

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.5510 OF 2018

Jyotirindia Nath Kar .. Petitioner
Versus
The State of Maharashtra & Anr. .. Respondents

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Ms.Krupali Rajani i/b Mr.Jaideep Thakkar for the Petitioner.
Mr.Kuldeep Patil with Mr.Nikhil Hire for the Respondent No.2.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 19th OCTOBER, 2023

P.C:-

1. The present Petition is filed being aggrieved by the order dated 03/11/2018, passed by the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay, rejecting the discharge application filed by the Petitioner in Special Case No.102 of 2013 under Section 11 read with Section 12 of the Prevention of Corruption Act, 1988 (for short, **“the P.C.Act”**).

2. The prosecution case against the Petitioner from the charge-sheet can be briefly summarized as under :-

“(A) The Petitioner, being a public servant, abused his official position while working as Dy.General Manager

(GS&MS), CSD, Head Office at Churchgate, Mumbai during the period from November 2008 to March 2012 by obtaining valuable things in kind for himself and his family members in the form of transportation services by hired vehicles, Railway and Air ticket expenses to the tune of Rs.8,93,431/- from M/s Sankalp Consumer Products Pvt. Ltd. (for short, “**M/s Sankalp**”) without paying anything from his pocket of the expenses as the Petitioner was having official dealing with Shri Milind Vinayak Govilkar, Director of M/s Sankalp related to CSD matters.

(B) The Petitioner, has availed the conveyance facility by way of Air/Railway Tickets and hired vehicles for himself, for his family members and relatives provided by Shri Milind Govilkar, Director of M/s. Sankalp, without paying anything from his pocket.

(C) The vehicles were hired by Shri Ravindra B Chavan and Air tickets were booked by Smt Sunita on the instructions of Shri Milind Govilkar, Director of M/s Sankalp from different travel agencies viz. M/s Shree Auto Travels, M/s R K Tours (Thane) Pvt. Ltd., M/s.Unique Travel Enterprises, M/s V A Transport, M/s A M Holidays and M/s Vidhi Travels etc. The payment of vehicle hire charges and Air and Railway tickets has been paid to the travel agencies from the account of M/s Sankalp and the Petitioner has availed the pecuniary advantage in kind other than legal remuneration to the tune of Rs.8,93,431/-.

(D) M/s. Sankalp was acting as agent of different companies to CSD. There was a written agreement in between M/s Sankalp and M/s Timex, M/s Dabur, M/s Cadbury, M/s Tata Tea, M/s Prime Houseware, M/s Pepsico, M/s Colgate, M/s Haldiram, M/s Adani, M/s Jyothi Laboratories, M/s Coca

Cola etc., for logistic support and aftersale services for supply of their products to CSD against profession charges/commission. Shri Milind Govilkar was looking after the CSD business on behalf of M/s Sankalp and having interaction with the Petitioner which is his official dealing with CSD.

(E) The said companies has paid the commission/professional charges claimed by M/s Sankalp and the said payments has been received in the account of M/s Sankalp. M/s Sankalp has shown the expenditure in the balance sheet which was paid as transportation charges to travel agents for the services provided to the Petitioner.”

3. I heard the learned counsel Mr.Krupali Rajani for the Petitioner, who is opposed by the learned counsel Mr.Kuldeep Patil, representing the CBI.

Ms.Rajani has placed before me an order passed by this Court in the case of Kishorekumar Hrishikesh Srivastava on 28/04/2023 (Cri.Writ Petition No.2864 of 2017), seeking an identical relief of discharge, since the Special Judge had rejected the discharge application in Special Case No.55 of 2014 in R.C.No.42/A/2012, which has similarly invoked Sections 11 and 12 of the Prevention of Corruption Act, 1988.

By deriving benefit of the said order, she would submit that even in this case, where the similar accusations are levelled against the Petitioner, there is no prima facie case or material sufficient enough to charge him under Section 11 read with Section 12 of the P.C. Act. According to her, the prosecution has failed to establish a prima facie case in the

charge-sheet and failed to demonstrate the manner in which the Petitioner has given or tried to give official favour to the co-accused and how the dealings were official or in exercise of official duty. She would submit that merely because the prosecution in the charge-sheet has submitted that the Petitioner has given some advice/consultancy to the co-accused, but even there is no evidence to that effect, it is not understood as to how it has helped Accused No.2 to promote his business to those companies registered with CSD, who had privately contracted M/s Sankalp as their logistic agent for their CSD operations. She would submit that mere existence of travel bills and invoices is not sufficient to establish the offence of criminal misconduct, but there must be some evidence presented at this stage to demonstrate that the Petitioner, by offering some consultancy to Accused No.2 in any manner compromised the interest of the CSD Department, be it in terms of finance or in any other manner, for seeking personal gains, in form of travel expenses paid from the account of M/s Sankalp and how the alleged consultancy helped Accused No.2 to promote business of his client/companies with CSD. It is her submission that when the prosecution has failed to make out a prima facie case in the charge-sheet and there is no sufficient justification to proceed against the Petitioner in a trial, in absence of any evidence to demonstrate that the Petitioner had misused his official duty and capacity, so that the benefit accrued in favour of Accused No.2.

4. Mr.Patil would, however, submit that the order delivered in the case of co-accused is subjected to challenge by the C.B.I.

before the Hon'ble Supreme Court and he would insist upon the same factors, which were put up before this Court while the Writ Petition of Mr.Kishorekumar Srivastava was considered.

5. The Petitioner, a public servant is accused of abusing his official position as Deputy General Manager (GS&MS), CSD, Head Office at Churchgate, Mumbai from November 2008 to March 2012, by obtaining 'valuable things' for himself and his family in the form of transportation services, by hired vehicles, railway and air tickets expenses to the tune of Rs.8,93,431/- from M/s. Sankalp, without paying anything from his pocket, as he was having official dealing with Accused No.2-Milind Govilkar, the Director of M/s Sankalp. It is alleged that the vehicles were hired by Mr.Ravindra Chavan and air tickets were booked on instructions of Accused No.2 from different travel agencies for the Petitioner and his family, for which he did not pay a single farthing and in fact, this amount was paid by Mr.Milind Govilkar, who was acting as agent of different companies having dealings with CSD.

When repeatedly asked as to what official duty was expected to be discharged by the Petitioner, for which he has obtained the favour, it is the submission of Mr.Patil that the facilities were availed illegally by accepting favours from M/s Sankalp through Accused No.2.

In response to my query, it is the submission of Mr.Patil that his bills of travel were paid by M/s Sankalp and and Accused No.2-Mr.Milind Govilkar was a middle man for all these transactions, as most of the receipts, vouchers bear the

signatures of the user of the vehicle hired by M/s Sankalp, though facilities were used by the Petitioner and his family members, who has signed the receipts as passenger upon use of the said vehicles for private purpose. While dealing with the case of a petitioner similarly situated and facing the same charge of obtaining favours from M/s Sankalp through Mr.Milind Govilkar, it's Director, I had specifically referred to the various statements annexed alongwith the charge-sheet. Similarly, the charge-sheet in the present case is also accompanied with statements of various individuals, when he is charged of availing pecuniary advantage in kind other than legal remuneration to the tune of Rs.8,93,431/-, since the payment of the vehicle hire charges and air and railway tickets have been paid by the travel agency from the account of M/s Sankalp.

The charge-sheet attempt a similar connect as in the other case that M/s Sankalp was acting as agent of the different companies to the Consumer Supply Department (CSD) and there was written agreement between M/s Sankalp and companies like M/s.Dabur, M/s.Cadbury, M/s.Tata Tea, M/s.Pepsico, M/s.Haldiram etc. for logistic support and after sale services for supply of their products to CSD against professional charges/commission. The charge-sheet allege that Milind Govilkar was looking after the CSD business on behalf of M/s Sankalp and, hence, he had regular interaction with the Petitioner, who was working as the Deputy General Manager (GS&MS), CSD Head Office, Churchgate, Mumbai. The charge-sheet allege that a whopping sum of Rs.8,19,029/- has been paid from the account of Sankalp in favour of various travel

agencies pertaining to the vehicle hire charges and air and railway tickets and this amount is in form of bribe in kind to Shri J.N.Kar, then DGM (Petitioner). This attracted an offence under Section 11 read with Section 12 of the P.C.Act, is what the charge-sheet allege. It is the charge levelled against the Petitioner that Milind Govilkar, Accused No.2 was having official dealings with the Petitioner, the then DGM for supply of products to the companies by CSD having agreement with M/s Sankalp for logistic support and in return, he helped him out by giving him advice/consultancy in sorting out the queries of CSD related matter in favour of M/s Sankalp. Since the Petitioner has already retired from service, no sanction was contemplated to prosecute him.

6. When Section 11 is read meaningfully, it can be discerned that when a public servant, accepts or obtains or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration, which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public duty of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, then it would amount to an offence, which is punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

Section 12 is the punishment prescribed for abetment, whether or not that offence is committed in consequence of that abetment.

7. A similar submission advanced, was dealt by me with the following observations :-

“9. Section 11 of the P.C.Act punishes an act of a public servant, who accepts or obtains or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration, which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public duty or himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.

The necessary ingredient of the said Section being acceptance of any valuable thing from a person, who is likely to be concerned in any proceeding or business transacted or about to be transacted in connection with any official function to be discharged by himself or by any public servant, to whom he is subordinate.

Section 11 thus contemplate a business transaction or concern in any proceeding or any official function pertaining to the public servant.

10. If one has to search the material to establish the above charge in the entire charge-sheet, there is no document, which would establish the said connect. The prosecution alleged that M/s Sankalp entered into Consultancy Agreement/Agreement with distinct entities and the Agreement with M/s.Dabur India Limited and Hindustan Coca-Cola Beverage Pvt. Ltd. are annexed alongwith the charge-sheet. The said agreement has described M/s Sankalp as party engaged in the business of providing services in the field of marketing of goods and all it's related activities and it had approached the first party (different entities) to offer it's services to facilitate marketing and sale of it's products.

None of the Agreement placed on record refer to further agreement about supply of the product/goods to the Canteen Stores Department (CSD).”

8. In the charge-sheet, a statement of one Mr.R.Ponnivalaval, working as AGM (GS) at CSD Department, Mumbai and looking after General Stores Group I, Toiletry Group II Household Appliances and Group III Plastic, is recorded. When he was asked about what type of help Mr.J.N.Kar can provide to Mr.Milind Govilkar of M/s Sankalp, he responded as under :-

“I state that in the specimen of orders to the companies registered with CSD, dealing with price revision cases, change in case packs, change in grammage and one to one replacements of products etc.”

He further state as under :-

“I further state that since Shri Milind Govilkar of M/s Sankalp Consumer Products Pvt Ltd was providing the after sale services to different companies for supply of products to CSD so in that context Shri J N Kar had helped Shri Milind Govilkar of M/s Sankalp, off the record, pertaining to placement of orders, dealing with price revision cases, change in case packs, changes in grammage and one to one replacements of products etc. But in the file the final decision in the matters is of Jt.GM and GM followed by different committees.

On being asked can Shri J N Kar, then DGM, being Public Servant advise/give consultancy to Shri Milind Govilkar in the CSD matters, I state that a Public Servant cannot give consultancy/advice to any private person as per CCS Conduct rules.”

9. Statement of another witness, Mr.Pandharinath Maruti Pingale about who received the orders for M/s Sankalp from the CSD Department, he has named one Prashant Yadav and Ravi Yadav and his statement is to the following effect :-

“I state that Shri Prashant Yadav and Ravi Yadav from M/s Sankalp often visits the CSD office and received the orders pertaining to M/s Cadbury, M/s Halidram, M/s 3 M India, M/s Paras Pharma Sitical, M/s Mother Dairy, M/s Colgate, M/s Pepsico, M/s Times etc. On being asked how Shri Prashant Yadav and Ravi Yadav from M/s Sankalp received the purchase orders for the said companies, I state that Shri Prashant and Ravi of M/s Sankalp used received the purchase orders regularly by visiting the CSD office and I knows

them as employees of M/s Sankalp. I further state that I can identify the signatures of Shri Prashant and Ravi of M/s Sankalp in the register obtained while issuing the orders.”

Supporting this statement, copy of the CSD dispatch inward and outward is compiled with the charge-sheet, showing the receipt of purchase order by Mr.Ravi Yadav and Mr.Prashant Yadav on behalf of M/s Sankalp.

Though the charge-sheet comprise of the copies of the Agreement entered in between M/s Sankalp and various companies like M/s.Haldiram Foods, M/s.Adani Wilmar Ltd., M/s Prime House Wares Ltd. etc., it is only indicative of the agreement between the two as M/s Sankalp was to provide logistic support of their products to CSD.

The entire charge-sheet is conspicuously silent upon the official function to be discharged by the Petitioner, favouring Mr.Milind Govilkar, a Director of M/s. Sankalp as Milind Govilkar did not even collect any orders and, since, it has surfaced on record that the Petitioner was not bound to give any advice/consultancy to any agency or entity and there is no material to that effect, the continuation of proceedings, in absence of such material, shall amount to an abuse of process of law and would be an empty formality.

In order to establish the charge under Section 11, it is imperative to establish the official function and it must necessarily involve a business transaction, being transacted or about to be transacted by a public servant, who obtains or attempts to obtain for himself any valuable thing, without any consideration, or for a consideration which he knows to be inadequate. In absence of such a connect in form a business to

be transacted or already transacted between CSD and M/s Sankalp having been brought on record, the prosecution is merely based on assumption.

For the aforesaid reason, by quashing and setting aside the impugned order, which has refused to discharge the Petitioner, in the wake of the material contained in the charge-sheet, I deem it appropriate that the Petitioner be discharged from Special Case No.102 of 2013.

The Writ Petition is, therefore, made absolute in terms of prayer clause (B), which reads thus :-

“B. This Hon’ble Court be pleased to quash and set aside the impugned order dated 3/11/2018, passed by the Ld. Special Judge (CBI), City Civil & Sessions Court, Gr Bombay in rejecting discharge application in SPECIAL CASE NO.102/2013, RC No.42/A/2012.”

(SMT. BHARATI DANGRE, J.)