

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION NO. 208 OF 2016

Iqbalsingh s/o Manaksingh Soni
aged about 82 years, occu. Business,
R/o. Near Hotel Siddarth,
Civil Lines, Chandrapur,
Tah. and District Chandrapur

.. APPLICANT

...VERSUS...

Central Bureau of Investigation,
through the Superintendent of Police,
Anti-Corruption Bureau, Nagpur

.. RESPONDENT

Mr. S. V. Manohar, learned Sr. Counsel a/b Mr. M. P. Khajanchi, Advocate
for appellant.
Mrs. Mughdha Chandurkar, counsel for respondent.

CRIMINAL REVISION NO. 209 OF 2016

Sevasingh s/o Pyarasingh Kalra
aged about 63 years, occu. Business,
R/o. BTS Plot, Alpalli Road, Shivaji Ward,
Ballarpur, Tq. Ballarpur, Dist. Chandrapur

.. APPLICANT

...VERSUS...

Central Bureau of Investigation,
through the Superintendent of Police,
Anti-Corruption Bureau, Nagpur

.. RESPONDENT

Mr.S.P.Dharmadhikari, learned Sr. Counsel a/b Mr.M.P.Khajanchi,
Advocate for appellant.
Mrs. Mughdha Chandurkar, counsel for respondent.

CRIMINAL REVISION NO. 214 OF 2016

- 1) Gurminder Singh Gill, Delhi
Aged 64 years, Occu. Retired
R/o. 186-E, Arjun Nagar,
New Delhi – 110016
- 2) A. S. Jagannatha Rao, Chennai
Aged 65 years, Occu. Retired
R/o. 84/6, Second Cross Street,
Basant Nagar, Chennai – 600090
(Tamil Nadu)
- 3) Ramesh Vasant Naphade
Aged 61 years, Occ. Retired
R/o. Flat No.03, Swamikrupa Residency,
Besa Road, Nagpur – 440037

.. APPLICANTS

...VERSUS...

State of Maharashtra through
Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Bureau, Nagpur

.. RESPONDENT

Mr.S.P.Dharmadhikari, learned Sr. Counsel a/b Mr.C.S.Dharmadhikari,
Advocate for appellant.
Mrs. Mughdha Chandurkar, counsel for respondent.

<u>CORAM</u>	<u>:-</u>	<u>MANISH PITALE J.</u>
<u>RESERVED ON</u>	<u>:-</u>	<u>22/12/2020</u>
<u>PRONOUNCED ON</u>	<u>:-</u>	<u>08/01/2021</u>

COMMON JUDGMENT

Heard.

(2) These are three revision applications filed by
the applicants herein challenging a common order dated

21/11/2016, passed by the Court of District Judge-4, Chandrapur, whereby applications for discharge filed by the applicants herein, were dismissed.

(3) The applicants in Criminal Revision Application No.214/2016, were employees of SAIL-Chandrapur Ferro Alloy Plant of the Steel Authority of India Limited, which was known as Elektros melt India Limited. The applicant No.1 in the said application was the Executive Director of the plant, while applicant No.2 was General Manager (Finance) and applicant No.3 was General Manager, (Material Management and Marketing), at the relevant time. The applicant in Criminal Revision Application No. 208/2016 was a supplier and Proprietor from whom the aforesaid plant purchased coal. Similarly, the applicant in Criminal Revision Application No. 209/2016 was also another such supplier and proprietor.

(4) The present applications concerned initiation of investigation by the respondent Central Bureau of Investigation (CBI) against the applicants and other accused persons. In pursuance of the enquiry and investigation, the respondent registered a First Information Report (FIR) on 31/05/2012,

against the applicants and others for having committed offences under Section 420 read with Section 120-B of the Indian Penal Code (IPC) and Sections 13(2) read with Section 13(1)(d) and 15 of the Prevention of Corruption Act, 1988. The allegation in the FIR was that the aforesaid plant suffered financial loss to the tune of Rs.57,47,989/-, due to the criminal conspiracy entered into between the accused persons, including the applicants herein. It was alleged that a process of tender initiated on behalf of the said plant for purchase of coal had reached finality, wherein the lowest bidders had been identified and instead of placing orders for purchase of coal, the officials of the said plant, including the applicants in Revision Application No.214/2016, cancelled the tender. A process of re-tendering, which was illegal and against the Purchase/Contract Procedure – 2009 (PCP-09), was initiated in conspiracy with the applicants in Criminal Revision Applications No.208/2016 and 209/2016, thereby leading to purchase orders from such suppliers at a much higher rate, resulting in the said wrongful financial loss to the plant.

(5) Upon registration of FIR, the investigation was completed and charge-sheet was filed. In the process, the respondent recorded statements of a number of witnesses. It was

claimed that the oral and documentary material that had come on record was sufficient to frame charges against the applicants herein. It was stated in the charge-sheet that specifications pertaining to the chemical qualities of coal were deliberately changed in the re-tendering process, as a result of which coal was purchased at a higher rate as compared to the lowest bids offered in the initial process of tendering. As per the material placed before the Court along with charge-sheet, the initial tender was cancelled by bringing about pressure on the members of the tender scrutiny committee of the plant and such pressure was brought by the applicants before this Court. It was claimed that the entire process of cancellation of the earlier tender and the process of re-tendering was undertaken in a dishonest manner, against public interest and this was evident from the fact that the coal purchased upon re-tendering was 13.54% more expensive than the rate at which the coal could have been purchased as per the lowest bids in the initial tender.

(6) At this stage, the applicants filed discharge applications before the Court below. It was claimed that there was no material to support the allegations made against the applicants. It was submitted that even if the material was to be accepted as it

is, there were no ingredients of the offences with which the applicants were sought to be charged. By referring to various documents pertaining to the two processes of tender, it was claimed on behalf of the applicants before the Court below that there was absence of material to frame charge against them.

(7) By the impugned common order dated 21/11/2016, the Court below considered the contentions raised on behalf of the applicants. The Court below referred to the documents on which emphasis was placed on behalf of the applicants and by referring to the law pertaining to considering applications for discharge, found that there was no substance in the applications. Accordingly, the applications stood dismissed.

(8) Aggrieved by the said common order passed by the Court below, the applicants approached this Court. While issuing notices, this Court granted stay of further proceedings before the Court below. As a consequence, the trial remained stayed. The applications were taken up for final hearing and learned counsel for the rival parties were heard at length.

(9) Mr.S.P. Dharmadhikari, learned Senior Counsel assisted by Mr.C.S.Dharmadhikari, learned Advocate for the applicant in Criminal Revision Application No.214/2016, submitted that a perusal of the material on record would show that no charge could be framed against the applicants, even if the material that came on record in pursuance of the investigation was to be accepted. It was submitted that both the tenders were published and there was nothing to show that the process of tendering was tweaked in any manner by the applicants in the aforesaid applications to cause any benefit to the successful bidders/suppliers of coal. It was submitted that the said applicants had no control with regard to the persons who would bid on the basis of the first, as well as the second tender floated on behalf of the plant. Price bids were not to be submitted in both the tenders and there was no pre-qualification also.

(10) It was submitted that a comparison of the technical specifications given in the tenders would show that there was a marked difference between the two. The decision to cancel the initial tender was consciously taken when the applicant No.2 in the aforesaid plant being the General Manager (Finance) analysed the financial implication on the plant as regards the

amount that would be paid and the quality of coal that would be purchased. On the basis of the offers made by two bidders in the first process of tender showing that there was good quality of coal being offered, it was thought fit by the said applicant that if the technical specifications as regards the quality of coal and corresponding penalty were appropriately modified, it would have a positive financial implication for the plant. This move was duly approved by the said committee and it was only thereafter that the first tendering process was cancelled. By referring to the technical specifications of the two tenders, it was sought to be highlighted that there was no scope left for any discretion in the hands of the officials of the plant. In the second tender process, as regards the quality of coal, a heavy penalty was provided for supply of coal that was found to be below a particular minimum standard. According to the learned Senior Counsel appearing for the said applicants, this was a move consciously taken on behalf of the plant, so as to ensure proper quality of coal at the best rate possible.

(11) It was further submitted that the two bidders who had participated in the first process of tender and had offered higher quality of coal did not even participate in the second

process of tender and therefore, it could not be said that the aforesaid decision of cancelling the first tender and initiating the re-tendering process, was tailor made for any particular supplier or bidder. It was then submitted that Clause 9.1.4 of the said Purchase/Contract Procedure – 2009 (PCP–09), clearly provided that a re-tendering process could be resorted to. It was further submitted that statements made by committee members during investigation that they were pressurized by the applicants to support the decision of cancellation of tender and initiating re-tendering process, was nothing but the result of the respondent investigating agency browbeating the said members of the committee into making such statements.

(12) It was submitted that the decision to cancel the tender and to initiate the process of re-tendering was a conscious decision taken in the interest of the plant and there was nothing to show that any particular bidder or supplier was sought to be benefited at the cost of the plant. The learned Senior Counsel further submitted that in view of amendment in the aforesaid Act, whereby Section 13(1) of the same stood deleted and replaced by the amended Section 13(1), the matter could not proceed further against the applicants on the basis of the earlier provision. But, in

the written submissions filed on behalf of the said applicants, it was conceded that as per the latest position of law, the said argument was not being pressed. But, it was then submitted that rule of beneficial construction enunciated by the Hon'ble Supreme Court in the case of **T. Barai vs. Henry AH Hoe and another, 1983 (1) SCC 177**, and followed thereafter needed to be applied in the case of the applicants. On this basis, it was submitted that the matter could not proceed further against the applicants. It was submitted that when the amended provision could be construed as beneficial, the applicants were entitled to benefit of the same, in view of the said position of law. In support of the aforesaid contentions raised on behalf of the applicants, the learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court in the cases of **T. Barai vs. Henry AH Hoe (supra)**, **Nemichand vs. State of Rajasthan (2018) 17 SCC 448**, **Trilokchand vs. State of Himachal Pradesh 2019 SCC Online SC 1912**, **State through CBI vs. Dr. Anup Kumar Shrivastav (2017) 15 SCC 560** and **State of Bihar vs. Ramesh Singh (1977) 4 SCC 39**.

(13) Mr. Sunil Manohar, learned Senior Counsel along with Mr. M. P. Khajanchi, learned Advocate for the applicants, the suppliers/successful bidders, submitted that even if

the material placed on record with the charge-sheet was to be accepted, no suspicion, much less grave suspicion, could be raised against the said applicants and that therefore, the application for discharge filed on their behalf ought to have been allowed. It was submitted that the said applicants had no role to play at all in the manner in which the officials of the said plant took decision to cancel the earlier tender and to initiate the process of re-tendering. By making reference to the technical specification of coal in the earlier tender and the subsequent one, it was emphasized that there appeared to be an attempt on the part of the officials of the plant to ensure supply of better quality of coal, which would eventually work out more economical for the plant. It was then submitted that in both the processes of tender a transparent approach was adopted and there was not even an iota of evidence to show that the process of the subsequent tender was sought to be tweaked in favour of the said applicants.

(14) By inviting attention of this Court to Section 120-A of the IPC, it was emphasized that the material available on record did not indicate any role played by the applicants for attracting the ingredients of a criminal conspiracy with the officials of the plant. It was submitted that even a legal inference could

not be drawn to that effect against the said applicants. It was further emphasized that the said applicants as bidders had no role to play in fixing the technical specifications of the second tender and the basis of arriving at a figure of loss suffered by the plant by comparing the price in the second tender with that of the first tender, was itself fallacious and wholly unsustainable. It was further submitted that no reference was made to the market price of the coal at the time when the bids of the said applicants were accepted, pursuant to the second process of tender.

(15) On the basis of such submissions it was submitted that there was no question of any penal provision being attracted in the case of the said applicants, much less the offences sought to be invoked against them. Reliance was placed on judgments of the Hon'ble Supreme Court in the case of **Union of India vs. Prafulla Kumar Samal, 1979 (3) SCC 4** and **State of M.P. vs. Sheetala Sahai, 2009 (8) SCC 617**.

(16) On the other hand Mrs. Mugdha Chandurkar, learned Advocate appearing for the respondent submitted that the Court below was fully justified in rejecting the applications for discharge filed on behalf of the applicants. It was submitted that

the material on record certainly indicated that the applicants deserved to face trial as grave suspicion was raised with regard to the manner in which the first tender was cancelled and the process of re-tendering was initiated. It was submitted that the Clauses of PCP-09 at various places indicated that when the process of tender was completed and the stage of placing supply orders had been reached, the process of re-tendering could be resorted to only after approval from the next higher authority. It was submitted that the officials of the plant did not undertake such a procedure, because they desired to act against public interest. It was submitted that statements of number of witnesses recorded by the respondent at various places demonstrated that the accused officials of the plant brought pressure on the members of the tender scrutiny committee to give an opinion for cancellation of the earlier tender and for initiating the process of re-tendering. According the learned counsel appearing for the respondent such material was sufficient to raise a grave suspicion against the applicants, justifying a fulledged trial in the present case.

(17) In the written note submitted on behalf of the respondent, the said stand was reiterated and relevant portions of

statements of witnesses were highlighted. The learned counsel for the respondent relied upon various judgments pertaining to the factors to be taken into consideration and the duty of the Court while considering an application for discharge. On the basis of the said judgments it was submitted that the Court was not expected to conduct a roving enquiry and it was for the court to come to a prima facie conclusion on the basis of available material, as to whether strong suspicion was made out and if that be so, the discharge applications deserved to be dismissed. Particular emphasis was placed on judgments of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Priya Sharan Maharaj** (1997) 4 SCC 393, **Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and others** AIR 2009 SC 9, **State of M.P. vs. Sheetala Sahai and others** (supra), **P. Vijayan vs. State of Kerala and another**, AIR 2010 SC 663. The learned counsel for the respondent also emphasized on judgments of the Hon'ble Supreme Court in the case of **Satyanarayan Sharma vs. State of Rajasthan** 2001 (8) SCC 607 and **Asian Resurfacing of Road Agency Pvt. Ltd. vs. Central Bureau of Investigation**, 2018 Online SC 310 to submit that matters pertaining to offences under the Prevention of Corruption Act, 1988, are required to be expedited and that trials ought not be stayed by the revisional

Court while considering challenge to orders dismissing applications of discharge.

(18) Having heard learned counsel for the rival parties and upon perusal of the material on record, it becomes necessary to refer to the approach required to be adopted by the revisional Court, while considering challenge to an order dismissing an application for discharge. This is crucial, because sending a person to trial is a serious matter and unless the material placed on record along with charge-sheet indicates that the accused needs to face trial, the Court would be slow in directing that the accused must face trial.

(19) In the judgment in the case of **Union of India vs. Prafulla Kumar(supra)**, the Hon'ble Supreme Court has deduced certain principles that need to be applied by the Court while considering the question as to whether charge needs to be framed against an accused. The said principles have been stated as follows :-

“ 10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(20) This position of law has been followed and elaborated in subsequent judgments of the Hon'ble Supreme Court. In the case of State of Maharashtra vs. Priyasharan Maharaj (supra), the Hon'ble Supreme Court held that at the stage of considering the question of discharge, the Court is expected to sift and weigh the material on record only to examine whether such material discloses a strong suspicion against the accused. It was further held that such sifting of material was for the purpose of examining whether a prima facie case was made out against the accused, further holding that grave suspicion should arise from the material placed on record.

(21) In the case of Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and others (supra), the Hon'ble Supreme Court referred to Sections 227, 239 and 245 of the Code of Criminal Procedure and held that the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused and to see while considering such a question as to whether the material brought on record could reasonably connect the accused with the trial. The case of State of M.P. vs. Sheetala Sahai (supra), has been relied upon by both the parties. On behalf of the applicants

emphasis has been placed on para 34 of the said judgment, wherein it is stated that a mere error of judgment in a collective decision ought not to be a ground to proceed for trial while considering an offence under Section 13(1)(d) of the said Act. The respondent has relied upon said judgment by emphasizing upon paragraph 51, which indicates that the tests at the stage of framing of charge and while recording conviction are completely different and that the Court must bear this in mind.

(22) In the case of P. Vijayan vs. State of Kerala (supra), the Hon'ble Supreme Court laid down that at the stage of Section 227 of the Cr. P. C., the Judge has merely to sift evidence in order to find out whether or not there are sufficient grounds for proceeding against the accused and in other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. This position was reiterated by the Hon'ble Supreme Court in its judgment in the case of **Shoraj Singh Ahlawat and ors. vs. State of UP and another, AIR 2013 SC 52**, stating that it needs to be considered while considering a question of discharge, as to

whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused. The above quoted principles laid down in the case of Union of India vs. Prafulla Kumar Samal (*supra*) were also relied upon.

(23) In view of the above position of law reiterated by the Hon'ble Supreme Court, it needs to be examined whether applying the aforesaid principles, it can be said that the Court below in the present case committed an error in rejecting the applications for discharge filed on behalf of the applicants. It has been specifically contended on behalf of the applicants before this Court that even if the material that has come on record with the charge-sheet is accepted as it is, there is no reason why the applicants should be made to face trial. In other words, the applicants have boldly contended that there is total absence of any material to raise even a suspicion against them and that therefore, the applications for discharge ought to have been allowed.

(24) In this context it would become necessary to now appreciate the material brought on record along with the charge-sheet. The basic case of the respondent appears to be that the officials of the said plant, who are applicants in Criminal

Revision Application No.214/2016, conspired with the suppliers of coal/successful bidders i.e. applicants in Criminal Revision Application No.208/2016 and 209/2016, to cause financial loss to the aforesaid plant and that such activity on their part constituted the ingredients of the offence under Section 13(1)(d) of the aforesaid Act. A perusal of the aforesaid provision would show that on the basis of material available on record, the relevant offence would be Section 13(1)(d)(iii) of the said Act, insofar as the officials of the said plant are concerned and the suppliers would be concerned with Section 120-B of the IPC.

(25) In this regard much emphasis was placed by the learned counsel appearing for the applicants on the technical specifications of the two tenders and it was sought to be demonstrated how the technical specifications in the second tender were much more stringent, so as to ensure supply of highest quality of coal. It was claimed that the technical specifications of the first tender left certain discretion in the hands of the officials and that there was some confusion in working the process as per the said specifications, which necessitated cancellation of the tender, and initiating the process of the re-tendering. It was submitted that a perusal of the technical

specifications in the second tender, whereby stringent conditions were imposed for ensuring supply of high quality coal, would show that such an action was, in fact, for the benefit of the plant. It was claimed that application of the technical specifications of the second tender would have the effect of high quality coal being supplied to the plant, which would work out more economical. On this basis it was submitted that the officials of the plant took a considered decision to cancel the initial tender and to initiate the process of re-tendering, which by no stretch of imagination could be said to be an offence.

(26) It was further submitted that increase in price of coal to the extent of 13.54%, by comparing the price in the second tender with the first tender was an erroneous approach adopted in the investigation, because the two prices could never be compared. It was claimed that the first tender pertained to a different month of that particular year and the second tender pertained to a month much later in the year and that price fluctuations in the market were always prevalent. It was submitted that no material was brought on record to show that the market price of the coal when the second tender was floated was lower than the price at which the bids of the suppliers were

accepted in the said tender. On this basis, it was submitted that there was hardly any material to infer any criminal liability.

(27) In this context, the learned counsel for the respondent placed much emphasis on the statements given by witnesses, which were recorded during the course of investigation. It was submitted that a perusal of the statements would show that the officials of the plant, who are applicants before this Court, not only violated the procedure as prescribed under PCP-09, but, they deliberately acted in a manner which prima facie indicated that ingredients of the offence under Section 13(1)(d) of the said Act read with Section 120-B of the IPC, were clearly made out.

(28) A perusal of the aforesaid material on record would show that admittedly the first tender floated on behalf of the said plant had reached its final stage and the tender scrutiny committee of the plant had recommended placement of orders for supply of coal to three parties. One M/s. L. J. Chandel (L-1) was to supply 60%, applicant in Criminal Revision Application No.208/2016 was to supply 25% and applicant in Criminal Revision Application No.209/2016 was to supply 15%. Thus, not only was the entire process completed for supply of coal, but, even

the recommendation for placement of orders had been made. In fact, on 09/07/2010, a note was prepared with the concurrence and approval of applicant No.1 in Criminal Revision Application No.214/2016, for placing orders in the aforesaid proportion to the said three parties. It is at this stage that the applicant No.2 in the said application made a suggestion in writing that the tender scrutiny committee of the plant may be advised to re-submit their recommendations. This was ostensibly for the reason that two bidders in the process of the first tender had offered coal of higher grade quality. This triggered meetings of the tender scrutiny committee and the committee submitted a report indicating that there was some ambiguous situation or alleged confusion in evaluation of the offers. This was allegedly on the basis that the technical specifications of the tender stated about fixed carbon of the coal being 65% (indicative) rather than a fixed minimum. Thereupon, the sequence of events occurred resulting in approval given by the applicant No.1 in Criminal Revision Application No.214/2016, calling for fresh tenders and abandoning the first tender completely.

(29) In the second tender the technical specifications stated that fixed carbon of the coal would be 65%

minimum rather than 65% indicative and certain penalty clause was added, if the fixed carbon percentage was found to be less. Now this is claimed by the applicants to be a step taken for ensuring supply of higher quality of coal to the plant. But, the material on record shows that when reverse auction in the re-tendering process was undertaken, only six parties participated and the applicant in Criminal Revision Application No.209/2016 was found to be L-1 and applicant in Criminal Revision Application No. 208/2016 was found to be L-2. The bid amount was admittedly higher per metric ton of coal as compared to the bid price in the first tender. The fact that the price of the coal in pursuance of the re-tendering process was about 13.54% higher is not disputed. Consequently, the plant was required to pay a higher amount for supply of coal, resulting in higher financial liability. The material on record does show that while the applicants in Criminal Revision Application No.208/2016 and 209/2016 were L-2 and L-3 in the first tendering process and they could have supplied 25% and 15% of the coal, as a consequence of the re-tendering process they were L-1 and L-2 and the bid amount per metric ton of coal was admittedly higher.

(30) When this is appreciated in the context of statements of witnesses recorded by the respondent, what comes on record is that the members of the tender scrutiny committee claimed to have been pressurized by the applicants in Criminal Revision Application No.214/2016, for submitting report for cancellation of the first tender, to facilitate initiation of the re-tendering process. For instance, statement of witness No.23 who at the relevant time was Manager (Finance) of the plant, shows that the members of the tender scrutiny committee were reluctant to change the earlier report of the committee, but they were strongly persuaded by the applicants in Criminal Revision Application No.214/2016 to submit such a report, the fallout of which was cancellation of the first tender, that had reached its finality, thereby facilitating the re-tendering process. A perusal of the statement of witness No.26, who was Deputy General Manager of the plant shows that he specifically stated about pressure brought about by the applicants in Criminal Revision Application No.214/2016, for re-evaluation of the tender, particularly on technical specifications. In fact, the said witness states that no other option was left to the tender scrutiny committee members, but to submit a revised report for facilitating the re-tendering process.

(31) This Court is of the opinion that the aforesaid material on record demonstrates that the first tender process, which had not only reached its conclusion, but even the stage of placing orders with the specific approval of Executive Director of the plant i.e. applicant No.1 in Criminal Revision Application No.214/2016, had been reached, was abruptly abandoned, to facilitate re-tendering process. The presence of applicants in Criminal Revision Application Nos. 208/2016 and 209/2016 as L-2 and L-3 with only 25% and 15% of supply available to them and then the same parties being L-1 and L-2 in pursuance of the second tendering process where admittedly the price of coal per metric ton was higher, does raise grave suspicion with regard to the manner in which the entire process was undertaken.

(32) The statements of the witnesses recorded during the course of investigation and brought to the notice of this Court also indicate that there is sufficient material to raise suspicion against the applicants herein. As per the position of law reiterated by the Hon'ble Supreme Court, the evidence recorded by the investigating agency and the documents produced before the Court do disclose suspicious circumstances against the applicants (accused) for framing of charges against them. The

material on record does lead the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the said offence and there are grounds for presuming that the offence has been committed. At this stage the Court is not required to ascertain that there are grounds for convicting the accused (applicants herein). The test to be applied at this stage, is as to whether a prima facie case is made out against the applicants. This Court finds that perusal of the statements of the witnesses recorded during investigation, the procedure prescribed under PCP-09 and the fact that the plant had to pay much higher amount for supply of coal, which was against public interest, demonstrates that a prima facie case does exist against the applicants before this Court.

(33) The emphasis placed on behalf of the applicants, who are the suppliers of coal before this Court, that Section 128-A of the Cr. P. C. which defines criminal conspiracy would not at all apply in the facts and circumstances of the present case, has not impressed this Court and the material on record indicates that the applicants need to face trial. This Court is of the opinion that the material available on record, when put to scrutiny on the basis of the aforesaid settled position of law, is

enough to raise a grave suspicion, indicating that no error can be attributed to the Court below for dismissing the applications for discharge filed on behalf of the applicants.

(34) Although initially an argument was sought to be made in view of the amendment of Section 13(1) of the said Act, the said argument was not pressed in the written submission, in the face of the admitted position of law. But, even the other argument raised on behalf of the said applicants that they need to be given advantage of the rule of beneficial construction, can also not be accepted. This Court is of the opinion that reliance placed on the judgment of Hon'ble Supreme Court in the case of T.Barai vs. Henry (supra) is also misplaced. This is because in the said judgment itself the Hon'ble Supreme Court has clarified that the rule of beneficial construction will not apply where the essential ingredients of the two offences are different. In this context a perusal of Section 13(1)(d) of the said Act i.e. the offence for which the applicants are sought to be charged, would show that the ingredients of the same are different from ingredients of the offence in the amended Section 13(1) of the said Act. Therefore, there is no question of applicability of the rule of beneficial construction in favour of the applicants before this court.

Consequently, there is no substance in the reliance placed on behalf of the applicants on the judgments of the Hon'ble Supreme Court in the case of Nemichand vs. State of Rajasthan (supra) and Trilok Chand vs. State of H. P (supra).

(35) In fact, the learned counsel for the respondent is justified in relying upon judgments of the Hon'ble Supreme Court in the cases of Satyanarayan Sharma vs. State of Rajasthan (supra) and Asian Resurfacing of Road Agency Pvt. Ltd. vs. Central Bureau of Investigation(supra), wherein much emphasis has been placed by the Hon'ble Supreme Court on the need for expedited trials concerning offences under Prevention of Corruption Act, 1988. The Hon'ble Supreme Court has come down heavily on stay of trials, pending challenge to orders dismissing applications for discharge. In the present case it is found that the applicants have been enjoying interim order of stay of proceedings before the Trial Court since the year 2016, till this Court took up the applications for final hearing and disposal. The trial has remained stayed for better part of four years and since this Court has found that there is no substance in the contentions raised on behalf of the applicants, appropriate directions need to be given, while holding against the applicants.

(36) In view of the above, this Court finds that there is no substance in the contentions raised on behalf of the applicants before this Court. The Court below was justified in dismissing the applications for discharge. Accordingly, the present Criminal Revision Applications are dismissed. The Court below is directed to take up the trial proceedings expeditiously and to conclude them at the earliest. No costs.

JUDGE

KOLHE/RA.