

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

+ **CRL.M.C.2362/2015**

Date of Decision: 10th May, 2016

SHIV CHARAN

..... Petitioner

Through Mr.H.S.Bhullar and Ms.Gargi Bhatt,
Advs.

versus

CBI

..... Respondent

Through Mr.Narender Mann, Special Public
Prosecutor for CBI with Mr.Manoj
Pant, Advocate and Inspector Sanjay
Kumar, [PC-II/CBI].

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner, namely, Sh. Shiv Charan for quashing of charges/ setting aside the order dated 06.01.2015 framing charges against the petitioner under Sections 120B read with Sections 420/419/384/468/170 IPC in the case titled 'CBI v. Manish Sharma & Ors.' and consequently to set aside the order dated 08.04.2015 passed by the Revisional Court which sustained the order dated 06.01.2015 passed by the Trial Court.

2. The case of the prosecution is that the petitioner along with other co-accused in furtherance of their criminal conspiracy conducted illegal raid at the premises of complainant Sh.S.M.Jain on 28.04.2012 by impersonating themselves as officials of Enforcement Department.

It is also alleged that Parveen Kaushik, one of the co-accused (since deceased), who was working with the complainant as Sales Executive had also taken active part in the conspiracy by furnishing details with respect to the business of the complainant and he persuaded the complainant to pay Rs.4,00,000/- to the raiding party to get the matter resolved. The evidence produced by the prosecution is the statement of the complainant/Sh.S.M.Jain recorded under Section 164 Cr.P.C., recorded telephonic conversations along with confirming report regarding the voice samples and also the statements of other witnesses. Out of the extorted money, Rs.3 lakhs has been recovered from the accused Mr.Parveen Kaushik and Rs.25,000/- has been recovered from the accused Mr.Manish Sharma. The Trial Court on the basis of the material has proceeded to frame charges against the accused including the petitioner vide Order dated 06.01.2015 under Sections 120B IPC read with 420/419/384/468/170 IPC and substantive offences under Sections 170/419/420/384 IPC. The petitioner went in revision which was dismissed vide Order dated 08.04.2015. Thus, the present petition has been filed by the petitioner.

3. I have heard the learned counsel for the parties and gone through the record.

4. It is well settled legal position that at the time of framing of charge, the Court is to only see whether there is prima facie material against the accused persons for the purpose of framing the charges and not to go into the probative value of the evidence/material so produced. In the instant case, there is sufficient evidence in the form of statements of complainant and his employees and also documentary

evidence to show prima facie involvement of accused persons in committing the offences. So far as the question of admissibility of tape recorded conversations is concerned, the same can be gone into after the conclusion of trial. Even otherwise, the tape recorded conversations have corroborative value and cannot be counted as substantive evidence. At the stage of trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not required to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is pertinent to mention here that the petitioner has refused to take part in Test Identification Parade (TIP) and also his name finds mention in the recorded voice conversation of one of the co-accused Subhash Chandra. Thus, strong suspicion at this stage is sufficient to sustain charge framed by the Trial Court.

5. The allegations involved in the present case are grave and prima facie there is sufficient material to put the accused to trial at this stage. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing the charge.

6. The contentions raised by the petitioner before this Court can be decided only after evidence and material placed on record. With the inclusion of Section 120B IPC and material available on record, it is neither desirable nor feasible to segregate the role of each accused at this stage.

7. The contentions raised by the petitioner to the effect that there is no evidence regarding hatching of criminal conspiracy and the role of the petitioner, are questions of fact which cannot be decided in the petition under Section 482 Cr.P.C. and it is to be decided by the Trial Court after adducing evidence by the parties. The contention regarding requirement of certificate under Section 65B of the Indian Evidence Act is also a question of fact. Such contentions are required to be raised by the petitioner before the Trial Court which can be decided only after evidence and material placed on record.

8. In *Subhadra V. State 1996 IV AD Delhi 181*, it was held that at the time of framing the charge, the Court has not to apply the same standard of test and judgment which it finally applies before recording a finding of guilt or otherwise. At this stage, what the Court has to see is whether there is ground enough for presuming that the accused have committed the offence for which they have been charged. The Court is not to judge the veracity and effect of evidence i.e. whether it will culminate in conviction on merit.

In *Smaty Machra and another V. State (Govt. of NCT of Delhi) 2007 Cr.L.J. 4341*, it was held that the considerations which are relevant at time of framing of charges and those at time of conclusion of trial are entirely different. While grave suspicion would entitle Court to frame charges, grave suspicion alone would not entitle Court to convict a person in respect of said charges. If the Court has strong reasons to suspect that the crime was committed by the accused, then it would not be in error if it frames charges accordingly.

The Hon'ble Supreme Court in case of *Soma Chakravarty V. State through CBI AIR 2007 SC 2149* observed 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 had committed the offence. At the time of framing of 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 at that stage.

9. In view of the given facts and circumstances, I do not find any illegality or ambiguity in the order dated 06.01.2015 passed by the Trial Court and the order 08.04.2015 passed by the Revisional Court upholding the order of the Trial Court so as to call for interference by this Court.

10. This petition is accordingly dismissed.

(P.S.TEJI)
JUDGE

MAY 10, 2016
dd/dm