

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

Date of decision: 26th OCTOBER, 2021

IN THE MATTER OF:

+ **CRL.REV.P. 143/2021 & CRL.M.A.4881/2021**

VIBHUTI THAKUR

..... Petitioner

Through Mr. Jaynarayan Patel with Mr. Manan Mehra, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through Mr. Mridul Jain SPP CBI, along with Mr. Vishal Chouhan, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 397 Cr.P.C. is directed against the orders on framing of charges dated 16.12.2020 and 23.12.2020 passed in CC No. 249/2019 by Ld. Special Judge, (CBI -05), (Prevention of Corruption Act), Rouse Avenue District Court, New Delhi.

2. The facts, in brief, leading to the present petition are as follows:

- a) Information was received that irregularities had been committed in awarding of tender pertaining to renovation work at Pay and Accounts Office (PAO), (IRLA), AGCR Building, Ministry of Information and Broadcasting, New Delhi.
- b) On receipt of the information, a preliminary inquiry being PE-7(A)/2012-DLI was registered on 26.09.2012 at CBI, ACB, Delhi.
- c) An inquiry was conducted by SI Ram Kumar Shukla, CBI, ACB,

New Delhi.

- d) On completion of inquiry, SI Ram Kumar Shukla registered an FIR being RC No.DAI-2013-A-0004 for offences under Sections 120B read with Sections 420, 468, 471 of the Indian Penal Code, 1860 (*hereinafter*, "IPC") and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter*, "PC Act").
- e) Charge-sheet was filed. The petitioner herein was arrayed as A-6 in the charge-sheet. The charge-sheet reads as under:

"Investigation has disclosed that vide note dated 18.06.2008, Sh. Vilas Rao Ghodeswar, Chief Controller of Accounts, Ministry of Information and Broadcasting approved a proposal moved by Sh. N.K. Gupta, Sr. Accounts Officer. Thereafter Sh. Vilas Rao Ghodeswar had constituted a tender committee without a single technical person. The members of the tender committee were

- i) Sh. N.K. Gupta, Sr. AO as Chairman,*
- ii) Sh. M.D. Gupta, AAO, Member,*
- iii) Sh. R.K. Bhambi, AAO member and*
- iv) Sh. Amit Dabas, Accountant, member.*

The committee was for the purpose to suggest suitable remedies to improve the condition of the office premises of the PAO. The tender committee had submitted an estimated area for renovation works at PAO(IRLA),AGCR building, Shastri Bhawan, M/o I&B, New Delhi. Sh. Vilas Rao Ghodeswar, Chief Controller of Accounts had approved the estimated area of work of 4725 Sq. Ft for Rs.85,07,060/- which was beyond his financial delegation of power. The financial approval was to be obtained from the Addl. Secretary & Financial Advisor (AS&FA) M/o I&B Govt. of India, but no such approval was obtained by him. Sh. R.C Mishra was the Addl. Secretary and Financial Advisor of M/o I&B, New Delhi during the relevant time. He has been examined and he disclosed that no approval was obtained from him in the present works. In this regard there are no

files pertaining to approval of AS&FA in the O/o the CCA, M/o I&B, New Delhi. Without the approval of AS&FA by Sh. Vilash Rao Ghodeswar, CCA, a tender for renovation works was invited in the website of Ministry of Information and Broadcasting on 09.07.2008 with due date of submission on 24.07.2008. In response thereof five firms had submitted their applications. The firms are

- 1) M/s Sunsilk Carpets and Furnishers, Munirka, New Delhi*
- 2) M/s Vidhi Carpets, C-264 Kamalpur Burari, Delhi-92*
- 3) Sudan Carpets, 4641/21 Ansari Road, Daryaganj, New Delhi-22*
- 4) Vimala Enterprises, 12951 Sector-5, R.K.Puram, New Delhi and*
- 5) Kamal Enterprises, 328/12, R.K. Puram, New Delhi.*

2. M/s Vidhi Carpets had quoted lowest rate at Rs.79,80,420/-; M/s .Sunsilk Carpets & Furnishers quoted 2nd lowest rate at Rs.85,07,060/- and M/s Vimala enterprises quoted highest rate at Rs.90,33,700/-. The lowest one i.e. M/s Vidhi Carpets was rejected as its work experience was for only 2 similar works as against the minimum requirement of 7 similar works as mentioned in the NIT. The 3rd lowest one i.e. M/s Vimala Enterprises was rejected as it quoted higher rates than the others. the second lowest one i.e. M/s Sunsilk Carpets & Furnishers was considered successful in the tender and was awarded the work for Rs.85,07,060/-. The EMD drafts of unsuccessful firms were returned. M/s Kamal Enterprises and M/s Sudan Carpets had not submitted the draft of Rs.2.00 lacs for EMD. The tenders of both the firms were rejected by the committee for the said reason.

3. Investigation revealed that all the firms except M/s Sunsilk Carpet furnishers were found to be nonexistent firms. No such firms were found at the given addresses. The EMD draft of M/s Vidhi Carpets and M/s Vimala Enterprises of Rs.2.0 lacs each were returned by the tender

committee by taking bogus receipts on their letters only and there was no detail mentioned regarding the persons who actually received these back. These drafts were further cancelled and deposited by Sh. Vibhuti Thakur, Proprietor SunsilK Carpets & Furnishers in his A/c No.12598 opened at Canara Bank, South Extn-1, New Delhi in the name of SunsilK Carpets and Furnishers and another A/c No.010454632508 opened at SBI, Subrota Park, New Delhi in the name of SunsilK Carpets and Furnishers. These facts establish that other firms were dummy firms of Sh. Vibhuti Thakur.

4. Investigation further revealed that the draft forms of EMD. of M/s Vidhi Carpets and M/s Vimala Carpets were prepared by Sh. Vibhuti Thakur, Proprietor M/s SunsilK Carpets & Furnishers under his writing and signature. The CFSL, New Delhi has given positive opinion vide Report No.CFSL-2013/D-652/3315 dated 13.08.2013.

5. Investigation also revealed that a quality control committee consisting of Sh. R.P.Sharma, Sr.A.O. Smt. Sunita Sharma, - AO and Sh. Om Prakash, Sr.A.O. all. of PAO, IRLA; M/o I&B,, New Delhi was also constituted by Sh. Vilas Rao Ghodeswar, CCA. They were required to check the ISI/ISO standards of the materials used by the contractor Sh. Vibhuti Thakur for the renovation works. The members of the committee are the account officials of PAO. The quality control committee required technical skilled persons but no technical person was involved. Whereas the constituted committee certified that the agency had used the quality of material upto the mark as per specification i.e. ISI/ISO, They also certified that the work was completed within the stipulated period hence no extension of time was required to be granted. They also certified that the material used by the agency was got approved by the Committee before the same are put into use. They also certified that the work station was prepared as per the specification. They also certified that the waste material was cleared by the agency from the site. They

also certified that the anti termite treatment of best quality was provided before use and during whole wooden works. Thus despite not being technically skilled they certified the materials casually. Therefore their lapses were referred to the concerned department for departmental action as criminality on their part could not be established.

6. Investigation also revealed that the materials used by M/s Sunsilk Carpets were found to be substandard and payment were made at exorbitant rates against the prevailing rates of 2008 as well as rates stipulated in DSR2007. During investigation, the materials were inspected by Sh. Partap Singh, AE(Civil), CPWD, Nirman Bhawan, New Delhi who found the material used by the contractor as substandard and he calculated a loss of Rs.53,36,945.91 to the Govt. exchequer.

7. Investigation revealed that the accused Sh. Vibhuti Thakur (Pvt person) and Vilash Rao Ghodeswar, N.K.Gupta, M.D.Gupta, R.K.Bhambi and Amit Dabas (all public servants), entered into a criminal conspiracy and they dishonestly and fraudulently by abusing their position as public servants for the purpose of facilitating the contractor resorted to illegal means and by aforesaid modus operandi, caused wrongful loss to the extent of Rs.53,36,945/- to the Govt. exchequer and corresponding wrongful gain to themselves.

8. The aforesaid facts and circumstances disclose commission of offence punishable u/s 120-B IPC r/w 420A71 IPC and 13(2) r/w Sec.13(1)(d) of P.C. Act 1988 and substantive offences thereof by Sh. Vilash Rao Ghodeswar, CCA, Sh. N.K.Gupta, Sr.AO, Sh. M.D.Gupta, AAO, Sh. R.K.Bhambi, AAO; Sh.Amit Dabas, Accountant, all of O/o the PAO(IRLA),M/o information & Broadcast, New Delhi, Sh. Vibhuti Thakur, Proprietor of M/s Sunsilk Carpets & Furnishers and M/s Sunsilk carpets & Furnishers.

9. The sanction for prosecution of Sh. Vilash Rao Ghodeswar, M.D. Gupta and Amit Dabas have been accorded by the competent authorities and the same are enclosed herewith in original. No prosecution sanction in respect of N.K. Gupta and R.K. Bhambi are required as they have retired from service"

(Emphasis supplied)

- f) After filing the charge-sheet, proceedings for framing of charge were initiated before the learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi.
- g) The learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi, by an order dated 19.04.2016, did not frame charges against A-1 to A-5. The learned Special Judge came to the conclusion that there was no evidence to conclude that conspiracy was hatched or entered into between A-1 to A-5, i.e. the public servants, for committing the offence. However, the Special Judge held that since A-6 was the contractor and was not a public servant, though he would be liable for the offence of cheating and forgery, the Special Court dealing with cases under the Prevention of Corruption Act, 1998, would be unable to proceed with the matter, and if the CBI deemed, it could take the appropriate and necessary action before the Court of competent jurisdiction. Therefore, A-6 was also discharged by the Special Judge.
- h) This Order was challenged by the CBI in CRL.M.C.3426/2016 before this Hon'ble Court. This Court by an order dated 08.01.2019, set aside the order of the Special Judge. This Court held that the Special Judge failed to take note of the General Financial Rules, 2005, which were being referred to by the CBI, as

also the Central Public Works Department (CPWD) Manual on which the prosecution places reliance. This Court found that it had been contended by the Counsel appearing for the public servants that the contract in question entailed expenditure of over Rs.30 Lakh and the provision contained in Rule 126 of General Financial Rules, 2005 would require compliances to be made, including as to constitution of a Quality Assurance Cell comprising of professionals having necessary technical skills and experience in terms of the CPWD Manual. This Court held that the Special Judge failed to take note of the report of PW-13, Mr. Pratap Singh, Assistant Engineer, on which reliance was placed in the charge-sheet. This Court also felt that there was substantive material to show that the refund of Earnest Money Deposit of the lowest bidder (rejected) and third lowest bidder (also rejected) was in the form of demand drafts which were credited into the account of A-6, Vibhuti Thakur, indicating the process of tender *prima facie* to be sham, and thereby, giving support to the case of the CBI about existence of criminal conspiracy. This Court, therefore, directed that the question of charge or discharge shall be considered afresh after taking into consideration the evidence/material submitted with the charge-sheet in entirety.

- i) On remand, the Special Judge, P.C Act, CBI-05, by the impugned Order dated 16.12.2020, found that there was sufficient material for proceeding against A-1 to A-5 for offence of Criminal Misconduct under Section 13(1)(d) of PC Act punishable under Section 13(2) of PC Act. The learned Special Judge noted that the

eligibility criteria for the tender was restricted to contractors having successfully executed minimum seven similar works in various Ministries of Government of India instead of having executed similar works in any Government office, and stated that the same was done to favour A-6, Vibhuti Thakur, who had filed dummy bids of other non-existent firms by submitting EMD of two firms from his bank accounts in order to give the impression that there were five bidders. The learned Special Judge held that omission to follow procedure is suggestive of criminal conspiracy amongst the public servants so as to give undue advantage to A-6, Vibhuti Thakur, which has led to unlawful loss to the public exchequer. The learned Special Judge stated that Work Order which was issued by the accused public servants and carried out by the Petitioner herein was at exorbitant prices and in violation of the applicable CPWD Manual and General Financial Rules, and that a comparison of the rates quoted by the Petitioner's firm and government-approved rates showed that there was a loss of Rs. 42.7 lakhs to the government. The learned Special Judge came to a conclusion that there is evidence to show that the selection process was designed in such a manner as to ensure that A-6 was awarded the contract. The learned Special Judge noted that PW-16, PW-17, PW-18, PW-19, PW-20, PW-21 had deposed that the addresses of the other bidder firms were non-existent which gave way to the assumption that there were no such firms. Furthermore, Search List of the search conducted at the premises of A-6 Vibhuti Thakur on 18.01.2013 showed the seizure of blank letter heads of

M/s Vidhi Carpets and M/s Vimala Enterprises who were the bidders in the case, and that the report of forensic expert from CFSL dated 31.07.2013 stated that all the questioned writings/signatures were of A-6 Vibhuti Thakur. The learned Special Judge stated that the notings duly forwarded by A-1 to A-4, and placed before A-5 for approval of payment to A-6 were conspicuously silent about the sanction from the Additional Secretary and Financial Advisor who alone was competent to grant administrative/financial approval. Accordingly, the learned Special Judge held that all the five public servants and private person, A-6 Vibhuti Thakur were to be charged for criminal conspiracy punishable under Section 120-B IPC read with Sections 420 and 471 IPC, read with Sections 13(1)(d) and 13(2) of the PC Act, with A-6 also being liable to be charged under Sections 420 and 471 IPC.

- j) Accordingly, charges were framed against the petitioner on 23.12.2020 which read as under:-

“That you A-6 Vibhuti Thakur proprietor of M/s Sunsilk Carpets and Furnishers applied for in your own handwriting and received a bank draft for Rs. Two lakhs in favour of PAO, Ministry of Information and Broadcasting, New Delhi from your Canara Bank account No. CA12598 on 17.07.2008 and deposited the same towards EMD for Vimla Enterprises and also applied for in your own handwriting and received another bank draft of Rs. Two lakhs in favour of PAO, Ministry of Information and Broadcasting, New Delhi from your SBI account No. 10454632508 on 22.07.2008 and deposited the same towards EMD for Vidhi carpets while bidding for tender for “Providing suitable working

conditions to the staff of PAO (IRLA), A.G.C.R. Building, Ministry of Information and Broadcasting, New Delhi” and after the bid of M/s Sunsilk Carpets and Furnishers was accepted, these two bank drafts were deposited, in your own handwriting, in your aforesaid bank accounts for credit and letters sent to Vimla Enterprises, Vidhi Carpets, Kamal Carpets and Sudan Enterprises at the addresses given in their tender documents were returned undelivered as there were no such firms which shows that bids of dummy firms Vimla Enterprises, Vidhi Carpets, Kamal Carpets and Sudan Enterprises were submitted by you whose blank letterheads were also seized at the time of search and seizure at your premises on 18.01.2013 and you thereby cheated Government of India for a sum of Rs. 53,36,945 by using forged documents as genuine documents knowing fully well that the bid of documents of Vimla Enterprises, Vidhi Carpets, Kamal Carpets and Sudan Enterprises were forged documents and thereby committed offence under Section 420 IPC and 471 IPC and within my cognizance.”

“That you all the five public servants namely A-1 Naresh Kumar Gupta, Sr. A.A., A-2 Mata Deen Gupta A.A.O., A.3 R.K. Bhambi A.A.O., A-4 Amit Dabas, Accountant, A.5 Vilas Rao Ghodeswar, C.C.A., in the office of PAO (IRLA) A.G.C.R. Building, Ministry of Information and Broadcasting and you private person A-6 Vibhuti Thakur proprietor of M/s. Sunsilk Carpets and Furnishers entered into a criminal conspiracy during 2008-2009 at Delhi to cheat Government of India in the tender for “Providing suitable working conditions to the staff of PAO (IRLA), A.G.C.R. Building, Ministry of Information and Broadcasting, New Delhi” and pursuant to that conspiracy the tender was publicised only on the website of Ministry of Information and Broadcasting and was not published in any newspaper and Indian Trade Journal and without estimation of cost involved on the basis of specifications of the work to be carried out being

mentioned in NIT and the tender was restricted to contractors having successfully executed minimum seven similar works in O/o CCA/ O/o CA of various Ministries of GoI instead of having executed similar works in any Government Office in order to favour A-6 Vibhuti Thakur proprietor of M/s Sunsilk Carpets and Furnishers who filed dummy bids of other non-existent firms by submitting EMD of two firms Vidhi Carpets and Vimla Enterprises from his bank accounts to give false impression that there were five bidders. Pursuant to the conspiracy the work was awarded without administrative and financial approval of Additional Secretary and Financial Advisor and the work was supervised by a committee without any technical member resulting in loss of Rs. 53,36,945 to the government of India and thereby all of you committed the offence under Section 120-B IPC read with Section 420 and 471 IPC read with Section 13(1)(d) read with section 13(2) of P.C. Act, 1988 (before its amendment on 26.07.2018) and within my cognizance.”

- k) The orders dated 16.12.2020 and 23.12.2020 are under challenge in the present petition.

3. Mr. J.N. Patel, learned Counsel appearing for the Petitioner, submits that the Petitioner is not a public servant. He states that when the Ministry of Information and Broadcasting/Respondent No. 3 had advertised for renovation in its department for the first time, the Petitioner was the only bidder, but no work had been assigned to him despite the Petitioner allegedly fulfilling all eligibility criteria. It is stated that when the Ministry notified a second advertisement on 08.07.2008, five bidders, including the Petitioner herein, applied, and it was only the Petitioner's firm (M/s Sunsilk Carpets and Furnishers) which fulfilled all the eligibility criteria by

possessing vast experiences with years of service. Accordingly, work assignment/work order was awarded to M/s. Sunsilk Carpets for the renovation work *vide* Order dated 29.07.2008, and this work order was for Rs. 85,07,060/-. The learned Counsel for the Petitioner submits that the Quality Control Committee (QCC) had recorded and certified that the Petitioner had used quality materials as per the specification i.e. ISI/ISO, and that the Petitioner had completed the renovation work within the stipulated time, and that the Ministry had not paid extra charges to the Petitioner.

4. It has been submitted by Mr. Patel that in its impugned Order, the learned Special Judge has failed to appreciate the fact that the Petitioner is a private contractor and it has nothing to do with the day-to-day proceedings/affairs of government agencies. Therefore, if any irregularity has been committed in the bidding process, Mr. Patel submits that the same cannot be attributed to the Petitioner who has only followed the work that has been assigned to him.

5. Mr. Patel submits that there is no concrete evidence against the Petitioner and investigation by the Respondent, i.e. CBI, cannot be done on the basis of presumptions and doubts. Further, he states that the CBI failed to implead members of the QCC. Mr. Patel also submits that out of the five bidders, it had been contended that three drafts were prepared from the account of the Petitioner, however, the rest of the two bidders were untraced. Mr. Patel states that this signifies the *mala fide* intention of CBI as they failed to implead the two bidders and chargesheeted the Petitioner.

6. Learned Counsel for the Petitioner submits that the impugned Order of the learned Special Judge is silent on the ground that the CBI

intentionally investigated only the Petitioner. Further, he states that the learned Special Judge failed to appreciate that the three demand drafts which had been prepared by the Petitioner were done so for his blood relations, i.e. his wife and one of his daughters, and that there could not be said to be any irregularity if three bidders came from one family. Mr. Patel further submits that the transaction conducted by the Ministry with the Petitioner had been audited by the Comptroller and Auditor General (CAG) of India and no irregularity was found, and that the only direction which was given to the Petitioner was to deposit 0.2% cess which was duly fulfilled by the Petitioner. He also submits that there is an absence of notification under Section 6 of the Delhi Special Police Establishment Act, 1946, and therefore, the CBI cannot conduct an investigation into the alleged offences.

7. *Per contra*, Mr. Mridul Jain, learned SPP appearing for the CBI, submits that the law with respect to framing of charges is well settled and was recently reiterated in Asian Resurfacing of Road Agency Pvt. Ltd. and Ors. v. Central Bureau of Investigation, (2018) 16 SCC 299, wherein it was held that a challenge to an Order of charge should be entertained only in the rarest of rare cases, and that too to correct a patent error of jurisdiction and not to re-appreciate the matter. Furthermore, placing reliance on State of M.P. v. Yogendra Singh Jadon, (2020) 12 SCC 588, the learned SPP submits that the power under Section 482 Cr.P.C. cannot be exercised where *prima facie* case stands established and allegations are required to be proved in court of law.

8. Mr. Jain, the learned SPP, further submits that direct evidence of conspiracy is seldom available, and in most of the cases, conspiracy is deduced from the evidence and circumstances which are to be proved during

trial, and that at this stage, the matter cannot be examined as if the guilt of the accused is being decided. He states that the submission of the Petitioner that all the lapses are on the part of Government officers and that he has nothing to do with the same cannot be taken into consideration as anything said, done or written by one member of a conspiracy in reference of common intention is a relevant factor against other members of the conspiracy.

9. With regard to the contentions of the Petitioner that the CBI has adopted a “pick and choose policy” by not impleading either members of the QCC or the other two bidders, the learned SPP submits that the chargesheet notes that lapses on behalf of the members of the QCC had been referred to the concerned department for action as criminality on the part of the members could not be established, and that the bidders as per the prosecution were non-existing dummy firms. Furthermore, if, *arguendo*, the members of the QCC were to be taken as part of the conspiracy, they could be summoned any time under Section 319 Cr.P.C. by the Trial Court if evidence surfaced, but this could not be a ground for exoneration of the Petitioner.

10. Mr. Jain submits that the role of the CAG is different and it has nothing to do with the investigation of the offences invoked against the Petitioner, and that investigation only comes under the purview of the investigation agency. He states that no legal provision entails that investigation cannot be done without departmental inquiry first. He submits that the argument that notification under Section 6 of the DSPE Act is absent does not apply in the instant case as Delhi is a Union Territory, and Section 2 of the DSPE Act provides power to DSPE/CBI to conduct investigations

throughout any Union Territory.

11. The learned SPP also submits that the instant case cannot be a mere breach of contract as not only forgery has been committed in pursuance of a criminal conspiracy, but all ingredients of Section 13(1)(d) of the PC Act are also satisfied, thereby causing wrongful loss of Rs. 53,36,945/- to the public exchequer.

12. Heard Mr. J.N. Patel, learned Counsel appearing for the Petitioner, Mr. Mridul Jain, learned SPP appearing for the CBI, and perused the material on record.

13. At the outset, it would be pertinent to note that this Court in its Order dated 05.04.2021, in **CRL. M.C. 263/2021** titled as Vilas Rao Ghodeswar v. CBI, had dismissed the petition therein and held that the material on record, at this stage, was sufficient to frame charges for the offence of Criminal Misconduct under Section 13(1)(d) of the PC Act punishable under Section 13(2) of the PC Act. This Court also held that the impugned Order dated 16.12.2020 of the learned Special Judge challenged in this petition was a well-considered Judgement, and that no infirmities could be found in the same.

14. While considering the question of framing of charge, it is well settled that the Court has to sift and weigh the evidence and find out whether or not a *prima facie* case against the accused has been made out. It is equally well settled that the Court does not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, and has to ascertain as to whether there is material which discloses the existence of the ingredients constituting the evidence. The Supreme Court in State v. S. Selvi, (2018) 13 SCC 455, has observed as under:

"6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights to discharge the accused. The Judge 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 statements 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 materials as if he was conducting a trial.”

15. The Supreme Court has also laid down the principles pertaining to the framing of charges in Sajjan Kumar v. CBI, (2010) 9 SCC 368. The same can be read as follows:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

“(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused

might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

16. Keeping the aforementioned principles in mind and applying the same to the facts of this case, it can be seen:-

a) That five firms had submitted their application in response to the tender for renovation works, i.e.

(i) M/s Sunsilk Carpets and Furnishers, Munirka, New Delhi,

(ii) M/s Vidhi Carpets, C-264, Kamalpur Burari, Delhi – 92,

(iii) Sudan Carpets, 4641/21 Ansari Road, Daryaganj, New

Delhi – 02,

(iv) Vimala Enterprises, 1295, Sector-5, R.K. Puram, New Delhi – 22, and

(v) Kamal Enterprises, 328/12, R.K. Puram, New Delhi.

Out of these firms, M/s Vidhi Carpets had quoted the lowest rate, M/s Sunsilk Carpets quoted the second lowest rate, and M/s Vimala Enterprises quoted the highest rate. However, due to the work experience being fixed at having a minimum requirement of seven similar works, M/s Sunsilk Carpets was successful, and the EMD drafts of the unsuccessful firms, i.e. M/s Vimala Enterprises and M/s Vidhi Carpets, were returned. M/s Kamal Enterprises and M/s Sudan Enterprises had not submitted the EMD, and for this reason they were rejected.

b) That as per the chargesheet and impugned Judgement, it is noted that according to PW-16, PW-17, PW-18, PW-19, PW-20 and PW-21, all firms except M/s Sunsilk Carpets are non-existent and dummy firms of the Petitioner. Furthermore, the EMD drafts, as per statements of account under D-7, D-8, and D-20, of M/s Vidhi Carpets and M/s Vimala Enterprises were not only deposited in the bank account of M/s Sunsilk Carpets by the Petitioner herein, but were also prepared by the Petitioner under his writing and signature (D-54, report of forensic expert from CFSL dated 31.07.2013). The Search List (D-46) of the search conducted at the premises of the Petitioner also showed the seizure of blank letterheads of M/s Vidhi Carpets and M/s Vimala Enterprises. This gives rise to the suspicion that the Petitioner was involved in the criminal conspiracy from the

get-go.

c) That, as noted in the impugned Judgement dated 16.12.2020, the rates claimed by the Petitioner, who is the proprietor of M/s Sunsilk Carpets, were much higher than the prevailing market rate and the CPWD rates during the currency of the tender, and that these irregularities would not have taken place unless there was connivance amongst the public servants with the Petitioner. The report of Shri Pratap Singh (D-48) indicates the difference between the prevailing market rates based on DSR 2010 and the rates given by the department with respect to renovation work at IRLA, AGCR Building, New Delhi, and on this basis, it shows that the loss caused to the government is to the extent of Rs. 53,36,945/-. Omission in due adherence to rules and regulations on behalf of the public servants suggests that there was in place a criminal conspiracy between the public servants and the Petitioner in order to ensure the Petitioner received wrongful gain, and that wrongful loss was caused to the public exchequer.

17. Conspiracy is generally hatched in secrecy and it is difficult to prove the same, if not impossible, by obtaining direct evidence. Conspiracy is mostly proven by circumstantial evidence, i.e. by taking into account the cumulative facts of the circumstances indicating the guilt of the accused rather than adopting an approach by isolating the role played by each accused (See State (NCT of Delhi) v. Shivcharan Bansal, (2020) 2 SCC 290).

18. As early as 1959, the Supreme Court in Badri Rai & ANR v. State of Bihar, 1959 SCR 1141, had observed as under:

“5.....A conspiracy is hatched in secrecy, and executed in darkness. Naturally, therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common bond linking all of them together. Ordinarily, specially in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the law has introduced this rule of common responsibility, on the principle that every one concerned in a conspiracy, is acting as the agent of the rest of them. As soon as the court has reasonable grounds to believe that there is identity of interest or community of purpose between a number of persons, any act done, or any statement of declaration made, by any one of the co-conspirators, if the act or the declaration has any relation to the object of the conspiracy.....”

19. It has been often stated in various judgments that conspiracy is like a moving train where conspirators can get in and get out at any stage, and it's not necessary or essential that all the parties should have been present from start to finish and take part in each and every act of the other conspirators. Therefore, the Petitioner's contention that being a private person, they are not privy to the mechanisms involved in the bidding process, and thus should not be charged, cannot be countenanced.

20. Whether there was a conspiracy to favour A-6, i.e. the Petitioner, in getting the contract right from the inception when A-1, Mr. N.K. Gupta, initiated the process or not is a fact that can only be established during trial. Suffice to say that all the procedural norms have been given a go-by and all the bidders are either dummy bidders or are entities of the Petitioner. This

does give rise to the grave suspicion that there was a conspiracy right from the inception to favour the Petitioner, and whether the Petitioner was a part of the conspiracy or not can be ascertained only after evidence is led.

21. As has been stated above, at the stage of framing charge or consideration of an application of discharge, the Court has to proceed with the presumption that materials brought on record are true and must evaluate such material with a view to find out whether the facts emerging therefrom, taken at their face value, discloses the existence of the ingredients of the offence. This Court finds that the material on record, at this stage, is sufficient to frame charges for the offence of Criminal Misconduct Sections 420 and 471 IPC read with Section 13(1)(d) of PC Act punishable under Section 13(2) of PC Act. The impugned Orders dated 16.12.2020 and 23.12.2020 indicate that the learned Special Judge has carefully weighed the material on record, and has taken an informed decision in this regard. This Court does not find any infirmity in the Orders of the Special Judge.

22. In view of the above, this petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

OCTOBER 26, 2021

Rahul