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

\+ W.P.(CRL) 1959/2016

JAI SINGH RANA

..... Petitioner

Through: Ms. Swati Gupta, Advocate

versus

CBI

..... Respondent

Through: Ms. Rajdipa Behura, SPP

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **12.01.2017**

The petitioner has preferred the present writ petition to seek quashing of the fresh charge-sheet filed by the respondent CBI in respect of RC-12(A)/95-DLI. The petitioner also seeks the quashing of the order dated 08.03.2016 passed by the learned Special Judge, CBI (PC Act), East Delhi, Karkardooma Courts, Delhi, whereby the learned Special Judge has taken cognizance and summoned the petitioner as an accused.

The background in which the present petition has been preferred may be noted. The petitioner Jai Singh Rana along with seven other accused were prosecuted in the aforesaid case i.e. R.C. 12(A)/95-DLI by the CBI. The petitioner was arrayed as accused No. 5. The charges framed against the petitioner were under Section 120 B and Sections 420/511 IPC. Out of the eight accused, four were public servants who are arrayed as accused Nos. 1 to 4. The matter went to trial and resulted in the order dated 09.12.2014 by the learned Special Judge after hearing the prosecution and the accused. A perusal of the said order shows that the same can be divided into two parts. The first part of the order is on merits, whereas the second part is on the aspect of grant of sanction for prosecution of the four public servants- accused Nos. 1 to 4. The learned Special Judge, on the first part, which concerns the petitioner/accused No.5 as well, inter alia, observed as follows:

> *"18. To prove its case the prosecution has examined 34 witnesses. The prosecution has examined actual Mela Ram as PW-1. The address of PW-1 has been given as R/o 64-A, West Mukherjee Nagar, Delhi. This witness has deposed that he never resided or visited or have any concern with premises no. 481, Pocket GH-8, Paschim Puri, New Delhi.*
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> *19. The prosecution case is that address of fake Mela Ram who as per prosecution impersonated by A8 Ram Nath Tyagi in the records of DDA for the purpose of this scam has been mentioned as 481, Pocket GH-8, Paschim Puri, New Delhi and all the correspondence by DDA concerning allotment of subject plot no. 1177, Dr. Mukherjee Nagar was claimed to be made with this fake Mela Ram at this very address. In the charge sheet the address of A8 Ram Nath Tyagi (since deceased) has been given as 60, Baldev Park, New Delhi.*
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> ***20. This Court has carefully gone through the entire evidence on record and also the case put up by CBI in FIR as well as in charge sheet and also the statement of PW-18 Inspector Rajesh Kumar initial IO and PW-34 DSP Ramnesh the subsequent IO. No where in the entire records the CBI has clarified about the status of address of 481, Pocket GH-8, Paschim Puri, New Delhi and also about the existence of Mela Ram at that address. Both the IO (s) are completely silent about this fact in their respective depositions made***

before this Court. Similarly no other evidence has been adduced by CBI on this point.

21. During investigation CBI in this case had found that witness Suresh Kumar on lease deed Ex.PW4/A produced by allottee fake Mela Ram is a non existing entity. The address of Suresh Kumar has been mentioned in lease deed Ex.PW4/A as B-18, Main Market, Jahangir Puri, New Delhi. In order to show that Suresh Kumar is a non existing entity, the CBI went to this address and found that PW-8 Shiv Shanker has been running his shop at this address who does not know anything about Suresh Kumar. This way CBI has sought to prove the fact that Suresh Kumar is a fake witness.

22. Similar is the position in regard to fake Mela Ram S/o Ram Dass R/o Flat No.481, GH-8, Paschim Puri, New Delhi. As per CBI case A8 Ram Nath Tyagi has assumed this character impersonating as Mela Ram and has signed all the documents in his name in the records of DDA concerning the allotment of Plot No.1177, Dr. Mukherjee Nagar, Delhi.

23. This Court is of the view that in this eventuality it was incumbent upon the CBI to verify the status of Flat No. 481, GH-8, Paschim Puri, New Delhi and also to verify the status of Mela Ram at that address. The question of verification of the address as well as of impersonated Mela Ram was essential for CBI to prove before this Court. This question goes to the root of the matter because subject plot as per claim of CBI has been fraudulently allotted in conspiracy with DDA officials and other accused by giving this name of Mela Ram as allottee with his address of Flat No. 481, Pocket GH-8, Paschim Puri, New Delhi. The question of fixing of identity of fake Mela Ram and his address given as Flat No.481, GH-8, Paschim Puri, New Delhi is the question at the central theme of the CBI case. In considered view of this Court the entire CBI case gets crumbled on this very point alone without discussing the other evidence because of the failure on the part of CBI to verify and confirm this fact.

24. In absence of CBI placing on record any evidence to show that no person by the name of Mela Ram was found in

> ***existence at the given address of Flat No.481, Pocket GH-8, Paschim Puri, New Delhi or even about the status of Flat No. 481, Pocket GH-8, Paschim Puri, New Delhi it cannot be presumed that this address or the person Mela ram are not in existence. In the given facts because of failure on the part of CBI it would not be useful to discuss about the other evidence in the matter to prove the charge relating to the other accused (s).”***
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> *[emphasis supplied]*

On the aspect of sanction, the finding returned by the learned Special Judge was that the same had not been duly accorded. Consequently, the learned Special Judge, in the ultimate analysis, in para 37 of the said order observed as follows:

> *“37. In view of the legal position as discussed above since the Sanction for A1 to A4 is held invalid this Court refrain itself from passing the order on merits.* ***Proceedings are dropped in the present case against all the accused. Order is made accordingly. File be consigned to record room.”***
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> *[emphasis supplied]*

The CBI interpreted the final direction, namely, dropping of the proceedings against all the accused, as an order permitting further investigation under Section 173(8) Cr.P.C. Consequently, the CBI sought to undertake further investigation and filed the supplementary charge-sheet - which is now called in question, since the learned Special Judge has taken cognizance on this supplementary charge-sheet and summoned the petitioner as an accused.

The submission of learned counsel for the petitioner is that the order dated 09.12.2014 is an order of acquittal of the petitioner/accused. The petitioner has been acquitted since there was a fundamental lacuna in the case of the prosecution, namely, that the prosecution did not verify the status of Mela Ram at the address i.e. Flat No. 481, GH-8, Paschim Puri, New Delhi, which was essential for the CBI to prove-so as to establish the charges against the petitioner/accused. As observed by the learned Special Judge, question of fixing the identity of fake Mela Ram and his address given as flat No. 481,GH-8, Paschim Puri, New Delhi, was central theme of the case of the CBI.

Learned counsel submits that the order dated 09.12.2014 is an order of acquittal in substance which has been arrived at after a full-fledged trial and hearing. The learned Special Judge has given his reasons for acquitting the petitioner. That being the position, the submission is that the petitioner cannot be vexed twice on the same charge. Learned counsel submits that the filing of the supplementary charge-sheet, and the proceedings premised thereon, is contrary to Section 300(1) Cr.P.C. which provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof. Learned counsel submits that the impugned action of the respondent is also hit by Article 20(2) of the Constitution of India which lays down the rule against double jeopardy by providing that no person shall be prosecuted or punished for the same offence more than once.

She submits that, even otherwise, there is no justification for filing a supplementary charge sheet, as the same is premised on evidence which could have been led by the prosecution in the first place and, secondly, the same has been filed only to fill up the lacuna in the case of the prosecution which forms the basis of the petitioner's acquittal.

On the other hand, the submission of learned counsel for CBI is that Section 248 Cr.P.C. provides that if, in any case, in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal. Ms. Behura submits that in the present case, learned Special Judge has merely "dropped" the proceedings. He has not recorded an order of acquittal and, thus, it was open to the CBI to carry out further investigation and file a supplementary charge-sheet under Section 173(8) Cr.P.C. She has sought to place reliance on ***Ram Lal Narang Vs. State (Delhi Administration)*** AIR 1979 SC 1791; and ***Kishan Lal Vs. Dharmendra Bafna and Anr.*** (2009) 7 SCC 685 in support of her submissions.

A perusal of the order dated 09.12.2014 passed by the learned Special Judge shows that the entire procedure relating to trial before a Court of Sessions contained in Chapter XVII, insofar as it is relevant and applicable was gone through before the culmination of the case into the order dated 09.12.2014. The said order shows that the charges were framed under Section 228 Cr.P.C. against the petitioner and the other accused; evidently, the petitioner and the other accused did not plead guilty (under Section 229 Cr.P.C.); the learned Special Judge recorded the evidence in the case by examining the prosecution evidence (under Sections 230 and 231 Cr.P.C.); the arguments of the prosecution and the defence were heard under Section

234 Cr.P.C.; and only thereafter the order dated 09.12.2014 came to be passed.

A perusal of the order dated 09.12.2014 shows that the learned Special Judge appreciated the evidence led in the case by the prosecution and in the light of the charges framed against the accused, found the same to be wholly deficient to be able to sustain the charges. The aforesaid position is abundantly clear from the perusal of the extracted portion of the order dated 09.12.2014 and, in particular, paras 23 and 24 as extracted above.

Since the charges against, inter alia, the petitioners were held to be not proved, on account of the fact that material evidence was not led by the prosecution/CBI, the only manner in which the final/operative direction contained in the order dated 09.12.2014 passed by the learned Special Judge could be understood-when he 'dropped' the proceedings, is that the petitioner/accused stood acquitted under Section 235 Cr.P.C. Section 235 Cr.P.C. does not use the expression, 'acquitted' except in the heading of the Section, which may be taken as very broad and general indicators of the nature of the subject matter dealt with there under. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject matter dealt with by the enactment underneath; though the name would always be brief having its own limitations or any of its variants, unlike Section 248 Cr.P.C. which expressly requires the Magistrate to '*record an order of acquittal*' in case the Magistrate finds the accused 'not guilty'. Pertinently, in the operative part of the order dated 09.12.2014, the learned Special Judge directed that, '*file be consigned to record room*'. Thus, the purport and intent of the order dated 09.12.2014 is abundantly clear. It is a straight forward case of acquittal of the petitioner accused on account of the lack of material evidence. Thus, in my view, the CBI was barred by Section 300(1) Cr.P.C. from subjecting the petitioner accused to a re-trial for the same offence, on the same facts, by resort to filing a supplementary charge sheet under Section 173(8) Cr.P.C.

The submission of Ms. Behura premised on reading of Section 248 Cr.P.C. has no force, firstly, since Section 235 Cr.P.C. and not Section 248 Cr.P.C. is strictly applicable to the present case, and Section 235 Cr.P.C. does not, strictly, oblige the Special Judge to record a finding of, 'acquittal'. Even otherwise, the only conclusion that can be drawn on a complete and meaningful reading of the order dated 09.12.2014 is that the same has resulted in the acquittal of the petitioner accused. There can be no justification for construing 'dropping' of the proceedings as the keeping of the proceedings in abeyance and permitting the CBI to file a supplementary charge-sheet under Section 173(8) Cr.P.C. If that had been the intent and purport of the order dated 09.12.2014, the Special Judge would have recorded so in his order, and not consigned the file to the record room.

Section 173(8) Cr.P.C. clarifies that further investigation in respect of an offence is permitted even after submission of a final report under Section 173(2) Cr.P.C. and, if upon such further investigation, the officer in-charge of the police station obtains further evidence, oral or documentary, he is obliged to forward to the Magistrate a further report or reports regarding such evidence. Obviously, the said exercise could be undertaken during the pendency of the trial and not after the case has been disposed of by following the procedure prescribed in the Cr.P.C. by a speaking order/judgment. A perusal of the supplementary charge-sheet shows that the same has been filed only to fill up the lacunae left by the prosecution which formed the basis of the order dated 09.12.2014 acquitting the accused. So far as petitioner-who was not a public servant, is concerned, the same could not have been done in view of the bar contained in Section 300(1) Cr.P.C. and Section 20(2) of the Constitution of India.

Reliance placed by Ms. Behura on ***Ram Lal Narang*** (supra) and ***Kishan Lal*** (supra), in the aforesaid background is completely misplaced. Firstly, ***Ram Lal (supra)*** was not a case where the supplementary charge-sheet was sought to be filed after the pronouncement of the final order in the case whereby the case was closed. Secondly, the said decision merely deliberates upon the issue with regard to the power of the court to file a supplementary charge-sheet. In this decision, the Supreme Court took note of its earlier decision in ***H.N.Rishbud Vs. The State of Delhi*** 1955 Criminal Law Journal 526, wherein the Supreme Court contemplated the possibility of further investigation even after a court taken cognizance of the case. The following extract from ***H.N.Rishbud*** (supra) was quoted:

> *"It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.*

Premised on the aforesaid extract, the Supreme Court observed;

> *"This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the Court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it."*

In para 22 of this decision in ***Ram Lal Narang*** (supra), the Supreme Court held;

> *"22. Anyone acquainted with the day today working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since*

whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light."

The power of the investigating agency to further investigate the case, even after filing of the challan under Section 173(2) Cr.P.C., cannot be read so broadly as to authorize the investigating and prosecuting agency to carry out the so-called investigation, and file a further supplementary report, by resort to Section 173(8) Cr.P.C. in a case which stands concluded with the rendering of a final judgment. The said power cannot be exercised to make up the lacunae and deficiencies that the Court may have found in the evidence led by the prosecution on account of which the accused has not been convicted. By resort to Section 173(8) Cr.P.C., the prosecution cannot indirectly seek to achieve what it is prohibited in law, i.e. by Section 300(1) Cr.P.C. and under Article 20(2) of the Constitution of India.

Reliance placed on ***Kishan Lal*** (supra) is misplaced. In this case, the Supreme Court noticed its decision in ***Ramachandran Vs. R. Udhayakumar***, 2008 CriLJ 4309, wherein, inter alia, the following has been observed:

> “..... ....
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> > *‘7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.’ ”*
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> *11. We have referred to the aforementioned decision only because Mr Tulsi contends that in effect and substance the prayer of the appellant before the learned Magistrate was for reinvestigation but the learned Magistrate had directed further investigation by the investigating officer inadvertently.*
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> *The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. ”*

Thus, it is apparently clear that a supplementary charge-sheet may be filed. The police has a right to carry on further investigation, but not fresh investigation or re-investigation. The right to carry on further investigation may be exercised in a situation when new facts come to notice or when certain aspect of the matter had not been considered by the investigation, and it found further investigation is necessary to be carried out from a different angle keeping in view the fact that new and further material has come to its notice. The learned Magistrate or superior Court can also direct further investigation after the investigation is found to be tainted and/ or otherwise unfair or otherwise necessary in the ends of justice.

The present case does not fall in any of these categories. Under the garb of further investigation and a supplementary charge-sheet, the evidence which was very much known and available to be gathered and led before the Court is now sought to be adduced after the acquittal of the petitioner accused on the basis of the evidence led before the Court. It cannot be said that any new or further material has come to light post the acquittal of the petitioner accused vide order/ judgment dated 09.12.2014. It appears that it has only now dawned upon the CBI that it should have gathered and led evidence, which was found lacking by the learned Special Judge in the order dated 09.12.2014. Pertinently, the learned Special Judge has also not directed the CBI to carry out any further investigation. In fact, the charges against the petitioner have been dropped and the file has been consigned to the record room.

For all the aforesaid reasons, I am of the view that this petition has to succeed and the supplementary charge-sheet filed by the respondent CBI on the basis of the impugned order dated 08.03.2016 has been passed by the learned Special Judge deserve to be quashed. It is ordered accordingly.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

JANUARY 12, 2017
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