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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.09.2019.

\+ CRL.REV.P. 712/2019 & CRL.M.A. 13107/2019

NEERAJ MAHAJAN ..... Petitioner
Through Mr. Sunil Dala with Mr. Harsh Khanna, Mr. Vivek Jain and Mr. Sandeep Khanna, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Through Mr. Ripu Daman Bhardwaj, SPP

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Vide the present petition, the petitioner seeks to set aside /Quash the Order and Judgment on charge dated 29.01.2019 and framing of charge and order dated 05.02.2019 passed by learned Special Judge CBI-011, Rohini Courts, Delhi, in CBI No. 52/2016 (old NO. 64/2008) Chander Lok CGHS Ltd.

2. Case of the petitioner is that after incorporation/registration of any CGHS, resignation by its members and joining of new members is permitted under law. No previous member has reported any illegality/ irregularity in

the matter of their memberships. In any case any such irregularity in the matter of management of CGHS has to be dealt under the relevant provisions of the Delhi Co operative Societies Act and not under the penal provisions of any law.

3. Learned counsel on behalf of petitioner further submits that consequent to the amendment in the Prevention of Corruption Amendment Act, 2018(16 of 2018), dated 26.07.2018 vide SO 3664(E), 26.07.2018, Section 13(1)(d) of the Prevention of Corruption Act, 1988 has been omitted and nothing survives in the chargesheet.

4. Learned counsel on behalf of petitioner further submits that there is nothing on record, which contemplates to fulfill the requirement as enumerated in section 154 of Cr. P.C., so if the registration of FIR/RC is inadmissible and illegal in that event consequential investigation carried out by the CBI as well as the chargesheet filed before this Court is inadmissible in law and the petitioner is entitled to be discharged on this ground.

5. Learned counsel on behalf of petitioner further submits that another important aspect with regard to the registration of the FIR/RC as well as the investigation carried out by the CBI in the present case is that the CBI has no Jurisdiction to even register the FIR. In this regard it is submitted that the

CBI is an organ of State which has been formed under Delhi Special Police Establishment Act, 1946 for the investigation of specific offences notified under section 3 of the said Act. The aforesaid FIR has been registered by the CBI on the directions of this Court vide order dated 03.10.2005 in WP(C) No. 10066/2004 which itself has no bearing in the eyes of law. As per the provisions of section 3, 5 & 6 of Delhi Special Police Establishment Act, 1946, the power of the CBI to carry out investigation is restricted to whatever provided by way of notification. In the absence of any such notification the CBI is statutorily debarred from entering into the arena of the investigation to any offence committed by any individual.

6. Learned counsel on behalf of the petitioner further submits that the allegations contained in the chargesheet against the present petitioner are that he has been allegedly shown as Vice President of the society which itself is inadmissible as it is the admitted case of the CBI that the society was under the control of Shri S.P. Saxena and Shri Srichand. There is no such disclosure statement on record. Nothing incriminating has come on record against the Petitioner/accused Neeraj Mahajan (A-13) which would become basis of prima facie allegations to frame the charge. Regarding the allegations of writings of petitioner confirmed by GEQD opinion is that the

specimen of the Petitioner has not been obtained with prior permission of the Court. Even the opinion of GEQD is not applicable as enumerated by this Court in case of "Rakesh Kumar V/s State 2004 (i) JCC 110.

7. Thus, it is made clear that the face value of the allegations, made in the chargesheet, do not disclose the commission of any offence mentioned therein and the petitioner is entitled to be discharged and more particularly there is no permission/order of Special Judge is on record, which empowers CBI to obtain hand writings and signatures of the petitioner and thus, he is liable to be discharged on this ground.

8. Learned counsel on behalf of the petitioner submits that as per the allegations contained in the chargesheet, the CBI has approved the illegalities, which are apparent from the statements of the witnesses filed along with the chargesheet, which shows that the investigation is tainted as pick and choose policy has been adopted by the CBI. The case of the petitioner is on the much better footing in comparison to the witnesses cited aforesaid by the CBI while filing the chargesheet and as such no case is made out against the petitioner. Learned counsel appearing on behalf of petitioner has relied upon the case of ***Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra*** (2009)(1) SCC (Crl.) 51, whereby it is held that

"By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused.

9. Learned counsel on behalf of the petitioner further submits that even no case is made out as per the Judgement in the case of ***Rajeev Mukhopadhyay v/s Registrar Co-operative Societies*** 141 (2008) DLT 321 DB of this Court. Thus, the case of the petitioner is squarely covered by the aforesaid judgment.

10. Further case of the respondent/CBI is that the accused Srichand surreptitiously obtained the records of the society including proceedings register and membership register after the death of its Secretary Sh. Chander Pal. He alongwith accused Anna Wankhade jointly prepared bogus minutes of the meetings dated 08.05.1981, showing the resignations of 10 promoter members and enrolments of 33 new members, including accused Anna Wankhede, K.A. Kanekar and several bogus persons namely Surender Pratap etc. The strength of the society was increased from 52 to 75. A false another minutes of meeting dated 15.06.1986 were prepared by accused Anna Wankhede showing the shifting of the office of the society from

Adhchini to 128 Vinoba Puri, Lajpat Nagar, New Delhi. The owner of the said premises has denied having given the said premises to the society. In the same minutes of meeting, there is mention of bogus election of the office bearers of the society showing the accused Anna Wankhede, to have been elected as its President, Kamlesh as its Vice-President, Surender Pratap as its Secretary, K.A. Kanekar as its Treasurer and Chandra Prabha as its Executive Member. The above named Surender Pratap is a bogus person and his address recorded as G-S, Sector-12, R.K. Puram, New Delhi is non existent. It is also stated that Chandra Prabha and Kamlesh too are non existing members.

11. Further case of the respondent/CBI is that the minutes of the several bogus meetings stated to have been held between the years 1986 and 1997 were prepared by accused Anna Wankhede. In the meeting dated 22.07.2001 election of the office bearers of the society is shown to have been conducted by a bogus election officer S.K. Sharma, wherein the above office bearers were re-elected. In another bogus minutes dated 03.09.2001, Surender Pratap is shown to have been appointed as Secretary of the Society and K.A. Kanekar as its Treasurer.

12. An application dated 07.09.2001 was submitted on behalf of the

society under the signature of bogus persons namely Surender Pratap as its Secretary before the Assistant Registrar in the RCS office for revival of the society and approval of its final list of members. In the letter that shifting of the office of the society from Adhchini to Vinoba Puri was informed to RCS office vide letter dated 18.06.1986 and the society did not receive the notice of liquidation. It is further alleged that accused Satish Aswal, the dealing clerk in the RCS office dishonestly and fraudulently as well as by abusing his official position submitted a note dated 14.09.2001 recommending sympathetic consideration of the request of the society for approval of its, list of 75 members and also mentioned that the society had, vide its letter dated 18.06.1986, submitted the list of 75 members for onward transmission for allotment of land, whereas no such letter had been received in the RCS office from the society and this fact was concealed by accused Aswal, in addition to above material facts.

13. Further case of the respondent/CBI is that regarding the payment scheme from different members by illegal means are against

Sl.	Name	Amount
1.	Mohit	107,000
2.	Madhu Saxena w/o Sh. S. P. Saxena	550,000

3.	Emrald Builders owned by S.P. Saxena	16,50,000
4.	Praveen Johri, A.K. Johri & Pramod Johri	97,000
5.	Kavita Sharma employee of S.P. Saxena	40,500
6.	Anita Kapasia w/o Sanjay Kapasia	28,000
7.	Vasundara CGHS run by S.P. Saxena	33,65,000
8.	Panwal CGHS run by S. P. Saxena	2,75,000
9.	Payment made to MTNL towards bill of phone number of S. P. Saxena	13,810

14. Neither in the chargesheet nor any of the witness have stated that the petitioner have received money and siphoned off in his account. Further allegation in the chargesheet is that the accused persons have allotted the flat to the persons, who have not applied to the same and collected money from them and allotted to their friends, near and dear, relatives and kith & kins. However, there is no charge against the petitioner that the petitioner has played fraud and allotted the flat to his known persons.

15. It is the case of the CBI that the allotment of the flat and money is before 2004, whereas the petitioner came in picture in the year 2004. There is no allegation in the chargesheet or the witness thereto, who states that the petitioner has either misappropriated money or violated the rules of the

company or allotted the flat to any of his near and dear ones. It is also not the case that the flats were allotted benami is in the name of the petitioner.

16. In view of above facts, since there is no evidence on record. It is a settled law that if chargesheet and the witness go unrebutted, the petitioner cannot be awarded conviction. Therefore, there is no purpose to ask the petitioner to face trial which may take many years. In view of the facts recorded above, I am of the considered view that the petitioner is entitled to be discharged from the CBI case No.52/2016.

17. Consequently order of charge dated 29.01.2019 and frame of charge on 05.02.2019 is hereby quashed with emanating proceedings thereto against the petitioner.

18. Order dasti under the signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 17, 2019
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