

Court No. - 16

Case :- APPLICATION U/S 482 No. - 11943 of 2023

Applicant :- Deepak Kumar Srivastava

Opposite Party :- State Thru. Cbi/Acb /Lko.

Counsel for Applicant :- Pranjal Krishna

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi,J.

1. Heard Shri Pranjal Krishna, learned counsel for the applicant and Shri Anurag Kumar Singh, learned counsel for the respondent-CBI.

2. By means of instant application filed under Section 482 Cr.P.C., the applicant has assailed validity of order dated 30.08.2023 passed by Special Judge, CBI, Court No.6, Lucknow in Session Trial No.2731 of 2022 rejecting an application filed by the applicant and framing charge of commission of offence under Section 7 of the Prevention of Corruption Act, 1988.

3. On 06.10.2022, a complaint was given to the Superintendent of Police, CBI, Lucknow stating that the complainant's father has applied for a Kisan Credit Card in Aryavart Bank; that the complainant's father is quite old and the complainant accompanies him to the bank and he talks to the Bank Manager and on 03.10.2022, the Bank Manager (the applicant), has demanded Rs.7,000/- for grant of loan.

4. A Discreet verification of the complain was carried out and after recording a satisfaction about prima-facie disclosure of commission of offence under Section 7 Prevention of Corruption Act by the applicant, the case was registered. The CBI laid a trap, arrested one Jaswant Singh, a daily wager employee of the bank, red handed while accepting Rs.7,000/- allegedly on behalf of the applicant.

5. On 28.11.2022, the CBI submitted a chargesheet against the applicant only for commission of offence under Section 7 of Prevention of Corruption Act, inter alia stating that a digital voice recorder was kept in a pocket of the complainant and the complainant and his father went to the bank, a shadow witness had positioned himself in front of the bank, the complainant gave a signal by making a phone call from his mobile whereupon the trap team members went inside the bank. The complainant identified one Jaswant Singh, who had accepted Rs.7,000/- on the applicant's direction. Jaswant Singh was also caught and he stated that he had been engaged by the applicant as a temporary messenger/daily wager for dealing purpose of branch since 03.10.2022. The applicant had demanded Rs.7,000/- and had directed the complainant to hand over the demanded bribe amount to Jaswant Singh outside the branch and the applicant had directed Jaswant Singh to take the bribe amount from the complainant outside the branch. The complainant had handed over the amount of Rs.7,000/- to Jaswant Singh, who accepted the same, counted the money and kept the same in his pocket. The independent witness corroborated the version of the complainant. The bribe money was recovered from the pocket of Jaswant Singh. The fingers of Jaswant Singh and the complainant turned pink upon being dipped into a chemical solution.

6. The chargesheet states that Jaswant Singh had accepted bribe amount on the direction of the applicant but Jaswant Singh had not demanded the undue advantage from the complainant. The complainant had not levelled any allegations against Jaswant Singh and, therefore, his pre-planned complicity in the crime could not be established conclusively during investigation and, accordingly, he was exonerated and the chargesheet was filed against the applicant only.

7. The learned counsel for the applicant has submitted that after submission of the chargesheet against the applicant only, Jaswant Singh was released from custody. The applicant has also been released on bail in furtherance of bail granted to him by this Court for commission of offences under Section 120B IPC and Section 7 of Prevention of Corruption Act, 1988. He has submitted that the chargesheet does not make any mention of the offence under Section 120B IPC.

8. The learned counsel for the applicant further submitted that although the allegation of commission of offence under Section 120 B was not levelled in the FIR, during investigation it was added when it was found that the co-accused Jaswant Singh had accepted the alleged bribe money apparently under the conspiracy with the applicant. When the co-accused Jaswant Singh has been exonerated of the charges, obviously, the allegation of conspiracy failed and the CBI has not acted fairly in not making a mention of this fact in the chargesheet and merely alleging that the applicant is guilty of commission of offence under Section 7 of Prevention of Corruption Act.

9. The second submission of counsel for the applicant is that the person who had accepted money has been exonerated completely and there is no allegation of acceptance of any money by the applicant. Therefore, the applicant cannot be tried for commission of offence under Section 7 of Prevention of Corruption Act when he himself had not accepted any money and the person who had accepted the money, stands exonerated.

10. In support of his submissions, the learned counsel for applicant has relied upon the following passage from the judgement of the hon'ble Supreme Court in case of **Dashrath Singh Chauhan Vs. CBI (2019) 17 SCC 509:-**

"29. It is for the reason that in order to prove a case against the appellant, it was necessary for the prosecution to prove the twin requirement of

"demand and the acceptance of the bribe amount by the appellant". As mentioned above, it was the case of the prosecution in the charge that the appellant did not accept the bribe money but the money was accepted and recovered from the possession of Rajinder Kumar, co-accused (A-1)"

11. The learned counsel for applicant further submitted that as per the prosecution case, the money was accepted by Jaswant Singh and Section 20 of Prevention of Corruption Act provides for a presumption to be drawn against the person who had accepted the money.

12. Replying to the aforesaid submissions, Shri Anurag Kumar Singh, the learned counsel for respondent-CBI has submitted that after receiving of the complaint, the CBI had conducted a verification of the allegations levelled in the complaint, during which a conversation made between the complainant and the applicant was recorded, wherein the applicant had demanded Rs.7,000/- bribe from the complainant for sanctioning Kisan Credit Card for the complainant's father. The conversation between the complainant and the applicant made during trap proceedings was also recorded which supports the allegations levelled against the applicant. He has further submitted that the voice sample of the applicant has been compared with the voice recorded in the digital voice recorder and the Central Forensic Science Laboratory, New Delhi has reported that the voice recorded in the digital voice recorder probably matches with the applicant's voice. He has further submitted that since Jaswant Singh had merely acted on the instructions of the applicant in receiving the amount from the complainant and no other fact came to light against him, he has been exonerated as no offence was established to have been committed by him but the exoneration of Jaswant Singh will not affect the case set up against the applicant and there is sufficient material for trial of the applicant for the offence under Section 7 of Prevention of Corruption Act.

13. I have considered the aforesaid facts and circumstances of the case and the submissions advanced by the learned counsel for the parties.

14. The scope of interference while deciding an application under Section 482 Cr.P.C. was explained by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, in the following words: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with mala fide 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. After laying down the aforesaid principles, the Hon'ble Supreme Court added the following words of caution: -

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

16. In **Indian Oil Corporation v. NEPC India Ltd. and ors.** (2006) 6 SCC 736, the Hon'ble Supreme Court has held that "A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

17. In **C.B.I. v. Arvind Khanna** (2019) 10 SCC 686, the Hon'ble Supreme Court has held that defence of the accused is to be tested after appreciating the evidence during trial.

18. In **C.B.I. v. Aryan Singh** 2023 SCC OnLine SC 379, the Hon'ble Supreme Court has held that as per the cardinal principle of law, at the stage of discharge and/or quashing of the

criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. At the stage of discharge and/or while exercising the powers Under Section 482 Code of Criminal Procedure, the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the Accused for which the Accused is required to be tried or not.”

19. This court cannot go into the correctness of the allegations made or weigh of the evidence adduced in favour of the allegations and the Court can merely examine as to whether a case for trial for the applicant is made out by accepting the allegations and the supporting material as it is, leaving a detailed scrutiny thereof to be carried out by the trial Court.

20. When we examine the facts of the case in light of the law laid down by the hon'ble Supreme Court regarding the scope of scrutiny under Section 482 Cr.P.C., what we find is that the complainant clearly alleged demand of bribe by the applicant for performance of his official duty. The allegation was prima facie found to be true during verification and thereafter the case was registered.

21. The demand of bribe by the applicant is said to be supported by the recording of conversation between the complainant and the applicant during trap proceedings wherein it is also recorded that the applicant had directed the complainant to hand over the money to Jaswant Singh and he had also directed Jaswant Singh to go outside the branch and accept the money from the

complainant. From the aforesaid facts, prima facie it appears that the applicant had demanded the bribe and had accepted the same through a sub-ordinate daily wager employee Jaswant Singh. The aforesaid facts clearly make out a case for trial of the applicant for commission of the alleged offence and the aforesaid facts do not make out a case for quashing of the order dated 30.08.2023, rejecting the application for discharge of the applicant or of the order dated 30.09.2023, framing charges against the applicant.

22. The application lacks merit and the same is accordingly ***rejected.***

23. It is clarified that the trial Court shall decide the case without being influenced by any observation made in this order.

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[Subhash Vidyarthi, J.]

Order Date :- 12.12.2023

-Amit K-