

#13

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 04.04.2016
Judgment Pronounced On: 26.05.2016

W.P.(CRL) 348/2016

RAJ KUMAR SINGLA

..... Petitioner

Through: Mr. Bharat Bhushan, Advocate

versus

C.B.I

..... Respondent

Through: Ms Sonia Mathur, Standing Counsel

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India, read with section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') prays for setting aside of the order on charge (impugned herein) dated 11.09.2015 passed by the Special Judge (PC Act), CBI-02, Patiala House Courts, New Delhi, in CC No. 13/12 in FIR No. RC. BD1/2010/E/0005 under section 120B read with sections 420, 467, 468, 471

IPC and section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act').

2. The learned Special Judge (PC Act), vide the impugned order dated 11.09.2015, has framed separate charges under section 120B IPC and section 420 IPC read with section 120B IPC against the petitioner herein.

3. The petitioner herein was the Assistant General Manager at Syndicate Bank, Nehru Place Branch, New Delhi on 06.06.2008, i.e. the relevant time. The subject FIR was registered on a complaint dated 15.09.2010 made by the General Manager of Syndicate Bank, Regional Office, New Delhi. The allegations in the subject FIR against the petitioner are to the effect that he in conspiracy with M/s Suhrit Services Pvt. Ltd., Anoop Pradhan, Binita Pradhan, Madhvi Shrestha, Dhiren Tamang, and Ashok Kumar Khanna, the other accused persons in the subject charge-sheet filed by the CBI, in furtherance of a common objective cheated Syndicate Bank, Nehru Place, New Delhi for an amount to the tune of Rs.25 crores. It was alleged that M/s Suhrit Services Pvt. Ltd. was sanctioned a credit limit for procurement and sale of cars manufactured by M/s Hyundai Motors India Ltd., but the amount so sanctioned was diverted by M/s Suhrit Services Pvt. Ltd for other purposes and it failed to repay the amount, which caused wrongful loss to

the tune of Rs.25 crore to the bank and wrongful gain to it and others. It was further alleged that the Directors of M/s Suhrit Services Pvt. Ltd. in conspiracy with public servants including the petitioner forged certain documents, and used them as genuine to induce the bank to sanction four car loans.

4. Specifically, the petitioner is alleged to have inspected a unit of M/s Suhrit Services Pvt. Ltd. on 16.07.2008 and prepared a report in respect of the same. In the said report, without verifying the stock properly, the petitioner stated that the value of stock available with M/s Suhrit Services Pvt. Ltd. was at around Rs.3800 Lacs. It was further observed in the said report that the unit was running in “good atmosphere” and that M/s Suhrit Services Pvt. Ltd. was generally having sales turnover of around Rs.16 crores per month.

5. On investigation into the subject FIR, it was revealed that the said report was false and was not based on the ground situation.

6. Mr. Bharat Bhushan, learned counsel appearing on behalf of the petitioner has invited my attention to the facts antecedent and attendant, that are enumerated as below:-

- (i) That the credit limit for M/s Suhrit Service Pvt. Ltd. was sanctioned by Syndicate Bank initially in November, 2004, and thereafter it was enhanced from time to time. However, during the service tenure of the petitioner with the bank, there were no enhancements.
- (ii) That the petitioner visited one of the premises of M/s Suhrit Services Pvt. Ltd. and noted that brisk activity was going on. The petitioner inspected the stock statement of M/s Suhrit Services Pvt. Ltd. in the year 2008, which was authenticated by professional auditors and found it to be correct. However, when in a consortium meeting, the representatives of M/s Suhrit Services Pvt. Ltd. revealed that some of its Directors had drained hefty amounts through unfair means, the petitioner arranged a full inspection of M/s Suhrit Services Pvt. Ltd. and the consequent report and discrepancies noticed were immediately reported to the higher authorities at the Regional/Corporate office of the Syndicate Bank.

7. In light of the facts as afore-mentioned, Mr. Bhushan, learned counsel appearing on behalf of the petitioner would urge, that the solitary allegation

against the petitioner is of conspiracy with the co-accused, which is based solely on the report submitted by Hyundai Motors India Ltd., stating that the stock position had always been inflated by M/s Suhrit Services Pvt. Ltd. In this regard it is further urged by Mr. Bhushan, learned counsel appearing on behalf of the petitioner, that this material is not sufficient by itself to sustain a charge under section 120B IPC, against the petitioner.

8. On the other hand, Ms. Sonia Mathur, learned Standing Counsel appearing on behalf of the official respondent would urge that, the petitioner has been charged under section 120B IPC, i.e. for conspiracy, and the question of conspiracy is a matter of inference and direct independent evidence is seldom available. Further, Ms. Mathur, learned Standing Counsel appearing on behalf of the official respondent would urge that specific allegations have been levelled against the petitioner in the charge sheet as well as in the impugned order, to the effect that the petitioner along with one of the co-accused, in furtherance of criminal conspiracy, submitted an inspection report of the stock of M/s Suhrit Services Pvt. Ltd., without conducting random checks of the stock of finished goods, and the said report was false.

9. After hearing counsel for the parties, the germane issue that arises for consideration of this Court is whether at the stage of framing of charges, the Special Judge is required to conduct a mini-trial?

10. The issue is no longer *res-integra*. In a decision of this Court in *Criminal Revision Petition No. 281/2012* titled *Veena Ajmani vs. State*, decided on 20.04.2015, which has been followed in *Kuldeep Kumar vs. State of Delhi and Anr.*, Writ Petition (Criminal) No.2053/2014, decided on 23.09.2015, this Court, relying on the decision of the Supreme Court in *P. Vijayan v. State of Kerala*, reported as (2010) 2 SCC 398, held that the consideration of the court at the stage of framing of charges is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. Whether the material in the hands of the prosecution is sufficient or not is a matter of trial. Moreover, the issue whether the trial will end in conviction or acquittal is also immaterial. The relevant portion of the decision is reproduced as below:-

“25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the

Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a *prima facie* case was not disclosed and to save the accused from avoidable harassment and expenditure.

26. In the case on hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed under Section 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence under Section 302 read with Section 34 IPC and because of the same, he dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said conclusion.”

(Emphasis Supplied)

11. Similarly, the Supreme Court in the case of **Amit Kapoor v. Ramesh Chander**, reported as (2012) 9 SCC 460, has observed as under:

“19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the

innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)

“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If ‘the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing’, as enjoined by Section 227. If, on the other hand, ‘the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused’, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. 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 deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the

court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

(Emphasis Supplied)

12. On the point whether the Trial Court can conduct a mini-trial at the time of framing of charge, the Supreme Court, in the case of **Indu Jain v. State of M.P.**, reported as **(2008) 15 SCC 341** has held as under:

“39. As has been observed in *Kewal Krishan case* [1980 Supp SCC 499 : 1981 SCC (Cri) 438 : AIR 1980 SC 1780] , at the stage of framing of charge, the court is not required to go into the details of the investigation but to only arrive at a prima facie finding on the materials made available as to whether a

charge could be sustained as recommended in the charge-sheet. The same view has been subsequently reiterated in Debendra Padhi case [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] and in Bharat Parikh v. CBI [(2008) 10 SCC 109 : (2008) 3 SCC (Cri) 609 : (2008) 10 Scale 86] wherein the holding of a mini trial at the time of framing of charge has been deprecated.”

(Emphasis Supplied)

13. Thus, at the state of framing of charge, the Special Judge/Trial Court is only required to ascertain whether there is a *prima facie* case made out against the accused or not, based on the material placed before it, and is not required to embark upon the question of the sufficiency or veracity of the material.

14. Therefore, in the present case, the submission made by counsel appearing on behalf of the petitioner *inter-alia* to the effect that the report given by Hyundai Motors India Ltd. is not sufficient to sustain a charge under section 120B IPC, is untenable.

15. In the present case, the trial court has observed based on the material before it, that the report dated 16.07.2008, which was submitted by the petitioner, purportedly after inspection of the stocks of M/s Suhrit Services Pvt. Ltd. was not correct, and was not based on the ground situation. The said discrepancy was noted by the trial court in comparison with the report given by Hyundai Motors India Ltd. In my opinion, therefore, the charge

for an offence under section 120B IPC as framed by the trial court does not warrant interference, in view of the position of law that at the stage of framing of charge, the trial court is not required to go into the question of the sufficiency or veracity of the material, but is only required to see whether a *prima facie* case is made out against the accused or not.

16. Thus, the issue that arises for determination in the present petition is answered in the negative and against the petitioner.

17. In view of the foregoing, I find no merit in the present writ petition. The writ petition is dismissed and disposed of accordingly.

MAY 26, 2016
dn

SIDDHARTH MRIDUL, J