

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Crl. Misc. No. M-6615 of 2018

Sandeep SharmaPetitioner

Versus

Central Bureau of InvestigationRespondent

2. Crl. Misc. No. M-7084 of 2018

Arun LumbaPetitioner

Versus

Central Bureau of InvestigationRespondent

DATE OF DECISION:12.11.2018

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Kaushal, Senior Advocate with
Mr. R.K. Handa, Advocate and
Mr. Atul Nehra, Advocate
for the petitioner(s).

Mr. Sumeet Goel, Advocate
for the respondent.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of two cases bearing Crl. Misc. Nos. M-6615 of 2018 and 7084 of 2018 as the facts and question of law involved in both the cases are the same. For the sake of convenience, facts are being extracted from Crl. Misc. No. M-6615 of 2018.

The present petition has been filed under Section 482 Cr.P.C.

for quashing of FIR No. RCCHG2007A0003 dated 20.2.2007 registered under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC at Police Station CBI, ACB, Chandigarh along with all the consequent proceedings arising therefrom.

Learned counsel for the petitioner contends that at the initial stage, the petitioner was not made as an accused and was involved in the present case after a period of two years that too in the final report filed under Section 173 Cr.P.C. There are allegations of conspiracy with the main accused-Kewal Singh Dhillon, Tajinder Pal Singh, who were named in the FIR. Learned counsel further contends that the petitioner was made accused along with Atul Goel, Brij Mohan (since deceased) and Arun Lumba, who were named subsequently in the final report filed under Section 173 Cr.P.C. The allegations against the petitioner are of conspiracy and of causing wrongful loss to Chandigarh Administration by not charging the conversion/composition/compounding fee by suppressing serious violations of Building Laws, sanctioning proposed building plan and granting occupation certificate to accused-Kewal Singh Dhillon. Learned counsel also contends that aforesaid FIR and subsequent proceedings have already been quashed by this Court vide judgments dated 22.12.2017 passed in Crl. Misc. No. M-5486 of 2010 and Crl. Misc. No. M-18446 of 2010 titled as **Atul Goel Vs. Central Bureau of Investigation, Chandigarh and another** and **Tejinder Pal Singh Vs. Central Bureau of Investigation, Chandigarh**, respectively as well as vide judgment dated 31.3.2010 passed in Crl. Misc. No. M-2746 of 2010 titled as **Kewal Singh Dhillon Vs. Central Bureau of Investigation**. It is also the argument of learned

counsel that the case of the petitioner is on better footings vis-a-viz co-accused against whom FIR has already been quashed. Learned counsel has also brought to the notice of this Court that earlier in the aforesaid cases, FIR and other consequential proceedings were quashed but subsequently an application was moved by respondent-CBI seeking clarification as to whether the FIR and other proceedings were quashed qua to the petitioners only or qua to all the accused, wherein, an order was passed clarifying that the FIR and all consequential proceedings have been quashed qua to petitioners only who have filed the petitions for quashing and not of all the accused. At the end, learned counsel for the petitioners contends that neither any financial loss has been caused nor any evidence has been collected to prove the conspiracy. The petitioner has already suffered for a period of more than eleven years and continuation of the proceedings would be futile exercise as the FIR qua to other co-accused has already been quashed.

Mr. Sumeet Goel, learned counsel for Central Bureau of Investigation has strongly opposed the submissions made by learned counsel for the petitioner. He submits that Sh. T.P. Singh, S.D.O (B), Sh. Brij Mohan, Assistant Engineer and Sh. Sandeep Sharma, Draftsman entered into criminal conspiracy with the petitioner and co-accused Kewal Singh Dhillon during the year 2006. Tejinder Pal Singh, S.D.O(B) extended undue favour while sanctioning building plan and granting occupation certificate by deliberately suppressing the serious violations of Building Laws and by not charging the conversion/composition charges which resulted into huge loss to the State Exchequer. It has come into investigation conducted by Central Bureau of Investigation that Tejinder Pal Singh joined

as SDO Buildings in the month of February 2006. Thereafter, in pursuance of criminal conspiracy, the petitioner, Shri Brij Mohan and Sandeep Sharma, by misusing/abusing their official position, overlooked all the violations and issued occupation certificate vide letter dated 28.09.1982. It was an act of cheating, which has resulted into huge loss to the tune of Rs.6,28,87,305/- and same has been done just to give benefit to the owner/leasee of the building. On completion of investigation, a charge sheet was issued to six accused persons including the present petitioner. The case is fixed for arguments on the issue of framing of charges but because of interim order, the proceedings could not be undertaken by the trial Court. Learned counsel also submits that the role of the petitioner-accused came into knowledge at the time of submission of the final report under Section 173 Cr.P.C. Not only there are violations of the sanctioned building plan but wrong dimensions have been given in the revised building plan and possession of the building was given without having any occupation certificate. It has come in the investigation and the final report that the construction was raised under the supervision and direction of accused petitioner in violation of relevant provisions of the Act. The violations in construction of Multiplex was the result of criminal conspiracy entered into in connivance with co-accused. Due to that criminal conspiracy, the building was constructed in contravention of the sanctioned building plan and thereafter submitted a revised building plan by concealing the actual dimensions of the building which had already been erected. The building was occupied by the accused company without having occupation certificate as required under Rule 18 of the Act. Not only the violations were overlooked but height of the building, illegal use of basement, construction

of extra cabins by reducing the area, the undue benefit was given to co-accused. He also submits that neither the accused-petitioner nor the owner of the building ever applied for issuance of occupation certificate. The building was illegally occupied by the lessor without putting any condition to the owner of the building to obtain occupation certificate, whereas, there was a specific condition that conversion charges would be finally verified at the time of grant of occupation certificate.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Admittedly, the aforesaid FIR and all consequential proceedings have already been quashed qua to accused, namely, Atul Goel, Tajinder Pal Singh and Kewal Singh Dhillon. The relevant portion of judgment dated 22.12.2017 is reproduced as under:-

“There are allegations of conspiracy between the petitioner and co-accused but there is no evidence on record. Even in the final report filed under Section 173 Cr.P.C, there is no allegation of conspiracy. Only the allegations of objections and violations along with diversion from revised plan are there. There is no allegation that some undue favour was done for some ulterior motive or consideration.”

Accordingly, by considering these facts and provisions as discussed above, there are no allegations of criminal conspiracy but it is a case of civil nature and in case, the violations are there of any sort, the same could be rectified or some of the violations could be compounded with penalty.

In view of the above, the present petition is allowed and FIR No.RCCH02007A0003 dated 20.02.2007 for offence under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC and subsequent proceedings thereto, registered at Police Station CBI, ACB, Chandigarh are hereby quashed.

However, a liberty has been granted to the respondent to communicate accused/owner/lessee in case any violations in erection/re-erection of the building are there, which are compoundable by way of deposit of penalty, as per provisions of law.

Since the FIR and other consequential proceedings arising therefrom has already been quashed qua to main accused, continuation of the proceedings against the petitioner would be abuse of process of law. Accordingly, the present petition is allowed and FIR No. RCCHG2007A0003 dated 20.02.2007 registered under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC and subsequent proceedings thereto, registered at Police Station CBI, ACB, Chandigarh qua to petitioners, namely, Sandeep Sharma and Arun Lumba are hereby quashed.

November 12, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes