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

Decided on: 17th May, 2017

+ W.P. (CRL.) 543/2013 and CrI.M.A. 4392/2013

SORABH GUPTA Petitioner
Through: Mr. Vijay Shankar, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION
THR. ITS STANDING COUNSEL Respondent
Through: Mr. Sanjeev Bhandari, Special Public
Prosecutor for CBI.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition presented under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeks to assail the order dated 10.11.2010 passed by the court of Additional Chief Metropolitan Magistrate (ACMM)-I of East District at Karkardooma Courts Complex on the file of the criminal case arising out of the report under Section 173 Cr.P.C. submitted by respondent Central Bureau of Investigation (CBI) on conclusion of investigation into crime registered by it vide RC No. RC/DST/2006/0004/CBI/STF/New Delhi.

2. It may be mentioned here that by an earlier order the ACMM had taken cognizance on the said report under Section 173 Cr.P.C. issuing process and thereby summoning the petitioner as one of the accused persons sent up for trial. By the impugned order, the ACMM found charge to be made out and proceeded to frame charges under Section 420 read with Section 120-B of the Indian Penal Code, 1860 (IPC), Section 468 read with Section 120-B IPC and Section 471 read with Section 120-B IPC.

3. It appears the petitioner had earlier challenged the order dated 10.01.2010 of ACMM by revision petition under Section 397 Cr.P.C. in the court of Sessions. The said criminal revision petition no.41/2012, was dismissed by the Sessions Court by a reasoned order dated 17.12.2012.

4. The criminal case concerns Vijay Cooperative Group Housing Society Limited which had been registered with the Registrar of Cooperative Societies, Delhi on 21.01.1984 and at that stage the society had on its rolls sixty two promoter members, the number eventually rising to seventy five by 1990-1991. The petitioner, as per the evidence gathered, became a member of the society on 27.10.1995. The society record would show that all the original seventy five members had resigned from time to time, during the period 1993-1994 onwards, they being replaced by freshly enrolled members including the petitioner. The petitioner eventually took over the position of President of the Society, freshly inducted members including a substantial number of his close relatives. Delhi Development

Authority (DDA), on the request submitted on behalf of the society, allotted land on 12.05.1998 against which payment of Rs.1,58,98,570/- was to be made. The evidence gathered shows the money to be deposited with DDA was contributed principally by the petitioner through different firms or companies in which he had control, this including Rs.39 lacs arranged from a non member (Dhampur Agro Limited) and Rs.11 lacs coming from the account of the petitioner's minor son. What stands out as one of the most incriminating circumstances is the fact revealed by the investigation that the letters of resignation of the original members were fabricated documents.

5. It is well settled principle of law that at the stage of charge the court is not to sift or weigh the evidence in the manner it is done at the stage of final analysis. The evidence placed before the court will generally be taken as correct, the test being to find as to whether upon such evidence being proved at the trial and it remaining unrebutted, it would prove facts as would constitute the offence with which the prosecution proposes the accused to be charged.

6. The principles on the subject were summarized by the Supreme Court in *Union of India vs. Prafulla Kumar Samal*, (1979) 3 SCC 4, as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the

undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

7. The law has been reiterated in *State vs. A. Arun Kumar*, (2015) 2 SCC 417 in the following words:-

“8. The law on the point is succinctly stated by this Court in Sajjan Kumar v. CBI[(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] wherein after referring to Union of Indiar. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] and Dilawar Balu Kurane v. State of Maharashtra [(2002) 2 SCC 135 : 2002

SCC (Cri) 310] this Court observed in para 19 thus: (Sajjan Kumar case [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], SCC pp. 375-76)

“19. It is clear that 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 only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves 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.”

8. The contentions urged by the petitioner through the petition at hand against the order of charge were duly considered and repelled by the court of Sessions sitting in revisional jurisdiction. Against this backdrop a procedural issue has been raised, the question being as to whether the petitioner having availed of the remedy of revision, should he be allowed to approach this court under Article 226 of the Constitution of India or under Section 482 Cr.P.C. for a virtual second revisional challenge or scrutiny which is clearly barred under Section 397(3) Cr.P.C.

9. Similar question had arisen in *Crl.M.C. No.4064/2016 titled State vs. Rakesh Dhawan*, decided on 28.04.2017 and this court noted the law on the subject as under:-

“5. There is merit in the contention urged on behalf of the respondent. Reference may be made in this regard to the following observations in Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr., (2005) 2 SCC 571:-

“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)

6. In Surender Kumar Jain vs. State & Anr., ILR (2012) 3 Del 99, a learned Single Judge of this Court accepted similar objects by the following observations:-

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy

inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in Madhu Limave v. State of Maharashtra(1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305 : AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration)1980 Cri. L.J. 202, Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.”

(emphasis supplied)”

10. Having heard the learned counsel on both sides, this court is satisfied that it cannot be said in the present case that there has been miscarriage of justice warranting interference by this court under the extraordinary jurisdiction under Article 226 of the Constitution of India or Section 482 Cr.P.C. The petitioner having availed of the

remedy of revision, there being no abuse of the process of court, nor a case made out of any breach of mandatory provisions of law, the petition at hand ought not be entertained.

11. Petition along with accompanying application stand dismissed.

MAY 17, 2017
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R.K.GAUBA, J.