

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

Reserved on: 14th November, 2014
Date of Decision: 8th January, 2015

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+ CRL. M.C. 1868/2014

RAJ KUMAR JAIN Petitioner
Through: Mr. Ramesh Gupta, Sr. Advocate with
Mr. Anurag Jain, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent
Through: Mr. K. Raghavacharyulu, Advocate.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition under Section 482 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), the petitioner calls in question the order dated 21.03.2014 passed by learned Special Judge-03 (PC Act), New Delhi and order on charge dated 29.03.2014 for the offence under Section 109 of Indian Penal Code (hereinafter referred to as 'IPC') read with Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').

2. Shorn off unnecessary details, the facts of the case are that on 06.05.2005, on the basis of source information an FIR bearing RC No.3A/2005/CBI/ACU-VI/New Delhi was registered against Mr. Badri Prasad Meena, Commissioner of Income Tax (Appeal)-13, Income Tax

Department, New Delhi and Mr. R.D. Meena under Section 109 IPC and Section 13(2) read with Section 13(1)(e) of the Act on the allegations, *inter alia*, that Mr. Badri Prasad Meena (accused No.1) working as Commissioner of Income Tax, New Delhi has amassed his assets disproportionate to his known sources of income to the tune of Rs.74,67,678/- (Rupees Seventy four lakhs sixty seven thousand six hundred and seventy eight) in his name as well as in the name of his wife and close relatives during the period September 1980 to January, 2000 and he could not satisfactorily account for the same. It is also alleged that during the said period Mr. B.P. Meena (accused No.1) out of his ill gotten wealth acquired a large number of *benami* assets in the name of his younger brother Mr. R.D. Meena (accused No.2) and his wife Smt. Bhagwati Devi Meena (accused No.3). Mr. R.D. Meena did not have sufficient means to acquire the assets in his name or in the name of his wife prior to his becoming a Panchayat Samiti Pradhan in February, 2000. Most of the assets in the name of Mr. R.D. Meena and his wife were acquired by Mr. B.P. Meena with the help of some people in Mumbai, Delhi and Jaipur who came in contact with him because of his official position. Thereafter, searches were conducted at the official as well as residential premises of Mr. B.P. Meena. During investigation it was also revealed that accused No.1, Mr. B.P. Meena was found in possession of disproportionate assets to the tune of Rs.58,74,273/- (Rupees Fifty eight lakhs seventy four thousand two hundred and seventy three) in his name and in the name of his family members.

3. During investigation it was revealed that Mr. R.K. Jain (petitioner) actively aided and abetted Mr. B.P. Meena in the acquisition of properties at D-75, Malviya Nagar, New Delhi in the name of Smt. Bhagwati Devi Meena and Mr. Raghuvar Dayal Meena as well as property No.2/11, Sarvapriya Vihar, New Delhi in the name of Mr. Raghuvar Dayal Meena. The petitioner Mr. R.K. Jain transferred the funds to the bank accounts of Mr. R.D. Meena (accused No.2) through his company M/s. South Delhi Apartment in order to aid Mr. B.P. Meena in falsely showing returning on loans created to finance, purchase/ acquisition of property at 2/11, Sarvapriya Vihar, New Delhi. It was also revealed that Mr. Rajesh Hira Lal Shah actively aided and abetted Mr. B.P. Meena in acquisition of property at New Delhi in the name of Mr. R.D. Meena by accepting Rs.8,50,000/- (Rupees Eight lakhs fifty thousand) in cash in 1997 from Mr. B.P. Meena and arranged for drafts in the name of Mr. R.D. Meena and falsely shown them as loans in his income tax returns. He also actively aided and abetted Mr. B.P. Meena in acquisition of properties at Rajgarh in the name of Mr. R.D. Meena and his wife Smt. Bhagwati Devi Meena by accepting Rs.10,00,000/- (Rupees Ten lakhs) in cash in 1997 from Mr. B.P. Meena and arranged for drafts in the name of Mr. R.D. Meena.

4. The sanction for prosecution against accused No.1 Mr. B.P. Meena was obtained from the competent authority. On completion of investigation charge-sheet was filed.

5. Vide order dated 21.03.2014 learned trial court found a prima facie case for the offence punishable under Section 109 IPC read with

Section 13(2) and 13(1)(e) of the Act. Accordingly, charges were framed on 29.03.2014.

6. Feeling aggrieved by the said order and the charges, the petitioner has preferred the present petition.

7. Learned senior counsel for the petitioner contended that merely giving a temporary loan of Rs.6,50,000/- (Rupees Six lakhs fifty thousand) by the petitioner to the co-accused Mr. R.D. Meena does not fall within the ambit of Section 109 IPC. There is no material on record to show that the petitioner aided and abetted the accused Mr. B.P. Meena or his family members to accumulate alleged disproportionate assets.

8. Relying upon judgment in '**Dilawar Balu Kurane vs. State of Maharashtra**', (2002) 2 SCC 135; '**Union of India vs. Prafulla Kumar Samal**', (1972) 2 SCC 392 and '**Soma Chakravarty vs. State**', (2007) 5 SCC 403, learned senior counsel for the petitioner urged that the offence under Section 109 IPC read with Section 13(2) and 13(1)(e) of the Act is not made out.

9. *Per contra*, K. Raghavacharyulu, Advocate appearing for the respondent/ CBI, at the outset, raised a preliminary objection that the present petition under Section 482 Cr.P.C. is misconceived.

10. It was also contended on behalf of respondent/ CBI that the petitioner aided and abetted co-accused Mr. B.P. Meena in acquisition of the respective properties. The petitioner continued to manage and control the property at D-75, Malviya Nagar, New Delhi even after selling it to Mr. B.P. Meena in August in the name of Mr. R.D. Meena

and Ms. Bhagwati Devi in two parts and sale consideration was received in cash. He was putting the property on rent, collecting the rent amount and depositing the same in the bank accounts of Mr. B.P. Meena in the name of Mr. R.D. Meena. There is sufficient evidence on record to prove that the petitioner is liable for the offence punishable under Sections 109 IPC read with Section 13(2) and 13(1)(e) of the Act.

11. I have bestowed my anxious thoughts to the submissions of learned senior counsel for the petitioner and learned counsel for CBI and have also gone through the material on record.

12. Before examining the facts of the present case it would be appropriate to consider the scope of interference of Section 482 of Cr.P.C. The Hon'ble Supreme Court of India in '**Dhanalakshmi v. R. Prasanna Kumar**', (1990) Supp. SCC 686, observed as under: -

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are

disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.”

13. Further in ‘**Amit Kapoor vs. Ramesh Chander & Anr.**’, (2012) 9 SCC 460, Hon’ble Supreme Court of India 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.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

14. While exercising jurisdiction under Section 482 of Cr.P.C. this Court would have ordinarily embarked an enquiry in order to determine whether the evidence in question is reliable or not or whether on a reasonable appreciation of it acquisition would be sustained or not. That is the function of the trial court. It is true that Court should be circumspect and judicious in misusing discretion and

should take all relevant facts and circumstances into consideration. Though, the powers under Section 482 of Cr.P.C. are wide, however, such powers require care and caution in its exercise. The interference must be on sound principles and the inherent powers should not be exercised to stifle a legitimate prosecution. The above mentioned judgments clearly reflect that inherent powers while quashing criminal proceedings should be exercised sparingly and with circumspection. The 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 ingredients of this 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 charge accordingly. The satisfaction of the Court in respect of ingredients of an offence and facts leading to an offence is a *sine qua non* for exercise of such jurisdiction. This presumption is not a presumption of law as such.

15. Section 120A of the IPC defines criminal conspiracy as under: -

“120A. Definition of criminal conspiracy. – When two or more persons agree to do, or cause to be done, -

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

16. The conspiracy requires an act (*actus reus*) and an accompanying mental state (*mens rea*). The agreement constitutes that act and the function to achieve the unlawful objective of that agreement constitutes the required mental state. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group. The offence of conspiracy is not a substantive crime, it also serves as a basis for holding one person liable for the crime of others. One who enters into a conspiracy is liable for every reasonable foreseeable act committed by every other member of this conspiracy in furtherance of its objective, whether or not he knew all about the crime or aided in their commission. All the conspirators must not know each and every detail of the conspiracy so long as they are conspirators. Thus, conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their conferrers.

17. Interpreting the provisions of Section 120A and 120B of IPC, the Apex Court in case of '**Yash Pal Mittal vs. State of Punjab**', (1977) 4 SCC 540, observed as under: -

“9. The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in

which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy, under Section 120-A is brought out pithily by this Court in *Major E.G. Barsay v. State of Bombay* [AIR 1961 SC 1762 : (1962) 2 SCR 195, 228 : (1962) 2 Cri LJ 828] thus:

“The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for

individual offences all of them may not be liable.”

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy.”

18. At the stage of consideration on charge, the Court is not required to assess, evaluate and weigh the prosecution evidence as it is done at the final stage. It is not open to shift and weigh the evidence as if the Court is conducting a mini trial and charge can be framed on the basis of grave suspicion and the evidential value of the statement recorded during the course of investigation is required to be seen at the time of trial. At this stage the Court is not required to meticulously go into the material placed on record by the prosecution and is only to consider whether *prima facie* there exists sufficient ground to proceed against the accused. A roving and phishing inquiry is impermissible and it is sufficient if the prosecution is able to show *prima facie* the commission of offence and the involvement of the charged person. It is immaterial whether the case is based on direct or circumstantial evidence and the Court is only required to see if *prima facie* there is sufficient ground for proceeding against the accused.

19. Some connecting link or connecting factor somewhere would be enough for framing of charge since framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. Conspiracy is generally a matter of inference (**‘Hardeo Singh vs. State of Bihar & Ors.’**, 2000 CrL. L.J. 2978).

20. In the instant case, the basic allegations against the petitioner are that the petitioner aided and abetted Mr. B.P. Meena (co-accused) by transferring funds in the account of co-accused Mr. R.D. Meena through his company M/s. South Delhi Apartment, by falsely showing return of loans, create finance, purchase/acquisition of properties and in acquisition of property No.D-75, Malviya Nagar, New Delhi in the name of wife of Mr. B.P. Meena, Smt. Bhagwati Devi Meena and his brother Mr. Raghuvar Dayal Meena as well as property No.2/1, Sarvapriya Vihar, New Delhi in the name of his brother Mr. Raghuvar Dayal Meena.

21. Considering the above legal propositions, it can be said that once a *prima facie* case is made out, court cannot delve into the merits of the case for framing of charges. At this stage, it cannot be said that the allegations are *ex facie* perverse, untenable or malicious.

22. There is no illegality and infirmity in the impugned order passed by the learned trial court. .

23. In the light of the aforesaid discussion, the petition is without any merit, same is liable to be dismissed and the same is hereby dismissed.

Crl.M.A. 6292/2014

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

JANUARY 8th, 2015
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