

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.608 of 2016

Arising Out of PS. Case No.-12 Year-2011 Thana- C.B.I CASE District- Patna

Satyendra Kumar S/o Late Bengali Prasad R/o permanent address- Vill Bhadwa,P.O.-Etasang, Thana-Rahue,Dist-Nalanda,State-Bihar Pin-803119.Presently residing at Flat-B4, Tarini-Apartment,Hinoo,Ranchi(Jharkhandi), Pin-834002 and Posted as EE(p),in the O/o CE(EZ-IV),CPWD,Airport Road, Hinoo, Ranchi Jharkhand Pin-834002

... .. Petitioner/s

Versus

Cbi/acb/patna Through Superintendent of Police, CBI/ACB/ Patna

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 858 of 2016

Arising Out of PS. Case No.-12 Year-2011 Thana- C.B.I CASE District- Patna

Sompal Singh Saini S/o Late Prasada Singh resident of 95 D, DDA MIG Flats, Shivam Enclave, Sahadara, Delhi-32, P.S.- Vivek Vihar, District-Eastern Delhi.

... .. Petitioner/s

Versus

The State of Bihar Through CBI/ACB/Patna Through The Superintendent of Police, CBI/ACB/Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 848 of 2016

Arising Out of PS. Case No.-12 Year-2011 Thana- C.B.I CASE District- Patna

Mithilesh Prasad Mishra Son of Late- Chhotelal Mishra, Resident of Mohalla- Babatpur, Police Station- Babatpur, District- Varanasi (U.P.).

... .. Petitioner/s

Versus

The State of Bihar through CBI/ ACB/ Patna through Superintendent of Police, CBI ACB/ Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 849 of 2016

Arising Out of PS. Case No.-12 Year-2011 Thana- C.B.I CASE District- Patna

Shiv Narayan Son of late Ram Swarup Resident of A-207, Nanda Devi Apartment, Plot No. 19, Sector 10,,Dwarika P.S. Dwarka, New Delhi.

... .. Petitioner/s

Versus

The State of Bihar, Through The CBI / ACB, Patna

... .. Respondent/s



Appearance :

(In Criminal Writ Jurisdiction Case No. 608 of 2016)

For the Petitioner/s : Mr. R. K. Khanna, Sr. Advocate

Mr. Pramod Kumar, Advocate

Mr. Ram Naresh Ray

For the Respondent/s : Mr. Bipin Kumar Sinha(SC,CBI)

(In Criminal Writ Jurisdiction Case No. 858 of 2016)

For the Petitioner/s : Mr. Vinod Gautam

For the Respondent/s : Mr. Bipin Kumar Sinha(SC,CBI)

(In Criminal Writ Jurisdiction Case No. 848 of 2016)

For the Petitioner/s : Mr. Vinod Gautam

For the Respondent/s : Mr. Bipin Kumar Sinha(Sc,Cbi)

(In Criminal Writ Jurisdiction Case No. 849 of 2016)

For the Petitioner/s : Mr. Ram Naresh Ray

For the Respondent/s : Mr. Bipin Kumar Sinha(SC,CBI)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 26-09-2018

These criminal writ applications have been preferred for quashing of the entire criminal proceeding including the order dated 19.11.2014 passed by learned Special Judge, C.B.I. III, Patna by which the learned Special Judge has taken cognizance of the offences under Sections 13 (2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act, 1988), Sections 120B read with Section 420, 468, 471 and 511 of the Indian Penal Code in Special Case No. 8 of 2011, R.C 12 (A) 11 C.B.I./ACB, Patna.

2. The petitioners have been chargesheeted and upon filing of the charge-sheet while taking cognizance, learned Special Judge has found prima facie case against the accused persons named in the charge-sheet, non-bailable warrants have been issued for causing appearance of these petitioners.



BRIEF FACTS OF THE CASE

3. As per the written complaint of Sri J. P. Mishra, the Additional Superintendent of Police, C.B.I., ACB/Patna as contained in Memo No. 2777 dated 29.06.2011, a reliable source information revealed that a State Highway No. 12 is under construction in the district of Rohtas and Bhojpur under Rashtriya Sam Vikash Yojana (RSVY) package No. 6 covering a distance of 95 kilometer in the State of Bihar. It is stated that the estimated cost of the work is Rs. 1,15,29,92,439/-. The construction was awarded to a joint venture of ECI Engineering and Construction Company Ltd., Hyderabad and Bhola Singh Jai Prakash Construction Ltd., New Delhi, which is named as ECI-BJCL (JV) on 09.03.2007. As per allegations one of the components of awarded work was 'Earth Work'.

It is alleged that the Central Public Works Department (CPWD) assessed the quantity of earth work at the cost of Rs. 13,92,00,000/-. As per procedure the contractor company conducted a detailed survey of the existing ground. It is alleged that as per survey conducted by the contractor before starting the work, the amount of the earth work required for the above road was estimated much less.



It is further alleged that the Officers of the CPWD and the contractors entered into a criminal conspiracy to do, or cause to be done an illegal act, or an act which is not illegal by illegal means and in pursuance thereof dishonestly and fraudulently fabricated the ground level data obtained by pre-work survey by the contractor company. The accused persons allegedly, manipulated the earth work of the project in order to facilitate fraudulent payment showing excess earth work. The allegation is also that neither the earth work was required nor the work was executed.

It is alleged that the tender was awarded to the M/s ECI-BJCL (JV), Plot No. 70, 3rd Floor, Jubilee Hills, Road No. 1, Hyderabad vide No. EE/RSVY/G/Acctt/RCP-06-07/57 dated 09.03.2007 at Rs. 1,15,29,92,439/-. There are allegations that Shri Shiv Narain, Executive Engineer, CPWD, Sasaram Division and Shri Satyendra Kumar, Assistant Executive Engineer, CPWD, Sasaram Division were posted and functioned as aforesaid during the relevant period.

The further allegation is that for undertaking the earthwork, original ground level was taken by the representative of the ECI-BJCL (JV) and CPWD officials. The Level Book is signed by Shri Satyendra Kumar, Assistant Executive Engineer and Shri Shiv Narain, Executive Engineer and a representative of ECI-BJCL



(JV). It is alleged that the Level Book is the fabricated one as it contains forged signature of the representative of ECI-BJCL (JV).

It is alleged that as per contract 738585 cubic meter of earth was to be excavated from the borrow pits, but subsequent verification revealed that borrow pits, wherefrom the soil is shown to have been obtained for the earth work were non-existing. It is further alleged that in many places earth work was neither required nor done, but earth work was shown on papers by the accused persons by creating false documents in order to facilitate fraudulent payment to the tune of Rs. 39761773.52/- thereby causing wrongful loss to the CPWD and corresponding gains to themselves. It is alleged that the accused persons have made unrealistic provision of Rs. 13,92,00,000/- under this head for siphoning of the government fund, out of which they could siphon of Rs. 39761773.52.

It is further alleged that as per contract the contractor ECI-BJCL (JV) was supposed to sublet the work only up to 33% after obtaining approval from Engineer-in-Charge of the work, whereas the contractor in connivance of the accused officials of the CPWD subletted the entire work to the sub-contractor.

4. In the aforesaid background of the allegation a regular case was registered against Shri Shiv Narain, Executive



Engineer, Shri Satyendra Kumar, Assistant Engineer, ECI Engineering & Construction Company Limited, Hyderabad and Bhola Singh, M/s Jai Praksh Construction Ltd. New Delhi and others unknown under Sections 120B read with 420, 409, 467, 468, 477A of the Indian Penal Code and Section 13(2) read with 13 (1) (c) & (d) of the PC Act, 1988 and the investigation was entrusted to Shri Nitesh Kumar, Inspector, CBI, ACB, Patna.

5. It appears that in course of investigation the Investigating Agency came to a conclusion that the allegations against Shri Shiv Narain, Sri Satyendra Kumar, M/s ECI Engineering & Construction Company Limited, Hyderabad, Shri Som Prakash Singh Saini, Executive Engineer, RSVY, CPWD, Sasaram, Sri M. P. Mishra the then Assistant Engineer, C.P.W.D., R.S.V.Y., Sasaram, two directors of M/s ECI Engineering and one Shri J. Ramakrishna authorised signatory M/s ECI Engineering & Construction Limited and on Shri S.R.K. Prasad the then director of M/s ECI Engineering are prima-facie true, may have been, therefore, charge-sheeted. The charge-sheet dated 30.08.2014 was submitted before the learned Special Judge, CBI-III. The charge-sheet discusses in detail the allegations and the revelations which have been made in course of investigation. In the concluding part



under the heading 'CHARGE', the Investigating Officer has recorded as under :-

“In view of the facts and circumstances mentioned herein above, chargesheet is being filed against following persons :-

(I) Shri Shiv Narain, the then Executive Engineer, CPWD, RSVY, Sasaram, Shri Satyendra Kumar, the then Assistant Executive Engineer, CPWD, RSVY, Sasaram, Shri K. Venkata Rao, CMD, ECI-ECC Ltd., Hyderabad, Shri K. Venkata Phani, Director, ECI-ECC Ltd., Hyderabad, Shri J. Ramakrishna, the then Authorised representative of ECI-ECC Ltd., Hyderabad and Shri S.R.K. Prasad, the then Director, ECI-ECC Ltd., Hyderabad for subletting the contract, fabrication of level data books and non deployment of skilled persons u/s 120B, 511 r/w 420, 468 IPC and Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

(ii) Shri Som Prakash Singh Saini, the then Executive Engineer, CPWD, RSVY, Sasaram and Shri M.P. Mishra, the then Assistant Engineer, CPWD, RSVY, Sasaram for dishonestly and fraudulently obtaining payment of Rs. 7,01,918/- under item 1.7 (a) & (b) u/s 120B r/w 420, 468, 471 IPC and section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

(iii) ECI-ECC Ltd., Hyderabad u/s. 120 B r/w 420, 468, 471 IPC.

List of documents and list of witnesses in respect of the above said accused persons on which the prosecution proposes to rely are enclosed.”



6. Learned Special Judge, thereafter perused the FIR, Charge-sheet and case diary submitted by the Investigating Officer. It was noticed that the sanction was also obtained against the accused Shri Shiv Narain, Shri Satyendra Kumar, Shri Som Prakash Singh Saini and Shri M.P. Mishra (the petitioners). The CBI had not submitted charge-sheet against the named accused of the FIR namely Bhola Singh on the ground that he was a sleeping partner. Thereafter, the learned Special Judge took cognizance of the offences and issued non-bailable warrant of arrest against the accused persons seeking their appearance.

SUBMISSION OF THE PETITIONERS

7. Mr. R.K. Khanna, learned Senior Counsel assisted by Mr. Pramod Kumar, Advocate on record has argued the matter at length. He has taken this Court through various aspects of the matter and with support of the documents available on the record as well as those documents which have come into existence after passing of the order taking cognizance by learned Special Judge: learned Senior Counsel has argued that, in fact, the entire allegations against these petitioners are baseless, false and contrary to what are apparent on the face of the records available before this Court. It is submitted that in order to favour Bhola Singh and Jay Prakash, the Investigating Officer has misrepresented the facts. It



is submitted that when all works were executed in the name of ECI-BJCL (JV) and all payments were made through cheques to the ECI-BJCL (JV) only, the Investigating Officer cannot exonerate one of the partners of the ECI-BJCL (JV) by saying that he was a sleeping partner.

It is further submitted that the Investigating Officer Mr. Nitish Kumar in the present case was earlier Incharge of the preliminary inquiry which was being conducted on an unanimous complaint/source information and therefore when the Additional Superintendent of Police, Mr. J.P. Mishra lodged the present regular case on the complaint made by another source, the investigation of the case should not have been handed over to the same Investigating Officer. Learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court in the case of **Mohan Lal vs. The State of Punjab** reported in **2018 (9) SCALE = AIR 2018 SC 3853**. It is submitted that in paragraph 15 the Hon'ble Apex Court has taken note of the concept of fair investigation and the principle of reverse burden of proof. The Hon'ble Apex Court held that if the informant were to be made the Investigating Officer, it was bound to reflect on the credibility of the prosecution case.



It is further argued by learned Senior Counsel that in Paragraph 16 of the charge-sheet it is stated that the entire construction work was sub-contracted to M/s Civitech Construction (P) Ltd. ('CCPL') headed by Shri D.N. Singh who acted as authorized signatory on behalf of ECI-BJCL (JV). According to the petitioners, he had submitted and signed the bills and other documents as authorized signatory of ECI-BJCL (JV), not as the director of CCPL. It is further submitted that if the Investigating Officer found that the entire work was entrusted to CCPL, headed by Shri D.N. Singh authorized signatory of ECI-BJCL (JV), which was according to the petitioners without the knowledge and consent of the CPWD, this could have been possible only inter-se between them and therefore he must be held liable for omissions and commissions and can't escape the liability. It has been submitted that he has been spared by the Investigating Officer for the reasons best known to him.

Learned Senior Counsel further submits that the road was constructed and was handed over to Government of Bihar as per scope of the work and to their entire satisfaction. It was widened from 5m to 7m Bituminous and 2.5 m shoulder on each side thus making total width of 12 m. This according to the petitioners was not possible without Earth work. It is submitted that the CBI has



focussed the investigation only on the Earth work. The Investigating Officer can only explain road of 12 m. wide can be constructed without Earth work. It is submitted that allegations that borrow pits were not utilized in this project is only a hypothetical assumption. It is submitted that work took place in the year 2007 onwards whereas FIR was registered on 29.06.2011 and thereafter verification if any of the Earth work and existence of borrow pits is not possible and it would be only a matter of imagination.

As regards the allegations based on the receipt of the e-mail wherein it is shown that some amounts were given to the Chief Engineer, the Superintending Engineer and other officers of CPWD, learned Senior Counsel submits that the CBI was itself not convinced regarding the e-mail. Referring to paragraph 26 of the charge-sheet, learned Senior Counsel submits that only an e-mail is not a trustworthy document to prove the charge. In this connection he has relied upon a judgment of the Hon'ble Apex Court in the case of **Common Cause (A Registered Society) and others vs. Union of India and others** reported in **2017 SCC OnLine SC 41=(2017)11 SCC 783 (para 278 to 282)** and also on the judgment of the Hon'ble Apex Court in the case **Central Bureau of Investigation vs. V.C. Shukla and others** reported in



(1998) 3 Supreme Court Cases 410. It is also pointed out that in this case the Chief Engineer and the Superintendent Engineer have not been made accused by CBI.

Learned Senior Counsel for the petitioners have also argued that the allegations about the initial Level book signed by Shri D.N. Singh, Director of M/s Civitech Construction (P) Ltd., authorized signatory of ECI-BJCL (JV) from the side of construction company and signature of Shri Shiv Narain, the then Executive Engineer and Shri Satyendra Kumar the then Assistant Executive Engineer from the side of CPWD is a figment of an imagination and there is no such document and hence there is no question of replacing the same by a fabricated ground level book containing signature of Shri Shiv Narain and Shri Satyendra Kumar on the side of CPWD and signature of ECI-BJCL (JV) and others from the side of construction company. It is submitted that Shri D.N. Singh was initially an employee of ECI-BJCL (JV), Hyderabad and he was made authorized signatory of ECI-BJCL (JV) through whom bills were prepared and submitted to CPWD and payments were made but after his relationship became strained with ECI-BJCL (JV), Hyderabad he cooked up a false story and became instrumental in lodging false case. The Investigating Officer has rewarded him by not implicating as an accused rather



he has been cited as PW-01 in the charge sheet. It is submitted that if the agreement was executed wherein the contractor has violated the terms of subletting the tender work to some other agency and has done so without approval of the competent authority of the CPWD, the petitioners cannot be made liable for the same.

It is also submitted that these petitioners were not involved at the time of preparing the estimates of Rs. 13,92,00,000/-. However, they have been made accused without there being any material on record.

8. During pendency of the case the petitioners have brought Interlocutory Application No. 2145 of 2017 in Cr.W.J.C. No. 608 of 2016. It is submitted that the petitioners have been made available the statements of the witnesses and some documents, still a large number of documents have been withheld by the prosecution. It is stated that the copy of agreement whose terms are alleged to have been violated, statement/report of Shri D.S. Kapur, Chief Engineer-cum-Project Manager, the copies of bills and vouchers, the copy of pre-estimate conducted by third party-Stup consultancy, the copy of periodical O.G.L. and its entry in the computer and the copy of letter of ECI-BJCL about termination of services of Shri D.N. Singh and several other documents have been withheld by the prosecution. The petitioners



filed an application before the trial court citing the judgment of the Hon'ble Apex Court in the case of **V.K. Shashikala vs. The State** reported in **(2012) 9 SCC 771 = AIR 2013 SC 613** wherein the ratio of law has been laid down and the documents even if, not relied upon by the prosecution if sought for by the defence, the same must be supplied. It is, however, stated in the Interlocutory Application that the trial court has allowed the petitioners to inspect the records. Connected I.A. No. 2431 of 2018 has also been filed in Cr.W.J.C. No. 608 of 2016.

9. In course of argument Mr. Khanna, learned Senior Counsel submits referring to the source information based on which the FIR has been lodged that there is no proof to support the assertion that Earth work was estimated by the contractor for a lesser amount. These petitioners were not included in the assumption of such amount by C.P.W.D. It is submitted that these petitioners were not at all involved in the per-assessment process of the Earth work. Assessment was carried out by different department of C.P.W.D. through another consultant company *i.e.* Stup Consultancy, therefore, the allegation is contrary to the facts evident from the record.

10. Learned Senior Counsel submits that even according to the basic fundamentals of the road construction, a



National Highway road is constructed at a height above the ground level so that never water stagnation take place on the surface of the road. Therefore it is impossible to conceive the widening of the road without Earth filling. As per awarded tender the contractor has to excavate earth work 738585 cubic meter of earth. It is also submitted that against the provision under the tender document of claim of Rs. 13,92,00,000/- the contractor has claimed and have been paid only Rs 3,97,61,773.52/-, therefore, because of the vigilance on the part of the petitioners, the payment towards actual earth filling has been made and the same has been reduced to less than 3.5 times, in these circumstances, it is submitted that charging for pits for 738585 cubic meter of earth on the part of the Investigating Officer is incorrect approach on the face of it.

Learned Senior Counsel submits that the accused Shri Shiv Narain, Executive Engineer has intimated the non-approval of sub-contract to Civitech Construction Pvt. Ltd to ECI-BJCL (JV). The document is available on the record and therefore, it is submitted that all the Bills were issued in the name of ECI-BJCL (JV) and no Billing was done by the unauthorized sub-contractor and payments were made to ECI-BJCL (JV).

Learned Senior Counsel submits that the dispute in the present case was the subject matter of an arbitration between the M/s ECI-



BJCL (JV) and the Union of India. In the said arbitration proceeding the Union of India did not raise any counter claim for the amount to the extent of the loss as alleged in the present case. A copy of the Arbitration Award dated 13.09.2018 has been placed on record before this Court. Learned Senior Counsel has also brought to the notice of this Court that the Superintending Engineer, RSVY Project Circle, CPWD has issued a completion certificate with regard to the work in question and therefore, it has been certified that the work has been carried out generally to specifications and has been completed satisfactorily. A copy of the completion certificate is available on record as Annexure-8 enclosed with the supplementary affidavit filed on behalf of the petitioners.

11. In the aforementioned background, learned Senior Counsel submits that there are catena of judgments of the Hon'ble Apex Court that proceedings initiated with malafide intention where the allegations are vague in nature are liable to be set aside. Learned Senior Counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Vineet kumar & Ors. V. State of U. P. & Anr.** reported in **2017 SCC Online C 316** and **Smt. Anita Kumari Versus The State of Bihar & Anr.** reported in **(2017) 3 PLJR 65**. To strengthen his submission that the present



case is of a purely civil nature which has been given a colour of criminal proceeding, learned Senior Counsel has relied upon a judgment of the Hon'ble Apex Court in the case of **Thermax Limited And Others Versus K. M. Johny and Others** reported in (2011) 13 Supreme Court Cases 412, **State of Karnataka Versus Muniswamy And Others** reported in 1977 (2) SCC 699, **Lovely Salhotra and Anr. Vs. State NCT of Delhi And Anr.** Passed in Criminal Appeal No. 670 of 2017, **Ashwani Kumar Batra V. CBI** reported in 2011 SCC Online Del 2641, **State of Haryana And Others Versus Bhajan Lal And Others** reported in 1992 Supp (1) SCC 335, **Rajib Ranjan And Others Versus R. Vijaykumar** reported in (2015) 1 SCC 513, **Robert John D'Souza and Others Versus Stephen V. Gomes And Another** reported in (2015) 9 SCC 96, **Binod Kumar And Others Versus State of Bihar And Another** reported in (2014) 10 SCC 663, **Indian Oil Corpn. Versus NEPC India Ltd. And Others** reported in (2006) 6 SCC 736.

It is submitted that in all the judgments it has been held that if the matter is of a purely civil nature and has been sought to be given a colour or criminal proceeding, the criminal court has to exercise the caution before issuing process and where a case of civil nature has been converted in a case of criminal nature it



should be quashed. It is emphatically pointed out by learned Senior Counsel that the tender was awarded to M/s ECI-BJCL (JV) at Rs. 1,15,29,92,439/- but the work has been completed at Rs. 87 Crores approximately, therefore, in fact, nearly 28-29 crores have been saved in this work. Learned Senior Counsel has prayed for quashing of the impugned order.

SUBMISSION ON BEHALF OF CBI

12. On the other hand, Mr. Bipin Kumar Sinha, learned counsel representing the C.B.I. submits that the petitioners have presently moved before this Court against the order taking cognizance and issuance of process. At this stage, when the learned Special Judge, C.B.I. III, Patna has upon perusal of the F.I.R., case diary and the chargesheet took a prima-facie view that there are sufficient materials to proceed against the accused persons, this Court is not required to appreciate and re-appreciate the materials available on the record. At this stage, it is submitted that the scope and ambit of the jurisdiction of this Court under Article 226 of the Constitution of India cannot be extended to interfere with the order taking cognizance and issuance of process by weighing the evidenciary value of the materials available on the record. Learned counsel submits that there are sufficient revelations in the charge-sheet, as such the order taking



cognizance has rightly been passed by the learned court below. Learned counsel submits that in the case of **State of West Bengal and Anr. Vs. Mohammed Khalid and Others** reported in **AIR 1995 Supreme Court 785** (paragraphs 66, 67, 75, 78, 82, 85, 86 and 87) the Hon'ble Apex Court has held that the court at the stage of taking cognizance need not undertake an elaborate enquiry in sifting and weighing the material. It is not necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.

Reliance has also been placed on the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation Vs. K. M. Sharan** reported in **(2008) 4 SCC 471** wherein the Hon'ble Court has held that at this stage while exercising jurisdiction under Section 482 Cr.P.C., the High Court was not called upon to embark upon the enquiry whether the allegations in FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are the matters which can be examined only by the court concerned after the entire material produced before it on thorough investigation and evidence are led. The



Hon'ble Supreme Court has also laid down the test saying that the High Court ought to have critically examined whether the allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the respondent.

Learned counsel representing the C.B.I. has further relied upon a judgment of the Hon'ble Apex Court in the case of **Dinesh Kumar v. Chairman, Airport Authority of India & Anr.** reported in **2011 AIR SCW 6834** which is on the point of sanction in a case lodged under Section 13 (2) read with Sections 13(1) (d) and 13 (1) (a) of the P.C. Act, 1988. The Hon'ble Apex Court referred the judgment of the Hon'ble Apex Court in the case of **Prakash Singh Badal and Another v. State of Punjab and Others** reported in **AIR 2007 SCW 1274** wherein it has been held that "the sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each and there cannot be any generalised guidelines in that regard".



Hon'ble Apex Court also referred the judgment of the Hon'ble Apex Court in the case of **State of Karnataka v. Ameerjan** reported in **AIR 2008 SC 108 : (2007) 11 SCC 273** wherein the Hon'ble Apex Court was examining the judgment/order of the trial court as the learned Trial Judge on consideration of the entire evidence including the evidence of sanctioning authority, held that the accused Ameerjan was guilty of commission of offence punishable under Section 7, 13 (1) (d) read with Section 13 (2) of the P.C. Act 1988. However, the High Court overturned the judgment of the trial court and held that the order of sanction was illegal and the judgment of conviction could not be sustained. The Hon'ble Apex Court in the said case in paragraph 17 held as follows:

“17.Prakash Singh Badal (supra), therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case.”

The Hon'ble Apex Court held in paragraph 13 of the judgment in the case of **Dinesh Kumar** (Supra) that having regard to the facts of the present case, now since cognizance has already been



taken against the appellant by the Trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the Trial Court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. The Hon'ble Apex Court held that "Such course is in accord with the decision of this Court in *Prakash Singh Badal* and not unjustified". The Hon'ble Apex Court though did not interfere with the impugned order but left it open to the appellant to raise the issue of invalidity of sanction order before the Trial Judge.

Further reliance has been placed on the judgment of the Hon'ble Apex Court in the case of ***Mahesh Chaudhary Versus State of Rajasthan And Another*** reported in **(2009) 4 SCC 439** wherein it has been held that the power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of court or to secure ends of justice. It has been held that the court can quash the charge-sheet if allegations in FIR or complaint petition do not disclose commission of offence even if on face value they are taken to be correct in their entirety. It has been observed that the High Court is not to embark upon appreciation of evidence but to consider only material on record as a whole though the High Court is required to consider as to whether the allegations made in the



FIR or the complaint petition fulfill the ingredients of the offences alleged against the accused. It has further been held that the dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in cases of forgery and fraud there would always be some element of civil nature.

Learned counsel for the C.B.I. has also relied upon the judgment of the Hon'ble Apex Court in the case of **State of Maharashtra through C.B.I. v. Mahesh G. Jain** reported in **2013 AIR SCW 3174** to submit that in the present case the sanction has been granted by the competent authority i.e. the Government of India and the validity of the sanction order has not been challenged by the petitioner. It is submitted that in the judgment in the case of **Mahesh G. Jain** (Supra) the Hon'ble Apex Court held that the court cannot go into the question of adequacy of material placed before the sanctioning authority. The sanction to prosecute is the subjective satisfaction of the competent authority and by holding that the sanction to be granted without subjective satisfaction would amount to granting tool in hands of accused on flimsy technicalities.

13. On the strength of the aforementioned judgments cited by the learned counsel representing the C.B.I. , it is submitted that on perusal of the F.I.R. as well as the charge-sheet in the present



case it would appear that in various paragraphs the revelations have been made about the fraud and the forgery.

14. Responding to the submissions of Mr. Khanna, learned Senior Counsel for the petitioner, Mr. Sinha, learned counsel representing the C.B.I. submits that Sri Nitish Kumar the Investigating Officer of this case is not the informant of the case. Only because he was earlier entrusted with a preliminary inquiry of a source information, it cannot be argued that he became a prosecutor in the present case. It is submitted that the ratio of the judgment of the Hon'ble Apex Court in the case of **Mohanlal** (Supra) would not at all apply in the facts of the present case. It is further submitted that so far as the submissions that Mr. D. N. Singh of M/s Civitech Construction Pvt. Ltd, the Chief Engineer and the Superintending Engineer of the CPWD were left out by the Investigating Officer even though they should have been arrayed as an accused in the present case are concerned, in case the materials come in course of trial showing their complicity in the offence alleged, there are provisions in the Code of Criminal Procedure wherein they may be issued summons as an accused by the learned trial court. However, that stage is yet to come. It is submitted that the submissions of learned Senior Counsel to the extent that the allegations are false and baseless are not required to



be examined and cannot be legally examined by this Court when prima-facie materials such as FIR and charge-sheet are disclosing commission of offence.

CONSIDERATION

15. Having heard learned Senior Counsel representing the petitioners as also learned counsel representing the Central Bureau of Investigation as also on perusal of the records and various judgments which have been taken note of hereinabove, this Court is of the considered opinion that at this stage the allegations made in the first information report and the revelations made in the charge-sheet filed by the Investigating Agency are prima-facie indicating that there are sufficient materials to proceed against the accused persons. So far as the submission of Mr. Khanna, learned Senior Counsel that Mr. Nitish Kumar the Investigating Officer could not have been given the investigation of the case is concerned, this Court finds that Sri Nitish Kumar the Investigating Officer is not the informant of this case. He was entrusted with preliminary inquiry on a source information received earlier but the present FIR has been lodged on a source information, by the Additional Superintendent of Police, C.B.I. In such circumstances the ratio of the judgment of the Hon'ble Apex Court in the case of **Mohanlal** (Supra) would



not be applicable. In the said case the FIR was lodged by PW 1 Sub-Inspector of Police stating that while on duty he was accompanied by 'DS', Sarpanch and Assistant Sub-Inspector, he had entertained doubts about the appellants. He was entrusted with the investigation of the case, therefore, in the aforesaid background the Hon'ble Apex Court considered the principle laid down by the Hon'ble Apex Court in the case of **Bhola Singh Vs. State of Punjab** reported in (2011) 11 SCC 653 and the judgment of the Hon'ble Apex Court in the case of **State of Punjab Vs. Baldev Singh** reported in (1999) 6 SCC 172 as also in the case of **Megha Singh vs. State of Haryana** reported in (1996) 11 SCC 709 and held that requirement of fair investigation under the N.D.P.S. Act carrying reverse burden of proof must be fair, judicious and just. It was held that under the Criminal prosecution there is an obligation cast upon the investigator not only to be fair, judicious and just during investigation but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. It was held that "..... in the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof,



makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved.....”

16. This Court finds that in the present case, Sri Nitish Kumar the I. O. is not the informant and therefore, the aforesaid judgment would not be applicable.

17. Mr. Khanna, learned Senior Counsel has taken this Court through the entire F.I.R and the charge-sheet and this Court has patiently gone through each and every paragraph of the document so referred in course of hearing.

18. In the opinion of this Court, there are sufficient revelations in the charge-sheet showing that there are sufficient materials to proceed against the accused persons. For example this Court would only refer paragraph 18, 22 and 26 of the charge-sheet. During investigation the Investigating Agency has collected materials and based on that the charge-sheet has been filed. The nature of allegations and the source information which have been referred in the initial paragraph of the statement are sufficiently indicating that the veracity of those are required to be tested in accordance with law. This Court also agrees with the submission of learned counsel representing the C.B.I. that this is not the stage



where this Court has to examine as to who have been made accused and who have been left out from the array of the accused. This Court further agrees with the submission of learned counsel representing the C.B.I. that there are provisions under the Code of Criminal Procedure wherein if in course of trial sufficient materials come to show the complicity of some more persons in the commission of offence, they may be arrayed as an accused and may be summoned to face trial. Such stage has not come presently and so far the grievance of the petitioners that some persons who should have been arrayed as an accused have been left out is not required to be examined at this stage.

19. This Court has taken note of the various judgment of the Hon'ble Apex Court on the scope and ambit of the jurisdiction of the Court under Section 482 of the Code of Criminal Procedure and abiding by the principles laid down by the Hon'ble Apex Court, this Court would refrain itself from embarking upon an inquiry or examining the materials which have been sought to be pleaded by way of defence. The statement of learned Senior Counsel that it is a case of purely civil nature would not appeal this Court and only because an arbitration proceeding has been held, it cannot be said that no criminal proceeding can be entertained in the facts and circumstances of the case. The



materials available on record would compel this Court to take a view that it is not one of those cases which are of purely civil nature.

20. Since learned Senior Counsel has informed this Court that a petition has been filed on behalf of the petitioners in the trial court raising certain issues with regard to the grant of sanction by the Government of India and it has been submitted that this Court need not embark upon examining the sanction order at this stage, this Court refrain itself from making any observations with regard to the order granting sanction for prosecution of the petitioners.

21. In the result, this Court would not interfere with the order taking cognizance and issuance of process against the petitioners. All these applications as well as Interlocutory Applications are dismissed.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
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