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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on 16th August, 2021

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CRL.REV.P. 117/2021, CRL.M.A.3804/2021

SUSHIL ARORA

..... Petitioner

Through: Mr.Siddharth Luthra, Mr.Siddharth Yadav, Senior Advocates with Mr.Anuj Chauhan, Mr.M.N Dudeja, Ms.Ananya De, Mr.Anand, Mr.Abhishek Budhiraja Mr.Aditya Mishra, Mr.Saifuddin Shams, Mr.Krishna Datta Multani, Mr.Akshay Kumar, Mr.Adityaa Raju, Advocates.

versus

CENTRAL BUREAU INVESTIGATION

..... Respondent

Through: Mr.Nikhil Goel, SPP, Mr.Vinay Mathew, Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (*Through Video Conferencing*)

1. This petition challenges the impugned order dated 28.10.2020 whereby the charge was directed to be framed against the petitioner. It also challenges an order dated 30.01.2021 whereby the formal charges were framed against the petitioner herein.

2. The brief facts are on 31.12.1983 the society namely *M/s.Anshika Co-operative Group Housing Society Ltd.* was formed. On 27.01.1993 it was wound up. On 19.04.1999 an application was made to revive the said society and ultimately on 28.01.2000 it was revived. The allegations are

CRL.REV.P. 117/2021

Page 1 of 9

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of conspiracy to get the society revived so as to grab the land belonging to it.

3. It is submitted by the learned senior counsel for the petitioner the petitioner herein has no role in the revival of the society or forgery of documents, hence the charge must go.

4. Vide an order dated 20.05.2021 of this Court the CBI/respondent was directed to file a reply as to if there is any other evidence, besides the handwriting expert report against this applicant. The allegations against the applicant are he had signed documents at point Q-16, Q-139 and Q-140 viz. a letter and an affidavit. It is argued GEQD report, signed by an Assistant Government Examiner, even otherwise is not *per se* admissible under Section 293 Cr.P.C. The section is as under:-

“293. Reports of certain Government scientific experts.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of- Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director 1 , Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
(f) the Serologist to the Government.”

5. It is argued the Assistant Government Examiner is not included under sub section (4) of Section 293 Cr.P.C., hence his report is not admissible in evidence and the CBI had rather failed to place on record any *notification* to show this report would fall within the ambit of Section 293 Cr.P.C.

6. It is also the submission of the learned senior counsel for the petitioner the witnesses viz PW-36 Amit Saxena; PW-58 Smt.Poonam.V.K.; PW-59 Murali N.Khemchandani PW-60 Nitin Gulati and PW-76 Sanjeev Nayyar do not provide any linkage with the petitioner *much less* of any conspiracy. Their statements are read and perused.

7. The learned senior counsel for the petitioner relied upon *Sandeep Dixit vs. State* 2012 SCC Online Del 2430 which held as under:

9. Hence I am in agreement with the contention of the learned counsel for the petitioner that the learned ASJ has gravely erred in not appreciating the fact that the opinion of an expert under section 45 of the Indian Evidence Act is merely an opinion and not a conclusive proof of the validity of the handwriting in question and the learned ASJ exceeded its jurisdiction by ordering the framing of charge against the petitioner merely on the report of the GEQD without corroboration.

and in *Rajeshbhai Muljibhai Patel and Others vs. State of Gujarat and Another* (2020) 3 SCC 794 the Court held:

“21. It is also to be pointed out that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the plaintiff-appellant No.3 to adduce appropriate evidence to disprove the

opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the FIR ought not to have been registered. Continuation of FIR No.I-194/2016, in our view, would amount to abuse of the process of Court and the petition filed by the appellants under Section 482 CrI.P.C. in Criminal Misc. Application No.2735/2017 to quash the FIR I-194/2016 is to be allowed.”

and Chennadi Jalapathi Reddy vs. Badam Pratapa Reddy (Dead) Though Legal Representatives and Another (2019) 14 SCC 2020; **Abdul Rahiman vs. State of Kerala** 2014 SCC Online Kerala 23291; to further support his argument.

8. The *learned* counsel also referred to *Parshnath Asthana vs. State of Gujarat* 2010 SCC Online Gujarat 2247 wherein the Court held:

“19. xxxx... Even the handwriting expert’s opinion is also exhibited during the oral evidence of PW-3 and the handwriting expert is not covered within the meaning of Sec.293 of Cr.P.C.”

9. Thus it is argued by the learned senior counsel for the petitioner the only evidence against the petitioner is an opinion evidence viz *GEQD* report qua his signatures at point *Q-16*; *Q-139* and *Q-140* which would not take the prosecution anywhere, at least not to his conviction, as is not supported by statements under Section 161 Cr.P.C. and lastly such report does not fall within the ambit of Section 293 Cr.P.C.

10. Heard.

11. As per the allegations the subject society was bought by co accused Anil Arora from SP Saxena and Ashok Goswami at the rate of Rs' 20000 per member. The same has been stated by Ashwani Vig who had given statement under S. 164 Cr.P.C. The petitioner is the brother of the said Anil Arora and was made a member and *secretary* of the society.

Given that the members would be the beneficiaries of the scam upon allotment of the land the fact that the brother of the petitioner had bought the society would lend further support to the version of the prosecution that the petitioner was part of the conspiracy and was managing the same along with others.

12. Thereafter, in the name of the petitioner various documents and resignations, etc. allegedly were forged, inter-alia, by co-accused Ashwani Sharma and the same were submitted to the RCS in furtherance of conspiracy to get the land allotted fraudulently on the basis fake and fabricated freeze list. The fact that co-accused Ashwani Sharma had put his signatures on many documents and was signing as Petitioner *prima facie* showed collusion and conspiracy between the two and others and whether the same was with or without the consent of the petitioner can only be ascertained through trial.

13. There is evidence the petitioner's name is reflected in the list of *members* as on 31.03.2001 submitted with the office of RCS (page-695 and 654 of D-7-Vol- III), as such he is beneficiary for the allotment of land. The petitioner was thus made a member after the alleged fraudulent revival of the society. His name also figures in the list of management committee submitted with the RCS office.

14. There is evidence to the effect the petitioner is also in list of *beneficiaries* for allotment of land submitted with office of RCS by Anshika CGHS vide letter dt. 25.05.2001. (page-330 to 335 of the RCS file D-6, Vol-II).

15. Further the order on framing of charge notes the role of the petitioner in para nos.64 and 67, as under:

*“64. Regarding role of accused Sushil Arora (A-7), ld.Sr.PP for CBI has contended that A-7 in conspiracy with S.P. Saxena, fraudulently took over the society and later shown elected as **Secretary** of Society. A-7 was enrolled in the society after revival and took over the society from S.P. Saxena (A-6). A-7 was elected as a Secretary in the society on the basis of fake/forged documents. A-7 made **correspondence with RCS as a Secretary** and submitted the fake and forged resignation. A-7 also enrolled new members in lieu of resignations submitted in the RCS office after revival. A-7 signed on the photocopy of resignation, receipt of refund, receipt of share money and other documents etc. The GEQD opinion has confirmed that A-7 had signed letter dated 02.01.2002 vide which he intimated to AR of the RCS office that AGM meeting of Anshika CGHS Ltd was held on 23.09.2001 in which new management committee had been elected and he became Secretary of the society. Ld. Sr. PP thus submitted that A-7 became involved in the conspiracy to get allotment of land on the basis of forged documents.*

67. I find no force in the submissions of Ld. Defence Counsel. The object of the conspiracy was not only revival of the society but also to get the land allotted. A-7 joined the conspiracy later and he took steps in getting the land allotted to the society which was illegally revived. As he joined the conspiracy later on, that is why his name does not appear in para 16.8 of the chargesheet which contains facts as existed at that point of time which was prior to revival of society. As A-7 had joined the conspiracy later, so A-7 is also liable to be charged for conspiracy and all the acts which were committed prior to his joining the conspiracy. The opinion of the handwriting expert cannot be ignored at this stage. It cannot be said that there is only opinion of handwriting expert as the material against A-7 is brother of A-9. There is grave suspicion against A-7 as well that he was also involved in getting allotment of land with his brother. The whole picture will be clear only after trial.”

16. Coming to the contention qua reliance upon GEQD report, per Section 293(2) Cr.P.C. I may say even though the report may not be *per se* admissible but an handwriting expert can very well be examined to prove his report. Rather the expert report dated 16.07.2007 of the Government Examiner itself in para 3 says:

“3. Should evidence be necessary in this case, the Opinion No. or this letter reference be quoted in all correspondence and the Summons be got issued in the Name of Shri Narendra Kumar, Asstt. Govt. Examiner of Questioned Documents, Kolkata.”

17. Though, *Sandeep Dixit* (supra) is referred to but there the expert report was *never* a part of list of documents. It rather notes:-

8. xxxxx ***The report of handwriting expert is not included in the list of documents which can be accepted as valid evidence without examining the author as per the scheme of Section 293 Cr. P.C.***
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18. Moreso, besides conspiracy, *admittedly* the petitioner is also being charged under Section 471 IPC. Now if the petitioner is discharged today and the offence of overall conspiracy is proved later, then there would be no reverting back to the positions, moreso where the petitioner also faces an independent charge under Section 471 IPC against him.

19. In *Ajay Aggarwal vs. Union of India* AIR 1993 SC 1637 wherein the Court held:

*“..It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as **they are co-participants in the main object of the conspiracy.** There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others' **The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be** sometimes misfire or overshooting by some of the conspirators. ”*

20. So, *admittedly*, society was revived and petitioner was its *secretary* and a *beneficiary* of land and that he communicated with Registrar of Societies, cannot be ignored at this stage. Further his signatures on the letter dated 02.01.2002 are *prima facie*, established by GEQD report, though such report can be proved later. Hence, all this is sufficient to *proceed further* against him.

21. Even otherwise, the law on charge is well settled. In *Asim Shariff vs. National Investigation Agency* (2019) 7 SCC 148 the Court held:

“16. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in Union of India Vs. Prafulla Kumar Samal & Ors.¹ had an occasion to consider the scope of Section 227 CrPC and it held in paragraph 7 as under:- “7. Section 227 of the Code runs thus:

*“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he 1 1979(3) SCC 4 shall discharge the accused and record his reasons for so doing.” The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not **there is sufficient ground for proceeding** against the accused. 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.”*

22. In *Hardeep Singh and Ors. vs. State of Punjab and Ors.* (2014) 3 SCC 92 the Supreme Court had reiterated the law with regard to the framing of charge.

"93. However, there is a series of cases wherein this Court while dealing with the provision of Sections 227, 228, 239, 240, 241, 242 and 245 Code of Criminal Procedure, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further."

23. Lastly I may say earlier also an order on charge was passed by learned Trial Court per order dated 10.05.2013, however, before the formal charge could be framed, it was revealed to the learned Trial Court the matter has already been stayed by the Hon'ble Supreme Court, hence such order was treated as *non-est*. However, per order dated 26.04.2018 the stay was vacated by the Supreme Court and thus the impugned order is passed. Admittedly, order dated 10.05.2013 was never challenged.

24. Thus the petition being devoid of merits is dismissed. Pending application, if any, also stands disposed of.

25. Nothing opined above shall be treated as an observation on merits of case on either side.

YOGESH KHANNA, J.

AUGUST 16, 2021

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CRL.REV.P. 117/2021

Page 9 of 9