



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

% **Pronounced on: 26th April, 2022**

+ **CRL.M.C.2422/2020, CRL.M.As. 17132/2020 & 2963/2021**

SATYENDAR KUMAR JAIN

..... Petitioner

Through

Mr. N. Hariharan, Sr. Advocate with
Mr. Bhavook Chauhan, Mr. Vaibhav
Yadav, Mr. Siddharth S. Yadav, Ms.
P.R. Angara, Mr. Prateek Bhalla &
Mr. Vaibhav Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION & ORS.

..... Respondents

Through

Mr. Mridul Jain, SPP for R-1/CBI

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, “Cr.P.C.”) read with Article 227 of the Constitution of India, against the order dated 20th November, 2020 passed by the learned Special Judge (PC Act) (CBI)-24 (MP/MLA Cases), Rouse Avenue District Courts, New Delhi.

2. Mr. N. Hariharan, learned senior counsel for the petitioner, submitted that it was obligatory for the prosecution and the investigating agency to bring before the court all the material they had collected during investigations and the same had to be also furnished to the accused



persons, be the material in favour of the prosecution or the defence. The second submission made was that unless and until all material collected by CBI was not placed before the Sanctioning Authority, the sanction for prosecution was itself invalid.

3. In the present case, the contention is that in the course of investigations, the CBI had searched the locker bearing No.152, which had belonged to the respondent No.4/Vaibhav Jain, maintained at the HDFC Bank, Chandani Chowk, Delhi. A Locker Operation Memo dated 13th April, 2018 was also prepared and it was found that there were various original sale-deeds of land purchased by the three companies held by the petitioner, namely, (i) M/s. Akinchan Developers Pvt. Ltd., (ii) M/s. Paryas Infosolutions Pvt. Ltd. and (iii) M/s. Manglayatan Projects Pvt. Ltd.. The copy of the Memorandum of Understanding dated 28th March, 2010, between the petitioner and the respondents No.3 & 5, was also found. The third document was a list of cash transactions that took place between 24th September, 2010 and 1st March, 2016. According to learned senior counsel for the petitioner, several other relevant documents, including currency notes, were also found in the said locker.

4. It was submitted that the respondent No.4 had filed an application under Section 91 Cr.P.C. seeking the summoning of the said Locker Operation Memo along with the documents mentioned therein. When such an application was moved, the petitioner realized that such a document existed. Therefore, he too filed an application under Section 91 Cr.P.C. for summoning of the Locker Operation Memo dated 13th April, 2018, along



with the documents and articles mentioned therein, for consideration at the stage of arguments on charge.

5. Learned senior counsel for the petitioner urged that at the time of framing of charge, the petitioner had a right to show that he was not involved in any offence and if these documents, which included original sale-deeds, were produced before the learned Trial Court, the petitioner would be able to justify his plea for a discharge. But, the learned Trial Court vide the impugned order dismissed his application under Section 91 Cr.P.C..

6. With reference to the stand taken by the respondent/CBI that these documents were not in their custody, as these were not seized, the learned senior counsel for the petitioner relied on a communication i.e., a letter dated 4th July, 2019, addressed to the Branch Manager, HDFC Bank Ltd., Delhi, sent by respondent No.4, placed at page No.174 of the e-file, which had the following noting: -

*“Locker No.152 is ceased (sic) with HDFC Bank
Chandni Chowk branch due to received notice from CBI.”*

7. The learned senior counsel for the petitioner submitted that clearly the Bank had not allowed the respondent No.4 to operate his locker or his account because of directions of the CBI. In other words, even if the physical custody of the documents was not with the CBI, in effect they were in the custody of the CBI and it was incumbent upon the CBI to supply the same to the petitioner.



8. With regard to the sanction, it was the contention of the learned senior counsel for the petitioner that had these documents, namely, the Locker Operation Memo and the documents found in the locker, been placed before the Sanctioning Authority, the material would have impacted the exercise of discretion and the sanction may not have been granted. Since these documents were not placed before the Sanctioning Authority, the sanction was invalid and the learned Trial Court erred in observing that the validity of sanction would be considered at the appropriate stage. It was the submission of learned senior counsel that the question regarding validity of the sanction was being raised at the earliest possible stage and the learned Trial Court may be directed to decide that issue straightaway, as also to direct the CBI to supply, not only the Locker Operation Memo, which has been so directed by the learned Trial Court, but also all the documents found in the locker.

9. In support of these submissions, reliance has been placed by learned senior counsel for the petitioner on the decisions in *Nitya Dharmananda and Ors. v. Gopal Sheelum Reddy and Ors.*, (2018) 2 SCC 93, *Shakuntala v. State of Delhi*, 2007 SCC OnLine Del 304; *Ashutosh Verma v. CBI*, 2014 SCC OnLine Del 6931, *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, (1997) 7 SCC 622 and *State v. Mukesh Kumar Singh & Ors.*, 2018 SCC OnLine Del 8136.

10. Mr. Mridul Jain, learned Special Public Prosecutor for respondent/ CBI has opposed the petition submitting that the CBI had not taken the custody of the documents found in the locker as during investigations, it was found that between the dates, when the locker was opened by the CBI



on 13th April, 2018, and the knowledge of CBI investigations available to the respondent No.4 i.e., 24th August, 2017 when the FIR was registered, the locker had been operated on 6th January, 2018 by the respondent No.4. Therefore, since the CBI doubted the authenticity of those documents, and was doubtful that these had been created and placed in the locker by the accused persons to bolster their defence, the CBI was not relying on the said documents.

11. It was also submitted by learned SPP for respondent/CBI that the locker has not been sealed by the CBI and relied on another document, placed on the record by the petitioner as Annexure P-5, being the Locker Operation Memo dated 13th April, 2018, itself, to submit that the Bank and respondent no.4 had acknowledged that the CBI had not seized anything. It was submitted that the learned Trial Court had rightly dismissed the application for production of the documents though allowing the supply of the copy of the Locker Operation Memo.

12. Learned counsel for the respondent/CBI has relied on decisions in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, *Ashok Chawla v. Ram Chander Garvan*, (2011) ILR 3 Delhi 638, *Assistant Collector of Customs and Ors. V. L.R. Malwani and Ors.*, (1969) 2 SCR 438, *Dharambir Khattar v. Central Bureau of Investigation*, 2009 SCC OnLine Del 1292, *Virender Singh and Ors. V. Central Bureau of Investigation*, 2011 (1) JCC 623 in support of these submissions.



13. I have heard the submissions of learned senior counsel for the petitioner as well as the learned counsel for the respondent/CBI and I have perused the material on the record and the cited judgments.

14. The two questions agitated before this Court are regarding the supply of the documents found in Locker No.152 belonging to the respondent No.4, and the consideration of the validity of the order of sanction by the learned Trial Court immediately. In this context, the prayers made in the present petition may be reproduced, which are as under: -

“a) Allow the petition, and set aside/modify the order dated 20.11.2020 passed by Ms. Geetanjali Goel, Additional Sessions judge/Special judge (PC Act)(CBI)-24 (MP /MLA Cases), Rouse Avenue District Courts, New Delhi, in case bearing RC-AC1-2017 -AOOOS, dated 24.08.2017, registered at Police Station CBI-AC1/NEW DELHI, under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code titled as "CBI Vs. Satyendar Kumar Jain and Ors."; and/or,

b) Direct the prosecution/C.B.I. to produce the documents/articles mentioned in Locker Operation Memo dated 13.04.2018, from Serial No.1 to 19, for consideration at the stage of arguments on charge; and/or

c) Allow the Petitioner to challenge the validity of order of sanction for prosecution granted under Section 19 of the Prevention of Corruption Act, 1988, on the ground that it was bad in the absence of the documents/articles mentioned in the Locker Operation Memo dated 13.04.2018, being placed before the sanctioning authority, at the appropriate stage in terms of the settled legal position.



d) Pass any other or further orders as it may deem appropriate in the facts and circumstances of the case, and in the interest of justice.”

15. It is clear that the prayers are slightly different from what was orally urged. Prayer (b) has already been allowed to the extent that the copy is to be supplied to the petitioner and other accused. Be that as it may, the contentions urged are considered on merits.

16. It is settled law that at the stage of framing of charge, the Trial Court is required to consider whether there are sufficient grounds to proceed against the accused. If, on a consideration of the record of the case and documents, and on the submissions made by both sides, the judge was to consider that there are insufficient grounds for proceeding against the accused, for reasons, it can discharge the accused under Section 227 Cr.P.C. However, if the Trial Court felt that there were sufficient grounds for presuming that the accused had committed such an offence, then charge would be framed under Section 228 Cr.P.C. The Trial Court is required to consider only the Police Report and the documents sent with it under Section 173 Cr.P.C. and proceed on the presumption that all the materials produced are true.

17. Even in *Nitya Dharmananda (supra)* the Supreme Court has reiterated that the defence cannot be considered at the stage of framing of charge, so as to avoid a mini trial. It was further observed that the defence had no right to invoke Section 91 Cr.P.C. *de hors* the satisfaction of the court at the stage of charge. The pertinent observations in para No.8 may be reproduced with benefit, as under:



“Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.”

18. The petitioner seeks the production of the documents found when the locker was operated at the stage of charge by invoking Section 91 Cr.P.C. In ***Debendra Nath Padhi (supra)***, Section 91 Cr.P.C. was discussed at length and it was held by the Supreme Court that any document or other thing envisaged under Section 91 Cr.P.C. can be ordered to be produced on the finding that the same is “necessary” or “desirable” for the purposes of investigation, inquiry, trial or other proceedings. Thus, the first requirement of the Section is the determination of the necessity or desirability for the production of the document or other thing. Additionally, the stage at which such a prayer has been made to invoke Section 91 Cr.P.C. would also be determinative. But, Section 91 Cr.P.C. does not permit the accused to produce any document in his possession at the time of framing of charge, nor can documents that would form the defence of the accused be summoned at the stage when charge is to be framed.



19. It is clear from the cited authorities that the court can direct the I.O. to place on record all the material that has been collected by him during investigations, even if not made part of the charge-sheet, as fair investigation and complete disclosure are necessary adjuncts to criminal prosecution. If the court finds any document or thing, which is in the custody of the I.O. or any other authority, which was “necessary” or “desirable”, and did not form part of the defence of the accused, the court can issue summons under Section 91 Cr.P.C. for its production even at the time of framing of charge. The court may consider the entire evidence collected by the I.O., even if deliberately left out by him, to determine the framing of charge.

20. The question then would be whether the documents sought to be summoned are in the possession of the respondent/CBI and have been deliberately withheld. The CBI has denied either having seized the documents in question or being in possession/custody of them. The case set up by the petitioner is that since the Bank had given a note on a letter addressed by the respondent No.4 on 4th July, 2019, therefore, the CBI had the custody of the documents and they ought to be directed to produce the same at the time of framing of the charge. This note is reproduced once again for ready reference. It reads as under: -

*“Locker No.152 is ceased (sic) with HDFC Bank
Chandni Chowk branch due to received notice from
CBI.”*

21. This endorsement indicates that a notice had been received from CBI, but particulars of the alleged notice, such as, the notice



communication number or the date of the notice, have not been incorporated in this note. Thus, this endorsement does not, in any way, reflect the fact that the CBI had seized the Locker No.152 or that the contents of the said locker were in the custody of the CBI, to contradict the signed record of the Locker Operation Memo. The letter of respondent No.4 to the Bank uses the words “block/seized” and the endorsement uses the word “ceased”. Whether the Bank meant the same thing is not evident. The note also thus, cannot be treated as an information that the locker operations have been frozen and therefore, to infer that “constructive possession” could be assigned to the CBI.

22. It is further interesting to note that the respondent No.4 in his application under Section 91 Cr.P.C., placed on the record as Annexure P-4, in para No.9, has averred that “*the said documents were again kept back into the locker and were not taken deliberately in possession by CBI*”, thus, acknowledging that the documents were not seized by the CBI. In these circumstances, when the documents referred to in the Locker Operation Memo are not in the custody of the CBI, the CBI cannot be directed to produce and place the same on the record as if deliberately withheld.

23. The learned Trial Court rightly concluded that what the petitioner and the respondent No.4 were trying to seek were directions to the prosecution to first seize the documents/articles lying in the locker and then supply the same to them. There is no error in the conclusion drawn by the learned Trial Court in this regard.



24. It may also be observed, at this juncture, that the documents are sought to be relied upon by the accused persons in order to establish a defence that the land transactions by the three companies, in which the accused persons were linked, were *bona fide* sale transactions, and thus, the petitioner could not be charged for being in possession of disproportionate assets. In all the cases cited before this Court by either side, the courts have taken a consistent view that the defence of the accused is not to be considered by the Trial Court at the time of framing of charge. Of course, if the accused were in possession of documents that were of sterling quality, then those could be looked into. However, in the instant case, it is an admitted fact that before the CBI had operated the locker on 13th April, 2018, the locker had been operated on 6th January, 2018 by the respondent No.4 i.e., after his residence had been searched on 25th August, 2017. Therefore, placing any reliance on these documents, at this stage, would be improper and their evidentiary value can be determined only after trial.

25. In respect of the question of sanction, the learned Trial Court has only observed, that the question whether the sanction order was bad, in the absence of all the documents being placed before the Sanctioning Authority, can be considered at the appropriate stage in terms of the settled legal position. Prayer 'c' is not seeking anything more. The learned Trial Court may decide to consider this Locker Operation Memo at the time of framing of charge in the light of the settled law. No further orders are called for in this regard. Moreover, this Court is unable to agree with the submission of the learned senior counsel for the petitioner, that the



sanctioning authorities ought to reconsider the question of sanction, directing the respondent to place the documents found in the locker and listed in the Locker Operation Memo before the sanctioning authorities, particularly in the light of the conclusion that the said documents were not seized by the CBI and were not in its custody.

26. The decision of the learned Trial Court, to consider the validity of the sanction at the appropriate stage, is thus not perverse.

27. The learned Trial Court has rightly dismissed the application of the petitioner under Section 91 Cr.P.C. for production of documents.

28. No grounds are made out to allow the prayers sought in the petition. The petition is accordingly dismissed along with the pending applications.

29. The judgment be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

APRIL 26, 2022

S

न्यायमेव जयते