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

Reserved on: 28th November, 2014

% **Date of Decision: 20th February, 2015**

\+ CRL. M.C. 4648/2014

NATWAR RATERIA ..... Petitioner

Through: Mr. R.K. Handoo, Advocate.

versus

CBI .....Respondent

Through: Mr. Narender Mann, Spl. PP with Mr. Manoj Pant, Advocate.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition, the petitioner has assailed the order dated 03.09.2014 passed by learned Special Judge-II, CBI, Rohini Courts, Delhi whereby the application moved by the petitioner for cessation of proceedings against him, has been dismissed.

2. Filtering unnecessary details, the relevant facts of the present case are that the petitioner was charge-sheeted along with Mr. Dalip Singh Judev as co-accused. The allegations as per the case set-up in the charge-sheet are that in a sting operation conducted on 05.11.2003 at Room No.822, Hotel Taj Maan Singh, New Delhi, accused Dalip Singh Judev (hereinafter referred to as accused A-1), who was the then

Union Minster of State for Environment and Forest received a sum of Rs.9,00,000/- (Rupees Nine lakhs) with regard to mining project in the State of Chattisgarh and Orissa, in the presence of the present petitioner who was working as Additional Private Secretary to A-1 at the relevant time. Some more persons were also charge-sheeted besides them but their role is not relevant to be discussed as they are not relevant for deciding the present petition.

3. The trial court record reveals that the petitioner (who is an accused No.2 before the Court below) was charged along with A-1for the offence of conspiracy punishable under Section 120B Indian Penal Code (for short, 'IPC') read with Section 7 of Prevention of Corruption Act, 1988 (for short, 'PC Act'). A-1 was also charged for the substantive offence under Section 7 of PC Act vide order dated 24.04.2007.

4. Unfortunately, A-1 expired during trial and consequently, proceedings against him stood abated on 30.10.2013.

5. In this backdrop, an application for cessation of proceedings against him was filed by the petitioner, which came to be dismissed by the impugned order dated 03.09.2014.

6. I have bestowed my thoughtful consideration to the submission made by learned counsel for the petitioner and learned Special PP for the CBI. I have also perused the material on record.

7. The impugned order has been challenged mainly on the premise that since, the petitioner is charged only for the offence of conspiracy

with A-1 who has already passed away, the proceedings against him should be ceased. In the absence of main accused i.e. A-1, who was charged with a substantive offence under Section 7 of the PC Act and who has already expired, no offence of conspiracy can be established against the petitioner. For the purpose of conspiracy there has to be two persons who can conspire with each other. It is a settled principle of law that no person can conspire with himself. In support of his submission, learned counsel for the petitioner also referred to the meaning of conspiracy as provided in Section 120A of IPC.

8. The counsel for the petitioner also urged that the abatement of proceedings against an accused has an effect of discharge/ acquittal as the case may be. Since the proceedings against A-1 stood abated on his death, it has the effect of acquittal of A-1 and as a necessary consequence thereof, the petitioner who is alleged to be the only conspirator along with deceased A-1 as per the case of CBI, also deserves to be acquitted.

9. In order to buttress his submissions learned counsel for the petitioner heavily relied upon the following judgments, '**Sant Kumar Gupta vs. The State of Jharkhand**', *Cr. Rev. No. 1111 of 2010 Decided On: 08.07.2011(Jharkhand High Court)*, '**Ex-Sepoy Hardhan Chakrabarty vs. UOI and Anr.**', *AIR 1990 SC 1210*; '**Faguna Kanta Nath vs. The State of Assam**', *AIR 1959 SC 673*; '**State of Maharashtra vs. Eknath Yeshwant Pagar and Anr.**', *AIR 1981 SC 1571*; '**Istiyak Khan Iqubal Khan vs. The State of Maharashtra**', *2014 ALLMR (Cri.) 3045*; '**Nilesh Sureshbhai Shah**

vs. CBI and Anr.', *Sp. Crl. Appln. No. 964 of 2012 decided on: 11.10.2013 (Gujarat High Court)* and '**Kanti Prasad Tyagi vs. State of Delhi**', *2014 (1) JCC 803*.

10. *Per contra*, learned Special Public Prosecutor of CBI supported the impugned order by contending that same is well reasoned and detailed order passed by learned trial court after taking into consideration all the facts and circumstances available on record. He further submitted that the authorities relied upon by the petitioner have been duly discussed in the impugned order and have been rightly held not applicable to the facts of this case.

11. Learned Special PP for CBI also contended that the inherent power is an extra-ordinary power, which should be used sparingly and in appropriate cases. In support of his contentions, he has relied upon the following judgments, '**Topandas vs. State of Bombay**', *(1955) 2 SCR 881*; '**Jitendra Kumar Singh vs. The State (Through CBI)**', *In Crl. Rev. (P) No.535/2005 decided on 21.04.200(Delhi High Court)*; '**State through CBI New Delhi vs. Jitender Kumar Singh**', *AIR 2014 SC 1169* and '**Pradumna Shriniwas Auradkar and Etc. vs. State of Maharashtra**', *1981 (087) Cr.L.J. 1873 (Bom.)*;

12. Before examining the respective contentions of both the parties, it is necessary to consider the provisions of Section 120A of IPC, which reads 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.

Explanation. – It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

13. The law with regard to criminal conspiracy has been laid down and has been defined under Section 120A IPC, as per which when two or more persons agree to do or cause to be done (i) an illegal act or (ii) 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 beside the agreement is done by one or more parties to such an agreement in pursuance thereof and it is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object.

14. The elements of a criminal conspiracy have been stated to be (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement or by any effective means, (d) in the

jurisdiction where the statute required an overt act. Thus, the essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no over act need be done in furtherance of the conspiracy and that the object of the combination need not be accomplished, in order to constitute that object of the conspiracy need not always be "an offence" but it may be any "illegal act". The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. Offence of criminal conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agreed to carry into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra* capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means. The said proposition was laid down by the Hon'ble Supreme Court in the case titled '**K. Hasim vs. State of Tamil Nadu**', *AIR 2005 SC 128*.

15. It is also an established proposition of law that conspiracies are generally hatched in secrecy and hardly any direct evidence is available to prove the same and it is in this background that Section 10 of the Indian Evidence Act was enacted providing a special law of evidence for providing the conspiracy which read as under: -

> "10. Things said or done by conspirator in reference to common design – Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

16. Section 10 has been deliberately enacted in order to make acts and statements of a co-conspirators admissible against the whole body of conspirators because of the nature of the crime and the words "common intention" signify a common intention existing at the time when the thing was said, done or written by one of them but it had nothing to do with carrying the conspiracy into effect. Yet another proposition of law is that a conspiracy in itself may be a combination of many sub-conspiracies and the liability still remains of the person who may be a party to only one sub-conspiracy and he is still liable under the criminal law even if he may be ignorant of remaining sub-conspiracies.

17. Now let me advert to the facts of the present case. It is an undisputed position on record that two separate conspiracies have been alleged by the prosecution in the charge-sheet. To be more specific, A-1 and A-2 i.e. the petitioner herein are alleged to have conspired

together to receive illegal gratification on the one hand while accused Nos.3 to 6 are alleged to have hatched another conspiracy to conduct sting operation at the behest of accused No.5 namely Amit Jogi to give political mileage to his father i.e. Mr. Ajit Jogi in the forthcoming elections in the State of Chhattisgarh. In other words, there is no scope of any doubt that the present petitioner was arraigned as an accused only with A-1 (since expired) on the set of allegations as discussed hereinbefore.

18. It is also an admitted position that A-1 is no more as on account of his death, proceedings qua him stood abated and thus, the present petitioner is the sole surviving accused as regards the offence of conspiracy charged against him along with A-1.

19. Now, the question which arises for consideration is as to whether the proceedings can continue against the petitioner in the absence of A-1 or not.

20. The aforesaid question has to be considered in the light of the fact that A-1 was neither discharged nor acquitted after conclusion of the trial but proceedings had to be abated against him due to his death. In this backdrop the answer to the above question has to be in the negative. I do not see any force in the first and foremost submission made on behalf of the petitioner that 'abatement' has the effect of acquittal due to which it would automatically lead to acquittal of sole surviving co-accused charged with the offence of conspiracy. Even if it be presumed, for the sake of argument, that the abatement has the effect of acquittal of an accused who has passed away, it does not

automatically lead to the acquittal of sole surviving co-accused. The reason is quite obvious. Whenever an accused expires during pendency of trial and proceedings are abated against him, it is not left open for the prosecution to level charges against such an accused by producing its witnesses during trial. It goes without saying that everyone is presumed to be innocent till proved guilty as per well settled cardinal principles of criminal jurisprudence. Once the accused is no more to face the trial till the end, his conclusion of guilt or otherwise cannot be arrived at by the Court trying said accused. Thus, benefit is extended in a way to such an accused by terming 'abatement' of proceedings against him as having an effect of acquittal. However, such abatement has to be purely due to death of the accused. Precisely for these reasons, the acquittal, if any, of accused who is dead is in a technical sense. Thus, the benefit of abatement of proceedings cannot be extended in favour of co-accused even if he remains to be the sole surviving accused after the death of the accused facing charge of conspiracy.

21. All the aforesaid judgments relied upon by learned counsel for petitioner are entirely distinguishable from the facts and circumstances of the present case and thus, same cannot be pressed into service for his benefit. In all these said judgments one out of the two or all but one accused were either discharged or had been acquitted on merits after complete trial. In this background, it has been held that since there must be two or more persons for existence of charge of conspiracy and charge of conspiracy could not stand against remaining

one accused, the offence of conspiracy cannot stand against sole surviving accused either.

22. In the instant case, there is no finding on merits that the offence of conspiracy is not proved against A-1 (since expired) so as to extend the benefit of view taken in the judgments relied upon by the petitioner to him. Rather, the position is otherwise. After both the accused i.e. A-1 and the petitioner herein were charge-sheeted for conspiracy, separate charge for the offence of conspiracy was framed against both of them. Both the accused were put to trial when A-1 died during trial and proceedings had to be abated qua him. In such a situation, the prosecution deserves to be afforded an opportunity to produce its witnesses for proving the charge of conspiracy against the petitioner. The Court would be well within its right to pronounce the verdict against the petitioner after holding full trial against him. I concur with the view taken by the Bombay High Court in the matter of '**Pradumna Shriniwas Auradkar and Etc. vs. State of Maharashtra**'(Supra).

23. Moreover, it is well settled law as also held by the Apex Court in the case of '**Ratinal Bhanji Mithani vs. State of Maharashtra**', *(1979) 2 SCC 179* that once a charge is framed against an accused, the Court has no power under Section 227 of Cr.P.C. or any other provision of the code to cancel the charge. Thereafter, the Court can either acquit or convict the accused unless Court decides to proceed under Sections 325 and 360 of Cr.P.C.

24. In the light of the aforesaid discussion this Court does not find any infirmity or illegality in the impugned order dated 03.09.2014

passed by learned Special Judge-II, CBI, Rohini Courts, Delhi. Consequently, the present petition without any merit and the same is hereby dismissed.

<u>Crl. M.A. No.15854/2014</u>

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

FEBRUARY 20th, 2015
hs