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

\+ CRL.M.C. 1974/2014

Date of Decision: June 01st, 2016

KUNAL SINGH ..... Petitioner

Through Mr.P.P. Malhotra, Sr. Adv. with Mr.Vineet Malhotra, Adv., Mr.Yasir Rauf, Adv. & Mr.S. Kaushik, Adv.

versus

C B I ..... Respondent

Through Ms.Sonia Mathur, Standing Counsel for CBI with Mr.Sushil K. Dubey, Adv. & Mr.A. Chauhan, Adv., Ms.Shreshtha Jain, Adv., Mr.Rajul Jain, Adv. Ms.Shreya Sinha, Adv, Ms.Ragini Singh, Adv. with Mr.Lalit Phullar, Investigating Officer.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for quashing of order on charge dated 21.09.2013 passed by the learned Special judge (PC Act) CBI and framing of charge dated 07.10.2013 in RC No.2172012/A0005 under Section 120-B IPC and Sections 7, 12 & 13(2) read with Section 13(1)(d) of the Prevention of Corruption

Act, 1988 and all the proceedings subsequent thereto.

2. The facts culled out from the record are that the CBI had filed a charge sheet against the accused/petitioner Kunal Singh and co-accused persons Ratan Singh, Uma Kant, Harish Dhondiyal, S.K. Garg and Anil Kumar Jaiswal. The FIR in question was registered on 03.06.2012. At the relevant time, accused Kunal Singh was posted as Director (Investigation), Income Tax, Kanpur; accused Ratan Singh was posted as Addl. Director (Investigation), Income Tax, Noida, accused Uma Kant was posted as Asstt. Director (Investigation), Income Tax, Noida; accused Harish Dhondiyal was posted as Inspector, Income Tax, Noida; accused S.K. Garg was the Chairman, accused Pankaj Bajaj (now approver) was Managing Director of M/s Eldeco Group; accused Anil Kumar Dhanda was CFO of M/s Eldeco Infrastructure & Properties and accused Anil Kumar Jaiswal was Advocate & Tax Consultant. It was alleged that a raid was conduted by the Income Tax Department at different premises of M/s Eldeco Group of Companies in March, 2012 in which various documents were seized and bank lockers were sealed. Accused Pankaj Bajaj and S.K. Garg contacted accused Anil Kumar Jaiswal, Chartered Accountant to settle the matter with the Income Tax Department who had contacted accused Ratan Singh, Umakant and Harish Dhondiyal. Investigation revealed that accused Kunal Singh was in touch with accused Pankaj Bajaj and he was called by accused Kunal Singh at his residence on 03.06.2012 at 8 p.m. A trap was laid during which accused Pankaj Bajaj had delivered Rs.30 lacs to

accused Kunal Singh and the said amount was recovered from his residence. It was further alleged that accused Ratan Singh had received bribe from accused Pankaj Bajaj, but the said money was not recovered. It was further alleged that accused Uma Kant had received bribe amount of Rs.12 lacs from accused Pankaj Bajaj and a sum of Rs.9.7 lacs being part of the bribe money was recovered from his residence. Accused Harish Dhondiyal had received bribe amount of Rs.1 lac from accused Pankaj Bajaj out of which Rs.70,000/- was recovered from his residence. Investigation also revealed that accused S.K. Garg was also involved in the payment of bribe to the officials of Income Tax Department. It was further alleged that accused Anil Kumar Jaiswal played a role in fixing meeting of officers of M/s Eldeco Group with the officers of Income Tax Department.

3. After completion of investigation, charge sheet was filed in the Court. After hearing the arguments on charge, the learned Trial Judge passed the order on charge on 21.09.2013. On 07.10.2013, charge under Section 120-B IPC read with Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act was framed against accused Kunal Singh, Ratan Singh, Uma Kant, Harish Dhondiyal, S.K. Garg and Anil Kumar Jaiswal. Accused Kunal Singh was also charged for substantive offences under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Feeling aggrieved by the same, the present petition has been preferred by the petitioner.

4. Arguments advanced by the learned Senior Counsel for the

petitioner as well as learned standing counsel for the CBI were heard at length.

5. Argument advanced by the learned Senior Counsel for the petitioner is that the petitioner was a senior officer of the rank of Joint Secretary to the Govt. of India. Section 6-A of the Delhi Special Police Establishment Act, 1946 (DSPE Act) prohibits the member of DSPE Act to conduct enquiry or investigation against the officers of the level of Joint Secretary and above except with the previous approval of the Central Government. Further argument advanced is that the petitioner was having telephonic conversation and meetings with accused Pankaj Bajaj as the petitioner was instructed by his seniors not to harass him due to medical condition of his wife. On 31.05.2012, a sum of Rs.30 lacs was paid to co-accused Ratan Singh by accused Pankaj Bajaj but no raid was affected on the said date nor any recovery was affected. On 03.06.2012, the CBI conducted raid at 14 premises at different locations and at the premises of the accused persons. The raid was conducted in a pre-planned manner and not on the basis of source information as indicated in the FIR in question. It is further argued that there is no demand of any bribe by the petitioner nor there is any evidence of its acceptance. The recovery alleged by the CBI is planted one. The finger prints on the bag were taken and were sent to CFSL, but no report was filed. On this point, learned counsel for the petitioner has relied upon judgment in the case of ***Banarsi Dass v. State of Haryana 2010 (4) SCC 450*** in which it was observed that to constitute an offence of illegal

gratification, demand of money and its voluntary acceptance by the accused is a sine qua non. It was also observed that mere recovery of money is not sufficient to constitute an offence of bribery in the absence of demand and voluntary acceptance. On similar points, judgments in the case of ***Suraj Mal v. State (Delhi Administration) 1979 (4) SCC 725; C.M. Sharma v. State of Andhra Pradesh 2010 (15) SCC 1***; ***C.M. Girish Babu v. CBI Cochin 2009 (3) SCC 779***; ***M.K. Harsharan v. State of Kerala 1996 (11) SCC 720***; ***B.Jayraj v. State of Andhra Pradesh (2014) 13 SCC 55***; ***B.Satyanarain Murthy v. State of A.P. (2015) 10 SCC 152*** and ***C.Sukumaran v. State of Kerala 2015 SCC Online SC 78*** have been relied upon by the petitioner.

6. Next argument advanced is that it is alleged that accused Ratan Singh demanded money on behalf of the petitioner, but there is no conversation between accused Pankaj Bajaj and Ratan Singh in this regard. The conversation dated 27.05.2012 shows that the petitioner was avoiding meeting Pankaj Bajaj. The conversation dated 28.05.2012 between Pankaj Bajaj and Dhirendra Khare further shows that there was no demand of money by the petitioner as Pankaj Bajaj told Dhirendra Khare that the petitioner was not meeting him and was not cooperating with him. Further it is argued that Pankaj Bajaj is the main culprit and CBI in order to shield and protect him, made him an approver in an illegal manner. Confession of Pankaj Bajaj has not been recorded in accordance with Section 164(4) of Cr.P.C. On this point, judgment in the case of ***Dhananjay Reddy v. State of Karnataka 2001 (4) SCC 9*** has

been relied upon in which it was observed that an alleged judicial confession proved to have not been legally recorded cannot be used as extrajudicial confession.

7. Next argument advanced is that the statement of co-accused is not a substantive evidence against other accused and the same can be used only for lending reassurance to the guilt which is based on other evidence. On this point, judgments in the case of ***Kashmira Singh v. State of M.P. 1952 SCR 526*** and ***Param Hans Yadav v. State of Bihar & Others 1987 (2) SCC 197*** have been relied upon in which it was observed that confession of a co-accused is not substantive evidence against other co-accused persons in the same trial. It can only be used for lending reassurance if there be any other substantive evidence to be utilized.

8. Next argument advanced is that the present case is based on circumstantial evidence but the chain of circumstances in the present case are missing which the prosecution is bound to prove fully. In support of this contention, judgments in the case of ***Musheer Khan @ Badhshah Khan and Anr. v. State of Madhya Pradesh (2010) 2 SCC 748***; ***Nizam & others v. State of Rajasthan (2016) 1 SCC 550*** and ***Banarsi Dass v. State of Haryana 2010 (4) SCC 450*** have been relied upon in which it was observed that the prosecution is bound to prove its case beyond reasonable doubt and the chain of circumstances must be complete in every aspect in all the cases where case of the prosecution relies upon circumstantial evidence.

9. Next argument advanced is that at the time of framing the charge, the Court is required to evaluate the material and documents to find out if the facts disclose the existence of all the ingredients constituting the alleged offence. In support of this contention, judgments in the case of ***Union of India v. Prafulla Kumar Samal and Anr. (1979) 3 SCC 4***; ***Niranjan Singh Karan Singh Punjabi & others v. Jitendra Bhimraj Bijja and others 1990 (4) SCC 76***; ***State of Maharashtra v. Priya Sharan Maharaj and Ors. (1997) 4 SCC 393***; ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 6 SCC 605*** and ***Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135*** have been relied upon.

10. On the other hand, learned Standing Counsel for CBI has argued that during March 2012, the Investigation Wing of Income Tax Department at Kanpur conducted survey on the allegations of Income Tax evasion by M/s Eldeco Group and seized various documents and sealed bank lockers at Patna, Agra and Delhi. Accused Anil Kumar Jaiswal contacted accused income tax officials to seek undue favour. Pankaj Bajaj developed contacts with accused Uma Kant, Ratan Singh and Kunal Singh and held meetings with them and an illegal deal was finalized amongst them. It was decided that Ratan Singh will be given a bribe of Rs.30-35 lacs and Kunal Singh will be given bribe of Rs.30 lacs for undue favours. Pankaj Bajaj had already made payment to Ratan Singh on 31.05.2012. On 15.04.2012, Pankaj Bajaj and Anil Jaiswal paid bribe of Rs.10 lacs to Umakant at his residence and

bribe of Rs.2 lacs at his office. During search, illegal gratification of Rs.9.7 lacs was recovered from his residence. Accused Ratan Singh had asked Pankaj Bajaj to settle the matter with Kunal Singh. Prior information was received by CBI that Pankaj Bajaj would come at the residence of Kunal Singh on 03.06.2012 to deliver bribe. A trap was laid and CBI team recovered bribe amount of Rs.30 lacs from the residence of Kunal Singh.

11. Next argument advanced is that the Constitutional Bench of Hon'ble Apex Court in ***Dr. Subramanian Swamy v. Director, CBI 2014 (6) Scale 146*** has held Section 6A of the DSPE Act as unconstitutional and violative of Article 14 of the Constitution of India, thus the petitioner cannot claim the benefit of Section 6A of the DSPE Act. It is further argued that CBI Manual does not prohibit registration of regular case instead of preliminary enquiry. In this context, judgment in the case of ***Lalita Kumari v. Government of U.P. & Ors. 2014 (2) SCC 1*** has been relied upon. It is further argued that there is no requirement to obtain sanction under Section 197 Cr.P.C. as the sanction was already obtained for the offences punishable under the P.C. Act and there was no need to obtain sanction for the offences committed under the Indian Penal Code. It is further argued that all the electronic evidences such as recording of voice conversation was procured after following due procedure. It is further argued that Pankaj Bajaj has turned approver and in his statement, he has narrated the entire conspiracy and statement of Pankaj Bajaj can be appreciated only when he is cross-examined. It is further argued that at the time of

framing the charge, the Court is not required to analyse the evidence relied upon by the prosecution but to see whether there is strong suspicion or not on the basis of material available.

12. The Senior Counsel for the petitioner has contended that the petitioner is having protection under Section 6A of the DSPE Act. This contention is not having any force inasmuch as said protection is no more available to a government servant on any designation he is holding. The Hon'ble Apex Court in ***Dr.Subramanian Swamy's*** case (supra) has categorically held the provision of Section 6A of the DSPE Act as unconstitutional and violative of Article 14 of the Constitution of India. Relevant para from the judgment is reproduced as under :

> "In view of our foregoing discussion, we hold that Section 6- A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to (a) the employees of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid."

13. In view of the law laid down in the above judgment, no protection of Section 6A of the DSPE Act is available to a

government servant and thus, there is no force in the argument advanced on behalf of the petitioner that he was having protection as per Section 6 of the DSPE Act which prohibits the member of DSPE Act to conduct enquiry or investigation against the officers of the level of Joint Secretary and above except with the previous approval of the Central Government.

14. The petitioner has further asserted that there is no evidence or material on record to show any demand or acceptance of alleged bribe by the petitioner and in the absence of demand and acceptance, the alleged recovery of money is of no consequence. It is also the contention of the petitioner that the recorded conversations do not prove in any manner the demand of bribe by the petitioner, rather it shows the reluctance of the petitioner to meet Pankaj Bajaj who has now turned an approver.

15. The conversation dated 26.05.2012 between Pankaj Bajaj and S.K. Garg shows that accused Ratan gave assurance of helping them. As per the conversation he suggested to give his senior 5 more than what was given to him i.e. 25. Then Pankaj agreed to give 30 to the senior of accused Ratan. The conversation dated 28.05.2012 between Dhirender Khare and Pankaj Bajaj shows that Khare told Pankaj that Kunal would meet him.

16. Apart from above conversation, it is alleged against the petitioner Kunal Singh that he met Pankaj Bajaj in India International Centre, Delhi. A cumulative effect of the recorded call details of the accused persons shows that there was a criminal conspiracy between the accused persons. It is also alleged against

the petitioner that in furtherance of such conspiracy of showing favour to M/s Eldeco Group, he accepted bribe amount of Rs.30 lacs which was recovered from his residence when raid was conducted by the CBI. When it has been shown prima facie that accused persons including the petitioner had been meeting each other, having telephonic conversations with each other and recovery of bribe money, a strong suspicion is raised against them and it would be sufficient to frame charge against them. So far the contention regarding admissibility of tape recorded conversation and other connecting factors are concerned, same are findings of fact and no comment on the same at this stage can be made. Such contentions are to be dealt with only at the time of conclusion of trial i.e. at the time of passing final judgment by the Trial Court.

17. Another plea raised by the petitioner is that the statement of co-accused Pankaj Bajaj who has now turned an approver cannot be relied upon and it cannot be used against the petitioner. There is no force in this contention of the petitioner inasmuch as it is shown on record that the statement of Pankaj Bajaj has been recorded before the learned Magistrate under Section 164 Cr.P.C. The certificate dated 04.10.2012 as required under the law has been given by the learned Magistrate regarding correctness of the statement made by Pankaj Bajaj. The contention of the petitioner that the said statement of the approver Pankaj Bajaj is not reliable, cannot be accepted at this stage in view of the fact that it is not the stage to pass the final judgment. It is a settled law that at the time of framing the charge, on the basis of material place before it the

Court has to consider whether there exists strong suspicion or not. The statement of Pankaj Bajaj, who has now turned an approved, also shows a prima facie case against the petitioner that he demanded and accepted bribe of Rs.30 lacs, as alleged by the CBI as well.

18. Learned Senior Counsel for the petitioner further argued that the cognizance taken by the Trial Court in the present matter is defective as no separate sanction was taken for the offences under the Indian Penal Code. There is no force in this contention of the petitioner in view of the ratio of the judgment in the case of ***Harihar Prasad v. State of Bihar (1972) 3 SCC 89*** in which it was observed that so far as the offence of criminal conspiracy and the offences under the Prevention of Corruption Act are concerned, the same cannot be said to be the part of the duty of a public servant, therefore, there is no requirement of sanction under Section 197 Cr.P.C.

19. In ***Romesh Lal Jain v. Naginder Singh Rana & Ors (2006)1 SCC 294***, it was observed that :

> "The upshot of the aforementioned discussions is that whereas an order of sanction in terms of Section 197 Cr. P.C. is required to be obtained when the offence complained against the public servant is attributable to discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the

> accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined."

20. In view of the law laid down in the above mentioned judgments, in the considered opinion of this Court, no sanction under Section 197 Cr.P.C. was required in the present case as the offences alleged against the petitioner cannot be said to be done in the discharge of his official duties to claim the protection as provided under Section 197 Cr.P.C.

21. The Hon'ble Apex Court in the case of ***Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. AIR 2011 SC 2161*** observed that :

> "The High Court in its writ jurisdiction, will not enquire into complicated questions of fact. The High Court also does not sit in appeal over the decision of an authority whose orders are challenged in the proceedings. The High Court can only see whether the authority concerned has acted with or without jurisdiction. The High Court can also act when there is an error of law apparent on the face of the record. The High Court can also interfere with such decision where there is no legal evidence before the authority concerned, or where the decision of the authority concerned is held to be perverse, i.e., a decision which no reasonable man could have arrived at on the basis of materials

available on record. Where an enquiry into complicated questions of fact is necessary before the right of aggrieved party to obtain relief claimed may be determined, the court may, in appropriate cases, decline to enter upon that enquiry, but the question is always one of discretion and not of jurisdiction of the court which may, in a proper case, enter upon a decision on questions of fact raised by the Petitioner."

In the case of ***The State v. Mariya Anton Vijay and Ors. (2015) 9 SCC 294***, it was observed that :

> "101. S.B. Johari's case (supra) was also a case where the High Court had quashed the charge at the instance of accused persons in exercise of its inherent jurisdiction by appreciating the material filed by the prosecution along with charge-sheet. The High Court therein had held that no case was made out on the basis of the contents of the charge sheet and the material filed in support thereof as in the opinion of the High Court, it was insufficient to frame the charge against the accused for their prosecution for commission of offence punishable Under Section 5(1)(d) and (2) of the Prevention of Corruption Act. The accused were accordingly discharged by the High Court without compelling them to face the trial on merits.
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> 102. In an appeal filed by the State against the order of the High Court, this Court allowed the State's appeal, set aside the order of the High Court and upheld the charge sheet and the charges which were framed by the trial court and laid down the law which we have reproduced in para 88 above.

> 103. Coming back to the facts of this case, the High Court committed the same error which was committed by the High Court in S.B. Johari's case (supra) because in this case also the High Court went into the questions of fact, appreciated the materials produced in support of charge sheet, drawn inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution under the Arms Act. This approach of the High Court, in our considered view while deciding petition Under Section 482 of the Code was wholly illegal and erroneous."

22. In view of the above discussion, contention raised by the learned Senior Counsel for the petitioner regarding protection of the petitioner as per Section 6-A of the DSPE Act; contention regarding non-holding of preliminary enquiry by the CBI before registration of FIR; contention regarding the manner in which the raid was conducted; contention regarding absence of demand and acceptance of bribe by the petitioner; contention regarding the fact that the alleged conversation attributed no role to the petitioner; contention regarding statement of approver Pankaj Bajaj cannot be used against the petitioner; contention regarding missing chain of circumstances in the present case and the contention regarding the fact that despite having no evidence against the petitioner, the charges have been framed against him by the Trial Court culminates into non-interference in the order passed by the Trial Court as the disputed facts cannot be made the basis for quashing,

the order on charge and the charge framed, in a petition under Section 482 Cr.P.C. as the same are subject matter of the Trial Court to be determined on the basis of evidence led by the parties.

23. The present petition is accordingly dismissed.

(P.S.TEJI)
JUDGE

JUNE 01, 2016
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