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

Date of decision: 29th **January, 2020**

\+ CRL.M.C. 2251/2017

RENUBALA PRADHAN ..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Amit Tiwari, Mr. Aditya Raj and Mr. Adarsh Verma, Advocates

versus

CBI ..... Respondent

Through: Mr. Mridul Jain, Spl. PP.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Present petition is preferred under Section 482 Cr.P.C. seeking quashing of summoning order dated 27.07.2016 passed by learned Special Judge (P.C. Act) (CBI) 06, New Delhi and proceedings emanating therefrom.

2. Brief facts of the case are that on the basis of information, respondent registered an FIR bearing RC No.04(A)/2014 dated 12.06.2014 under Sections 120-B/420/467/468/471 IPC and Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988 against petitioner and some unknown persons. Pursuant to completion of investigation, respondent filed charge sheet concluding that no offence has been committed by petitioner,

who consequently was kept in column 12 therein. Investigation revealed commission of offence as mentioned above by Mr. Subodh Mishra, Mr. Rajesh Agnihotri, the Director of M/s Vandana Air Travels Pvt. Ltd and the company. However, learned Special Judge while rejecting the closure report, took cognizance under Section 120-B IPC read with Section 420/467/468/471/474 IPC and under Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, against petitioner also besides other charge sheeted persons

3. It is submitted by counsel for Petitioner that she is a social worker and worked as President, Zila Parishad, Ganjam District, Odisha from 1997-2002. Thereafter, she worked as Member of Zila Parishad, Ganjam Distt., Odisha from 2002-2007. In April, 2008, she was elected Member of Parliament, Rajya Sabha from State of Odisha under candidature of Biju Janta Dal. During her tenure in Rajya Sabha, she has been Member of several committees. Petitioner's tenure in the Rajya Sabha expired in April, 2014. Being Member of Parliament and member of several important parliamentary committees, she has played significant role in development of the country in general and her state in particular. She is recognized in her

state as a leader having deep roots in society. She is seen as a political worker with dignity, integrity, honesty and intellect.

4. Learned senior counsel appearing on behalf of petitioner submits that every Member of Rajya Sabha is entitled to 34 free air travel journeys during one financial year and also unlimited air travels for official work. Out of these 34 journeys, spouse or companion of a member is entitled to travel eight alone journeys in a year. For reimbursement of expenditure incurred by a member upon said air travels, the Member has to submit TA Claims enclosing details of journey in prescribed arrival/departure report, air-tickets and boarding passes. E-tickets submitted by members are to be counter-signed by them. Concerned department after scrutiny and procedure established by law, approves the TA claims and reimburses the amount by directly crediting in bank account of the member.

5. In terms of the guidelines/protocol, the Members of Parliament have privileges as protocol at the airport by virtue of which they are not required to stand for their ticket and boarding passes required for performing their journey. Companion family members travelling with petitioner also enjoy these privileges. Formalities of obtaining boarding passes for passenger and his companion are done by protocol official with assistance of travel agent.

6. Learned senior counsel further submits that the nature of work requires petitioner to frequently travel and visit several places. She had to perform several functions including booking of air tickets etc. for which she required assistance of her Private Secretary. She had been elected as Member of Parliament for the first time and had no social circle in Delhi. Upon enquiry from fellow member, petitioner learnt that one Mr. Subodh Mishra who is working in the parliament since 1992 has in depth knowledge about all procedural aspect and handles travelling arrangement of many Members of Parliament. Accordingly, Mr. Subodh Mishra approached petitioner and informed her that he will be handling her travelling issues and claims easily as he is aware of all procedural formalities. He informed petitioner that his son and son-in-law are working in a travel agency namely M/s. Vandana Air Travels Pvt. Ltd. He further informed that he arranges all air tickets of several members and also looks after their claims from concerned Houses of Parliament. Believing upon his representation and also on the fact that he was already managing travelling issues of several members, petitioner also asked him to look after her tickets and claims from Rajya Sabha. He, thereafter, started arranging tickets through Mr. Rajesh Agnihotri who was Director of M/s Vandana Air Travels Pvt. Ltd. He also

got his daughter Ms. Lalita Kumar officially appointed as PS of petitioner. In a routine manner, petitioner after performing several journeys, used to handover bunch of boarding passes to Mr. Subodh Mishra. The tickets were sent through e-mails by Mr. Rajesh Agnihotri to him for the purpose of submitting TA claim subsequent to journey performed by petitioner. Necessary documentation for submitting TA bills were filled by Mr. Subodh Mishra. Petitioner, upon presentation of TA claims by Mr. Subodh Mishra, bonafidely signed the TA bills. Thereafter, he used to submit the claim with the concerned department of Rajya Sabha Secretariat and pursued the same in case of any objections. Concerned department after approving the claim credited amount directly in account of petitioner. Said Mr. Subodh Mishra, thereafter, obtained cheques from petitioner for payment to Vandana Air Travels Pvt. Ltd. Petitioner has paid all the money reimbursed to her to Mr. Subodh Mishra for payment to the travel company. Some of the cheques issued were account payee while some of self as requested by Mr. Subodh Mishra. He withdrew money from petitioner's account and misappropriated the same without knowledge and consent of petitioner. He inserted forged inflated tickets in the TA claims along with other genuine tickets and obtained signatures of petitioner. However, Petitioner had no knowledge of submission of forged tickets in the TA claims. She also had no occasion to raise suspicion as the amount spent on travelling was reimbursed to her by the Rajya Sabha.

7. On the other hand, learned counsel for CBI submits that as per allegations during the period 2012, the then Member of Parliament, entered into criminal conspiracy with unknown employees of M/s. Vandana Air Travels Pvt. Ltd. and claimed inflated reimbursement bills for four companion tickets amounting to ₹1,62,459/- from the Pay and Accounts Office, Rajya Sabha Secretariat, New Delhi. The information revealed that concerned 4 tickets were purchased by petitioner under Companion Free Scheme (hereinafter referred to as CFS) after making payment of ₹5632/-. It is further alleged that petitioner on the basis of false tickets claimed excess amount of ₹1,56,827/- from Government of India.

8. Further submission is that FIR provides details of alleged false claims made by petitioner under CFS during the period 2011-2013, which are as follows:-

Sr. No.	Name of the Companion	Main Ticket	CFS Ticket	Fare claimed for the companion ticket	Actual Fare Paid	Sector & Date
1.	N. Pradhan	0982067201204	0982105160886	41985/-	3613/-	Bhubneshwar-Delhi 27.11.12
2.	Mr. Vishu	982066222546	0982104795783	40158/-	673/-	Bhubneshwar-Delhi 21.10.12

3.	Mr. Ranjan Nehra	0982066222548	0982104795778	40158/-	673/-	Bhubneshwar-Delhi 22.10.12
4.	Mr. Lisha	0982066222548	0982104795772	40158/-	673/-	Bhubneshwar-Delhi 22.10.12
			Total	162459/-	5632/-	
			Loss	1,56,827/-		

9. Learned counsel for C.B.I. submits that pursuant to registration of FIR, respondent conducted investigation. Prima facie, it was revealed that aforesaid 4 e-tickets amongst several submitted along with TA claims by the petitioner during the period 2012, were issued under CFS and formed basis for excessive reimbursement. Aforesaid e-tickets were false. It was also revealed that during the period 2011-2013, petitioner had also claimed excess fair on e-tickets on further 06 companion free scheme ticket, 01 frequent flyer passenger ticket and 15 coupon tickets from the Rajya Sabha Secretariat in her TA claims, in addition to the 4 tickets mentioned in FIR. Details of those 26 tickets are as follows:

Sr. No.	Forged Ticket	Type of Ticket	Fare Claimed from Rajya Sabha	Actual Fare Paid	Excess amount claimed
1.	0982104795772	CFS	40158/-	673/-	
2.	0982104795778	CFS	40158/-	673/-	
3.	0982104795783	CFS	40158/-	673/-	
4.	0982105160886	CFS	41985/-	3613/-	
5.	0982105542211	CFS	42204/-	3832/-	
6.	0982105542174	CFS	41985/-	3613/-	
7.	0982103220963	CFS	23023/-	454/-	
8.	092103674165	CFS	61745/-	673/-	
9.	0982103623259	CFS	49638/-	13007/-	
10.	0982103589795	CFS	36631/-	891/-	
11.	098210477663	FFP	42204/-	892/-	

12.	0984215551928	Coupon	42143/-	25210/-	
13.	0984215497477	Coupon	42250/-	23626/-	
14.	0984215497522	Coupon	43350/-	23626/-	
15.	0984215456415	Coupon	35968/-	40103/-	
16.	0984215457558	Coupon	35968/-	23602/-	
17.	0984215459973	Coupon	36631/-	22072/-	
18.	0984215459974	Coupon	36631/-	22072/-	
19.	0984215462140	Coupon	36631/-	23934/-	
20.	0984215462485	Coupon	39957/-	23934/-	
21.	0984215462489	Coupon	39957/-	23934/-	
22.	0984215494321	Coupon	39957/-	21010/-	
23.	0984215494232	Coupon	39957/-	21010/-	
24.	0984215494008	Coupon	39957/-	21010/-	
25.	0984215448403	Coupon	35195/-	23504/-	
26.	0984215449404	Coupon	35526/-	23504/-	
			10,39,967/-	3,91,145/-	6,48,822/-

10. Accordingly, learned counsel submits that petitioner paid only a sum of Rs.3,91,145/- to Air India against aforesaid 26 tickets while she claimed an amount of Rs. 10,39,967/- thereby causing loss of Rs. 6,48,822/- to the Rajya Sabha.

11. Heard learned counsel for the parties at length and perused material on record.

12. It is not in dispute that Air India vide circular dated 03.10.2011 launched Companion Free Scheme for domestic travels. The scheme was initially valid upto 31.03.2012 which was subsequently extended till 31.05.2013. In terms of the scheme, passengers buying full ticket were entitled to have one free ticket for their companion provided latter is either spouse, child or parent. The main ticket/paid ticket was to be issued by the travel agent and companion ticket was to be issued only by Air India Office.

The main ticket bears a specific endorsement with name of family member for issuance of companion ticket. Air India requires only the number of main ticket for issuance of companion ticket, so as to enable it to cross-check the endorsement on the main ticket for the companion ticket. In terms of the policy, no authorization was required from main ticket holder to obtain a companion free ticket. Similarly, frequent flyer scheme and coupon ticket scheme was also examined by respondent.

13. It is also not in dispute that other co-accused were booked in a different FIR, who were similarly placed. Out of the 6 accused, CBI filed closure report against petitioner herein and one Brajesh Pathak. However, said report has not been accepted by trial Court. Being aggrieved, Brajesh Pathak filed petition before this Court for quashing of the summoning order and emanating proceedings thereto vide Crl.M.C. 1127/2015. Same was allowed vide judgment dated 11.04.2017. Another accused namely Mohmood Asad Madani filed Crl.M.C. 4956/2017 titled '***Mahmood Asad Madani v. CBI***'. Same was decided by this Court vide order dated December 11, 2019 thereby quashing FIR therein and emanating proceedings thereto.

14. It is pertinent to mention here that in '***Brajesh Pathak vs. Central Bureau of Investigation***', it was alleged that "during the period 2011 to 2013, the petitioner therein entered into a criminal conspiracy with known private persons and claimed wrongly inflated reimbursement for eight companion tickets amounting to Rs. 2,19,887/- from the Pay and Accounts Office, Rajya Sabha Secretariat, New Delhi but had only paid an amount of Rs. 10,499/- for the said eight companion tickets, thereby he unduly claimed an excess amount of Rs. 2,09,338/- from the Government of India. The respondent CBI filed charge- sheet on 02.01.2015 with the conclusion that investigation revealed commission of offences under Sections 420, 467, 468, 471 and 474 IPC against Sh. Rajesh Agnihotri, Director of M/s Vandana Air Travels Pvt. Ltd. and that no offence has been committed by the petitioner, who was kept in column 12 therein. Thereafter, an application was moved by respondent CBI through Deputy Superintendent of Police marking of the matter to Magisterial Court of competent jurisdiction. The learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi vide order dated 20.02.2015 rejected the application filed by the respondent CBI and took cognizance against the petitioner therein for the offences punishable under Sections 120-B, 420, 467, 468,471 and 474 IPC and Section 13(2) read with

Section 13(1) (d) of the Prevention of Corruption Act, 1988 and issued summons to the petitioner, Rajesh Agnihotri and M/s Vandana Travels Private Limited. Aggrieved by the said impugned summoning order dated 20.02.2015 and all the proceedings emanating therefrom, the petitioner filed petition under Section 482 Cr.P.C. to quash the summoning order and all proceedings emanating therefrom.

15. While allowing the above mentioned petition vide order dated 11.04.2017, Co-ordinate Bench of this Court observed as under:-

> *"28. It is apparent from the charge-sheet filed by the respondent CBI that the petitioner through his Private Secretary/ Private Assistant submitted his e-tickets and boarding passes and on the basis of etickets and boarding passes the claim amount was reimbursed by Rajya Sabha Secretariat.*
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> *29. Nothing is emerging on the record or investigation made by the respondent CBI that price of air tickets amounting to Rs.2,19,887/- has not been paid by the petitioner to the Travel Agency/ there is no any such complaint pending qua the present petitioner which otherwise means the amount of Rs. 2,19,887/- has been paid by petitioner to the Travel Agency. The petitioner has got reimbursed the aforesaid amount of Rs. 2,19,887/- from the Rajya Sabha Secretariat after depositing the air tickets and the boarding passes.*
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> *30. The whole dispute is arising out of the non-matching of the amount of the tickets sold at the counter of Air India and the tickets sold through Travel Agency.*

31. There is nothing on the record to show on which date Air India sold the last tickets to its customer for its destination to determine the actual cost of the ticket. It is a general practice which has been noticed that air tickets at counter are not available as the same has been sold to the Consolidator long time back to avoid the risk of loss due to the existing stiff competition among various Airlines. Once, the tickets are sold to the Consolidator and further to the Travel Agency, the Travel Agency further sells the tickets to customer looking into its own business interest until and unless there is a regulation on behalf of Government for restricting the higher price of Travel Agency.

32. There is nothing coming on the record that there is any domestic/Government/Air India regulation restricting the higher price of the Travel Agency.

33. Therefore, in absence of such regulation, even if the prosecution case taken to be gospel truth still do not constitute prima facie case qua the present petitioner in absence of any evidence against the petitioner in the charge-sheet filed by the respondent CBI. Reliance is placed on the judgment of the Apex Court in the case State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR (1992) SC 604, which has laid down certain category for quashing of the proceedings, the relevant portion is reproduced hereunder:-

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;"

34. In the light of aforesaid discussions, the cognizance taken qua the present petitioner without *taking recourse under Section 173(8) Cr.P.C. for further investigation is hereby set aside.*

35. Consequently, the present petition is allowed and the impugned summoning order dated 20.02.2015 and subsequent proceedings qua against the petitioner in CC No. 01/2015 bearing RC No. 3(A)/2014/CBI/AC-III/N.D. pending before the learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi are hereby quashed to the extent of the role of the present petitioner in FIR No. 3(A)/2014/CBI/AC-III/ND."

16. Similar was the case in ***Mahmood Asad Madani vs. Central Bureau of Investigation, 2019 SCC OnLine Del 11809***, decided on 11.12.2019 by this Court, wherein observed as under:

"31. It is pertinent to mention here that in case of Brajesh Pathak, the CBI had filed closure report and the same was not accepted by the Trial Court and being aggrieved, the Brajesh Pathak challenged the same before this court and this court quashed the FIR with emanating proceedings thereto. The order has attained finality.

32. In view of the facts recorded above, the facts and evidence on record are same and similar and FIR was filed against Brajesh Pathak and Ms.Renu Bala Pradhan and the petitioner herein, however, in two cases, the CBI has filed the closure report, the same were not accepted by the Trial Court and in the present case, the chargesheet is filed and the case is pending for trial. Two parameters cannot be accepted.

33. I am conscious about the directions of the Hon'ble Supreme Court in ***Chilakamarthi***

Venkateswarlu & Anr. (Supra) *vide order dated 31.07.2019 whereby "the power to quash the proceedings is generally exercised when there is no material to proceed against the Petitioners even if the allegations in the complaint are prima facie accepted as true."*

34. However, in case of ***S.W. Palanitkar and Ors. vs. State of Bihar and Anr.: (2002) 1 SCC 241*** *the Hon'ble* Supreme Court has held that *"in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating.*" Thus, it is held that the essential ingredient for committing an offence under section 420 IPC, *"mens rea"* is an essential ingredient.

35. In case of ***C.K. Jaffer Sharief vs. State (CBI): (2013) 1 SCC 205*** whereby held that *"dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."*

36. In case of ***Central Bureau of Investigation vs. K. Narayana Rao: (2012) 9 SCC 512***, the Hon'ble Supreme Court has held that *"the ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are*

> *alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

17. Moreover, in case of ***Ramesh Rajagopal vs. Devi Polymers Pvt. Ltd.: (2016) 6 SCC 310,*** the Hon'ble Supreme Court has held that *"in the absence of any act in pursuance of the website by which he has deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person, we find that it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468."*

18. The petitioner being similarly placed with Brajesh Pathak and Mahmood Asad Madani, I am of the view that in the present case there is no conspiracy established on the part of petitioner, thus, there is absence of *mens rea* in the present case. Though excess amount has been claimed but that is due to inadvertence on the part of PA of the petitioner. However, she has not claimed excess amount at all with ill intention. Therefore, I hereby quash the FIR and emanating proceedings thereto.

19. While quashing the FIR in case of ***Mahood Asad Madani*** (Supra) I imposed cost of ₹5Lacs. However, the petitioner herein is neither a businesswoman, nor serving anywhere. She is a social worker. I therefore, refrain from imposing cost.

20. The petition is accordingly allowed and disposed of.

<u>Crl.M.A. 9223/2017</u>

21. In view of the order passed in the present petition, the application has been rendered infructuous and is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 29, 2020/ऑ