



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

% **Pronounced on: 22nd July, 2022**

+ **CRL.M.C. 1889/2020**

VIPIN KUMAR GUPTA & ORS.

.....Petitioners

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. R.S. Dakha, Mr. Mayank
Sharma and Ms. Sujata Yadav,
Advocates

versus

CBI

..... Respondent

Through: Mr. Anil Grover, SPP-CBI with Mr.
Neeraj Bhardwaj, Mr. Vij and Mr.
Anurag Agarwal, Advocates

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 (Cr.P.C.) praying that the summoning order dated 4th November, 2019 in R.C. No.219/2016-E-0003-16 be set aside.

2. The case in brief is that the petitioner No.1 was previously posted as Deputy General Manager with the Oriental Bank of Commerce (now Punjab National Bank) whereas petitioners No.2 & 4 are posted as Manager and Senior Manager respectively in the same bank. A written



complaint had been submitted by the Deputy General Manager, Oriental Bank of Commerce, Regional Office, Karol Bagh, Sh. Ravinder Yadav against Sh. Sanjay Khanna, Sh. Prem Nath Khanna and Sh. Sandeep Khanna, who are partners of M/s Adigear India, Smt. Amarjeet Kaur and other unknown officials of the Oriental Bank of Commerce, LU Branch, Pitampura and other unknown persons. On the basis of this complaint, the Economic Offences Wing-I of the Central Bureau of Investigation (CBI) registered an FIR against all of them under Sections 120B/420 IPC and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

3. The charge-sheet was filed against the accused showing the present petitioners in column No.12, explaining that they were placed at column No.12 as no sanction was granted by the competent authority to prosecute them.

4. The grievance of the petitioners is that despite an absence of sanction, they have been summoned for committing the offence under Section 120B read with Sections 420/468/471 IPC and the substantive offence of Section 420 IPC.

5. Mr. Mohit Mathur, learned senior counsel for the petitioners, submitted that the learned Chief Metropolitan Magistrate (CMM), Rouse Avenue Court, had erroneously summoned the petitioners in the absence of any sanction being granted for their prosecution. Attention has been drawn to the Office Memorandum (Annexure-E) dated 7th February, 2018 issued by the Advisor to the Oriental Bank of Commerce, to the effect that there was no evidence or proof of obtaining gain by the petitioners or any act of



dishonesty, corrupt practice on their part. Hence, there was no criminal intent discernable in their acts, warranting criminal proceedings in the court of law. Therefore, the Central Vigilance Commission (CVC) through the Advisor declined grant of sanction for their prosecution.

6. Relying on the decision in *Ashoo Surendranath Tewari Vs. The Dy. Superintendent of Police, EOW, CBI & others*, (2020) 9 SCC 636, the learned senior counsel urged that the report of the CVC ought not to have been brushed aside so easily and the exoneration by the CVC had to be considered by the learned CMM and instead of summoning the petitioners, they ought to have been discharged. Reliance has also been placed on the decision in *Anirudh Sen Vs. State of NCT of Delhi*, 2006 SCC OnLine Del 1362, to contend that when there was no material on the record to connect the petitioners with the commission of the alleged offences, they could not have been summoned. It was also argued that the FIR had been registered for the commission of offences under Section 120B read with Section 420 IPC and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and the CMM was not the designated court to have dealt with the charge-sheet. Therefore, the summoning order dated 4th November, 2019 was passed without jurisdiction and was liable to be set aside.

7. *Per contra*, Mr. Anil Grover, learned counsel for the respondent/CBI contended that though the FIR had been registered for the offences under Section 120B read with Section 420 IPC and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, however, after due investigations, the charge-sheet was filed for the commission of offences



under Section 120B read with Sections 420/467/468/471 IPC and the learned CMM was fully empowered to deal with the charge-sheet and lacked no jurisdiction.

8. It was further submitted that the sanction was essential for prosecution under the Prevention of Corruption Act, but was not required qua the petitioners under Section 197 Cr.P.C. This was, as submitted by the learned counsel for the respondent, because the petitioners were not public servants, who could be removed from office only with the sanction of the government. Reliance has been placed on the judgment in **S.K. Miglani Vs. State of NCT of Delhi**, (2019) 6 SCC 111. Reliance has also been placed on the judgment in **Md. Hadi Raja Vs. State of Bihar**, (1998) 5 SCC 91 to contend that employees of a Public Sector Undertaking could not be equated to those of a government department and the protection of sanction under Section 197 Cr.P.C. was not available to them. Reliance has been placed on the decision of the Supreme Court in **Punjab Warehousing Corporation Vs. Bhushan Chander**, (2016) 13 SCC 44 in this respect.

9. I have heard submissions of both the learned counsel and have perused the record.

10. At the outset, it may be noted that the contention of the learned senior counsel for the petitioners that the learned CMM, Rouse Avenue Court has no jurisdiction to deal with the charge-sheet, cannot be accepted. The admitted fact is that the charge-sheet has been filed for the commission of the offences under the IPC and the various accused persons have been charge-sheeted for offences under Section 120B read with



Sections 420/467/468/471 IPC and substantive offences thereof. It does not matter that the FIR itself was registered also under the Prevention of Corruption Act. The FIR is only an information, on the basis of which, investigation commences and after investigations, the charge-sheet is filed. It may even be that the investigations reveal that no offence has been committed, and cancellation of the FIR is also sought by the police. So, the FIR cannot preclude the filing of the chargesheet before the jurisdictional court as has happened in the present case.

11. No doubt, in respect of the petitioners, the charge-sheet has listed them in column No.12 also recording that they were accused of offences under Sections 120B/420/467/468 IPC and Sections 13(2) and 13(1)(D) of the Prevention of Corruption Act and substantive offences thereof. But as noticed, the charge-sheet does not include any allegation in respect of the acts of corruption.

12. Be that as it may, the reasons for placing these petitioners in column No.12 is the absence of sanction for prosecution being granted by the Competent Authority. The learned Trial Court observed that the absence of sanction was not fatal to the prosecution of these petitioners in view of the language of Section 197 Cr.P.C. and in the light of the decision of the Supreme Court in *S.K. Miglani* (*supra*). Considering that there were supporting materials sufficient to summon the accused, the impugned order was passed.

13. Great emphasis has been placed by the learned senior counsel for the petitioners on the Office Memorandum dated 7th February, 2018, whereby,



the CVC/Advisor declined grant of sanction of prosecution against the petitioners not just for corrupt practices, but also for offences under the IPC, finding no act of dishonesty, fraud or conspiracy against them. The learned senior counsel sought to rely on the information received under the Right to Information Act, 2005, to contend that the sanction was refused after considering the departmental proceedings and thus on the merits. But the validity of the impugned order is to be considered on the material and documents that were there before the learned Trial Court and none of these documents admittedly were placed before the learned CMM at the time of passing of the impugned order.

14. A perusal of the Office Memorandum dated 7th February, 2018, does show that the CVC had exonerated the petitioners, but unlike in the case of ***Ashoo Surendranath Tewari*** (*supra*), this is not a full report submitted by the CVC exonerating the petitioners of the same charge in the departmental proceedings. What it says is, that on an analysis of the case in its entirety, it was observed that there was no evidence or proof against the petitioners that “*reflects dishonesty, fraud, conspiracy or corrupt practices*” because “*no criminal intent was discernable*” warranting prosecution. Hence sanction was declined. How and on what basis the CVC had so concluded that there was no evidence of proof is not disclosed in this Office Memorandum. Even accepting the contention of the learned senior counsel that the departmental inquiry had been considered by the CVC, that fact ought to have been reflected in the Office Memorandum. Nothing can be read into it.



15. The absence of such a speaking order is significant, considering that the charge-sheet has been filed indicating the role of the present petitioners of having facilitated the sanction of loan by overvaluing the properties, by overlooking absence of machinery in the premises that at least two of the petitioners had inspected and releasing an additional credit facility and two Letters of Credit (L/Cs) totalling Rs.1.70 Crores without the permission of the Competent Authority and not adhering to the KYC norms of guarantors and so on and so forth. Therefore, unlike in the case of **Ashoo Surendranath Tewari** (*supra*), no particular assistance can be obtained from this Office Memorandum.

16. In the absence of sanction, it is true that the petitioners cannot be prosecuted under the Prevention of Corruption Act. But they cannot be excluded from prosecution for the offences under the IPC. The protection under Section 197 Cr.P.C. is available only to those public servants, who cannot be removed from their office except with the sanction of the government. The petitioners being Bank Officers do not require sanction of the government before they are removed from office. They are, therefore, not covered under Section 197 Cr.P.C. The case of **S.K. Miglani** (*supra*) applies on all fours to the present case. There too, the accused was a Branch Manager in the Bank of Baroda and, thus, a bank official. The Supreme Court in **K.CH. Prasad Vs. Smt. J. Vanalatha Devi & Ors.**, (1987) 2 SCC 52 held that a bank official could not claim protection under Section 197 Cr.P.C. Precisely for this reason that the accused was not a public servant whose removal from his office could not happen, save by or with the sanction of the government. This view was followed in **S.K.**



Miglani (*supra*). The learned CMM has only applied the law and that too correctly.

17. The decision in *Anirudh Sen* (*supra*) is not found applicable as it deals with the summoning of the accused after an earlier order had been passed discharging them and it was held that the learned MM had no powers to review its order and that after the cognizance was taken, ordinarily, fresh summoning orders may be issued to other persons only under Section 319 Cr.P.C. The court had discussed the difference between the provisions of Sections 190 & 319 Cr.P.C. Therefore, nothing turns on that judgment in the present case.

18. It is trite that the court would exercise its power under Section 482 Cr.P.C. only in the rarest of the rare cases, when there is perversity in the orders of the courts below or it results in miscarriage of justice. In the instant case, neither circumstance is present.

19. The petition lacks merit and is accordingly dismissed.

20. It is made clear that nothing contained in this judgment will be an expression on the merits of this case.

21. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 22, 2022

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