

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

Date of Decision: April 07, 2015

+ CRL.M.C. 1331/2015 & Crl.M.A. Nos.4883/2015 &4884/2015

M L MEENA

..... Petitioner

Through: Mr. Umesh Sinha, Mr. Anil Singh
& Mr. Rajesh Kumar, Advocates

versus

STATE (C B I)

..... Respondent

Through: Ms. Rajdipa Behura, Special
Public Prosecutor for CBI &
Ms.Monica Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 17th May, 2014 rejects petitioner's application under Section 294 of Cr.P.C. seeking to place on record some documents obtained under the *Right to Information Act, 2005* (henceforth referred to as the 'RTI Act').

At the hearing, learned counsel for petitioner relied upon decisions in *Crl.Rev. P. 240/2011* titled as *Lt. Gen. Retd. Nirmal Puri v. CBI*, decided on 13th November, 2014; *Rajiv Thapar and Others v. Madan Lal Kapoor* (2013) 3 SCC 330; *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568; *Rukmini Narvekar v. Vijaya Satardekar & Ors.* AIR 2009 SC 1013 to submit that the documents produced by the defence are

of sterling quality and so, they ought to be considered even at the charge stage and further submits that the documents sought to be produced in *Hem Chand v. State of Jharkhand* (2008) 5 SCC 113 were not obtained through RTI and in the instant case, petitioner has a good case for discharge.

Learned Special Public Prosecutor for respondent-CBI had supported the impugned order and had submitted that Apex Court's decision in *Hem Chand (supra)* has not been considered in the decisions relied upon on behalf of petitioner and the instant case is squarely covered by the Apex Court's decision in *Hem Chand (supra)* and that there is no substance in this petition.

Upon hearing and on perusal of the impugned order, material on record and the decisions cited, I find that Apex Court's decision in *Hem Chand (supra)* has not absolutely barred the trial court from considering the relevant material placed on record by the accused even at the charge stage. The pertinent observations of the Apex Court in *Hem Chand (supra)* are as under:-

“13. The learned counsel for CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related to the documents filed by the appellant along with his application for discharge. The court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily

not consider as to whether the accused would be able to establish his defence, if any.” (underlined to supply emphasis)

No doubt, the defence of accused is not be considered at the stage of framing of charge but there is no absolute bar to consider the relevant documents produced by accused at this stage. The above dictum of Apex Court in *Hem Chand (supra)* has been reiterated by the Apex Court in *Rukmini Narvekar Vs. Vijaya Satardekar & ors.* AIR 2009 SC 1013 in these words:-

“In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges. , if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.”

On this aspect, Apex Court in *Rajiv Thapar vs. Madan Lal Kapoor* (2013) 3 SCC 330 has pertinently observed as under:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

In the face of afore-noted legal position, the impugned order of 17th May, 2014 is rendered unsustainable and is hereby quashed. Trial court is directed to consider the information (Annexures-6 to 24) obtained under the RTI Act, at the time of hearing on the point of charge.

This petition and the application are disposed of while making it clear that the evidentiary value of the documents (*Annexures-6 to 24*) is not commented upon and its relevance is required to be considered by the trial court at the stage of framing of charge.

(SUNIL GAUR)
JUDGE

APRIL 07, 2015

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