of circular dated 16.04.1999, the price of the aforesaid property should have been Rs.55,00,000/- (Rupees fifty five lakhs) approximately and that Shri Ashok Kumar had further spent Rs.10,00,000/- (Rupees Ten lakhs) on renovation. Besides the above, the accused and his family members were alleged to be in possession of heavy bank balances and other expensive movable properties.

3. Subsequently FIR No.RC-52(A)-2000/ACB/D1 dated 20.07.2000 under Section 13(2) read with Section 13(1)(e) of PC Act was registered. During investigation it was revealed that the main accused (Ashok Kumar) has not made declaration of any movable or immovable assets acquired by him to the departments before the check period or at any time of joining service in MCD as AO. Hence, the assets before the check period were taken as nil. The main accused acquired these disproportionate assets after entering into a criminal conspiracy with his wife Maya Devi, Ajay Gupta, Director of M/s.

Sybron Leasing, Atul Goyal partner at M/s. Pace Financial Services Ltd. and Subhash Gupta, who helped him by giving him unsecured loans and also creating false income from investments in share business in the name of his wife and children. It was revealed that the main accused had a total income of Rs.10,31,771/- (Rupees Ten lakhs thirty one thousand seven hundred seventy one) for the check period under consideration in view of the services rendered by him in the capacity of a public servant while serving in MCD. The chain of events leading upto the aforementioned FIR commenced with the wife of the main accused Smt. Maya Devi purchasing a property bearing No.E4/10, Model Town measuring 257 sq. yds. on 16.01.1987 for Rs.4,80,000/- (Rupees Four lakhs eighty thousand) on which stamp duty of Rs.38,400/- (Rupees Thirty eight thousand four hundred) was paid. This was sold to Ms. Amarjeet Kaur through a property dealer Rajeev Verma for Rs.9,45,000/- (Nine lakhs forty five thousand) vide three sale deeds dated 09.03.2000. Smt. Maya Devi gained a profit of Rs.4,26,000/- (Rupees Four lakhs twenty six thousand) in the whole transaction. Further investigation revealed that Ashok Kumar obtained a loan of Rs.52,800/- (Rupees Fifty two thousand eight hundred) from his Department MCD for purchase of a second hand Fiat Car, which was included in his loan income. The actual cost of the car as revealed during investigation was Rs.55,000/- (Rupees Fifty five thousand) and was included in the assets of the accused.

4. The main accused had also taken loans from his relatives including his mother, brother-in-law and brother worth Rs.3,50,000/- (Rupees Three lakhs fifty thousand). These people were financially

incapable to forward such huge personal loans and therefore this amount was held as disputed. In addition to this accused also claimed loans of Rs.43,00,000/- (Rupees Forty three lakhs) from other persons namely Subhash Gupta and Ajay Gupta. Out of this Subhash Gupta paid Rs.10,00,000/- (Rupees Ten lakhs) whose total salary from all sources worked out to be Rs.40,000/- (Rupees Forty thousand). Even though no agreement regarding grant of loan existed between Smt. Maya Devi and Subhash Gupta, it was revealed that on 05.07.1999 cash was credited into his account in two instalments of Rs.5,00,000/- (Rupees Five lakhs) each, i.e. immediately prior to issue of cheque to Maya Devi regarding grant of loan for Rs.10,00,000/- (Rupees Ten lakhs) on 07.07.1999. The other loan paid by Ajay Gupta was for Rs.33,00,000/- (Rupees Thirty three lakhs) who was the Director of Sybron Leasing Pvt. Ltd. Company. During investigation, it was revealed that whenever they forwarded the loan to her (i.e. through six cheques) immediately prior to that cash was also deposited in the current account of M/s. Sybron Leasing Company with State Bank of Patiala, Model Basti, New Delhi, in Account No.3543. No terms and conditions and no guarantee was taken from the accused and his family for these loans as well. No interest was also paid on the said amount and even the principal amount was not returned.

5. CBI could not confirm the claim of Ashok Kumar regarding tuition income of Rs.64,000/- (Rupees Sixty four thousand) for the assessment year 1999-2000 and hence the benefit has not been given to the accused.

6. In addition to the above, Smt. Maya Devi, Abhishek and Sanajana have claimed income of Rs.38,58,760.70 paise (Rupees Thirty eight lakhs fifty eight thousand seven hundred sixty and seventy paise) from share business. The aforesaid three persons invested a total amount of Rs.1,00,000/- (Rupees One lakh) (Rs.40,000/- + Rs.30,000/- + Rs.30,000/-) on 08.01.1999, 22.01.1999 and 22.01.1999 respectively in share business through the concern of the petitioner and earned profits of Rs.37,58,760/- (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty) within a period of two and a half years. The present petitioner as proprietor of M/s Pace Financial Services Ltd., in the business of sale and purchase of shares, was buying and selling shares for these three persons on the instructions of one Ashok Kumar, an employee of Shri Dinesh Garg, who was their chartered accountant and that the proceeds of the share transactions conducted in a period of two and a half years were paid to the these investors in the form of 13 cheques drawn on Citibank. These share transactions were verified with National Stock Exchange which has revealed that these transactions had taken place in the client code of CVS 01 owned by Mr. Vijay Sachdeva. Purchase of shares of the value of Rs.6,00,000/- (Rupees Six lakhs) to Rs.8,00,000/- (Rupees Eight lakhs) was made by M/s. PFS on behalf of these three persons when there was no amount due in their account. The present petitioner was making investment on behalf of the investors, which was not permitted as per SEBI rules. No contract was executed between M/s PFS and these three persons. Furthermore, many of the scripts held by the aforementioned persons

were on D-mat and no D-mat account in respect of any of these three persons was ever opened.

7. Thereafter, property bearing no. 5/12 Roop Nagar, Delhi worth Rs.2,34,66,100/- (Rupees Two crores thirty four lakhs sixty six thousand one hundred) was purchased by Smt. Maya Devi on 20.04.2000 for Rs.40,00,000/- (Rupees Forty lakhs). Again, properties No.106, 107 Aurobindo Place, Hauz Khas, New Delhi were purchased for Rs.32,00,000/- (Rupees Thirty two lakhs) by Smt. Maya Devi which was of the value of more than Rs.1,00,00,000/- (Rupees One crore). The main accused (Ashok Kumar) also purchased property bearing Plot No.175, Pocket-17, Block-4, Sector-8, Rohini, Delhi measuring 60 square yards for Rs.12,200/- (Rupees Twelve thousand two hundred) in his own name from DDA for which he paid a sum of Rs.76,271/- (Rupees Seventy six thousand two hundred seventy one) till 20.09.2000 towards this plot including penalty and ground rent totalling to Rs.88,471/- (Rupees Eighty eight thousand four hundred seventy one) to DDA. Even though the plot was sold by the main accused on 10.04.2000 to one Mr. Sanjeev Verma the payment for the same i.e. cheque for Rs.2,50,000/- (Rupees Two lakhs fifty thousand) was deposited by him in his bank account in October 2000 i.e. after the check period and hence the profit obtained on the benefit of sale is not given to the main accused. Therefore, the main accused had total assets of Rs.2,77,52,480/- (Rupees Two crores seventy seven lakhs fifty two thousand four hundred eighty). Investigation has further revealed that he had incurred an expenditure of Rs.25,14,194.05 paise (Rupees Twenty five lakhs fourteen thousand one hundred ninety four and five

paise) under various heads including educational expenses (towards his five children), electricity and water bill, telephone bill, commissions to property dealers, stamp duty in respect of 5/12, Roop Nagar, Delhi, regularization charges of E-4/10 Model Town, property tax, income tax, charges paid to jeweller for getting evaluation report in 1986, LIC premium, Non-verifiable expenditure and charges paid to jeweller for getting evaluation report in 1986. Thus, the accused was in possession of disproportionate assets worth Rs.2,86,99,670.60 paise (Rupees Two crores eighty six lakhs ninety nine thousand six hundred seventy and sixty paise). After completion of investigation charge-sheet was filed.

8. Vide order dated 27.01.2014 learned Special Judge-IV, CBI (PC Act), Tis Hazari Courts, Delhi framed charges for the offence under Sections 120B/109 IPC read with Section 13(1)(e) and 13(2) of Prevention of Corruption Act. Feeling aggrieved by the said order the petitioner has filed the present petition.

9. Learned counsel for the petitioner submitted that during investigation CBI has verified and confirmed the purchase and sale of all the shares in the name of these persons from National Stock Exchange which affirmed transactions in the name of Smt. Maya, Ms. Sanjana and Mr. Abhishek. He further submitted that the transactions had taken place on the NSE, and there was no doubt about the quantity and the rate of the transactions. He also submitted that it is not in doubt that the transactions that had taken place would not culminate into a profit of Rs.37,58,760/- (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty).

10. Mr. Narender Mann, learned special public prosecutor for CBI vehemently argued that the present petitioner has intentionally aided in accumulation of disproportionate assets of accused No.1, Ashok Kumar & in the name of his family members i.e. Smt. Maya Devi (wife), Ms. Sanjana (daughter) and Mr. Abhishek (son) and has helped the said accused in accumulating assets which were disproportionate to his known source of income. In order to highlight the said contention, he referred to the relevant document showing income accrued in the name of aforesaid persons, namely, Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek from investment in share transaction carried out in their name by the present petitioner who was working as a share broker under the name and style of M/s. Pace Financial Services. He pointed out that Smt. Maya Devi gave a sum of Rs.30,000/- (Rupees Thirty thousand) to M/s. Pace Financial Services on 22.01.1999 against which she was repaid a sum of Rs.1,99,160/- (Rupees One lakh ninety nine thousand one hundred sixty) and Rs.2,23,505/- (Rupees Two lakhs twenty three thousand five hundred five) as profits. Likewise, Ms. Sanjana gave a sum of Rs.40,000/- (Rupees Forty thousand) to M/s. Pace Financial Services on 08.01.1999 and was repaid a sum of Rs.34,511.66 paise (Rupees Thirty four thousand five hundred eleven and sixty six paise) and Mr. Abhishek who paid a sum of Rs.30,000/- (Rupees Thirty thousand) to M/s. Pace Financial Services on 02.01.1999 was repaid a sum of Rs.1,72,125.79 paise (Rupees One lakh seventy two thousand one hundred twenty five and seventy nine paise) (by way of cheque dated 20.03.1999) as profit of alleged share transactions. It was also pointed out on behalf of respondent/ CBI that

investigation revealed that the aforesaid three close relatives of public servant i.e. accused No.1 Ashok Kumar had generated income of Rs.37,58,760.70 paise from the share business during the time span of two years five months with initial investment of Rs.1,00,000/- (Rupees One lakh).

11. Learned special public prosecutor for CBI further submitted that all the share transactions were verified with National Stock Exchange which revealed that those transactions had taken place in the client code of CVS01 which belongs to one Vijay Sachdeva whose statement under Section 161 Cr.P.C. was recorded as PW-68. He also referred to the relevant portion of said statement of Mr. Vijay Sachdeva (PW-68) wherein he claimed that he was not aware that his broker was utilizing his client code for Smt. Maya, Ms. Sanjana and Mr. Abhishek. On the basis of these facts, it has been contended on behalf of respondent/ CBI that the said share transactions are not genuine on behalf of these three persons and the same have been generated by the petitioner in order to aid accused Mr. Ashok Kumar in accumulating disproportionate assets.

12. Learned special public prosecutor of CBI had also highlighted the following facts in order to contend that share transactions carried out in the names of Smt. Maya, Ms. Sanjana and Mr. Abhishek were not genuine and thus, acts of the petitioner attract offence of abetment against him. Those facts are summarized as under: -

- (i) No independent client code was allotted to aforesaid three close relatives of the main accused and all share

transactions were made under the client code CVS 01 owned by Mr. Vijay Sachdeva (PW-68);

- (ii) All the share transactions were being made in the name of M/s. Pace Financial Services belonging to the present petitioner and no share was held by any of the said three persons in their names;
- (iii) None of the aforesaid three persons were ever paid any dividend during the relevant period;
- (iv) There has been purchase of shares amounting to Rs.6,00,000/- (Rupees Six lakhs) to Rs.8,00,000/- (Rupees Eight lakhs) by the petitioner on behalf of aforesaid three persons at the time when there was no amount in their account and the broker was making investment on their behalf which was not permissible as per Security Exchange Board of India Rules (SEBI Rules);
- (v) No written instruction was received regarding the sale and purchase of shares and all the share transactions were carried out on oral instructions of an employee of chartered accountant namely, Mr. Dinesh Garg;
- (vi) No written contract was executed between M/s. Pace Financial Services belonging to the petitioner and those three persons namely Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek;

- (vii) Despite the fact that many of the shares held by said three relatives of the main accused were in Demat Form, no demat account in the name of any of them was opened and all transactions were being made in demat account of M/s. Pace Financial Services at Global Trust Bank, Connaught Place, New Delhi; and
- (viii) As per verification carried out by National Stock Exchange the client code given to said close relatives of the main accused by M/s. Pace Financial Services belonging to the present petitioner, did not exist in the system of National Stock Exchange.

13. I have given my anxious thought to the submissions made by counsel for the petitioner and Ld.Spl.PP for CBI. I have also gone through the material on record.

14. The Apex Court in '**State of Haryana & Ors. Vs. Bhajan Lal**', 1992 Supp. (1) SCC 335, examined the scope of inherent powers of this Court in interference of its office by the appeals in the backdrop of interpretation of various relevant provisions of Cr.P.C. under Chapter XIV and all the principles of law enunciated by the Apex Court in a series of decisions relating to exercise of extraordinary power under Article 226 of Constitution of India or inherent powers under Section 482 of Cr.P.C. which enumerate the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of Court or otherwise to secure the ends of justice. The Apex Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelized

inflexible guidelines or rigid formulae in order to give an exhaustive list of myriad kinds of cases wherein such power should be exercised: -

- (i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

- (vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (vii) Where a criminal proceeding is manifestly attended with malafide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. There are a catena of judgments of the Hon'ble Supreme Court. However, specific reference can be made to '**State of U.P. vs. Golconda Linga Swamy & Anr.**', (2004) 6 SCC 522, wherein it was held that while exercising the powers under Section 482 of Cr.P.C., the Court does not function as a Court of appeal or revision and that such a power though very wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by tests laid down in the section itself. Section 482 of Cr.P.C. envisages three circumstances under which inherent jurisdiction may be exercised namely (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of process of the Court, and (iii) to otherwise secure ends of justice.

16. In **Golconda Linga Swamy's** case (supra) it was also held that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction in the enactment dealing with the procedure and provide with all cases that possibly arise. When the complaint is sought to be quashed it is permissible to look into material to assess what the complainant has alleged and whether any offence is made out even if the allegation are accepted in toto. Similarly, in the case of '**Devendra & Ors. Vs. State of Uttar Pradesh & Anr.**', (2009) 7 SCC 495, Hon'ble Supreme Court observed that "when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior Court would not encourage harassment of a person in a Criminal Court for nothing".

17. In view of the settled proposition of law as noted above, there does not remain any doubt that this Court has inherent power under Section 482 Cr.P.C. and also extraordinary power under Article 226 of the Constitution of India to entertain the present petition. Since power is to be exercised sparingly due care and caution will be required to examine the allegations as set out in the FIR and also brought up from the evidence gathered during investigation.

18. In the instant case, learned Special Judge-IV, CBI (PC Act), Tis Hazari Courts, Delhi formed an opinion that prima facie case in respect of offence under Section 109 IPC read with Section 13(1)(e) punishable under Section 13(2) of the PC Act is made out who is accused No.5 before the trial court. Learned Special Judge, however,

rejected the contention raised on behalf of CBI that prima facie case in respect of offence of criminal conspiracy punishable under Section 120B IPC was also made by observing that even as per allegations of prosecution, the acts of accused No.3, 4 and 5 (petitioner herein) were independent acts and also that there was no allegation contained in the charge-sheet that the accused persons had conspired together with accused No.1 or accused No.2 to facilitate the commission of offence under Section 13(1)(e) punishable under Section 13(2) of Prevention of Corruption Act by accused No.1.

19. Learned trial court relied upon judgments reported in '**Kanti Bhushan Bhadra Shah vs. State of West Bengal**', (2000) 1 SCC 722; '**Lalu Prasad vs. State of Bihar**', (2007) 1 SCC 49 and '**Sudhir Kumar Jain & Ors. vs. State**', (1994) (2) Crimes 954, to observe that no reasons are required to be recorded at the time of framing the charges against an accused. However, the order under challenge is completely silent about any incriminating evidence or document available before the trial court which raises grave suspicion against accused No.5 who is the petitioner herein in respect of even the offence of abetment as charged against him.

20. On the other hand, learned counsel for the petitioner urged that even as per the admitted case of CBI initial payment of Rs.1,00,000/- (Rupees One lakh) was made by aforesaid three persons by way of three cheques and the amount of Rs.37,58,760.70 paise (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty and seventy paise) was made by the petitioner through 13 account payee cheques. He

highlighted the fact that there is no allegation of cash transaction. He also submitted that all the share transactions have been verified by CBI during the course of investigation and the profit of Rs.37,58,760.70 paise (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty and seventy paise) has been generated during the time span of two years and five months and at the time when there was boom in the stock market. In this regard, learned counsel for the petitioner has referred to the document filed by CBI as document – D-211 along with charge-sheet. He also pointed out that aforesaid three close relatives of the main accused have also suffered loss of about Rs.11,70,000/- (Rupees Eleven lakhs seventy thousand) during the financial year 2000-2001 when the market prices of shares had fallen down steeply. Thus, the petitioner has provided his services as a share broker to the aforesaid three persons and has done nothing beyond that.

21. No doubt, the share transactions entered in the name of Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek by the petitioner herein were executed in the client code CVS 01 belonging to Mr. Vijay Sachdeva (PW-68). However, merely because the close relatives of the main accused Ashok Kumar, had engaged services of the petitioner for making investment in the share market through him, it does not lead to any inference that the petitioner had aided or abetted in the commission of offence of accumulation of disproportionate assets by the main accused.

22. A perusal of trial court record would reveal that as per investigation carried out by CBI, Smt. Maya Devi, Ms. Sanjana and

Mr. Abhishek were introduced by Mr. Vijay Sachdeva (PW-68) to the petitioner herein. In this backdrop, the submission made on behalf of petitioner that client code of said Mr. Vijay Sachdeva was used in the record of petitioners for identification, as surety and security in case of default, appeals to reasoning as in case of default of dues by those persons, the client code would indicate the name of the concerned person who had introduced the defaulters to share broker so as to claim reimbursement for such liability from introducer or to enforce the liability from defaulters through introducer.

23. It may also be noted here that the respondent CBI has filed a document i.e. D-227 with the charge-sheet which clearly shows that besides above said three persons, client code of Mr. Vijay Sachdeva (PW-68) was not only used for his family members and also for 37 other persons who were introduced by him. The detailed particulars including addresses of those 37 other persons, have been mentioned therein. As per the trade contracts, the share transactions executed on behalf of different persons in the same client code, used to be posted in the respective ledger accounts of each of the clients on the same day in order to ensure that each and every client got his separate contract note and at the same time to show that financial dealings carried out on behalf of each of them, is separate. Same is also apparent from perusal of document D-207 which clearly shows that Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek had separate ledger accounts in which share transactions were posted on the same day.

24. A perusal of the trial court record would reveal that all the share transactions carried out in the name of Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek through M/s. Pace Financial Services belonging to the petitioner in National Stock Exchange, were duly verified by CBI and all the said transactions are shown to have been actually carried out. It is nowhere the case of CBI that any of these share transactions as mentioned therein, was fake or that any particular transaction was manipulated.

25. It has been portrayed by CBI that against a total investment of Rs.1,00,000/- (Rupees One lakh) made by Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek, they earned a huge profit amounting to Rs.37,58,760.70 paise (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty and seventy paise). It would be relevant to highlight the fact that the said profit amount had been generated during the time span of about two and half years i.e. during the period 1999-2001. It is a matter of common knowledge that there was boom in the stock market during the period 1999-2000 on account of steep increase in the prices of some scripts and the share prices had increased even by 1000% during the said period. The relevant statements of accounts of these persons would show that they actually made a profit of about Rs.49,20,000/- (Rupees Forty nine lakhs and twenty thousand) during first two financial years i.e. 1998-1999 and 1999-2000. At the same time, they also suffered a collective total loss of more than Rs.11,00,000/- (Rupees Eleven lakhs) during the financial year 2000-2001. This fact is also established from the statement under Section 161 Cr.P.C. of PW-39 as available in the trial court record. In other

words, the aforesaid three persons initially made profits on account of boom in the stock market and suffered losses during the third year i.e. financial year 2000-2001 when the share market came down. Not only this, it is nowhere the case of CBI that these three persons did not pay tax on the profits earned by them during first two years or that any cash transaction took place between firm of the present petitioner and those three persons. The entire profit amount of Rs.37,58,760.70 paise (Rupees Thirty seven lakhs fifty eight thousand seven hundred sixty and seventy paise) is shown to have been paid by the firm of the present petitioner by way of 13 cheques as also affirmed by the investigation carried out by CBI.

The persons had no separate demat account:

26. The contention raised on behalf of CBI that the aforesaid three persons were not having a separate demat account and same is an incriminating circumstance appearing against the petitioner, does not carry any force for the simple reason that it is not mandatory for the client to have a demat account during the relevant period. As a matter of fact, the shares of the aforesaid three persons were lying in the demat account of M/s. Pace Financial Services as margin, which is the usual practice being followed by share brokers in case of almost all their clients. It is customary for the clients in the stock market to keep their shares as margin for buying additional shares, in the demat account of their broker.

There was no intimation to the National Stock Exchange that these three persons were trading through M/s. Pace Financial Services:

27. Another incriminating circumstance as pointed out on behalf of CBI was that there was no intimation furnished with National Stock Exchange that the aforesaid three persons were trading through the aforesaid firm of the present petitioner. However, there is no substance in the said submission of learned special public prosecutor for CBI. It is pertinent to note that these three persons traded with M/s. Pace Financial Services Ltd. during the period 1998-2000. The requirement for brokers to intimate the details of the clients to stock exchange, was notified by SEBI vide circular dated July 18, 2001 [point (7) of the said circular] and was applicable prospectively for the clients trading after that date. The last transactions of these three clients happened about one year prior to this circular having come into existence. National Stock Exchange notified requirement of uploading client information to the Exchange vide circular dated July 20, 2001 and this circular is part of the document of CBI i.e. D-211.

Profit entries have been lifted from the account of Mr. Vijay Sachdeva and posted in the accounts of these three persons: -

28. It was vehemently argued on behalf of CBI that the profit entries had been lifted from the account of Mr. Vijay Sachdeva (PW-68) and same were posted in the accounts of these three persons which is another incriminating circumstance appearing against the petitioner. The said argument appears to be impressive at the first instance but same is not tenable in the eyes of law and deserves to be rejected.

29. During the course of investigation, CBI had found that in the sale and purchase of shares, there were losses also. The gains initially were on account of boom in the stock market and when the market fell, there were losses also. As per PW-39, Ms. Sanjana suffered a loss of about Rs.7,70,000/- (Rupees Seven lakhs seventy thousand) during the financial year 2000-2001. Mr. Abhishek also suffered a loss of about Rs.4,00,000/- (Rupees Four lakhs) in the financial year 2000-2001. Therefore, in the first two financial years, all the three persons made profits of Rs.49,20,000/- (Rupees Forty nine lakhs twenty thousand) approximately but during third financial year i.e. 2000-2001 when the stock market fell they suffered losses of Rs.11,70,000/- (Rupees Eleven lakhs seventy thousand) approximately. Therefore, as much as 24% of the profits made over a period of first two financial years, were wiped out in just a few months when the share market had fallen down. Moreover, the said three persons had paid full taxes on the profits of the first two years and the losses in the third year could not have been set off against the profits of the earlier years, thus, substantially raising their effective tax rates further by 24%. If the allegation of manipulating the accounts to generate profits were true, then there would not have been a net loss of about Rs.11,70,000/- (Rupees Eleven lakhs seventy thousand) in the financial year 2000-2001.

Dividend is paid by the Companies to the shareholders and not by brokers to their clients: -

30. The argument raised on behalf of CBI that no dividend was received by any of these persons clearly shows the involvement of

present petitioner, is totally misconceived and is liable to be rejected. It is a matter of common knowledge that in case the shares are lying with broker as margin then the dividend is received by the broker from the companies and then the said broker credits the dividend amount in the accounts of its clients. This is the normal business practice which is generally followed by stock brokers dealing in the share market.

The transactions are void as per Section 14(1) and Section 15 of the Securities Contracts (Regulations) Act, 1956: -

31. Learned special public prosecutor for CBI heavily relied upon provisions contained in Section 14(1) and 15 of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as ‘SCR Act’), in support of his contention that share transactions carried out in the name of aforesaid three persons namely Smt. Maya Devi, Ms. Sanjana and Mr. Abhishek were in violation of law.

32. In order to appreciate the rival submissions made on behalf of both the sides, it would be appropriate to refer to relevant provisions contained in Securities Contracts (Regulations) Act, 1956: -

“9. Power of recognised stock exchanges to make bye-laws.

(3) The bye-laws made under this section may—

- (a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;

(b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:—

- (i) fine;
- (ii) expulsion from membership;
- (iii) suspension from membership for a specified period;
- (iv) any other penalty of a like nature not involving the payment of money

13. Contracts in notified areas illegal in certain circumstances.- If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any [*State or States or area*], that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such [*State or States or area*], and thereupon every contract in such [*State or States or area*], which is entered into after the date of the notification otherwise than [between the members of a recognised stock exchange or recognised stock exchanges] in such [*State or States or area*] or through or with such member shall be illegal:

14. Contracts in notified areas to be void in certain circumstances- (1) Any contract entered into in any State or area specified in the notification under section 13 which is in contravention of any of the bye-laws specified in that behalf under clause (a) of sub-section (3) of section 9 shall be void:

- (i) as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-law, and also

- (ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(2) Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

15. Members may not act as principals in certain circumstances - No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognised stock exchange, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure written confirmation by such person or such consent or authority within three days from the date of the contract:

Provided further that no such written consent or authority of such person shall be necessary for closing out any outstanding contract entered into by such person in accordance with the bye-laws, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.”

33. A bare perusal of the aforesaid provisions would clearly show that Section 14 of the SCR Act is applicable only to the transactions done in any state or area specified in the notification issued under

Section 13 by the Central Government. However, in the present case, all the share transactions were done on the trading platform of the National Stock Exchange and not in area which may be notified by Central Government under Section 13 of SCR Act. Moreover, no bye-laws made under Section 9(3)(a) of SCR Act are claimed to have been framed or brought to the notice of this Court, which make the transactions of these three persons void. In any case, there is no such allegation in this regard appearing in the charge-sheet filed by CBI before the trial court.

34. It may also be relevant to point out that Section 15 of SCR Act is applicable for transactions which are not conducted on Stock Exchanges. The said provision clearly provides that only in respect of transactions carried out by any member of recognized stock exchange, there is requirement to obtain written consent of the client on whose behalf, any member is entering into any contract as a principal member with any person other than a member of recognized stock exchange. However, this section is not applicable to the transactions of these three persons as all their transactions had taken place on National Stock Exchange. In fact, this fact has been mentioned by CBI in the charge-sheet itself that all those transactions were verified by it from National Stock Exchange.

As per regulations 3.1.8 of the National Stock Exchange of India limited regulations (capital market segment), 1994, it was mandatory to enter the unique client code of client at the time of entering the order in the stock exchange: -

35. The reliance placed by learned special public prosecutor for CBI on the aforesaid regulation is again without any substance. No doubt, the said regulations of National Stock Exchange were originally framed in the year 1994 but it may be noted here that clause 3.1.8 was inserted in the regulations only on January 28, 2004. Same is quite apparent from the bare perusal of the relevant National Stock Exchange circular notifying this amendment. The said circular has been enclosed as Annexure-A with the petition filed before this Court.

36. In view of the discussion made hereinabove, this Court is not able to lay its hand on any incriminating material which may raise grave suspicion against the present petitioner in respect of the offence of abetment as punishable under Sections 109 IPC.

37. In the case of '**Kanshi Ram vs. State**', 2001 (1) JCC 320 Delhi, it has been held by this Court that Court cannot act as a mouth piece of prosecution, but has to consider broad probabilities of the case, the total effect of the documents produced before the Court, any basic infirmities appearing in the case and so on.

38. Further in '**Bhim Singh vs. State**', 48 (1992) DLT 402, it has been observed by this Court as under: -

“the stage of framing of charges is an important stage in the criminal appeal and the Judge concerned has to carefully evaluate and consider the entire material available on record and he must judiciously apply his mind. Framing of charges erroneously would mean vital crossing for several areas the responsibility of Judge concerned is particularly fair, greater in our country because of long delay in criminal trial and final

disposal of criminal cases. Long prosecution invariably leads to tremendous harassment, mental agony and immense distress.”

39. In the light of the aforesaid discussion, the petition is allowed. The impugned order dated 27.01.2014 passed by learned Special Judge-IV, CBI (PC Act), Tis Hazari Courts, Delhi is set aside qua the petitioner and the FIR No.RC-52(A)-2000/ACB/D1 dated 20.07.2000 under Section 13(1)(e) of Prevention of Corruption Act registered against the petitioner and the proceedings pursuant thereto are hereby quashed qua the petitioner.

40. Trial court record be sent back forthwith.

Crl. M.A. No.5163/2014

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

NOVEMBER 03rd , 2014
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