

Court No. - 16

Case :- APPLICATION U/S 482 No. - 976 of 2022

Applicant :- Dhruv Agarwal And Others

Opposite Party :- Central Bureau Of Investigation Thru.
Superintendent Of Police Head Of Branch And Another

Counsel for Applicant :- Nadeem Murtaza, Sheeran Mohiuddin Alavi

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Nadeem Murtaza, learned counsel for the applicants and Sri Anurag Kumar Singh, learned counsel for the C.B.I.
2. This is an application under Section 482 Cr.P.C. praying for quashing of the proceedings of Case No.1824 of 2022 (C.B.I. vs Dhruv Agarwal & Ors) in the Court of learned Special Judicial Magistrate, CBI, Lucknow for prosecution of the applicants for committing offences under Sections 120B, 420, 511 IPC.
3. Briefly stated, facts of the case are that on 17.05.2016, Director General, NCC, New Delhi had floated a tender for purchase of 27,60,000 T-shirts for NCC cadets. Applicant No.3 is a company of which applicant Nos.1 and 2 are the Directors and applicant No.3, Company had submitted a tender in response to the aforesaid notice inviting tender dated 17.05.2016. Along with the tender documents, the applicants had submitted a list of their plants and machinery which *inter alia* included 10 Circular Knitting Machines (Power Driven), 6 Kaaz Hole Machines, 6 Button Stitching Machines and a Screen Printing Machine.
4. The applicant's tender was not accepted.
5. On 24.11.2016, the C.B.I. lodged an FIR under Section 13(2)/13(1) (d) of the Prevention of Corruption Act, against Sri Prakash Verma,

SSO-II, O/o SQAEGS, Kanpur, Sri Neeraj Kumar Singh @ NK Singh Assistant Engineer (Quality Assurance), O/o SQAGS, Kanpur and Sri Sivasankar Senior Scientific Officer-II, O/o Senior Quality Assurance Establishment (GS), Napier Road, Kanpur and some unknown persons, alleging that M/s Integrated Defence Products Pvt. Ltd. (M/s IDPL), Kanpur submitted their tender documents for supply of NCC T- Shirts in response to the aforesaid tender notice dated 17.05.2016. Co-accused persons Prakash Verma and Shri Neeraj Kumar Singh had inspected the plants and machinery and they had submitted a false and misleading report dated 08.10.2016 recommending that the firm be awarded the permission to manufacture T-shirts. The FIR states that aforesaid co-accused persons had confirmed that a Screen Printing Machine was available at the time of inspection whereas this statement was false and the machine was not available in the factory premises till the joint surprise inspection was conducted. Power Driven Knitting Machine was also not available at the time of inspection.

6. The FIR states that the aforesaid facts *prima facie* disclose commission of offences punishable under Sections 120B, 420 IPC, 13(2)/13(1)(d) of the Prevention of Corruption Act on the part of the co-accused persons, Prakash Verma, Neeraj Kumar Singh and the Applicant No.1, Dhruv Agarwal.

7. After investigation, the investigating officer had submitted a final report dated 10.07.2018 *inter alia* stating that during capacity verification of M/S IDPL, Kanpur by the officers of SQAEGS, Kanpur, Screen Printing Machine with four heads were found available in the factory and their inspection report did not make any mention of any Screen Printing Machine with 12 color stations/heads, although they were supposed to conduct inspection in respect of their machines also. It has further been stated in the Final Report that the applicant No.3 Company had actually purchased a Screen Printing Machine with 12 heads on 21.08.2018. Since the tender for supply of T shirts was not accepted, there was neither any work executed nor

was any amount paid to M/s IPDL and no loss had been occasioned to the Government exchequer.

8. The final report recommended that no action was warranted against applicant No.1, who is a Director of M/s IDPL, Kanpur as he was a private person and departmental action was recommended against the co-accused persons Prakash Verma and Neeraj Kumar Singh who are said to have submitted misleading and ambiguous report. However, no criminal action was recommended against Prakash Verma and Neeraj Kumar Singh also.

9. When the final report was submitted to the Special Judge, Anti Corruption, C.B.I. Central Lucknow, the trial court rejected the report and directed the C.B.I. to carry out further investigation.

10. After conducting further investigation, a charge-sheet has been submitted on 31.12.2021 against the applicants and regarding the other persons, it is mentioned in the charge-sheet that the competent authority has declined sanction for their prosecution.

11. the charge-sheet alleges that investigation has revealed that Sri M. Satyanarayana, Pr. Sc.O, Dy Controller, CQA (T&C), Kanpur had also provided a check list to the office of SQAEGS, Kanpur vide letter no. G/12071/CON/Policy Norms/TC-2A dated 10.06.2016, in which it was mentioned that following 12 machines were required to be ensured by the officers/Board of SQAEGS Kanpur while conducting the capacity verification of the firms:

- (i) Power operated Cutting Machine - 02
- (ii) Spreading & Cutting Table (Minimum size 5 m x 1.5 m)- 02
- (iii) Power driven light / medium single needle stitching machines - 32
- (iv) Four thread over locking machine with thread cabi cutter For 6.6.1 (a), (b), (c) (d) of specifications - 18
- (v) Three Thread Flat Lock Machine for button -10
- (vi) Button stitching machine -02
- (vii) Button hole stitching machine-02
- (viii) Multi colour computerized embroidery machine of heads each -02 of 06
- (ix) Screen printing machine with dryer arrangement NCC Logo on sleeves -12 stations
- (x) Finishing thread bid removal machine -01

(xi) Pressing table -04

(xii) Electric Steam Press -08

12. It is specifically mentioned in the charge-sheet that during Joint Surprise Check conducted by the C.B.I. and officers of D.G. (Vigilance) on 25.10.2016, a small Screen Printing Machine with 04 color heads/stations was found in the factory of IDBL, Kanpur. Some Circular Knitting Machines (Power Driven), Kazz Hole Machines & Button Stitching Machines were also found available, although the same were not in working condition.

13. Upon the aforesaid charge-sheet. the trial court has passed an order dated 11.02.2022 taking cognizance of the offences under Sections 120B, 420, 511 IPC and summoning them to face trial.

14. The learned counsel for the applicants has submitted that in the FIR or in the charge-sheet there is absolutely no allegation of any act of commission by the applicants. The allegation was that the co-accused persons Prakash Verma and Neeraj Kumar Singh had submitted an incorrect inspection report, which would have benefited the applicants. He has submitted that the applicants had not furnished any false information. A copy of the tender document submitted by the applicant no.3 has been annexed with the affidavit, which mentions availability of 10 Circular Knitting Machines, Power Driven, 6 Kazz Hole Machines, 6 Button Stitching Machines and 1 Screen Printing Machine and even as per the averments made in the charge-sheet, all these machines were found available. The officials who had made the inspection and had submitted the inspection report, had stated about availability of these machines only in their report. There is no allegation that the report submitted by them was false. The allegation is that those persons had submitted a misleading report because they had not made any mention of 12 point /head of Screen Printing Machine. There is no allegation that the applicants had done any act, which would have led the aforesaid two officials to submit an incorrect report.

15. The learned counsel for the applicants has submitted that the aforesaid facts do not make out commission of any offence by the applicants.

16. Sri Nadeem Murtaza, learned counsel for the applicants has submitted that applicants are being tried for commission of offence of criminal conspiracy, along with the cheating and attempt to commit cheating. The persons, against whom an allegation of submitting false inspection report was leveled, are not being prosecuted for want of prosecution sanction. Without the persons, who are said to have committed the substantive offence, being tried, the accused persons cannot be tried for commission of offence of conspiracy alone.

17. In support of this submission, Sri Nadeem Murtaza, learned counsel for the applicants has relied upon a judgment of Hon'ble Supreme Court in the case of **Himanchal Pradesh Cricket Association & Anr vs State of Himanchal Pradesh & Ors** : (2020) 18 SCC 465. In that case, some FIRs were lodged against numerous persons, including some government officers, who were the main persons who took active part in deciding grant of 3 leases to the appellants. Prosecution sanction in respect of those officers was either denied or they were not prosecuted at all. Other persons were being tried for commission of the offences under Sections 406, 420, 120B IPC, and 13(2) of the Prevention of Corruption Act. An application for quashing of the proceedings was rejected by the High Court. In Appeal, the Hon'ble Supreme Court took note of the following salient facts of the case:-

“50. This Court, on a 360° scanning of the matter, arrives at the conclusion that the elements of criminal intent or criminal acts are lacking. Following factors do stand established from record:

50.1. There is no criminal act on their part and the facts do not disclose any offence.

50.2. None of the officers who processed the case of the appellants are not prosecuted.

50.3. Two officers Subhash Ahluwalia and T.G. Negi who took active part in the decision-making were made Principal

Secretary to CM and Advisor to CM, respectively, by Respondent 2 and were not prosecuted.

50.4. As per the prosecution, there is no criminal act on the part of the officers and they performed their appropriate administrative duties due to which sanction stands declined by the Central Government and the CVC. That itself is sufficient to absolve others from any criminal prosecution.

50.5. Even otherwise the State Government continues to remain owner of the land which is on lease and on which the appellants have constructed assets worth above Rs 150 crores.

50.6. These assets are for use of the public of the State and are being used as such. Further, filing of charge-sheet and an order taking cognizance is not a final judicial order. It is a preliminary process in criminal law and is open to challenge in higher judicial fora such as this Court.”

18. Regarding scope of the powers under Section 482 Cr.P.C., the Hon’ble Supreme Court held that: -

“54. We are conscious of the scope of powers of the High Court under Section 482 CrPC. The inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by the tests specifically laid down in the section itself. Further, inherent power under this provision is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily. If the trial is allowed to linger when prima facie it appears to the Court that the trial could likely to be ended in acquittal. It is, for this reason, principle which is laid down by catena of judgments is that the power is to be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. However, whenever it is found that the case is coming within the four corners of the aforesaid parameters, the powers possessed by the High Court under this provision are very wide. It means that the Court has to undertake the exercise with great caution. However, the High Court is not to be inhibited when the circumstances warrant exercise of such a power to do substantial justice to the parties. This provision has been eloquently discussed in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335] which has become locus classicus. Principles (i) and (ii) of Indian Oil Corpn. [Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6 SCC 736], therefore, become applicable. The entire subject-matter has been revisited in a recent judgment in Vineet Kumar [Vineet

Kumar v. State of U.P., (2017) 13 SCC 369] and some of the discussion therein which takes note of earlier judgments is reproduced below :

“26. A three-Judge Bench in *State of Karnataka v. M. Devendrappa* [*State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89*] had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6 :

‘6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.’

27. Further in para 8 the following was stated : (*Devendrappa case* [*State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89*])

‘8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal.’

19. *Per contra*, Sri Anurag Kumar Singh, learned counsel for the C.B.I. has opposed the application and has submitted that it is mentioned in the charge-sheet that M. Satyanarayana, Pr. Sc.O. Dy Controller, CQA (T&C), Kanpur had also provided a check list in which it was mentioned that availability of 12 machines including a Screen Printing of 12 Color Stations was required to be ensured by the officers/Boards conducting verification of the firms. The report submitted by the aforesaid two officers stated about availability of Screen Printing Machine but it did not mention that a 12 Color heads/ Station machine was available. He has submitted that the charge-sheet itself mentions that investigation has established that Prakash Verma and Neeraj Kumar Singh had submitted ‘misleading and ambiguous report’.

20. However, the officers who had submitted the allegedly misleading and ambiguous report are not being tried and the sanction for their prosecution has been declined.

21. Although the charge-sheet alleges that the misleading and ambiguous report had been submitted by aforesaid two officers for facilitating the survival of applicant No.3, company, there is absolutely no allegation that the applicants had given any undue favour to any of the officials for obtaining the report or had committed any other act for influencing them to submit such a report.

22. Sri Anurag Kumar Singh, the learned counsel for the C.B.I. has relied upon the judgment rendered by a Single Judge of Delhi High Court in **Ambuj Hotels & Real Estate Pvt. Ltd., & Others** versus **Central Bureau of Investigation** : 2023/DHC/4284 wherein the judgment of the Hon'ble Supreme Court in Himanchal Pradesh Cricket Association (supra) has been distinguished on facts.

23. Sri Nadeem Murtaza has pointed out that the aforesaid judgment in the case of **Ambuj Hotels & Real Estate Pvt Ltd.** (Supra) has been challenged by filing an SLP (Criminal) No.9115 of 2023 before the Hon'ble Supreme Court and proceedings of the trial of the aforesaid case has been stayed by means of the interim order dated 07.08.2023, after recording the submissions that 'when sanction for Railway Officers are found to be unmerited by the CVC, the Railway Board and the High Court, to proceed against the catering contractors on charge of conspiracy, in connivance with the Railway Officers, are submitted to be wholly fallacious.'

24. Having considered and aforesaid facts and circumstance of the case in light of the law referred to above, it appears that the applicants had submitted a tender in response to a notice inviting tender. Along with the tender document, they had submitted a list of machines available in their factory. The declaration made by the applicants regarding availability of the machines or any other declaration made in the tender form has not been found to be false.

25. After investigation, initially a final report had been submitted stating that no offence was established against any of the co-accused persons. After the Final report was rejected by the trial court, a fresh charge-sheet has been submitted against the applicants only and the officers who has submitted the report, are not being tried as a request for granting sanction for their prosecution has been declined by the competent authority.

26. In absence of the person who had committed any act, the applicants cannot be tried for commission of offence of conspiracy

alone, more particularly, when act of commission on the part of the applicants is alleged by the prosecution. The offences punishable under Sections 420, and 511 IPC require some action on the part of the accused persons and in absence of any such allegation, a person cannot be prosecuted for commission of the offences under Sections 420, 511 IPC.

27. In view of the aforesaid discussion, I am of the view that the trial court has passed the order dated 11.02.2022 without addressing the aforesaid aspect of the matter which has resulted into a patent error having crept in the aforesaid order.

28. When the offences alleged are not made out even on the basis of allegations leveled in the FIR, it would not be in the interest of justice to continue with the trial of the applicants, rather it would defeat the ends of justice.

29. Accordingly, the application under Section 482 Cr.P.C. is **allowed**. The charge-sheet dated 31.12.2021 filed by the CBI In RC0062116A0032 registered at CBI/ACB, Lucknow, the order dated 11.02.2022 passed by the Court of Special Judicial Magistrate, CBI, Lucknow in Case No.1824 of 2022 (C.B.I. versus Dhruv Agarwal & Others) whereby the Court has taken cognizance of the offences under Sections 120B, 420, 511 I.P.C. and has summoned the applicants for being tried for the aforesaid offences and the entire proceedings of the aforesaid case are **quashed**.

(Subhash Vidyarthi, J.)

Order Date - 02.12.2023
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