IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2748 OF 2016

Rakesh Rastogi,	]
Age of 56, a German National	]
Holding Passport No.330816448	]
And Carrying on business at S-101,	]
Green Park Extension, New Delhi	]….. Petitioner.

Versus

1]	Central Bureau of Investigation,	]
	Through Manoj Kumar	]
	Inspector of Police,	]
	CBI, EOU-1, New Delhi.	]
		]
2]	Union of India,	]
	Aayakar Bhavan, Mumbai	]….. Respondents.

Mr. Samir A Vaidya for the Petitioner.
Mr. H S Venegaonkar for Respondent No.1.
Mrs. G P Mulekar, APP for the Respondent/State.

CORAM : S. S. SHINDE J.
DATE : 19th September 2019

JUDGMENT :

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 By this Writ Petition the Petitioner challenges the proceedings being Special Case No.1 of 2012 pending on the file of the learned District Judge, Daman, Union Territory of India as also the order dated 20/06/2016 passed by the learned Special Judge, Daman rejecting the application filed by

the Petitioner for discharge.

3 The facts leading to filing of the Writ Petition, can in brief be stated thus :-

On the basis of reliable information received, a case (FIR) bearing No. RC EOU-I-2010-E-002 was registered on 27/04/2010 against O Ravi, Joint Secretary (Disaster Management) MHZ, Government of India, New Delhi and others for the offences punishable under Section 120-B r/aw 420 of the Indian Penal Code and Section 9, 13(2) r/aw 13(1)(d) of Prevention of Corruption Act, 1988. It has been alleged in the said FIR that during the period from 2007 to March 2010 the officials of department of State Excise Administration of Daman and Diu entered into Criminal Conspiracy with private person, the owners/Directors of various Pvt Distillery of Daman. In pursuance of the aforesaid criminal conspiracy the accused/public servants abused their official position by way of facilitating evasion of excise duty and VAT to the tune of Rs.340 Crores and in furtherance of the said conspiracy, the accused/private persons cheated the administration of Daman and Due of Excise Duty and VAT of Rs.340 Crores and caused undue loss to the Government. It is alleged that in order to evade the excise duty and VAT, the distillers of Daman in connivance with the officials of Excise Department resorted to under reporting of production by preparing fake documents. The distillers also resorted to unauthorized sale of unreported liquor bottled to the neighbouring States in order to evade excise duty. The seizures were made by Gujarat Police in the year 2009. It is also alleged that Shri. Babu Lal Khemani and Shri. Ashok Khemani of M/s. Khemani Distillery and M/s. Royal Distillery and the Director of M/s. Jupiter Distillery, M/s. Krimpy Distillery, M/s. Silver Star Distillery and M/s Dhamal Distillery in conivance with the officials of Excise Department namely Shri. Ramesh Mahyavanshi and Vijay Halpati, Excise Inspector, Daman, and Shri. Suresh Dhodi, Excise Sub Inspector, Daman have caused financial loss of Rs.340 Crores on account of evasion of excise duty and VAT to the administration of Daman and Diu during the last 5 years. It is also alleged that Daman Administration tightened its control on the under reporting of the production and unauthorized sale to the neighbouring States by holding regular joint meeting and initiating action of recovery of the evaded excise duties on the direction of administrator of Daman and Diu. The records in respect of various distilleries were examined by Excise Department, Daman and it has issued show cause/demand notices of various papers. It is further alleged that in this connection Shri. Ashok Khemani was in regular touch with Shri. O Ravi, the Joint Secretary, Disaster Management, Ministry of Home Affairs, Government of India, New Delhi in order to utilize his services to cause the transfer of Administrator of Daman so as to avoid the recovery of excise duty. It is alleged that Mr. O Ravi assured him that, he will use his personal influence over senior functionaries in Government of India and manage the transfer of the administrator of Daman to derail the effects of administration, and for that purpose Mr. O Ravi accepted Rs.25 Lakhas as illegal gratification, and promises Mr. Ashok Khemani that he will get the present administrator transferred out of Daman. In pursuance of the commitment to Mr. Ashok Khemani, Mr. O Ravi has been actively pursing the transfer matter on regular basis. It is alleged that the aforesaid facts and circumstances revealed commission of offences by the public servants namely Shri O Ravi, Joint Sectretary, Shri Ramesh Mahyavanshi and Shri Vijay Halpati, Ex Inspectors of Daman, and Shri Suresh Dhodi, Ex Sub-Inspector of Daman in connivance with the private parties namely Shri Babul Khimani, Shri Ashok Khimani of M/s. Khimani Distillers and M/s. Royal Distillery and the Directors of M/s. Jupiter Distillery, M/s. Krimpy Distiller, M/s. Silver Star Distiller, and M/s. Dhamesh Distiller, and other unknown persons under Sections 120-B r/w S. 420 of IPC and Sections 9 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences thereof.

4 Thereafter the matter was registered and entrusted to Shri M R Kadole, Addl. S P CBI, EOU-1, New Delhi for investigation. It is alleged that during the course of investigation it was found that the accused Ashok Khemani who was well acquainted with the accused O Ravi contacted him, and later accepted Rs.25 Lakhs from him for using his influence over the superior officers at Delhi for effecting the transfer of the said Administrator. It is also alleged that during investigation it was found that the accused O Ravi handed

over the amount to the accused Rakesh Rastogi, who is the Petitioner in this Writ Petition, and amount to the extent of Rs.22.75 lakhs came to be recovered from the locker of the said accused i.e. the Petitioner. The Petitioner came to be arrested at New Delhi and produced before the Special Judge, who initially remanded the Petitioner to police custody till 03/05/2010. Thereafter the Petitioner preferred Misc. Criminal Application No.20 of 2010 for bail before the Special Court at Daman. The learned Special Judge by order dated 09/06/2010 allowed the said application of the Petitioner and granted bail to him on the terms and conditions mentioned in the said order.

5 Thereafter the Petitioner has preferred an application for discharge under Section 239 of the Criminal Procedure Court before the Court of Special Judge, CBI, Daman. It was the case of the Applicant/Petitioner in the said discharge application that the charge sheet has been filed before the Court. It is alleged that co-accused O Ravi was using Airtel Mobile number 9971639201 which was given to him by the accused/applicant and the accused/applicant had obtained the said mobile number from one Shri Ashok Kumar Gupta on the pretext that the same was required for use by the driver of the accused/applicant. It is also alleged that the mobile phone used by co-accused O Ravi was intercepted after obtaining orders from Union Home Secretary, Ministry of Home Affairs and calls recorded during 28/02/2010 to 24/04/2010 between co-accused O Ravi and co-accused Ashok K Khemani revealed the

incriminating circumstance/material and that the co-accused O Ravi had assured co-accused Ashok Kumar Khemani to get aforesaid Shri Satya Gopal transferred through his friend in Ministry of Home Affairs, New Delhi, and co-accused O Ravi asked co-accused Ashok Khemani as to whether an offer of “twenty Five” be given and co-accused O Ravi further suggested co-accused Ashok Khemani that they should first give “ten” and then give rest of the amount after the work was done to which co-accused Ashok Khemani agreed and told that he would arrange the same on the next date i.e. 09/03/2010. It is alleged that on 12/03/2010 co-accused told co-accused O Ravi that one person would come to his house and deliver a bag to which co-accused O Ravi agreed, thereafter, on the same day co-accused Ashok Khemani enquired from O Ravi whether the briefcase had been delivered, upon which, co-accused O Ravi after confirming replied back that it was delivered. It is further alleged that Shri Amit Khemani S/o co-accused Ashok Khemani had arranged a sum of Rs.10 lacs from his friend Shri Arjun Sehgal at New Delhi on 12/03/2010 and the amount of Rs.10 lakhs was collected by one Shri Ashok Gupta, who was the employee of the said Arjun Sehgal, along with his colleague Shri K K Singh from one Smt. Jasinder Kaur i.e. the mother of the said Arjun Sehgal, and after packing the said money in a box and wrapping it in gift paper, delivered it at the residence of co-accused O Ravi as directed by accused Ashok K Khemani. It has been further alleged that after registration of case by the CBI, search of the residential as well as office presmies of the accused persons were conducted by the CBI and some incriminating documents like copies of complaint dated 24/03/2010 of Shri Nathu Patel, Member of Parliament of Silvasa addressed to Home Minister against Shri Satya Gopal was recovered from the residence of accused O Ravi. It is also alleged that during investigation, the accused/applicant i.e. the Petitioner herein, who is a friend of accused O Ravi, was also arrested and interrogated along with accused persons, and during the course of interrogation, accused Ashok K Khemani admitted to have given Rrs.25 lakhs to accused O Ravi for getting the administrator of Daman transferred out of Daman, and accused O Ravi also admitted having received Rs.25 lacs from accused Ashok Khemani, and stated to have given the said amount to the accused/applicant i.e. the Petitioner herein for keeping in his custody, and during custodial interrogation, the accused/applicant i.e. the Petitioner admitted to have received one packet containing money from co-accused O Ravi, and having kept the same in his bank locker No.473 at Axis Bank, Green Park, New Delhi. It has been further alleged that the accused/applicant disclosed that he withdrew an amount of Rs.2-3 lacs for his own purpose from the said packet. It is also alleged that the said bag containing Rs.22.75 lacs was recovered from the said locker and thus the accused/applicant i.e. the Petitioner herein and other two accused persons were part of the criminal conspiracy to get Shri Satya Gopal, the then administrator of Daman illegally transferred out of Daman. It is also alleged that the accused/applicant i.e. the Petitioner was an instrumental in providing the SIM card (9971639201) to O Ravi for talking to accused Ashok K Khemani for the said purpose and had also kept the bribe money paid to accused O Ravi by accused Ashok Khemani in aforesaid locker of the Petitioner.

6 From the aforesaid allegations made in the charge-sheet, the role of accused/applicant i.e. the Petitioner in the present case is of the conspiracy with other accused persons and that the accused O Ravi was using above mentioned Airtel mobile number for talking with accused Ashok Khemani. It is the allegation of the Petitioner in the said discharge application that the accused/applicant obtained the said SIM from Ashok Gupta, which was in the name of his mother Smt. Sumitra, on the pretext that he required it for use by his driver for the time being but who gave the same to his friend O Ravi. It is also alleged that on the basis of the disclosure statement of the accused/applicant i.e. the Petitioner recorded in the presence of witnesses, an amount of Rs.22.75 lacs was recovered at the instance of accused/applicant from his aforesaid bank locker.

7 It is the case of the Petitioner in his discharge application that the accused/applicant was arrested on 28/04/2010. Nothing incriminating was seized during the search of residence of the Petitioner which can connect him to the crime in question. It is further the case of the Petitioner that his disclosure statement recorded on 29/04/2010 was a forged document and that

he was forced to sign on blank papers while being in custody. It is also the case of the Petitioner that, bare perusal of the said disclosure statement would show that it is of no relevance to the case under investigation, and it does not establish mens rea, knowledge and connivance of the Petitioner in the said crime. It is further the case of the Petitioner that, though it is mentioned in his disclosure statement that the packet containing money was delivered to him by O Ravi about 20-22 days back, he took out the money from the said packet and kept the same in his said bank locker, he had utilized about 2-3 lacks for his personal purpose, and that he could get recovered rest of the money from the said locker, the details of exact amount received from the accused O Ravi, the date of receipt of the said amount and denomination of the said money are not mentioned in the said disclosure statement. It is also the case of the Petitioner that as per the case of CBI, only Rs.10 lacs were delivered at the residence of accused O Ravi on 12/03/2010, whereas the amount recovered from the locker was Rs.22.75 lacs., and there is no mention as to when and how the further payment of Rs.15 lacs was made to O Ravi. It is also the case of the Petitioner that there is no evidence at all as to how and when the alleged bribe amount of Rs.25 lacs was delivered to the Petitioner for keeping in the locker, and hence the case of the CBI is based purely on imaginations. It is further the case of the Petitioner that, the money recovery from the said locker is the exclusive property of the Petitioner and he had nothing to do with the alleged bribe amount and with the accused persons, and there is no evidence on record to prove that the money recovered from the locker was the bribe amount. In so far as the mobile phone is concerned, it is the case of the Petitioner that the said mobile phone was taken into possession of Ramesh Kumar, ASI of CBI on 15/05/2010 and the said mobile was bearing IMEI No.355362003749004, and the said mobile was recovered from the petitioner by the Ramesh Kumar on 04/05/2010 in August Kranit Rajdhani Express while in transit from New Delhi to Daman. The said IMEI using Airtel connection No.9971639201 does not get reflected in the call details recorder of the said connection which was seized by CBI during investigation. Though it is the case of the CBI that this mobile phone was being used by accused O Ravi, the CBI itself was not clear about the use of the said mobile by accused O Ravi or any other person. The said mobile connection was issued in the name of Smt. Sumitra Gupta and does not in any way help the case of the CBI to establish the charges against the Petitioner. It is also stated in the discharge application that the statements of Ashok Gupta, Tarun Khuran and Amesh Kumar do not help the CBI to prove the conspiracy as alleged when the said mobile connection was recovered from Ramesh Kumar ASI of CBI. In view of above facts and circumstances the Petitioner prayed to discharge him from the charges/allegations mentioned in the charge-sheet.

8 The CBI has filed a reply to the discharge application of the Petitioner. It is stated that a charge sheet under Section 120-B of IPC r/w

Section 9 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act was filed against O Ravi, Ashok K Khemani and, Rakesh Rastogi i.e. the Petitioner herein on 31/01/2012. It is stated that the Petitioner, who is a friend of accused O Ravi, provided him airtel mobile SIM bearing connection No.9971639201 for talking to Ashok Khemani. It is also stated that subsequent to registration of case, accused O Ravi, Ashok Khemani and Rakesh Rastogi i.e. the Petitioner were arrested and interrogated. During interrogation Ashok Khemani admitted to have given Rs.25 lakhs to accused O Ravi for getting the administrator of Daman transferred out of Daman. Accused O Ravi admitted to have received Rs.25 lakhs from accused Ashok Kheamni, and stated that he had given the same to Rakesh Rastogi i.e. the Petitioner herein for keeping in his custody. During custodial interrogation accused Rakesh Rastogi i.e. the Petitioner admitted to have received one packet containing money from accused O Ravin and having kept the same in his bank locker. He further disclosed that he withdrew an amount of Rs.2-3 lacs for his own purpose from the packet and told that he could affect recovery of rest of money from his locker. It is also stated in the said Reply that the disclosure statement of the Petitioner was recorded on 29/04/2010 in the presence of independent witnesses, and recovery of a cloth back containing GC notes of Rs.22.75 lacs was made at the instance of the Petitioner from his locker. It is stated that the accused Rakesh Rastogi was a part of this criminal conspiracy as he had not only arranged mobile connection for accused O Ravi for talking to accused Ashok Khemani for committing the crime but also facilitated him in keeping the bribe amount in safe custody in his bank locker.

9 The learned Special Judge, Daman by order dated 20/06/2016 considered the application for discharge of the Petitioner. The learned Special Judge has observed that the evidence reveals that the Petitioner is having acquaintance with accused No.1, and in ordinary course of nature, and particularly considering the status of accused No.1, he need not have to use the SIM card, which is in the name of third person. It is also observed by the Special Judge that the Applicant/Petitioner has also no reason to provide SIM card to very small person. The Special Judge has held that unless there is certain specific intention, no such act would have been done by the person in natural Course, and secondly the person in ordinary course of transaction shall not keep such a huge money in the locker at the loss of interest. The Special Judge has further observed that the accused may be answerable to the income tax department for the amount recover from him but the circumstances may not be ignored. The Special Judge was of the opinion that there is sufficient material to frame the charges against the accused. The Special Judge therefore by the impugned order dated 20/06/2016 rejected the discharge application of the Petitioner. It is the said order dated 20/06/2016 which is taken exception to by way of the above Writ Petition.

10 The learned counsel appearing for the Petitioner submits that from the material so collected by the prosecution during course of investigation prima facie discloses that no offence is made out against the Petitioner. It is submitted that a perusal of the FIR shows that no offence under any of the provisions of Prevention of Corruption Act as alleged is made out against the Petitioner. It is also submitted that the statement of witness Ashok Gupta cannot be presumed that the Petitioner is a part of conspiracy as may have been hatched and/or otherwise perpetrated by the perpetrators of crime. It is further submitted that it is crystal clear from the provision of Section 120-B of the IPC that a conspiracy cannot be culminated at the instance of an individual but, there has to be a meeting of minds between the parties. The learned counsel for the Petitioner therefore submitted that upon perusal of the statements of the witnesses, none of the witnesses say that there was meeting of minds between the Petitioner and accused Nos.1 and 2 so as to be a part of the conspiracy as suggested by the prosecution. It is submitted that the prosecution must have visibly demonstrate by way of independent witnesses in respect of an incident, however, in the present case, there is not a single statement of the witnesses recorded by prosecution which could indicate the Petitioner with the alleged crime as may have been perpetrated by the accused Nos.1 and 2 for their own benefits or for their common benefit. It is submitted that mere knowledge or even discussion of the plan per-se would not constitute conspiracy and the offence of conspiracy shall continue till the termination of

such agreement between the individuals, however, in the present case there is no such meeting inasmcuh as if at all, there were meetings the same in itself cannot be presumed that those meetings were for committing an illegal act and therefore the question of conspiracy by the Petitioner cannot be sustained in law. The learned counsel for the Petitioner further submitted that while rejecting the application of discharge filed by the Petitioner, the Special Judge has acted as a post office and mouth piece of prosecution without any application of mind to the facts of the present case. It is submitted that perusal of material it can be inferred that though there may be suspicion, the suspicion is not so grave inasmuch as on the basis of the said material, there cannot be conviction and therefore the rigors of trial could be avoided qua the Petitioner. It is also submitted that the learned Special Judge has grossly erred in presuming that the SIM Card as furnished or handed over by the Petitioner to the accused No.1 was specifically for doing or committing an illegal act. It is further submitted that there is no specific statement, which would even implicate the Petitioner as a conspirator, and there is no ample material produced by the prosecution to frame charge against the Petitioner. The learned counsel for the Petitioner further submits that the Petitioner being not a public servant, the question of applying even the charges under Section 9 or Section 13(1)(d) and 13(2) of the Prevention of Corruption Act against the Petitioner cannot be sustained in law. It is submitted that the amount of Rs.22,75,000/- was lying in the locker of the Petitioner in itself cannot be presumed that the said money was specifically for the purpose of illegal gratification to the accused No.1 and in absence of any statement, by any stretch of imagination, the same is not sufficient for framing charge under Section 120-B of IPC against the Petitioner. It is also submitted that it is clear from the witness Ashok Kumar Gupta that the said money was collected by Ashok Kumar Gupta at the instance of Ashok Khemani, or may be O Ravi, and therefore, complicity of the present Petitioner is nowhere in picture.

11 In addition to the aforesaid submissions, the learned counsel for the Petitioner submits that the Petitioner is a Senior Citizen aged about 62 years, and is a German National of Indian Origin. The Petitioner is expertise in the field of planning and development and has earned goodwill and reputation in Germany. It is submitted that the Petitioner has been in India since 2009 after completing the rail project with Germany. It is submitted that impressed with the goodwill and reputation of the Petitioner Mr. O Ravi i.e. the accused No.1 befriended the Petitioner in the year 2009. It is submitted that by using the relation with the Petitioner and his position as senior bureaucrat working with Government of India, the said Mr. O Ravi – accused No.1 has also developed acquaintance in the neighborhood of the Petitioner, and due to influence and acquaintance, Mr. O Ravi had obtained SIM card of Airtel company bearing No.9971639201 from PW-9 Mr. Ashok Gupta who was earlier tenant of the Petitioner.

12 The learned counsel for the Petitioner invites attention of this Court to the statement of PW-9 Ashok Gupta and submits that PW-9 Ashok Gupta knows accused No.1 Mr. O Ravi who used to recharge his satellite TV connection. It is submitted that from the perusal of the statement of PW 9 it is clear that the Petitioner herein has never asked the PW9 for any SIM card, but PW-9 has handed the SIM card to Mr. O Ravi out of his mutual respect and to develop friendship with such senior Government official. It is further submitted that the Petitioner admittedly has friendly relations with accused No.1 O Ravi but never had any commercial or business relations with Mr. o Ravi. The learned counsel for the Petitioner also submits that firstly the FIR dated 27/04/2010 was registered against 11 accused, however, the name of the Petitioner has not been mentioned at all, and secondly upon perusal of charge-sheet wherein it is alleged that the Petitioner had provided the airtel mobile SIM card to accused O Ravi, does not disclose that the Petitioner has played any role in providing any SIM card to accused No.1 Mr. O Ravi and the amount of Rs.22.75 recovered from the locker of the Petitioner was agreed to be paid for ousting of the then administrator of Daman.

13 It is further submitted that the prosecution has miserably failed to demonstrate the trail of money as to how the money reached the Petitioner, and what was the source of the money. It is submitted that the allegations

levelled against the Petitioner are baseless and are of no consequences to even suggest the involvement of the Petitioner in the alleged crime with other accused. It is also submitted that no offence much less any offence under section 120-B of the IPC as alleged is made out against the Petitioner, and the statement of the complainant, the FIR, charge-sheet and the statements recorded under Section 161 of Cr.P.C. do not implicate the Petitioner, and the proceedings if continued against the Petitioner, it would amount to an abuse of process of law. It is also submitted that the Investigating Officer has not recorded the statement of the driver of the Petitioner to over sustain the allegations in respect of the SIM Card.

14 The learned counsel for the Petitioner further submits that nothing incriminating was seized during the search of residence of the Petitioner which can connect him to the crime in question. It is also submitted that the disclosure statement of the Petitioner was a forged document and he was forced to sign on blank papers while being in custody, and bare perusal of the said disclosure statement would show that it is of no relevance to the present case. It is further submitted that the prosecution has failed to prove that the money so recovered from the bank locker of the Petitioner was the bribe money. It is submitted that the CBI itself is not clear about the use of the said mobile connection by accused O Ravi or by any other person, and the evidence and/or material produced on record only proves that the said mobile

connection was issued in the name of Smt. Sumitra Gupta and does not in any way help the case of the CBI to establish the charges against the Petitioner. The learned counsel for the Petitioner submits that the Petitioner was not named as an accused in the FIR. It is submitted that there is no evidence and reference of the Petitioner in the alleged recorded conversations in the CD Q.1 and the transcripts thereof in D-19, D-20, D-21. It is also submitted that there is no evidence at all on record for delivery of remaining Rs.15 lacs to accused O Ravi by accused Ashok Khemani. He submits that the evidence on record is only relating to delivery of Rs.10 lacs on 12/03/2010, and whereas the recovery of Rs.22.75 lacs from the locker of the Petitioner is being linked to the bribe amount thus creating material contradiction in the case of CBI. It is also submitted that there is no direct or indirect circumstantial evidence on record to connect the Petitioner with the alleged demand and acceptance of Rs.25 lacks by accused O Ravi from accused Ashok K Khemani which had been allegedly kept with the Petitioner. It is also submitted that there is absolutely no evidence on record that the amount of Rs.22.75 lacks recovered from the locker was the same amount which had been allegedly received by O Ravi except the statement of accused persons which are not admissible in evidence. It is also submitted that there is no evidence to prove the charge of criminal conspiracy against the Petitioner and, there is nothing on record to connect the Petitioner with the other co-accused persons. The learned counsel for the Petitioner submits that the impugned order is illegal and improper as the most essential ingredient of meeting of minds to be a part of conspiracy is not present in the instant case. He therefore submits that on the basis of the weak material and/or evidence as per the charge sheet, if considered, the Petitioner ought to be exonerated, discharged and the proceedings qua the Petitioner ought to be quashed and set aside, and the impugned order liable to be set aside.

15 In support of the aforesaid submissions, the learned counsel for the Petitioner sought to place reliance on the following judgments :- 1] 1996 (4) SCC 659; State of Maharashtra v/s. Som Nath Thapa; 2] AIR 1977 SC 1489 State of Karnataka v/s. L Munniswamy and ors; 3] AIR 1979 SC 366 Union of India v/s. Prafullkumar Samal & anr; 4] 2012 (9) SCC 460 Amit Kapur v/s. Ramesh Chander & anr; 5] Cr. RA/383/2016 Sumeet Ganpatrao Bachewar v/s. State of Maharashtra and anr. 6] 2002 (2) SCC 135 Dilawar Balu Kurane v/s. State of Maharashtra; 7] 1996 (9) SCC 766 Satish Mehra v/s. Delhi Administration & anr and 8] 2008 (13) SCC 678 Suryalaxmi Cotton Mills Ltd. v/s. Rajvir Industries Ltd & ors.

The learned counsel for the Petitioner therefore submits that the Petition deserves consideration.

16 On the other hand the learned counsel for the Respondent-CBI

submits that the charge sheet under Section 120B of the IPC r/w Section 9 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act was filed against the Petitioner and other co-accused on 31/01/2012. It is submitted that the measures taken by administrator Satyapal Gopal created adverse impact on the illegal trade of liquor by Daman based distilleries and therefore accused Ashok K Khemani made up his mind to get him transferred out of Daman, the said Ashok Khemani therefore contacted accused O Ravi who then was joint secretary in Ministry of Home Affairs and sought his help to get the administrator transferred out of Daman. It is submitted that the Petitioner is the friend of accused O Ravi. It is also submitted that from the statements of the witnesses it is clear that the Petitioner provided him airtel mobile SIM bearing No.9971639201 for talking to Ashok Khemani for the aforesaid purpose. It is also submitted that during the course of interrogation the Petitioner has admitted that he received on packet containing money from accused O Ravi and kept the same in his bank locker, and the Petitioner has withdrawn amount of Rs.2-3 lacks for his own purpose from the said packet. He submits that the disclosure statement of the Petitioner was recorded in the presence of independent witnesses and a cloth bag containing GC Notes of Rs.22.75 lacs was recovered at the instance of the Petitioner. He therefore submits that the aforesaid facts and circumstances show that the Petitioner was a part of the criminal conspiracy as he has not only arranged the mobile connection for accused O Ravi for talking to accused Ashok Khemani for committing the crime but also facilitated him in keeping the bribe amount in safe custody in his bank locker. He therefore submits that there is evidence and material on record which shows the involvement of the Petitioner in the present crime. He therefore submits that the Petitioner deserves no consideration.

17 Heard the learned counsel for the parties. With their able assistance I have perused the pleadings and grounds taken in the Writ Petition, charge-sheet and accompaniments made available by the learned counsel for the Respondent - CBI, and the annexures to the Petition. I have also perused the impugned order passed by the Special Judge.

18 During the course of arguments, the learned counsel for the Respoondent – CBI invites attention of this Court to the statements of the witnesses recorded under Section 161 of the Cr.PC. In the statement of Ashok Gupta s/o Jai Kishan Gupta (PW-9) he has stated that his late grand father late Bhagwan Dass had hired Shop S-1A located at Ground Floor, of S-1, Green Park Main, New Delhi-110016 from the mother of the Petitioner Smt. Vidyawati Rastogi on ret @ Rs.167/- per month in 1967. The said shop was gifted by Smt. Vidyawati Rastogi to the wife of the Petitioner Smt. Jublee Rastogi. This witness PW-9 purchased the said shop in 2001 from the said Smt. Jublee Rastogi for Rs.2 Lakhs and, doing business of selling prepaid mobile

recharge coupons. It is also stated that he knows the entire family of Mr. Rakesh Rastogi i.e. the Petitioner. He further stated that he has seen Shri O Ravi i.e. the accused No.1 visiting the residence of Shri Rakesh Rastogi frequently atleast twice/thrice in a week. It is also stated that Mr. Ravi also used to get his Tata Sky Satelite TV reacharged from his shop and he had seen his name as Ravi displayed on the mobile screen. It is further stated that he took one airtel prepaid mobile connection No.9971639201 for his son in the name of his mother Smt. Sumitra Gupta and as his mother was having low eye sight, he himself affixed signature of his mother on the application form submitted to the airtel for the said prepaid connection, however, his son did not use the said air prepaid sim card. It is also stated that somewhere in the 2nd week of February 2010, Shri Rakesh Rastogi requested the witness to provide a sim card of prepaid mobile connection for his driver for the time being, and when he asked for the ID proof of his driver, Shri Rastogi told me that his driver did not have any identity proof. The witness further stated that Mr. Rastogi told him not to worry as they know each other since long and there would be no misue of the same, and since his son did not use the said sim card, he gave the same to Shri Rakesh Rastogi in good faith and at that time he had recharged the said SIM by Rs.300/-. It is further stated that Shri Rakesh Rastogi has not returned the said sim card to him.

Now coming to statement of PW-10 Tarun Khuran who was working as Nodal officer Bharti Airtel Ltd. In response to the notice from CBI, he produced the original customer application form and CDR for the period 15/02/2010 to 28/04/2010 in respect of airtel mobile No.9971629201. On the basis of records, he sated that said connection was issued to Smt. Sumitra Gupta w/o Jai Kishan Gupta R/o 94-A, Arjun Nagar, new Delhi on 15th February and was activated on 15/02/2010. He stated that during the above period various outgoing and incoming calls were made from the Mobile No.9223363333, 9820043434, 9820448484 as well as a few other numbers.

The statement of Mr. M C Kashyap (PW 12) who was working as Inspector of Police, CBI, Spl Unit, according to the prosecution, is also important. He stated that from obtaining orders from Shri G K Pillai the Secretary to the Government of India, Ministry of Home Affairs, new Delhi during 28/02/2010 to 27/04/2010 he intercepted 64 incoming and outgoing calls/SMS in respect of Mobile No.9971639201 being used by accused O Ravi the then Joint Secretary, Disaster Management, MHA Govt. of India with the help of computer system installed at SU. He further stated that the said calls were reproduced on a compact disc and sets of the same were prepared and those compact discs were signed by him for the purpose of identification and he had sealed one set of compact disc under his signature and another CD was kept unsealed for the purpose of investigation. Thereafter he handed over both the sets of Cdc along with the call information report and the copies of the orders of Mr. G K Pillai to the CBI on 08/06/2010 which was seized vide a seizure memo. He further stated that he was having lawful control over the use of the said computer system which was used regularly to record intercepted telephonic communications.

The prosecution has also recorded the statement Jayesh Shah (PW-16), who was working as chairman cum managing director of M/s. Shree Naman Developers, 315 Parekh Market, Opera House, Mumbai. He stated that some time in January-February 2010 Shri Ashok Khemani told him that the SIM of his mobile had been blocked due to some technical reasons and he urgently required a local mobile of Mumbai, and gave him one Tata Mobile having connection No.9223363333 for using the same till his SIM was unblocked. He also stated that the said Tata Mobile had been taken by his company as CUG N for the use by their staff. The witness was shown the consumer application form (CAF) in respect of the said Teleservices Limited Mobile No.9223363333 and after seeing the same he stated that the same had been signed by Shr. Harun Shah, Head of RMC Deptt. Of their company on behalf of the company. The witness identified his signature on the said CAF. He further stated that Mr. Ashok Khemani has still not returned the said mobile to him.

The prosecution has relied upon the statements of Ashok Kumar

Gupta PW-20) and statement of Kamlesh Kumar Singh (PW-22) on the aspect of collecting the amount from the house of Arjun Seehgal (PW-21) and delivered the same at the house of accused O Ravi. PW-20 Ashok Kumar Gupta stated that he joined M/s. Interocean Shipping India Pvt. Ltd. on 11/05/1987 as an Accounts Assistant and presently working as financial executive in the said company. He stated that Shri Arjun Sehgal is his boss and Mrs. Jasinder Sehgal – mother of Arjun Sehgal is the chairman and managing director of the company. He also stated that Mr. Arjun Sehgal is director of company M/s. Interocean Shipping Co. which is sister concern and Mr. Arjun Sehgal is the proprietor of this firm and, Mr. Arjun Sehgal is looking after the affairs of both the said concerns. He stated that he received a call from Shri Arjun Sehgal and he gave him instructions to collect a sum of Rs.10 lacs from his mother from his residence at 67, Sainik Farms, New Delhi which is to be delivered to someone for which one Mr. Khamani will instruct him. He further stated that after sometime, Mr. Ashok Khamani contacted the witness over his mobile on the same day about 10.30 hrs and told him that he had to deliver a sum of Rs.10 lacs at the address given by him in Chanakyapuri, New Delhi. He also stated that he also mentioned to the witness that the witness has to wrap the money in gift pack and deliver at the residential address of Sh. O. Ravi and the same may be given to anyone available in the house. He stated that he accordingly visited the residence of Arjun Sehgal and collected sum of Rs.10 Lacs from Mrs. Jasinder Sehgal. He further stated that when he was on the way to Chanakyapuri, he was chased by mr. Ashok Khamani and he asked where was he. This witness further stated that when they reached the house of given address and knocked the door, a maid servant came out of the house, he told her that they had brought a gift pack from Mr. Ashok Khamani. She asked them to wait and went inside the house. After about 2 minutes, a lady came out with the maid servant. The witness further stated that he told that also that they have brought a gift pack from Mr. Ashok Khamani. She took the packet from him and shut the door and then they came back and left for their respective residences. The witness further stated that after that Mr. Ashok Khamani confirmed him over mobile that the packet has been received.

PW-22 – Kamlesh Kumar Singh has given the corroborative statement to whatever stated in the statement of PW-20 Ashok Kumar Gupta.

To support the aforesaid case, the prosecution has also recorded statement of PW-21 – Arjun Sehgal . This witness stated that one or two months back Mr. Amit Khamani contacted him over his mobile No.9810085005 probably during mid day and requested him that he was in urgent need of Rs.10 lacs at New Delhi and he promised that he would repay the amount to him in Mumbai. This witness further stated that he contacted Shri Ashok Gupta, accounts head of his company at New Delhi and informed him that Shri Amit Khamani, his friend would contact him who was in urgent need of a sum of Rs.10 lacs . This witness also informed Shri Ashok Gupta that for this purpose should collect a sum of Rs.10 lacs from his mother who was at his residence and the same may be given to Shri Amit Khamani.

19 From the perusal of the statements of the aforesaid witnesses, it is prima facie disclosed that the Petitioner had taken the SIM card in question from Ashok Jaikishan Gupta and provided it to accused No.1 and the said SIM Card was alleged to have used by O Ravi for talking to accused Ashok Khemani, which was discovered from the electronic data collected from computer system installed in SU. It is an admitted fact that the Petitioner knows the accused O Ravi and he is the friend of the Petitioner. It is an undisputed fact that the accused O Ravi frequently visited the residence of the Petitioner. From the evidence and material produced on record it reveals that the Petitioner is well acquainted with accused No.1 O Ravi. It is also important to note that, the Petitioner, who is having goodwill and reputation, requested PW-9 Ashok Gupta to provide a Sim Card for prepaid mobile connection for his car driver without even having identity proof of his driver. The record of the Bharti Airtel Ltd in respect of the Airtel Mobile No.9971639201 is produced record. It appears that the said connection was issued to Smt. Sumitra Gupta who was the mother of PW No.9 Ashok Gupta, and the said PW No.9 has given the said mobile SIM Card to the Petitioner. Prima facie it is disclosed from the material on record that various outgoing and incoming calls were

made from Mobile No.9223363333, 9820043434, 9820448484 as well as a few other members during the period of 15/02/2010 to 28/04/2010. According to the statement of Jayesh Shah (PW-16), he has given one Tata Mobile having connection No.9223363333 to accused Ashok Khamani. It is required to be noted that there is a reference of this Tata Mobile connection No.9223363333 in the statement of Tarun Khurana (PW-10) who has produced record in respect of airtel mobile No.9971639201 which was given to the Petitioner by PW-9 Ashok Gupta, and from the said record it is also revealed that various outgoing and incoming calls were made during 15/02/2010 to 28/04/2010 from the mobile numbers mentioned therein out of which one is 9223363333 which was allegedly given to Mr. Ashok Khamani by PW-16 Jayesh Shah.

20 It is the defence of the Petitioner that the amount which was recovered from his bank locker is his own money. The mobile SIM Card which was taken by the Petitioner from the witness Ashok Gupta was found with accused No.1 O Ravi and there is a conversion through the said mobile number. It is also the defence of the Petitioner that the driver was not examined in the matter. This Court is of the prima facie view that examination of the driver makes no difference. It is the defence of the Petitioner that there is no evidence on record to show that the amount, which was recovered from his bank locker, was the same amount which had been alleged to have been

received by accused No.1 and, according to the Petitioner mere statement of co-accused is not admissible in evidence. All these aspects will have to be proved during the course of trial. If the material produced on record is to be considered in its entirety, the same is sufficient to frame the charge.

21 In so far as knowledge of conspiracy is concerned, normally the conspiracies are hatched in secrecy, and therefore, prosecution will have to be given an opportunity to lead circumstantial evidence during trial.

22 In so far as recovery of amount of Rs.22.75 lacs from the locker of the Petitioner is concerned, it is the case of the prosecution that there is a scandal of Rs.300 Crores and more. It is therefore important to note that scandal of such a huge amount of Rs.300 crores and more would certainly ruin the economy of a State like Daman and Diu, and therefore, considering the material on record, the nature of crime appears to be very serious and would certainly affect upon the society at large, and the evidence collected by the prosecution is sufficient to frame the charge against the Petitioner. Considering the allegations levelled against the Petitioner that he is a facilitator to accused No.1 - O Ravi in getting transfer of administrator Satya Gopala out of Daman so as to avoid the recovery of excise duty, therefore appears to be part of wide spread conspiracy, and therefore, at this stage it is impossible to separate the role of each accused.. During the course of interrogation, accused Ashok

Khemani admitted to have given amount of Rs.25 lacks to accused O Ravi for getting the administrator transferred out of Daman, and accused O Ravi admitted to have received the said amount and gave it to the Petitioner for keeping in his custody. Whether the amount recovered from the bank locker of the Petitioner is the bribe amount or his own property will be decided by producing evidence on record during the trial.

23 Considering the circumstantial evidence brought on record, the reliance sought to be placed on the judgments cited (supra) by the learned counsel for the Petitioner is misconceived.

24 As stated herein above, this Court has gone through the statements of witnesses, material produced on record including the charge-sheet. Prima facie there appears to be substance in the case of the prosecution that the Petitioner was a part of the criminal conspiracy as he has not only arranged the mobile connection for accused O Ravi for talking to accused Ashok Khemani for committing the crime but also facilitated him in keeping the bribe amount in safe custody in his bank locker. The prosecution has produced sufficient material on record for showing prima facie involvement of the Petitioner in the present crime.

25 The learned Special Judge has rightly observed that reading the

charge - sheet in it entirety there appears prima facie and sufficient material to link the accused with the alleged crime. The learned Special Judge has held that in the case of conspiracy as discussed above direct evidence is not possible in each case and every person need not be remain present at the time of hatching the conspiracy, as some may join subsequent with one of the conspirators. The learned Special Judge has rightly come to a conclusion that the present applicant has joined in conspiracy with accused No.1. The reasons recorded by the learned Special Judge are plausible reasons. There is no perversity in the impugned order passed by the learned Special Judge. No case is made out to interfere with the impugned order. The Writ Petition is accordingly dismissed. Rule is discharged.

26 The observations made herein above are prima facie in nature and confined to the adjudication of the present Writ Petition. Needless to state that the Trial Court shall not get influenced by the observations made herein above and, shall try the proceedings on their own merits and in accordance with law.

[S.S. SHINDE, J.]