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

+ CRL.REV.P. 671/2014

MATHEW SAMUEL

..... Petitioner

Through: Mr.Mohit Mathur, Senior Advocate
with Mr.P.V.Dinesh and Ms.Sindhu
T.P., Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Ms.Rajdipa Behura, Spl. PP for CBI
with Ms.Monica Gupta and
Ms.Garima Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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17.02.2016

CRL.REV.P. 671/2014 & CRL.M.A. No.17119/2014 (condonation of delay)

1. The petitioner has filed the present revision petition impugning the order dated 16.10.2012 passed in case RC No.1(S)/2001 whereby the learned ASJ ordered for framing of charge against the petitioner and other co-accused persons.
2. I have heard Mr.Mohit Mathur, learned Senior Advocate for the petitioner as well as Ms.Rajdipa Behura, learned Special PP for CBI and carefully gone through the record.
3. Mr.Mohit Mathur, learned Senior Advocate for the petitioner has submitted that the petitioner was one of the accused in case RC No.01(S)/2001 CBI/SIC-IV/New Delhi. The other co-accused persons

namely Aniruddha Bahal, Niraj Kumar and Thomas Mathew filed revision petitions bearing Crl.Rev.P Nos.683/2012, 707/2012 & 34/2013 respectively before this Court impugning the order on charge. By common order dated 26.05.2014 all the three revision petitions have been disposed of by this Court and all the three revisionists namely Aniruddha Bahal, Niraj Kumar and Thomas Mathew have been discharged. The order passed by this Court in Crl.Rev.P Nos.683/2012, 707/2012 & 34/2013 has not been challenged by the CBI hence has attained finality. In view of the decision of this Court in revision petitions filed by co-accused namely Aniruddha Bahal, Niraj Kumar and Thomas Mathew, the present petition may also be allowed.

4. Mr.Rajdipa Behura, learned Special PP for CBI has submitted that there is an inordinate delay on the part of the petitioner in impugning the order on charge. However, she has not disputed that the order dated 26.05.2014 passed in Crl.Rev.P Nos.683/2012, 707/2012 & 34/2013 has not been challenged by the CBI.

5. Before dealing with the contentions raised on behalf of the petitioner, suffice it to record that vide order dated 16.10.2012, in the concluding paragraph, all the accused persons were ordered to be charged as under:-

'32. Hence, in the light of above discussion and material on record, I find that there is prima facie sufficient material on record for framing charge under Section 3 (1)(c) and 5(1)(2) and (4) of Official Secret Act, 1923 r/w Section 120-B IPC against accused Neeraj Kumar, Thomas Mathew, Mattherw Samuel, Anirudh Behl and Ms/Buffalo Networks Pvt. Ltd., charge under Section 5(1)(a) punishable under Section 5(4) of Official Secret Act, 1923 against accused Neeraj and under Section 5(2) punishable under Section 5(4) of Official Secret Act, 1923 against accused Mathew Samuel and Thomas Mathew. Ordered accordingly.'

6. The present petitioner Mathew Samuel and his co-accused persons namely Aniruddha Bahal, Niraj Kumar, Thomas Mathew and M/s Buffalo Networks Pvt. Ltd. through one of its Director Tarunjeet Tejpal, were charged by learned Special Judge as under:-

‘CHARGE

On 09.10.2000 and 10.10.2000 all of you in furtherance of criminal conspiracy wilfully communicated or published the minutes of the meeting dated 29.9.99 held under the Chairmanship of Sh.G.K.Pillai, Joint Secretary, MHA, besides report containing secret matters of file No.11011/40/99NE-IV under the title “Dutch Support revealed for rebels in Bihar and North East” and another report titled “Unravelling : Dutch role in aiding and abetting Indian insurgents” containing information from the said secret file of ministry of Home Affairs which was displayed on the portal of tehlaka.com, which information relates to the matter, the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State of friendly relations with foreign State and thereby all of you committed offence punishable under Section 3(1)(c) and 5(1)(2) and (4) of Official Secret Act, 1923 r/w Section 120-B IPC and within my cognizance.

That on the aforesaid date, time and place, you accused Neeraj Kumar having in your possession the aforesaid minutes of the meeting and the articles which relate to a matter affecting the friendly relations of a country with foreign state communicated the same to accused Thomas Mathew S/o Late Sh.Thomas Mathew and Mathew Samuel S/o Sh.Samuel Kutty i.e. to a person other than a person to whom you were authorised to communicate it and thereby committed offence under Section 5(1)(a) punishable under 5 (4) of the Official Secret Act, 1923 and within my cognizance and within my knowledge.

That on the aforesaid date, time and place you accused Mathew Samuel and Thomas Mathew voluntarily received the aforesaid information knowing or having reasons to believe at

the time of receiving the same that the said information is communicated in the contravention of the Official Secret Act and thereby committed offence under Section 5(2) punishable under Section 5(4) of the Official Secret Act, 1923 and within my cognizance.

And you are hereby directed to be tried by this Court for the aforesaid offences.'

7. While disposing of Crl.Rev.P Nos.683/2012, 707/2012 & 34/2013, the co-ordinate Bench of this Court has referred to the contentions raised by Thomas Mathew – the co-accused as under:-

'25. Insofar as the co-accused Thomas Mathew is concerned, it is contended that there is no material against him which gives rise to grave suspicion against the accused for commission of alleged offences. It is contended that the case against him is also based on the alleged confessional statement of co-accused Niraj Kumar purported to have been recorded u/s 164 CrPC which is liable to be rejected for the reasons noted above. The charge sheet or the complaint does not mention anything about his involvement or that he had any knowledge of the publication of the alleged offending material.'

In para 46 after considering the material on record, it was observed that there was no sufficient material to frame the charge against the accused persons.

In paras 55 and 56, while dealing with the material against Thomas Mathew, it was observed as under:-

'55. Against Thomas Mathew again there is no evidence other than alleged confessional statement under Section 164 of accused Niraj Kumar to which reference has already been made.

56. Prima facie there is no material which shows gave suspicion against the accused Thomas Mathew also for commission of any of alleged offences.'

8. While allowing the revision petitions bearing CrI.Rev.P Nos.683/2012, 707/2012 & 34/2013, the charges framed against the petitioners/accused persons were set aside and petitioners were ordered to be discharged.

9. The accusations against the present petitioner Mathew Samuel are that accused Niraj Kumar was close to accused Thomas Mathew and accused Thomas Mathew knew the petitioner Mathew Samuel, who had been visiting the office of Thomas Mathew very frequently. The co-accused persons have been discharged mainly on the ground that the foundation of the case rested on confessional statement under Section 164 CrPC made by accused Niraj Kumar in the hope of being made an approver in the case. Subsequently, accused Niraj Kumar moved two applications seeking withdrawal of statement under Section 164 CrPC as well for withdrawal of the application under Section 306 Cr.P.C. While disposing of the revision petitions filed by the co-accused persons, in para 52 it was specifically noted that there was no other prima facie evidence against accused Niraj Kumar and thereafter it was noted that against Thomas Mathew except the confessional statement of accused Niraj Kumar, there was no evidence. Thus, there was prima facie no material even to show grave suspicion against Thomas Mathew.

10. No doubt, there is a delay on the part of the petitioner in approaching this Court in filing this revision petition. The question that requires consideration is when all the accused persons, who filed revision petitions bearing CrI.Rev.P Nos.683/2012, 707/2012 & 34/2013, have been discharged by this Court on the ground that prima facie there is no material against the accused persons which may even give rise to grave suspicion.

Role of the petitioner is limited to the extent that he had acquaintance with co-accused Thomas Mathew, who was close to accused Niraj Kumar who made the confessional statement and retracted thereafter. When all the co-accused stand discharged, the trial could not have proceeded against the petitioner. So the delay in filing this revision petition cannot be termed as fatal in this case. Hence, the delay in filing the revision petition is condoned.

11. The petitioner was ordered to be charged alleging that he was close to co-accused Thomas Mathew and used to visit his office frequently. There is no material against the petitioner except acquaintance with the co-accused Thomas Mathew, who stands discharged. The trial cannot proceed against the present petitioner Mathew Samuel when all his co-accused have been discharged recording a finding that prima facie there was no material against them to frame charge.

12. Revision petition is allowed and the petitioner Mathew Samuel is discharged in case RC No.01(s)/2001 CBI/SIC-IV/New Delhi.

13. A copy of this order be sent to the concerned Court for information.

As prayed, a copy of this order be given dasti to learned counsel for the parties.

Crl.M.A. Nos.17118/2014 & 17120/2014

Dismissed as infructuous.

PRATIBHA RANI, J.

FEBRUARY 17, 2016

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