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

Judgment delivered on: 28th August, 2015

\+ **Crl. MC No. 3512/2015**

VIRENDER KUMAR SINGH ..... Petitioner
Represented by: Mr. Harsh K. Sharma,
Mr. Rohit Gaur and Ms. Mehak N., Advs.

Versus

C B I ..... Respondent
Represented by: Ms. Sonia Mathur,
Ms. Meghna Rohatgi, Advs. with
Mr. Raman Kumar Shukla, Investigating Officer

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.12531/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 3512/2015

1. Vide the present petition, filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks setting aside of the order dated 15.07.2015 passed by the Special Judge-IV, (PC Act) CBI: Delhi whereby the trial court has passed an Order on Charge against the petitioner under sections 7 & 8 of the Prevention of Corruption Act, 1988.
2. Mr. Harsh K. Sharma, learned counsel appearing on behalf of the petitioner submits that the allegation against the petitioner

was that on 20.08.2010 after apprehension of accused no. 1, i.e., Architect, made call to the petitioner on his mobile no. 9716777237 and the conversation took place between them is not admissible in evidence being confessional statement of accused no. 1 as he was in custody of the CBI at that time.

3. Learned counsel for the petitioner further submits that the petitioner was maintaining mobile no. 9810008449 and the above mentioned mobile number 9716777237 was of one Sunil Kumar Sharma. As per the statement of Mr. Sharma recorded under section 161 CrPC this number has been lost by him and he had moved an application regarding loss of the said number at PS Kotwali.

4. Learned counsel for the petitioner submits that the case was registered under section 8 of the PC Act against the petitioner and investigation has also been carried out under section 8 of the PC Act. However, the learned trial court has directed to frame the charges under section 7 & 8 of the PC Act without any material on record. He submits that since there is no material on record against the petitioner it will be a futile exercise if the petitioner is directed to face trial in this case.

5. The trial court while considering the question of framing the charges under section 227 of the Code has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The material placed before the court disclose grave suspicion against the accused. The court has to consider the broad probabilities of the case, the total effect of the evidence

and the documents produced before it. 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. The court should apply the test as to whether the uncontroverted allegations as made from the record of the case and documents submitted therewith prima facie establish the offence or not. No meticulous examination of the evidence at the stage of charge is needed for considering whether the case would end in conviction.

6. In the case of ***Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC page 4,*** the Apex Court summarized the principles governing the exercise of powers at the time of framing of charge as follows:-

> *"1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.*
> *2) Whether the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing as charge and proceeding with the trial.*
> *3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused,*

he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a post office or a mouthpiece of the Prosecution, but has to consider the broad probabilities of the case the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial".

7. In the case of ***Amit Kapoor vs. Ramesh Chander & Anr. 2012 (9) SCALE*** the Apex Court observed as under:-

19. 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:

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](228) of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*

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.

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.

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 loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

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.

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.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

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.

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.

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.

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.

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 with by the prosecution.

> *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.*
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> *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.*
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> *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 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.*

8. On perusal of the impugned order dated 15.07.2015 on charge, it is revealed that the trial court observed that complaint has specifically alleged that the petitioner visited the premises of the complainant and had sealed 3rd floor of his premises on 13.08.2010 and for not sealing 2nd floor of the premises, he had demanded bribe of Rs.15 lacs. The petitioner had asked the complainant to contact accused no. 1, architect of M/s Design-aid, Karol Bagh, to settle the issue. On 18.08.2010, complainant had visited the office of accused no.1 who confirmed the demand of Rs. 15 lacs made by the petitioner and Executive Engineer Chauhan for favourable action. This conversation was recorded by complainant in DVR. The conversation recorded in

Q-1 reveals that accused no.1 has uttered "total kharcha kal shyam tak bata doonga" and "jis sae baat huehai, pahale us sae to confirm karoon".

9. The case of the prosecution is that the petitioner was using the aforesaid mobile no. 9716777237 and accordingly both the accused persons talked with each other number of times and even accused no. 1 had called the same number at about 9 pm (being apprehended by the CBI). As per the statement of Inspector Vikash Pathak, wife of the petitioner was admitted in Room no. 307 in Sant Parmanand Hospital, Civil Lines, Delhi and the location of this mobile was Civil Lines which further proves that this mobile was being used by the petitioner.

10. In addition to the above, the accused no. 1 and the petitioner entered into an agreement, as a result of that petitioner demanded bribe of Rs. 15 lacs from complainant and asked him to contact A-1, who was running an office in the name of M/s Design-aid at Karol Bagh. Under this agreement, accused no.1 reiterated the demand of Rs. 15 lacs from the complainant and asked him to pay this money to get favour of petitioner qua his property. Under this conspiracy, accused no.1 accepted bribe of Rs. One lac on behalf of the petitioner. Accordingly, the trial court has directed to frame charges for the offences punishable under Section 120-B IPC read with Section 7 and Section 13(2) read with 13(1)(d) of the PC Act, 1988 against the petitioner and accused no.1.

11. In view of the facts recorded above, there are allegations, evidence and material on record against the petitioner, therefore,

I do not find any legal infirmity or perversity in the impugned order dated 15.07.2015 passed by the learned trial court, therefore, I am not inclined to interfere with the same.

12. In view of the above, the present petition is dismissed in limini.

Crl. M.A.No.12530/2015(stay)

Dismissed as infructuous.

SURESH KAIT, J

AUGUST 28, 2015
RS