

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

+ **CrI.M.C.No.4445/2014**

Date of Decision: November 21st, 2016

ASHOK KUMAR AHLUWALIA Petitioner

Through **Mr.Prem B.Kshetri, Adv.**

versus

CENTRAL BUREAU OF INVESTIGATION..... Respondent

Through **Mr.Narender Mann, Spl.P.P. for CBI**
with **Mr.Manoj Pant, Adv.**

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. for quashing and setting aside the order dated 22.02.2014 along with order dated 01.08.2013 passed by the Special Judge, CBI whereby charge has been framed against the petitioner in R.C.No.32(A)/94 dated 03.06.1994 under Section 120B read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, 1988.

2. The learned counsel for the petitioner has raised grounds in the following petition in support of his case that the impugned order dated 22.02.2014 which is in continuation of earlier order dated 01.08.2013 is neither sustainable under law nor tenable under the facts and circumstances of the case and that the same has been passed without appreciating the facts and applying the judicial discretion, and is unjustified, bad in law and hence is liable to be set aside; that the petitioner is a scapegoat inasmuch as the conspiracy was hatched by accused persons namely Sh.Subhash Handa and Sh.D.S.Kanwar, who have been arrayed as accused Nos.1 & 2 respectively in the charge sheet; that the Trial Court failed to observe that the petitioner has issued delivery orders dated 22.07.1991 on the basis of letter dated 31.10.1990 whereby the accused No.1/Sh.Subhash Handa was given the category of Special Dealers with special facility of inbuilt storage of 2500 metric tons per month to the charge of the company as per company's policy; that the Trial Court failed to appreciate that the payment had to be collected by advance demand draft whereas the same was collected by the mode of

cheque; that the Trial Court failed to examine that the respondent knowingly did not file several documents which make it clear that the petitioner is not guilty; hence, the petitioner sought permission to file those documents which has been allowed by the Trial Court and accordingly filed letter dated 25.07.1991, 31.07.1991, memorandum of departmental enquiry, charges and order dated 04.05.2006 which now has become part of the charge sheet and court record and hence the Trial Court would have to examine those documents as these are very important pieces of evidence; that the Trial Court failed to examine that the respondent knowingly did not file letter dated 12.08.1991 written by the petitioner to Sh.Sohan Lal, DO Kaithal wherein it is very much clear that those three Delivery Orders were issued by the petitioner at the instructions of AAM, Kurukshetra. Till 12.08.1991, M/s Aar Kay Enterprises had not lifted the materials as per the Delivery Orders. Apart from above grounds, the petitioner has assailed the order on charge on the ground that the same is without due application of mind and due appreciation of material placed before it.

3. The case of the prosecution is that the petitioner i.e. Ashok Kumar Ahluwalia, while working as Assistant Area Manager, National Fertilizers Limited ('NFL' for short) at Kaithal during the year 1991, abused his official position as public servant. As per the policy of NFL, an adhoc dealer is appointed after verifying antecedents and experience, for a period of 6 months. In the instant case, M/s. Aar Key Enterprises and M/s. Kuber Traders, firms of the co-accused/Subhansh Handa were appointed without prior verification and their appointment was not supported by requisite documents and that too for a period of one year in each case. The policy of NFL is that fertilizers are assured to its dealers through a document called Delivery Orders. Advance payment in the form of demand draft has to be obtained from the dealers as per the quantity requirement, before the issuance of the deliver order. The petitioner, in violation of policy of NFL, issued Delivery Orders for the supply of 518.35 metric ton of Urea worth Rs.8,03,243.50 vide three Delivery Orders i.e. (i) DO no.5501 dated 22.7.1991 for 410 metric tons urea for a sum of

Rs.6,27,300/- in favour of M/s. Aar Key Enterprises, Ambala (ii) DO no.5502 dated 22.7.1991 for 75 metric tons urea for a sum of Rs.1,22,250/- in favour of M/s. Aar Key Enterprises, Ambala and (iii) DO no.5503 dated 22.7.1991 for 33 metric tons urea for a sum of Rs.53,693/- in favour of M/s. Aar Key Enterprises, Ambala, which is the firm of the co-accused Sh. Subhash Handa on credit without receiving the payment and caused corresponding loss to the NFL.

4. That the petitioner/accused with the object of causing undue pecuniary advantage to accused Subhash Handa through his firms M/s. Aar Key Enterprises and M/s. Kuber Traders was part of conspiracy with other accused persons in appointing these firms as ad-hoc dealerships and later issuing DO orders without taking advance Bank Drafts for the value of the Urea, which resulted into loss of Rs.2,52,05,302.12/- to the NFL and corresponding unlawful gain to co-accused Subhash Handa. The petitioner is an important link in the chain of the conspiracy and without his involvement the offence could not have been committed.

5. Learned Special PP for the CBI has submitted that the impugned order for framing of charge is just, fair and proper, based on the evidence collected during the course of investigation and available on record. The framing of charge is justified as prima facie material is available on record and an offence is made out against the accused. It is further submitted that at the stage of framing charge, the trial court is not required to evaluate the entire evidence or weigh the evidence.

6. It is submitted that the any material which is not part of the charge sheet or documents accompanying it, shall not be considered at the stage of charge. If the petitioner/accused wants to rely on any other material, it can be considered only at an appropriate stage at the stage of defence evidence. Any such material can not be considered at the stage of charge.

7. The case law regarding framing of charge is well settled. The Hon'ble Apex Court in ***P. Vijayan v. State of Kerala and Anr.*** AIR 2010 SC 663 has held as under :

“14. In a recent decision, in the case of ***Soma Chakravarty v. State through CBI*** (2007) 5 SCC 403 this Court has held that the settled legal position is that if on the

basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a *prima facie* finding that there exist some materials there for. Suspicion alone, without anything more, cannot form the basis there for or held to be sufficient for framing charge.”

8. From the material placed on record by the prosecution, apparently, there is sufficient evidence and material against the petitioner that he was part of the criminal conspiracy to give ad hoc dealership to the firm of his co-accused and also of misusing his official position as public servant to give undue favour to his co-accused.

9. *It is a settled law that at the time of framing charge, the court is required to look into the material placed before it by the prosecution and to form its prima facie view whether there exists strong suspicion to frame the charge or not as observed in the case of P. Vijayan (supra).*

This court is of the considered opinion that the contentions and arguments advanced by the counsel for the petitioner could be answered only on conclusion of evidence and no comment on the same, whether the same leads to conviction or acquittal, can be made at this stage. In the nutshell, the petitioner is not able to make out his case questioning the sustainability of the charge.

10. In view of the above discussion, this court does not find any merit in the present petition to quash or set aside the order on charge as well as charge framed against the petitioner. So, the present revision is dismissed being devoid of merit.

11. The pending application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

NOVEMBER 21, 2016