

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

+ **W.P.(CRL) 972/2011**

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Reserved on: 21st March, 2014
Decided on: 3rd April, 2014

ADITYA NASHIER

..... Petitioner

Through Mr. D.S. Kohli, Mr. A.S. Anand,
Advs.

versus

CBI

..... Respondent

Through Mr. P.K. Sharma, SC for CBI with
Mr. Rakesh Sharma, Mr. Jaideep
Tandan, Ms. Somi, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner assails the orders dated 15th November, 2007 and 27th November, 2007 whereby the Petitioner was directed to be charged and consequently a charge was framed against the Petitioner for offence under Section 120B/420/471/468 IPC and Sections 13(2)/ 13(1)(d) of Prevention of Corruption Act (in short the PC Act).

2. The Petitioner had first filed a revision petition before this Court which was dismissed in view of the decision of this Court in *Anur Kumar Jain vs. CBI, 178 (2011) DLT 501* wherein it was held that no revision against an order of framing charge by the learned Special Judge under PC Act was maintainable. Thereafter, the Petitioner has filed the present petition.

3. The case of the Petitioner in short is that charge has been framed against the Petitioner without any basis, there being no material against him. The prosecution witnesses have not clarified the distinction in the work of Junior Engineer (Site) and Junior Engineer (Plant). The Petitioner being JE (Site) was only responsible for execution of work at site and not at the plant where the bitumen was received and the ready mix was prepared. There is no allegation that the work at the site was not executed or there was any error in the execution of the work. The charge-sheet in order to confuse the two, in Para 15 & 16 of the charge-sheet clubs the JEs of both the Plant and Site thus creating confusion. Reliance is placed on *Union of India Vs. Prafulla Kumar and Ors* AIR 1979 SC 366; *Niranjan Singh Karam Singh Punjabi Vs. Jatinder Bhimraj Bijja* AIR 1990 SC 1962, *Dilawar Babu Kurane Vs. State of Maharashtra* AIR 2002 SC 564 and *Ashok Kumar Nayyar Vs. The State* 2007 (2) JCC 1489. The Court may though not appreciate the evidence but has to sift the material against each accused at that stage. Countering the arguments against the learned counsel for the CBI relying upon *Satish Mehra Vs. State of NCT of Delhi & Anr.* 2013 Crl.LJ 411 SC it is stated that this Court in exercise of its jurisdiction under Section 482 can quash the proceedings even at an advanced stage of trial. It is further stated that the Petitioner cannot be faulted for the delay in disposal of the petition.

4. Learned counsel for the CBI at the outset has relied upon the decision in *Central Bureau of Investigation Vs. A. Ravishankar Prasad and Ors.* (2009) 6 SCC 351 to contend that since the trial is at the fag end and defence evidence is in progress, this Court will not interrupt the proceedings and

decide the present petition. Learned counsel for the CBI points out towards the statement of PW17 Deepak Mukhopadhyay wherein it is stated that the mix of bitumen mecadum is manufactured in the hot mix plant of the contractor and then carried to the site of the work by tippers. The mix is then laid on the road by mechanical pavers. Mr. Sharma further relying upon the statement of PW17 states that JE is responsible for 100% check of the contractor's work and measurement in the MB. He states that since in the statement of PW17 no distinction has been carried out between the work of JE (Plant) and JE (Site), thus JE (Site) is also responsible for the measurement in the MB book or the Contractor's book.

5. Relying upon PW10 learned counsel for the CBI states that on being shown the invoices PW10 Nitin Bhatnagar states that the invoices of IOC officials have been forged. As per the NIT condition fresh receipt of the bitumen in original has to be submitted by the Contractor to the Department as proof of purchase from the Oil companies. No receipt of any other dealer/ distributor/ stockist etc. is accepted. This is one of the conditions of NIT order and this condition has been violated. Mr. Sharma says that this condition has been violated by the Contractor and JE (Site) deliberately did not point out at the time of finalization of the bill that this NIT condition has been violated. Rather the JE (Site) certified that this NIT condition has been fulfilled.

6. Learned counsel for the CBI states that after going through the entire material the competent authority has granted the sanction and in case there was no role attributed to the Petitioner, no sanction would have been granted,

and thus there was ample material before the learned Special Judge to frame the charge.

7. I have heard learned counsel for the parties. Since learned counsel for CBI was not in a position to point out the role attributed to the Petitioner and the functions assigned to him, this Court perused the charge sheet. As per the charge sheet the allegations are that Anur Kumar Jain was the proprietor of M/s. R.K. Goel/ Abhay Kumar Jain. Agreements were entered between him and the concerned Executive Engineer, MCD to carry out the works in accordance with MCD specifications and Notice Inviting Tender (NIT) work order conditions. The NIT instructions which were required to be followed strictly are:

- a) The contractor will ensure and procure fresh supply of bulk bitumen from Bharat Petroleum or Indian Oil Corporation or Hindustan Petroleum as approved by Engineer-in-Chief of MCD.
- b) The contractor will ensure submission of fresh original receipt as a proof for purchase of bitumen.

8. Further, additional conditions were also imposed on the contractors for dense carpeting of roads:

- i) Cash receipt indicating the name of work for which bitumen is being purchased.
- ii) Invoices showing the quantity actually delivered.
- iii) Gate pass of refinery.
- iv) Receipt of terminal tax of UP and Haryana Border.

9. As per the charge-sheet Pankaj Gupta, JE; H.G. Saxena, JE and A.K. Jain, JE accepted 19 bogus invoices in all the four work orders from the

contractors which were purported to have been issued by IOC Mathura. The invoices submitted to MCD in this regard by Anur Kumar Jain were found to be forged as they were not issued by IOC Mathura and the signatures of Shri Nitin Bhatnagar officer of IOC Mathura were forged. It is alleged that Pankaj Gupta, H.G. Saxena and A.K. Jain, JEs were supposed to ensure procurement of fresh bitumen from approved oil companies, receipt of original documents like cash receipts, invoices, gate passes and terminal tax receipts from the contractor as per NIT conditions, preparation of Hot mix, testing of different material, dispatch of Hot Mix and also maintain proper record. Investigation also reveals that the registration number of the vehicles mentioned on the bogus invoices allegedly showing transportation of bitumen were not used for transportation of bitumen from IOC Mathura Refinery to the contractors of hot mix plant. The owners of the said vehicles denied having transported bitumen from IOC, Mathura Refinery to Hot Mix plant of M/S. R.K. Goel/ Abhay Kumar Jain. In Paras 15/16 of the charge sheet it is alleged that the investigation disclosed that Pankaj Gupta, H.G. Saxena and A.K. Jain prepared Bitumen Issue Register in which details of invoices, which were ultimately found to be forged, are mentioned. The said bogus invoices were found counter-signed by AEs J.B. Bhatia, M.K. Gupta and Anil Dalal. However, in Para 15 and 16 instead of stating JE Plant it is stated JE Plant/Site. The role attributed to the Petitioner is that the Petitioner and one Sahid Mahmood were JE (Site) and they had put signatures on the MB book authenticating the receipt of bitumen on the basis of bogus invoices and they are equally responsible for non-compliance of NIT/ work order condition.

10. The case of the Petitioner repeatedly is that the work of JE Plant and JE (Site) are totally different. The work of JE (Plant) is to receive bitumen and get the ready mix prepared at the Hot Mix Plant, where after the work of JE (Site) starts which is only at the execution site. JE (Site) is responsible for the receiving of the ready mix at the execution site and laying of the dense carpeting. It is further stated that MB books at the Plant and the execution site are different and the Petitioner has no concern whatsoever with regard to MB books at the Plant. There is no allegation that dense carpet was not laid or there was any short fall in the same.

11. Learned counsel for the CBI has relied upon the statement of PW15, Rakesh Dhondiyal Executive Engineer, Bridges-III, MCD to state that the Petitioner has signed MB No. 1007 at pages No. 45 to 52 and 58 to 62 regarding the work of Improvement/ Strengthening of 18 M (60') ROW in Dr. Lohia Industrial Area. Sub Head: Imp and Strengthening of 60' ROW roads in block A & B on 30th April 1998, 1st May 1998, 2nd May 1998, 4th May 1998, 5th May 1998, 6th May 1998, 8th May 1998, 12th May 1998, 13th May 1998, 15th May 1998. Though the charge-sheet clearly say that the Petitioner was JE (Site), however the role of the Petitioner as JE (Site) and what connection he has at the Plant where the bitumen is received, has not been explained by any of the prosecution witnesses. The charge sheet is silent on this aspect and so is the learned counsel for the CBI.

12. It is well settled that the prosecution has to stand on its own legs and not expect the defence to lead evidence on these aspects. Further MB 1007 relied upon by the learned counsel for the CBI also talks about improvement of roads and carpeting therein. It is not clarified that the same is in regard to

bitumen having not been received at the site. Further, there is no allegation that no carpeting had been done at the spot or the bitumen used was deficient in nature. Though I am not in agreement with the contention of the learned counsel for the CBI that it will be for the defence to explain their role during trial, however considering the fact that the trial is at the fag end and the Petitioner has also led his evidence it would be inappropriate for me to return any finding at this stage. Needless to state it will be for the prosecution to prove its case against the Petitioner as to the role assigned to him, if any.

13. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 03, 2014
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