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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th September, 2018

\+ CRL.M.C. 2569/2015

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner
Through: Mr. Sanjeev Bhandari, SPP, with Mr. Prateek Kumar

versus

VIRENDER RAJORIA & ANR ..... Respondent
Through: Mr. Rahul Singh Chauhan, Adv. for R-2

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

ORDER (ORAL)

1. The petitioner / Central Bureau of Investigation (CBI) had registered first information report (RC no.1996/E/006 of CBI/SIU-X, New Delhi) on the basis of some information on 31.12.1996 concerning, *inter alia,* the offences of cheating by use of forged documents allegedly pursuant to criminal conspiracy in which certain public servants were involved to cause wrongful loss to Oriental Bank of Commerce, New Friends Colony, New Delhi. The investigation resulted in final report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) being submitted seeking prosecution, *inter alia*, of the two respondents, they having been described as accused no.4 (A-4) and accused no.5 (A-5) respectively, the others sent up for

trial including accused no.1, S.K. Pathrella (A-1), accused no.2, Sanjeev Arora (A-2), accused no.6, H.S. Dhingra (A-6) and company M/s. Electa Electronics Ltd. The Special Judge (Prevention of Corruption Act, 1988) before whom the charge-sheet came up for consideration took cognizance by order dated 12.11.2014 and issued summons under Section 204 Cr. PC against all the said accused persons except A-4 and A-5 (i.e. first and second respondents herein), in his view there being no sufficient evidence brought against them, consequently they having been pronounced, even at that stage to be *"discharged"*.

2. The CBI, feeling aggrieved by the said order passed at the threshold, came up with the present petition invoking inherent power and jurisdiction of this Court under Section 482 Cr. PC submitting that the order of the Special Judge qua the respondents is perverse, it having glossed over and overlooked the material evidence indicating existence of a criminal conspiracy hatched by the other co-accused persons in which the respondents were also *prima facie* a party, wrongful loss having been caused to the bank as a consequence of certain acts of commission and omission on the part of the public servant, Chief Manager of the bank (A-1), so as to cause wrongful gain to the others i.e. the other accused persons, who have been summoned.

3. The respondents, upon being served with notices on the petition, appeared in person on 18.08.2015. Thereafter, there has been no

appearance on behalf of the first respondent, the second respondent having been represented throughout by counsel.

4. At the hearing, the learned counsel for the second respondent fairly conceded that on the basis of the material which was submitted by the CBI with the charge-sheet, it could not have been said that there were no sufficient grounds to proceed, which is the test the court of cognizance should have applied under Section 204 Cr. PC while passing the impugned order. At the same time, he also submitted that his submission to this effect may not be construed as he conceding that charge is properly made out against him, he reserving the contentions to the contrary to be agitated at the appropriate stage. With this submission, he submitted that he would have no objection if the impugned order to the extent thereby he was pronounced as *"discharged"* at the threshold, issuance of summons having been declined, is set aside and direction is given for process to be issued against him to appear as accused before the trial court for further proceedings to be undertaken in accordance with law.

5. The concession to the above effect on the part of the second respondent notwithstanding given the lack of assistance on the part of the first respondent, the case against him requires to be examined independently.

6. For this, reference to certain portions of the impugned order of the Special Judge would be of some assistance. Therefore, the same may be extracted as under :-

"4. The facts and the allegations as per the chargesheet filed in brief are that A-1 A.K. Pathrella during the relevant period of year 1994-95 was posted as Chief Manager, Oriental Bank of Commerce, New Friends Colony Branch, New Delhi and had entered into criminal conspiracy with A-2 to A-6 to cheat the Oriental Bank of Commerce, New Friends Colony Branch, New Delhi. The modus operandi adopted was, six accounts were opened with the Oriental Bank of Commerce, New Friends Colony Branch, New Delhi in the name of (i) M/s. Star Time (Account No.2547/1712), the account opened by A-2 Sanjeev Arora as Proprietor on 28.06.1994, (ii) M/s. Pushtron Electronics (Account No.2584), the account opened by A-3 Vikram Arora as a proprietary concern on 17.02.1995, (iii). Electa Electronics Ltd. (Account No.2829), account opened on 09.08.1995 by A-2 Sanjeev Arora and A-3 Vikram Arora as Directors of the company (iv) M/s. Bharat Adhesive (Account No.2804), account opened by A-4 Virendra Rajora, who was an employee of A-2 Sanjeev Arora and A-3 Vikram Arora, (v) M/s. Ashok Industries (Account No.2773), account opened on 22.05.1995 by A-5 John Luther, who was an employee of A-2 Sanjeev Arora and A-3 Vikram Arora and (vi) M/s. Nitesh Overseas (Account No.2851), account opened by A-3 Vikram Arora on 08.09.1995.

All the six accounts were allowed by A-1 S.K. Pathrella.

5. Further allegations are that modus operandi adopted was to open different accounts with different banks by the accused persons, issue cheques in the name of the companies or the persons having account with Oriental Bank of Commerce, New Friends Colony Branch, New Delhi, thus *opened by the accused persons, and to get the same purchased in conspiracy with each other.*

9. 8 cheques amounting to Rs.25,04,008/- issued from different accounts, were submitted and allowed to be purchased by A-1 S.K. Pathrella in account no.2804 in the name of M/s. Bharat Adhesive. Proceeds were availed, but the amount under the cheques of purchase, was not received from the issuing banks, resulting in wrongful loss to the tune of Rs.25,04,008/- to Oriental Bank of Commerce, New Friends Colony Branch, New Delhi.

10. One cheque amounting to Rs.4,75,230/- was deposited in current account no.2773 of M/s. Ashok Industries, the cheque was allowed to be purchased by A-1 S.K. Pathrella. The proceeds were availed, but the cheques returned unpaid resulting in wrongful loss to the tune of Rs.4,75,230/- to Oriental Bank of Commerce, New Friends Colony Branch, New Delhi."

7. It must be added here that the Special Judge in the aforementioned order also took note of the similar transactions in certain other accounts, reference thereto being not relevant at this stage for consideration of the case against the first respondent.

8. The case against the first respondent was trashed by observations recorded in (paras 20 and 21 of) the above said order, which read thus :-

"20. As regards the role assigned to A-4 Virendra Rajora in the chargesheet filed is that A-4 Virendra Rajora was an employee of A-2 Sanjeev Arora and A-3 Vikram Arora and he opened a current account No. 2804 in the name of M/s Bharat Adhesive, which was

allowed by A-1 S.K. Pathrella. The account was opened on the introduction of one Manish Agarwal of M/s Jay Bee Lamination Ltd. Eight cheques amounting to Rs. 25,04,008/- issued from various accounts opened by A-2 Sanjeev Arora and A-3 Vikram Arora, were purchased in this account. Introducer of the account, Manish Agarwal, has been examined as a witness during investigation of the case, under Section 161 Cr.P.C., and as per the statement, he has stated that he was not knowing account holder Virendra Rajora personally and he had introduced the opening of account by him on the asking of A-1 S.K. Pathrella, he being a customer of the bank and frequent visitor to the bank. The only evidence collected by CBI against A-4 Virendra Rajora is that questioned signatures appearing on the documents, being the account opening form and the endorsement relating to account no. 2804, were sent to Government Examiner of Questioned Documents alongwith his specimen signatures and he was opined to be the author of the questioned signatures. Other evidence is in the form of statement of PW-66 Raj Kumar Sharma, recorded under Section 161 Cr.P.C., who had stated that he was associated with the Arora Group of concerns for the last several years as C.A., which were controlled by A-2 Sanjeev Arora and A-3 Vikram Arora and he was knowing A-4 Virendra Rajora being their employee and since he had seen Virendra Rajora writing and signing, he can identify the signatures of A-4 Virendra Rajora and had in fact, stated that he was identifying the signatures appearing on the documents relating to account no. 2804 with the Oriental Bank of Commerce, New Friends Colony Branch, New Delhi. The cheques in question, through which the money was withdrawn, were not sent to the Government Examiner of Questioned Documents for comparison and there is no evidence collected by the prosecution during investigation that A-4 Virendra Rajora was in any way *beneficiary of the amount and so, the evidence in the form of the statement given by PW-66 Raj Kumar Sharma, as identifying his signatures on the account opening form and related documents and the opinion of Government Examiner of Questioned Documents, is not a sufficient evidence for proceeding against him, particularly when the introducer of the account, has stated in his statement under Section 161 Cr.P.C. that he had introduced the person only on the asking of A-1 S.K. Pathrella, being the Chief Manager of the bank branch.*

21. *Another allegations against A-4 Virendra Rajora is that he opened account No. CA-32242 dated 26.07.1995 as proprietor of M/s Subnit Enterprises. Cheques from this account were discounted in group accounts of A-1 Sanjeev Arora and A-2 Vikram Arora, the main beneficiaries and introducer of the account had been examined during investigation of the case. The introducer is cited as PW-59 S.K. Murlidharan, who has not stated a single word as regard the current account no.32242. As such, there is not sufficient material disclosed from the investigation and the material collected by the prosecution to proceed against A-4 Virendra Rajora for the offences for which he has been chargesheeted. Accordingly, he is discharged of the allegations of offences punishable under Section 120-B r/w Sections 420,409 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and also for substantive offences punishable under Section 420 IPC."*

9. It is clear from the summary of some of the evidence of CBI in the charge-sheet that there is substantive evidence brought before the court to show that the first respondent (A-4) in the case was the person responsible for opening of the two above mentioned accounts. It is also clear from the facts noted in the impugned order that the

transactions which were suspect and questionable concerning purchase of cheques in the said account, seemingly with illicit motive, were allowed through the said account by A-1, the person in managerial position vis-à-vis the bank. The purchase of such cheques causing loss to such extent as noted above, to the bank, does *prima facie* brings out not only the fraudulent but also dishonest intention, this constituting offences under the Indian Penal Code, 1860 which have been referred to but also under the Prevention of Corruption Act, 1988. There is *prima facie* material to show existence of a criminal conspiracy. Given the fact that the accounts of A-4 were also used for such purposes, close on the heels of they being opened, it forming pattern with similar transactions availing different accounts at the same point of time, it cannot be said that no sufficient grounds existed for A-4 to be summoned. In this view, the order passed by the Special Judge trashing the case against A-4 at the threshold by pronouncing he to be "*discharged*" was erroneous. The error being grave and serious needs to be corrected by this court.

10. For the foregoing reasons, the impugned order to the extent thereby issuance of process against respondents was declined, is set aside. Both the respondents would stand summoned in the aforementioned criminal case pending on the file of the Special Judge. The said court is directed to issue necessary process to secure their presence for further proceedings in accordance with law.

11. Needless to add, nothing said in this order will be construed as final expression of opinion on merits of allegations against the respondents, not the least even at the stage of consideration of charge.

12. The petition is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 28, 2018
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