

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

Reserved on: 13th August, 2014
Date of Decision: 13th October , 2014

+ CRL.M.C. 4072/2012

ASHOK JAIN

..... Petitioner

**Through: Mr. Rajesh Kumar & Mr.
Saurabh Kansal, Advs.**

versus

C.B.I.

..... Respondent

**Through: Ms. Sonia Mathur, Standing
Counsel.**

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), the petitioner has challenged order dated 04.05.2012 passed by learned Special Judge (PC Act), CBI-08, Central, Delhi whereby the petitioner was charged for the offences under Section 120B IPC read with Sections 420/467/468/471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act and Section 420 IPC r/w Section 120B IPC and consequently charges were framed on 30.08.2012.

2. The factual matrix of the case are that on the complaint of Mr.D.K. Thakur, case bearing No.RC34(A)/2007-DLI was registered, wherein complainant has alleged that during the period 2006-07, Sumer Chand Garg (Assistant Director) and Atul Vashisht (UDC), both officials of Slum Upgradation and Relocation (SUR), Slum & JJ Department, MCD entered into criminal conspiracy among themselves along with Ashok Malhotra, Ashok Jain (petitioner) and others for the purpose of allotting the plots under Resettlement Scheme in the name of fictitious/ineligible persons. In furtherance of the said conspiracy, fake/forged documents like ration cards, identity proof cards etc. were prepared and used in the name of fictitious persons for allotting of 11 plots at J Block, Sector-16, Rohini under re-settlement scheme.

3. Mr.Ashok Chikara, Junior Engineer (co-accused), in furtherance of said conspiracy, issued possession slips of the said plots to such fictitious persons. The provisional identification slips which were used as proof of allotment and other official records of the plots were knowingly passed on by the MCD officials to Ashok Malhotra and Ashok Jain (petitioner) which were recovered at the instance of the petitioner. The official records of SUR (Slum and JJ Department) i.e. the draw list and draw parchis dated 12.03.2007 of said plots were also recovered from the house No. B-62, Nehru Vihar, Delhi where they have been kept on the directions of Ashok Malhotra. On completion of investigation, 16 charge-sheets were filed by CBI in respect of fictitious allotment of the plots under resettlement scheme.

4. Vide order dated 04.05.2012, learned trial Court found a prima-facie case for the offences under Section 120B IPC read with Sections

420/467/468/471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act and Section 420 IPC r/w Section 120B IPC against the petitioner and the charges were framed on 30.08.2012.

5. Feeling aggrieved by the said order, the petitioner has preferred the present petition.

6. Learned counsel for the petitioner urged that there is no material on record to show involvement of petitioner and no charge can be framed on the basis of mere apprehension. There is neither any allegation of any overt act on the part of the petitioner in furtherance of alleged conspiracy nor the respondent CBI has imputed any *actus reus* on the part of the petitioner. There is no evidence against the petitioner except his disclosure statement.

7. Learned counsel for the petitioner also submitted that the petitioner should have been cited as a witness instead of an accused as there is no allegation of forging the documents upon him. According to counsel for the petitioner, recovery of documents does not show any conspiracy on the part of the petitioner.

8. Per contra, learned standing counsel for CBI contended that the accused persons including the petitioner entered into a conspiracy with the public servants and got the allotment in the name of fake and fictitious members. After the allotment was made, documents were handed over to the petitioner to sell the same in open market. The petitioner was found in possession of documents in respect of various plots which would were not allotted in the name of the petitioner or his family members. The officials of MCD handed over possession slips and the receipt of money to Ashok Malhotra (co-accused) who in turn

sent the same to the petitioner along with other documents for sale of allotted plots in open market, which he had no right to possess neither as a public servant nor as an original allottee of the plots. The same establishes this conspiracy between the petitioner and the other co-accused persons.

9. I have bestowed my anxious thoughts to the submissions made by learned counsel for the petitioner and standing counsel for CBI and also gone through the material on record.

10. Before examining facts of the present case, it would be appropriate to consider the scope of interference, in a petition under Section 482 Cr. P.C. The Apex Court in '**Amit Kapoor vs. Ramesh Chander & Anr.**', (2012) 9 SCC 460, while dealing with the issue of interference at the stage of charge in a petition under Section 482 Cr.P.C. observed as under:-

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in

terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ;]”

11. The aforementioned principles clearly show that inherent powers while quashing criminal proceedings should be exercised very sparingly and with circumspection. Framing of charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of Cr.P.C., unless the accused is discharged under Section 227 of Cr.P.C. Once the facts and ingredients of the Section with which the accused is charged are established, the Court would be well within its right in presuming that there is a ground to proceed against the accused and

frame charges accordingly. The satisfaction of the Court in respect of constituents of an offence and facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. This presumption is not a 'presumption of law' as such.

12. It is a settled provision of law that at the stage of framing of charge, the Court is concerned with a strong suspicion that the accused has committed an offence which, if put to trial, could prove him guilty. The final test of guilt is not to be applied at that stage. Framing of charge is a kind of tentative view that the trial Court forms in terms of Section 228 of Cr.P.C. which is subject to final culmination of the proceedings.

13. The offence of criminal conspiracy is not only a substantive crime, it serves as a basis for holding one person liable for the crime of others. One who enters into conspiratory relationship is liable for every reasonable forceable crime committed by every member of the conspiracy in furtherance of its objectives, whether or not he knew of the crime or aided in their commission. The very agreement, concert or league is the ingredient of the offence. All the conspirators must not know each and every detail of the conspiracy so long as they are conspirators not main object of the conspiracy.

14. In the present case, the basic allegations against the petitioner are that Sumer Chand Garg (Assistant Director), Atul Vashisht (UDC), of Slum Upgradation and Relocation (SUR), Slum & JJ Department, MCD and officials of DD-V, MCD hatched a conspiracy with Ashok Malhotra, Ashok Jain (petitioner) and other private persons for the purpose of allotting the plots under resettlement scheme in the name of

fictitious/ineligible persons and in furtherance of said conspiracy fake/forged documents such as ration cards, identity cards etc. were prepared in the name of fictitious persons. During investigation, pursuant to disclosure statement of the petitioner, the official records of SUR, Slum and JJ Department, draw list and draw parchis of the plots were recovered from house No.B-62, Nehru Vihar, Delhi which were kept there on the directions of Ashok Malhthora. The accused persons have been alleged to have prepared fake and forged documents with the intention to illegally sell the said plots in an open market at exorbitant prices in order to cause wrongful loss to the Government and wrongful gain to themselves. The provisional identification slips which were used as a proof of allotment and other documents, were recovered at the instance of the petitioner. At this stage, it cannot be said that the allegations are ex-facie perverse, untenable or malicious.

15. In view of the aforesaid discussion, there is no illegality or infirmity in the impugned order dated 04.05.2012 by learned Special Judge (PC Act), CBI-08, Central, Delhi. Thus, the petition fails and the same is hereby dismissed.

Crl.M.A. No.19318/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

OCTOBER 13, 2014/gm