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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 495/2019

Date of Decision: 15.11.2022

IN THE MATTER OF:

CENTRAL BUREAU OF INVESTIGATION
CBI HEAD OFFICE BUILDING
5-B, CGO COMPLEX, LODHI ROAD
NEW DELHI-110003

..... Petitioner

Through: Mr. Jeevesh Nagrath, SPP for the CBI
with Ms. Kirti Mewar and Mr. Arjun
Gaur, Advocates.

versus

SWAROOP SINGH
THE THEN ASSISTANT REGISTRAR
S/O: LATE SH. BANWARI LAL
RIO: PLOT NO. 308, VILLAGE
KHERA DABAR, JULAHA BASTI
PO UJWA, NEW DELHI-110073

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

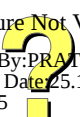
CRL.M.A. 8823/2019 (for condonation of delay)

1. This is an application filed on behalf of the petitioner for condonation of 68 days delay in filing the instant revision petition.

2. For the reasons stated in the application, the delay is condoned.
3. The application stands disposed of.

CRL.REV.P. 495/2019

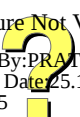
4. This revision under Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C') is directed against the order dated 28.11.2018 passed by learned Special Judge, CBI, Rohini Courts, Delhi with respect to FIR No. RC-8(A)/2006/SCU.V/SCR-II/CBI/New Delhi for offences punishable under Section 120-B read with Sections 420, 467, 468, 471, 511 of the Indian Penal Code (in short, 'IPC') and under Section 13(2)/15 read with 13(1)(d) of the Prevention of Corruption Act, 1988 (in short, 'PC Act').
5. The learned Special Judge has discharged the respondent in absence of any evidence against him. Learned counsel appearing on behalf of the petitioner-CBI submits that the order of discharge is erroneous inasmuch as the learned Special Judge has not considered the material facts involved in the case. According to him, the society was revived *vide* order dated 16.08.2000, subject to completion of upto-date statutory audit and submission of list of members for verification. He further states that as per the note of the Dealing Assistant dated 30.08.2000, there were 19 resignation and 33 fresh enrolments which had taken place when the society was under liquidation. According to him, on the basis of the aforesaid fact, it is clear that the respondent had also conspired with the other accused persons for the commission of the offence in question.
6. I have heard by learned counsel appearing on behalf of the petitioner and perused the record.
7. The facts of the case would show that the Cooperative Group Housing



Society, namely, Shiv Jyoti CGHS Ltd. was registered with the Office of Registrar Cooperative Society, Delhi *vide* Registration No. 1220 on 31.12.1983. Since the same was not functioning in accordance with provisions of the Delhi Cooperative Societies Act, and the Rules framed thereunder, an order dated 29.06.1993 was issued by the then Joint Registrar (Group Housing) for its winding up with immediate effect. It is seen that the society was later on revived *vide* order dated 28.07.2000. The order of revival was passed by accused No.3 R. K. Srivastava, the then Registrar. The allegation in the chargesheet is that the revival of the society was on the basis of false and forged documents. It is alleged that the accused entered into a criminal conspiracy in order to get the society revived fraudulently on the basis of false/bogus document in order to ensure that land is allotted to the society by DDA on highly subsidised rates.

8. The learned Special Judge in paragraph No.28 of the impugned order has considered the case which relates to the present respondent and he has noted that the present respondent admittedly joined as Assistant Registrar in the office of Registrar Cooperative Society only on 01.09.2000 i.e. after the order of revival dated 16.08.2000 was passed by accused No.3/R.K. Srivastava. Since the present respondent was not in picture at all when the documents of the revival of the society were submitted no *prima facie* case has been found to be proceeded against the respondent No.3, accordingly, he has been discharged.

9. Section 227 of the Cr.P.C. postulates application of judicial mind on the part of judge to the fact of the case in order to determine whether the case for trial has been made out by the prosecution. It is not feasible or desirable to lay down a rule of universal application to determine *prima*



facie case, the same, however, depends on the facts of each case. Generally, if two views are equally possible and if the judge is satisfied that the evidence produced before him give rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused (see: *Union of India v. Prafulla Kumar Samal*¹, *Dilawar Balu Kurane v. State of Maharashtra*² and *Yogesh v. State of Maharashtra*³).

9. It is also equally true that all lapses in discharge of the public function would not necessarily entail in criminal prosecution. In the instant case nothing contrary has been pointed out to indicate culpability of the present accused and, therefore, this court does not find it appropriate to interfere with the well reasoned order passed by the learned Special Judge, CBI. Accordingly, the instant writ petition is bereft of merit, the same is therefore dismissed.

10. The petition is disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 15, 2022/p

¹ 1997 3 SCC 4

² 2002 2 SCC 135

³ 2008 10 SCC 394

