$~13, 11, 12 & 46

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2018

\+ CRL.REV.P. 726/2014 and Crl. M.A. 18454/2014

RAGHAV KALRA ..... Petitioner

Through: Mr. Khalila Ansari and Mohammad Akhtar, Advocates

versus

STATE THR. CBI ..... Respondent

Through: Mr. Sanjeev Bhandari, SPP with Mr. Prateek Kumar, Advocate

\+ CRL.M.C. 912/2015 and Crl. M.A. 3454/2015

Dr. DEEPTI MANGALA ..... Petitioner

Through: Mr. S.S. Kulshreshtra, Sr. Advocate with Mr. A.S. Kulshreshtra, Mr. Ajeet Pandey, Mr. Lalit Kumar and Mr. K.K. Sharma, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION .... Respondent

Through: Ms. Rajdipa Behura, SPP

\+ CRL.M.C. 717/2018 and Crl. M.A. 2573/2018

DR KANIKA GUPTA ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Harsh Khanna, Mr. Sandeep Khanna and Ms. Aakashi Lodha, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Sanjeev Bhandari, SPP with Mr. Prateek Kumar, Advocate

\+ CRL.M.C. 5999/2018 and Crl. M.A. 48241/2018

SOUMYA SINGH @ DR. MANJU ..... Petitioner

Through: Ms. Sonam Gupta and Mr. Devansh Arya, Advocates

versus

STATE THROUGH C.B.I ..... Respondent

Through: Mr. Sanjeev Bhandari, SPP with Mr. Prateek Kumar, Advocate

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

ORDER (ORAL)

1. The All India Institute of Medical Sciences (AIIMS) had conducted an entrance examination on 08.05.2011 for admission to Post Graduate courses. The said examination was held through question paper containing 200 multiple choice questions, the answers whereto were to be marked on optical mark reader (OMR) answer-sheets using black ball point pen by the candidates. The OMR sheets which were issued to the candidates taking the said exam at various centres in four metro cities of India including Delhi would bear unique serial numbers. The question booklets which were supplied were also bearing booklets numbers, the same being returnable at the time of the exam alongwith OMR answer-sheets.

Concededly, the four petitioners before this court were candidates and had actually taken the said exam.

2. The Central Bureau of Investigation (CBI) registered the first information report (FIR) - RC 219 2011 E0005 - on 02.06.2011, on the basis of source information about manipulation in the said exam, the prime role being of those connected to M/s. Hi Tech Graphics, the agency which had been engaged by AIIMS for scanning and evaluation of the OMR answer sheets. On conclusion of the investigation into the said FIR, report (charge-sheet) under Section 173 of the Code of the Criminal Procedure, 1973 (Cr. PC) was submitted, followed by some supplementary reports, upon cognizance being taken on which, the petitioners herein alongwith certain others were summoned as accused.

3. The Chief Metropolitan Magistrate (CMM) of the Central District, after securing the presence of all the accused who had been summoned, considered the question of charge. By a very detailed order passed on 29.09.2014, he found charge made out against these petitioners for the offence under Section 120B read with Sections 420, 467, 468, 471 of the Indian Penal Code, 1860 (IPC) besides for the substantive offence under Section 420 IPC. Similarly charge was also found made out against two persons connected to M/s. Hi Tech Graphics, they being Rajib Ghatak and Dev Raj for the offence under Section 471 IPC.

4. The petitioner Raghav Kalra (Crl. Revision Petition 726/2014) has challenged the above mentioned order dated 29.09.2014 of the Chief Metropolitan Magistrate invoking the revisional jurisdiction. The petitioner Deepti Mangla has brought a similar challenge to the said order of Chief Metropolitan Magistrate by her petition (Crl. MC 912/2015) invoking the inherent power of this court under Section 482 Cr. PC.

5. The other two petitioners i.e. Dr. Kanika Gupta (Crl. M.C. 717/2018) and Soumya Singh @ Dr. Manju (Crl. M.C. 5999/2018) had first chosen to bring a revisional challenge to the order of Chief Metropolitan Magistrate before the court of Sessions, their said revision petitions (Crl. Revision 172/2014 and Crl. Revision 184/2014) having been dismissed by said court by its orders dated 03.10.2017 and 15.05.2018 respectively. Questioning the view taken by the Chief Metropolitan Magistrate in the aforementioned order dated 29.09.2014, and by the revisional court in the said two matters, petitions have been filed by them invoking the inherent power of this court under Section 482 Cr. PC.

6. Though it was rightly pointed out by the learned counsel for the petitioners that the case of each petitioner will have to be examined in the light of material presented against them, certain facts which are common cannot be lost sight of. Essentially, the scrutiny required is of the view taken by the Chief Metropolitan Magistrate in the order dated 29.09.2014 holding *prima facie* case to be made out that the petitioners herein were party to the criminal

conspiracy in which the aforementioned two persons Rajib Ghatak and Dev Raj, employees of M/s. Hi Tech Graphics were the lead pair.

7. There is no contest raised at this stage by the petitioners to the fact that there is ample evidence to show that prior to the aforementioned two employees of the agency engaged by AIIMS conducting the scanning and evaluation of the OMR answer-sheets, the concerned authorities had taken a precaution wherein all the answer-sheets handed over to them through the agency were first subjected to imaging. The images of the OMR answer-sheets which were captured were handed over to Sub-Dean (Exam) of AIIMS, in the form of non re-writable DVDs, as back-up data, which was created with the objective of protection against any manipulation. The scanning of the OMR answer sheets was carried out thereafter.

8. It is also not disputed by these petitioners that they had answered very few of the total 200 multiple choice questions that had been included in the question booklets which were used in the exam. To be specific, it may be added that as per the data contained in the images of OMR answer sheets prepared on 08.05.2011 and 09.05.2011 by Rajib Ghatak and Dev Raj, the petitioner Raghav Kalra (Crl. Revision Petition 726/2014) had answered only 13 out of 200 questions. Similarly, Deepti Mangala (petitioner in Crl. MC 912/2015) had answered only 10 out of 200 questions. Further, Dr. Kanika Gupta (petitioner in Crl. M.C. 717/2018) and Soumya Singh @ Dr. Manju (petitioner in Crl. M.C. 5999/2018) had attempted

answers only to 10 and 2 questions respectively. The data collected and collated by Rajib Ghatak and Dev Raj after scanning, in contrast, would show these four petitioners to have attempted 190, 200, 196 and 196 questions respectively. Apparently, there is a clear mis-match between the data prepared on the basis of imaging of the OMR answer sheets prepared on 08.05.2011 and 09.05.2011 and the result of scanning carried out subsequently, the natural inference drawn from this chronology being that additional answers were added to the OMR answer-sheets of these petitioners, as indeed statedly of at least 20 others, during the interregnum. During the said period, Rajib Ghatak and Dev Raj were the custodians of the relevant record, the grave suspicion of manipulation and tampering being on their account consequently arises.

9. In the merit list that was eventually issued, the petitioner Deepti Mangla was shown at the rank of 385 which could not have been the result if her original OMR answer sheets carrying only 10 questions having been attempted were to be evaluated. Similar is the case of the petitioner Kanika Gupta, who with 186 additional answers shown by tampering, attained the 43rd rank in the merit list. It may be added here that though additional answers were shown added by manipulation to the OMR answers sheets of the petitioners Raghav Kalra and Soumya Singh @ Dr. Manju, they did not figure in the merit list.

10. The prosecution relies upon, *inter alia*, evidence based on certain calls which were intercepted, the call detail records (CDRs)

of some of the prime accused, which include certain persons mentioned as “touts” and some others indicated as the parents or guardians of some of the candidates. The evidence presented also includes recovery of four slips of papers, which contained OMR answer-sheet particulars of a number of candidates, which included the OMR answer sheet numbers of the four petitioners before this court. It is stated that the evidence also includes some proof of certain illicit payments having been made, tendered, received or assured to those behind the scam.

11. From the above material, the Chief Metropolitan Magistrate concluded that there was enough evidence to infer, for purposes of consideration of the case at the stage of charge, that the petitioners were party to the criminal conspiracy, they being the intended direct beneficiaries on account of manipulation for securing admission to the PG course of AIIMS. *Per contra*, it is argued by the petitioners that in absence of any proof of any direct or indirect contact between them and the prime conspirators, no recovery having been made of any incriminating documents from their hands, there being no evidence of the petitioners having any access to the OMR answer-sheets, the authorship of such manipulation not having been established, it is a case at best of mere suspicion and, therefore, the charge cannot be framed, it being impermissible for presumptions to be raised on account of acts of commission or omission of other persons. Reliance is placed, *inter alia*, on rulings of the Supreme Court in *Khekh Ram Vs. State of H.P., Crl. Appeal no.1110/2016*,

decided on 10.11.2017, *State of Himachal Pradesh vs. Raj Kumar, Crl. Appeal no.31/2018*, decided on 08.01.2018 and a learned single Judge of this court in *Vinay Jain vs. State and Anr., 2015 SCCOnline Del 7363*.

12. In *Sajjan Kumar Vs. CBI, (2010) 9 SCC 368*, the Supreme Court summarized the guiding principles of consideration of a criminal case at the stage of charge as under :-

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
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> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.*
>
> *(ii) 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.*
>
> *(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros*

and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. In the considered view of this court, the CMM by his impugned order has analyzed the material in its entirety in the proper perspective. Merely because there is no evidence of any direct contact between the petitioners or their kith or kin on one hand with the prime conspirators on the other, is no reason why they should be exonerated. The evidence clearly shows that unique numbers of OMR answer sheets and the corresponding booklet numbers were within the special knowledge of each candidate. Such information could not have reached the hands of others without it having been passed on by the candidates with some motive. The disclosures on basis of which certain discoveries have been made indicate that passing on the information about question booklet numbers and the corresponding OMR answer-sheet numbers was essentially to facilitate those undertaking the task of scanning and evaluation to help in the manipulation. The slips which were recovered from the possession of the prime conspirators included the OMR answer-sheets numbers exclusive to these four petitioners as well. A reasonable inference can be raised at the stage of charge that this information would have come from them only.

14. The fact that their OMR answer-sheets underwent manipulation they, after having been doctored, showing attempts of questions much more than what had actually been made indicates that the manipulation was in the wake of some request coming from the petitioners. It is well settled that criminal conspiracies are hatched in secrecy and executed in stealth. The entire information

of all the facts can never be brought to light. A case of this nature has to depend on circumstantial evidence. In the above facts and circumstances, there is material to show wrongful gain secured being the objective. The dishonest intention and intent to defraud is vivid in this scenario. The grave suspicion that the petitioners were party to the overall criminal conspiracy, thus, cannot be wished away. Against this backdrop, the acts of commission or omission of co-conspirators will only enforce the view taken by the Chief Metropolitan Magistrate in directing charges to be framed.

15. This court finds no error or infirmity in the impugned orders. The petitions and the applications filed therewith are dismissed.

R.K.GAUBA, J.

NOVEMBER 29, 2018
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