

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

RESERVED ON : 16th April, 2015

DECIDED ON : 06th May, 2015

+ CRL.REV.P. 672/2014

R K SRIVASTAVA

..... Petitioner

Through : Mr.A.K.Vali, Advocate with
Mr.Ramesh N.Keshwani,
Advocate.

versus

STATE THROUGH CBI

..... Respondent

Through : Mr.R.V.Sinha, Standing Counsel
with Mr.A.S.Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present revision petition has been preferred to challenge the legality and correctness of an order dated 21.10.2014 of learned Spl.Judge CBI (PC Act)/East by which application dated 21.02.2014 filed under Section 265 B Cr.P.C. was dismissed.

2. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the petitioner urged that the Trial Court did not appreciate the contents of charge-sheet where there were no specific allegations against the petitioner to have committed any offence

punishable under Sections 467/468/471 IPC. The petitioner was charged only with the aid of Section 120-B IPC. The petitioner was not attributed commission of any act in the charge-sheet which could attract any offence punishable with imprisonment for more than seven years. Provisions of plea-bargaining are applicable even to offences which prescribe minimum sentence for any proved offences.

3. Apparently, the petitioner besides others has been sent for trial by CBI for committing various offences. Charge-sheet has been filed for the offence under Section 120B read with Section 420/467/468/471 IPC and Section 13(2) read with Section 13(1) (d) of P.C.Act. Cognizance has already been taken by the Trial Court. It is significant to note that the petitioner and other accused persons have been charged for committing various offences punishable under Sections 420/467/468/471 IPC; 120 B IPC and Sections 13(2) read with Section 13(1) (d) of P.C.Act by an order dated 06.06.2013. The accused persons have pleaded not guilty to the charges. The prosecution has examined nine witnesses so far.

4. On 21.02.2014 an application under Section 265B Cr.P.C. for seeking 'plea-bargaining' was moved by the petitioner. The impugned order dismissing the application being not-maintainable under law cannot be faulted as the provisions of Chapter XXI-A can be invoked by the

accused among others, where in police case charge-sheet/completion report has been filed against the accused that an offence, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force appears to have been committed by such an accused.

5. In the instant case, the petitioner has been charge-sheeted under Section 120B read with Section 420/467/468/471 IPC and Section 13(2) read with Section 13(1) (d) of P.C.Act. Not only that, a specific charge has been framed against him by an order dated 06.06.2013. The petitioner did not opt to challenge the order on charge. The prosecution has examined nine witnesses so far to prove the charges. The matter is still pending before the Trial Court for recording statements of remaining witnesses of the prosecution. At this stage, evidence led or to be adduced at latter stage cannot be appreciated to prejudge the commission of exact offence. Since the offences for which the petitioner has been charged attract more than seven years imprisonment, the provisions of Chapter XXI-A Cr.P.C. are not applicable.

6. I am in agreement with the contention of the learned counsel for the petitioner that Section 265-A does not bar seeking plea-bargaining

in cases where minimum sentence is prescribed. Clause (c) Section 265 E reads as under:

“After hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.”

7. Plain reading of this provision allows the provisions of plea-bargaining to be applicable in cases where minimum punishment has been prescribed under the law. However, in that eventuality, the accused resorting to plea-bargaining would be liable to get half of such minimum sentence and possibly cannot ask for lesser punishment.

8. In the light of the above discussion, I find no merit in the revision petition and it is dismissed. Trial Court record (if any) along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 06, 2015

sa