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

Judgment reserved on: 23.11.2020

% *Judgment delivered on:01.12.2020*

\+ **W.P.(CRL) 200/2010 & Crl. M.A. Nos. 11012/2014 & 5169/2016**

PUNEET SABHARWAL ..... Petitioner

Versus

CBI ..... Respondent

WITH

W.P.(CRL) 339/2010 & Crl. M.A. Nos. 2641 & 7806/2010, CRL. M.A. Nos. 11013/2014, 5175/2016, 17046/2016

R C SABHARWAL ..... Petitioner

Versus

CBI ..... Respondent

Through: Mr. Salman Khurshid, Senior Advocate with Mr. Khowaja Siddiqui, Mr. Ashwini Kumar, Mr. Arup Sinha, Mr. Raghav Kakar, Mr. Zafar Khurshid and Ms. Sanchita Ain, Advocates for petitioners.
Mr.Sanjeev Bhandari, Special Public Prosecutor for CBI with Mr. Prateek Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition under Article 226 & 227 of the Constitution of India read with Section 482 Cr.P.C. challenges the order on charge as well as the

charges framed under Section 13(2) read with Section 13 (1)(e) of the Prevention of Corruption Act, 2018 (PC Act) in RC No. 74(A)/95/DLI. The petitioners contend that there is no direct substantive evidence against R.C. Sabharwal, the father/ public servant. His assets stand duly proven through settled income tax returns. The ITRs of various entities and individuals linked to the petitioners would show taxes paid on all the income and the assessment stands completed. These tax returns filed much prior to the registration of the case, and money belonging to other accused cannot be fastened on the accused. Reliance is placed upon ***DSP Chennai vs K Insbasagaran (2006) 1 SCC 420*** and ***State of Andhra Pradesh vs J. Satyanarayan JT 2000 (10) SC 430***. Further reliance is placed upon ***Gapadibai vs State of Madhya Pradesh (1980) 2 SCC 327*** to assert that in order to prove benami transactions evidence must be led to show that (i) accused paid consideration; (ii) he had custody of the sale deed; (iii) he was in possession of the property; and (iv) the motive of the transaction. It is argued that there was no material to show that the properties of various entities such as M/s Morni Devi Brij Lal Trust, M/s PUS Properties, M/s Sahil Properties and M/s Morni Merchants Ltd. were benami properties of the petitioners, or that consideration was paid for the said properties. It is argued that the CBI failed to take into account income of M/s Morni Merchants Ltd which had earned Rs.30.84 lacs through special bearer bonds. It is argued that no benefit of encashment was ever availed by petitioners or any of his family members nor were any properties purchased from encashment of the said bonds by the petitioners. The value of property bearing no. 513, Hemkunt Tower, Nehru Place by Smt. Sushma Suri to Smt. Savitri Devi on 01.03.1995, much prior to the end of the check period/

investigation period, was not taken into account. It is argued that there is an over-valuation of Rs.74.50 lacs regarding the New Friends Colony property. If the aforesaid amounts are deducted from the alleged disproportionate assets there will clearly be no case for the prosecution. Furthermore, no link or substantial evidence is shown, of the petitioners having come into possession of any monies by indulging in any criminal misconduct.

2. What is to be seen at this stage is whether a case is made out for trial on the basis of the documents presented. The learned Trial Court having considered the chargesheet, statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, and other documents opined that there is grave suspicion arose from the material placed before the Court of the involvement of petitioner R.C. Sabharwal and Puneet Sabharwal for the offences of which they have been charged under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code, 1860.

3. The case against R.C.Sabharwal is that he was found in possession of the total assets worth Rs.3,10,58,324/- for the check period beginning from 20.08.1968 till 23.08.1995. The assets which were disproportionate to his known sources of the income were Rs.2,05,63,641/-. His wife's salary during the said period was Rs.8,72,249.42. He himself earned a salary of Rs.10,00,042/- for the period in question. As per the chargesheet, the unexplained amount was 166% of the known sources of income. The learned Trial Court had considered the following aspects apropos the charge of disproportionate assets:

> *".......wherein it was alleged that accused R.C. Sabharwal had amazed huge assets which is disproportionate to his known*

source income. The assets acquired by him are either in his name of in the name of his family members, the assets include two flat bearing No.5A and 5B, White House, Bhagwan Pass Road, New Delhi each costing to Rs.36 lacs in the year 1991, residential house at Masjid Moth, double storied house at Plot No. 2/6080, Dev Nagar, Karol Bagh, New Delhi, petrol pump on land measuring 8888/9 Sq Yards at Garh Mukteshwar, 5.5 acres of land at Suitanpur Villate in the name of his son Punit Sabharwal and Sumeet Sabharwal, six bighas land purchased at village Indergarhi, Ghaziabad, UP, 14 biswas and 5 bishwami of agricultural land at Indergarh, Ghaziabad UP, 2 bighas agricultural land at village Indergarhi and a parking space at G-72, Cannaught Place and one Maruti car. It is also alleged that accused R.C. Sabharwal is also in possession of various costly electronic equipment, gadgets and huge bank account in his name or in the name of his family members.

2. During investigation it was revealed that father of accused R.C. Sabharwal was running petrol pump before partition at Rawalpindi and after partition family fled away from Pakistan to Delhi who expired in 1973. The accused R.C. Sabharwal was born in the year 1940 and graduated from Delhi University in the year 1967 and he was appointed as Architecture Assistant in 1968. He was married to Smt. Usha, a medical graduate on 02.06.69 and he has two sons Shri Puneet Sabharwal and Sumeet Sabharwal. The son Sumeet

Sabharwal is in USA and Puneet Sabharwal is running business since 1991.

3. During investigation searches were conducted and it was revealed that accused R.C. Sabharwal has total income from salary as well as other sources amounting to Rs. 10,00,042/- and Usha Sabharwal wife of accused obtained total salary of Rs.8,72,249.42/-. Accused R.C. Sabharwal received a sum of Rs.3,08,856/- from M/s Morni Enterprises. The accused had income of Rs.24,89,087/- from M/s Morni Merchants, accused Puneet Sabharwal joined the said business on 12.10.88. It is also alleged that accused had income of Rs.89,653/- from M/s Sahib Properties. Income of Rs.3,08,197/- from Paroo Properties. Accused had also earned Rs.13,61,062/- from SPK Enterprises and a sum of Rs.42,43,505/- from Morni Davi Brij Lal Trust. During investigation it is also revealed that firm M/s PUS Properties was started by Smt. R. Mehta and accused Puneet Sabharwal who resigned and replaced by Shri Sumeet Sabharwal, Shakuntia Sahni and Sushma Suri and they earned income of Rs.87,593/-. Accused R.C. Sabharwal had rental income of Rs. 13,31,448/- from house No. 7, Masjid Moth, New Delhi and Rs.8310/- from insurance policies and accused R.C. Sabharwal and his wife earned Rs. 1,98,972/- towards interest. It is also alleged that accused earned rental income of Rs.62,890/- from BPC Pump at Garh Muktheshwar. Thus total *income of accused R.C. Sabharwal and his family was Rs.1,23,18,091/-.*

4. According to case of prosecution check period in this case has been taken from the date when accused R.C. Sabharwal joined as Architecture Assistant in NDMC i.e. 20.08.1969 to the date of search i.e. 23.08.95. The total expenditure of accused during the check period comes out to Rs. 8,23,108/-.

5. It is alleged that during investigation it was revealed that accused R.C. Sabharwal invested huge amount for acquiring movable properties and total movable assets worth Rs.4,25,450/- were acquired by him either in his name or in the name of his family members. Apart from the same accused was having various accounts and balance in the accounts, in his name or in the name of his family members including sister, the bank balance in various accounts as on 23.08.95 was Rs.82,63,417/-.

6. It is alleged that during inspection it is revealed that accused R.C. Sabharwal acquired 24 immovable assets to the tune of Rs.2,27,94,907/- either in his name or in the name of his family members and sister during the check period. Accused R.C. Sabharwal acquired assets disproportionate to his known source income for which he could not satisfactorily account for. He was a party to criminal conspiracy with his son Puneet Sabharwal, who had received 79 lacs through *encashment of Special Bearer Bonds and he facilitated commission of offence as conspirator and in furtherance to the said criminal conspiracy assets were acquired by him in the names of Morni Devi Brij Lai Trust, Morni Merchants and other firms in which sole beneficiary was his son accused Puneet Sabharwal. The accused was found in possession of total assets of Rs.3,10,58,324/- for the check period w.e.f. 20.08.1968 to 23.08.1995 and assets worth Rs.2,05,63,341/- were disproportionate to his known source of income."*

4. The learned Senior Counsel for the petitioners has contends that no case could be made out against the son – Puneet Sabharwal, because the check period started from August, 1968 and he was born only on 03.09.1970 and attained the age of majority in 1991. The court would note that this obviously, is an error because as per his date of birth, Puneet Sabharwal would have attained the age of majority on 02.09.1988. Furthermore, there are allegations and reliance is made on statements of 7 prosecution witnesses to establish complicity or abetting his father in procuring and facilitating illicit monies. Evidently seven years of the investigation period pertain to his having attained the age of majority. The prosecution's case is that the monies came into his account through dubious sources or that he or a Trust were beneficiaries of monies coming illegitimately, the same gives rise for suspicion, warranting a trial, on the basis of the records adduced with the chargesheet.

5. Another argument is raised that the monies which came into the accounts of the various Trusts such as Morni Devi Brij Lal Trust could not

be looked into under the scheme of Special Bearer Bonds issued under The Special Bearer Bonds (Immunities and Exemptions) Act, 1981. However, according to the prosecution, the unaccounted for income is 166% of the known sources of income. The amounts, according to Charge No. 1, is that the petitioner R.C. Sabharwal was found in possession of assets to the tune of Rs.3,10,58,324/- as against his income and that of his family members' income, to the tune of Rs. 1,23,18,091/- and expenditure of Rs. 18,23,108/- and that he was found in possession of total assets to the tune of Rs.2,05,63,341/-, which were disproportionate to his known sources of income.

6. The learned counsel for the CBI contends that the protection under section 3 of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 ('the Act' for short) is not absolute apropos monies which may have been derived through illegitimate means or relating to any offence under Chapter IX and XVII of the IPC and the Prevention of Corruption Act, 1988 (P.C. Act) or any offence which is tenable under any law which is similar to offence punishable either under these Chapters of the IPC or the P.C. Act. He relies upon under section 3(2) of the Act which reads as under:

> *(2) Nothing in sub- section (1) shall apply in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Prevention of Corruption Act, 1947 (2 of 1947) or any offence which is punishable under any other law and which is similar to an offence punishable under either of those Chapters or under that Act or for the purpose of enforcement of any civil liability. Explanation.-- For the purposes of this sub-*

section," civil liability" does not include liability by way of tax under any law for the time being in force.

7. He further refutes the petitioner's contention that, at best, only four transactions would come under the scanner for trial in the present proceedings, is untenable because ITAT's order, relied upon by the petitioner, is of subsequent date i.e. 31.08.2007 whereas the material available before the CBI pertains to the period prior thereto i.e. for the period ending 1995. The order on charge was framed on 21.02.2006, therefore, a subsequent document would not be of any assistance to the petitioner. He relies upon the principle that Income Tax Returns are only with respect to such monies, as may be taxble under the said Act. It does not examine the source or the manner in which the monies were brought into the hands of the assessee as envisaged under section 13(1)(e) of the PC Act. The test of legitimacy of the money would be the jurisdiction of the investigating agency under the latter Act. He relies upon the dicta of the Supreme Court in ***State of Karnataka v. J. Jayualalitha, (2017) 6 SCC 263*** as well as in ***Vishwanath Chaturvedi (3) v. Union of India (2007) 4 SCC 380*** which held inter alia "*It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could, on court direction, determine the question of disproportionate assets."*

8. In ***State of Karnataka v. J. Jayalalitha, (2017) 6 SCC 263*** it was held as under:

*"....**187.** It was exposited that there was nothing in law which prevented the Income Tax Officer in an appropriate case*

from taxing both the cash credit, the source and nature of which was not satisfactorily explained, and the business income estimated by him under Section 13 of the Income Tax Act, 1922, after rejecting the books of accounts of the assessee as unreliable. It was propounded as well that where there was unexplained cash credit, it was open to the Income Tax Officer to hold that it is the income of the assessee and no further burden lies on the Income Tax Officer to show that that income is from any particular source and that it was for the assessee to prove that even if the cash credit represented income, it was an income from a source which had already been taxed.

190. *The decision is to convey that though the IT returns and the orders passed in the IT proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section 13(1)(e) of the PC Act, 1988 and that independent evidence would be required to account for the same.*

191. *Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in* *evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act…..*

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***196.** This Court ruled that the fact that the accused, other than the two Ministers, had been assessed to income tax and had paid income tax could not have been relied upon to discharge the accused persons in view of the allegation made by the prosecution that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it* *will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law.*

543. *While observing that mere declaration of property in the income tax returns does not ipso facto connote that the same had been acquired from the known lawful sources of income, the trial court held the view that the prosecution could successfully establish that the respondents and their firms/companies, who posed to be income tax assessees, had no independent or real source of income and that it was the finance of A-1 that was really in circulation and thus it could prove beyond reasonable doubt that the only source of money, the acquisition of large assets was that of hers...."*

9. The CBI further contends that (i) merits of the matter would best be tested in a trial during which the petitioner would be given due opportunity in law to defend himself, and (ii) such appreciation would be possible only after the evidence has been led. Reliance is placed upon the dicta of the Supreme Court in ***Sunil Kumar Loharia vs. Sumeet Ganpatrao Bachewar & Anr., Crl. Appeal No. 1051 of 2018 decided on 23.08.2018.*** It is argued that complicity of the co-accused is otherwise made out on the basis of the material available and deposition of the witnesses, recorded during the investigation.

10. The petitioner submits that there is nothing specific, whatsoever, about abetment by the son during the entire period. In law, he could not possibly be an abettor to a crime under the provisions of the Prevention of Corruption Act, while the son was a minor. An unsubstantiated statement to the effect that the father had amassed wealth disproportionate to his known source of income or otherwise by illegal means would not by itself be

sufficient to impute criminality against son or abetment by son to indulge in illegal activities. Additionally, he submits that the father has two sons one of whom lives in UK. Since he is similarly placed to the petitioner, he too could be said to be beneficiary of the encashment of the Special Bearer Bonds which was put into the account of M/s. Morni Merchants Ltd. The said son has not been arrayed as an abettor in the present proceedings. He submits that at best prosecution against amassing wealth through illegal means may well lie against the petitioner but such sins, if any, cannot be visited for the son. Detailed Assessment Orders examining 37 properties, which was far in excess of few properties arrayed in the RC with respect to the son, have been passed for the relevant period i.e. up to the financial year 1996-98 by the CIT who had assessed the son's returns by an order dated 12.01.2001 looking into the source of income of the monies into the account of the assessee, his son and found the same to be in order. All CIT orders were affirmed by the ITAT in 2017. He submits that said proceedings took into account the complaints made by the CBI apropos illegal enrichment by the father. Reference is made to the definition of the abetment under section 107 of the IPC which reads as under:

> *107. Abetment of a thing.—A person abets the doing of a thing, who—*
>
> *(First) — Instigates any person to do that thing; or*
>
> *(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

(Thirdly) — *Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."*

11. The petitioner insists that there is no material to make out any charge for abetment for illegal gratification by the petitioners. He relies upon the following judgements:

(1) *Sh. Ram & Ors. v. State of Uttar Pradesh Criminal Appeal Nos. 142 & 205 of 1973 decided on 06.11.1974*;

(2) *K.C. Builders and Ors. v. The Assistant Commissioner of Income Tax (2004) 2 SCC 731*;

(3) Kedari Lal v. State of Madhya Pradesh and Ors. (2015) 14 SCC 505;

(4) State of Madhya Pradesh v. Mohanlal Soni (2017) 6 SCC 628;

(5) D.S.P., Chennai v. K. Inbasgaran (2006) 1 SCC 420;

(6) *State of Maharashtra v. Pollonji Darabshaw Daruwalla 1987 (Supp) SCC 379;*

(7) *Mohd. Mumtaz v. Nandini Satpathy and Ors. (1987) 1 SCC 279*;

12. The Court would note that each of the aforesaid cases dealt with appeals either against conviction or acquittals and not on framing charge. The learned counsel for the CBI submits that allegations against the accused would be made out during trial. He submits that statement of witnesses, in particular, of Anit Mehta to the effect that he had assisted Puneet Sabharwal in filing of returns and monies for purchase of properties were paid from the account of Mr. Puneet Sabharwal. It is argued that in the Income Tax proceedings, the CBI was not a party. It was only a complainant. The CBI relies upon the ***P. Nallammal vs State (1999) 6 SCC 559*** to contend that trial could be done of not only the offence punishable under the PC Act but also of conspiracy, attempt or abatement of such an offence. In the process private individuals too could be prosecuted on the ground that they have abetted or conspired with in the criminal misconduct by a public servant. The legitimacy of the source of the income is, therefore, under examination.

13. That being the position, what element of the monies came into the account of the accused i.e. the father and the son respectively, or whether the latter was a beneficiary of the alleged transactions through or by his father, remains unexplained. Simply because for a large part of the period of investigation, the son was a minor, would not by itself be a reason to disregard the fact that at least for seven years of the investigation period he

was a major. In the circumstances, there appears to be material for the trial to be conducted.

14. Furthermore, as noted hereinabove, s.3(2) of the Special Bearer Bonds Act makes the benefits of the said Act inapplicable to the PC Act or similar offences. The prosecution seeks to rely upon documents, upon statements of witness viz. Anit Mehta, Ashok Grover, Ramnivas, Sushil Salhotra, Vijay Kumar Lalla and Surender Malik. Reliance is also placed upon the decision of the Supreme Court in ***State of Karnataka vs Jayalalitha (2017) 6 SCC 263*** to contend that income tax assessment orders are apropos tax liability on income, they do not necessarily attest to the lawfulness of the sources of the income. The latter is the subject matter of the investigation. According to the CBI, some income tax related orders relied upon by the petitioners, are of a date after the filing the chargesheet, therefore they would be of no relevance. What is to be seen at this stage is whether there is a strong suspicion that the accused has committed the offence. From the preceding discussion, an answer emanates in the affirmative.

15. In view of the above, the Court finds no reason to interfere with the order on charge dated 21.02.2006 and the framing of charge dated 28.02.2006.

16. The petitions are without merits and stand dismissed alongwith pending applications.

NAJMI WAZIRI, J.

DECEMBER 01, 2020
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