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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Reserved on: 09th December, 2022**
Pronounced on: 19th December, 2022

\+ **CRL.M.C. 3242/2021 & CRL.M.A. 19946/2021**

TEJINDER BISHNOI ..... Petitioner

Through: Mr.Arun Khatri, Mr.Devender Singh and Ms.Saumay Bajaj, Advocates.

versus

UNION TERRITORY CHANDIGARH (STATE) ..... Respondent

Through: Mr.Charanjit Bakshi, APP for UT of Chandigarh.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed with the following prayers;

> *"A. Call for records and quash and set-aside impugned orders dated 29.10.2021 passed by the court of Principal District and Session Judge (PC Act) (CBI), Rouse Avenue Court, New Delhi, order dated 28.01.2020 passed by the court of Addl. Session Judge, Chandigarh and order framing charges dated 31.01.2020 passed by the Addl. Session Judge, Chandigarh and consequent framing of formal charges dated 31.01.2020 in case FIR no. 194/2017 dated 19.09.2017 u/s 409/420/120B/201 IPC & Section 8/9/13(1) (d) r/w 13 (2) PC Act, PS. 03 (SIT), District Chandigarh."*

2. The brief facts are: a final report was presented under Sections *8/9/13(1)(d)* read with Section *13(2)* of Prevention of Corruption Act and under Sections *409/420/120B/201* IPC against nine accused person, including the present petitioner. The allegations are the exam of HCS (Judiciary) (Preliminary) -2017 was fixed on 16.07.2017. Balwinder Kumar Sharma was the custodian of paper being Registrar (Recruitment),

High Court of Punjab and Haryana, Chandigarh. He handed over the question paper to one Sunita, a candidate for said exam. Accused Balwinder Kumar Sharma had close and long association with accused Sunita. She further gave the paper to another candidate namely Sushila. Both Sunita and Sushila got top positions in General category and in reserved category respectively. Accused Sunita was staying at Radha Krishan Temple, Sector-8, Chandigarh while accused Ayushi was also residing there, but in a different room. Both Sunita and Ayushi became friends and started residing in a single room as roommates in the said Mandi*r*. Accused Sunil Kumar Chopra who provided accommodation to accused Sunita and Ayushi, failed to maintain record of temple rooms and of visitor's. He also allegedly got removed all articles from the room of Sunita and Ayushi prior to raids. Accused Balwinder Kumar Sharma used to visit temple to see Sunita and Ayushi. Kuldeep Singh, being step brother of Sunita when came to know Sunita was having question paper tried to arrange candidates to whom it could be sold. But then on knowing authorities had come to know about leakage of paper he removed articles from the room of accused Sunita. Tejinder Bishnoi being one of such candidates, to whom paper was allegedly sold, stood second in General category. Subash Chander Godara is father of Ayushi and whereas Sushil Bhadu is maternal uncle of Ayushi. Ayushi arranged candidate Tejinder Kumar Bishnoi/petitioner herein through Subhash Chander Godhara and Sushil Bhadu. There is evidence of money transaction from the bank account of Tejinder Bishnoi to the bank account of father of Sushil Bhadu and withdrawal of such money by Sushil Bhadu. It is alleged all accused namely Balwinder Kumar Sharma, Sunita , Sushila, Ayushi, Sunil Kumar Chopra, Kuldeep Singh, Subash Chander, Sushil Bhadu and Tejinder Bishnoi conspired for leakage and selling/purchase of the question paper.

3. The whole matter surfaced when one candidate namely Suman, came to know from Sushila that Sunita is having a leaked question paper, a day before exam. The complainant Suman then met Sunita and Sushila at Sector 17, Chandigarh but their deal could not mature. The complainant then filed a petition in the Hon'ble High Court and her husband Manoj filed a complaint in the Hon'ble High Court, when Suman found the same questions as were disclosed by Sushila were in the question paper, which Sushila had allured her to purchase. On complaint, Registrar (Vigilance) conducted an inquiry and per his findings, the question paper was found leaked and matter was referred to Full Bench. On directions of the Hon'ble High Court the present FIR was registered.

4. The learned Trial Court after going through the charge sheet had passed an impugned order against the petitioner:

> *"28. Thus, in view of the above discussion and after hearing all the parties and going through the record, and applying the law laid down by the Apex Court in the aforesaid decisions, this court is of the considered opinion that the material on record discloses grave suspicion against the accused persons. There are sufficient grounds for presuming that accused have committed the subject offence. Further, considering the scope of inquiry at the stage of framing of the charge, this Court is of the opinion that the submissions made by the Ld. Counsels for accused are not required to be considered at this stage as, the submissions made by the ld. Counsels on behalf of accused persons are on merits and are required to be dealt with and consider at an appropriate stage during the course of trial. Some of the submissions made by the ld. Counsel appearing on behalf of accused persons are on the conduct of the SIT and some may be considered to be the defence of the accused, which are required to be dealt with and considered at an appropriate stage during trial considering the material on record and the same are not required to be considered at*

the stage of framing of the charge. Hence, on considering the material, on record, this court is of the opinion that there is more than a prima-facie case against the accused persons for which they are required to be tried. There is sufficient ample material against the accused persons to put them on trial for committing offence under Section 8,9,13(1)(d) r/w 13(2) Prevention of Corruption Act and under Section 409, 420,120-B, 201 IPC and Section. Let charge be framed against them accordingly."

5. It is the submission of the learned counsel for the petitioner only three things are against the petitioner ***a)*** disclosure statement of co-accused, which has no evidentiary value; ***b)*** the CDRs which connect the petitioner with co-accused Sushil Badhu and ***c)*** the statement of accounts of his bank whereby an amount of Rs.7.00 lacs has been transferred to the account of accused Sushil Badhu and his father. It was argued the CDRs which the petitioner had with co-accused Sushil Bhadu and the amount transferred from the joint account of Tejinder and his father are all natural transactions as Sushil Bhadu is his relative and that his appearance at Sector-17, Chandigarh, a day earlier to exam was also natural since he was appearing in the exam, the next day. Hence, it is argued simply on disclosures the petitioner cannot be charged for the alleged offences.

6. The learned counsel for petitioner had relied upon *Union of India vs. Prafulla Kumar Samal and Ors.* (1979) 3SCC 4 as under:

"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 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 A 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."

and *Sunil Bansal vs. State of Delhi* in CRL.REV.P.*928/2006* decided on 24.04.2007, wherein it was held:

> *"13. xxx xxx xxx* ***It is well-settled that if two views at charge*** *framing stage exist, based upon the materials available, the view favoring the accused is to be preferred. Ref. Dilawar Balu Kurane v. State of Maharashtra 2002 SCC (Crl) 310."*

and *Vinod Kumar Kila vs. CBI* in CRL.M.C.*2942/2016* decided on 08.08.2022, wherein it was held:

> *"16. There is no gainsaying that such a reasoning is indeed convoluted. Charge can be framed only on the material before the court and cannot be based on speculation. The court had to consider whether on the chargesheet and documents relied upon by the CBI, including the retracted confessional statements recorded under Section 164 Cr.P.C, there were sufficient grounds to frame charge against the petitioner. The learned Trial Court itself records in the impugned order that in both the letters i.e., D-92 and D-253 relied upon by the prosecution, the petitioner has not been mentioned and that the confessional statements have been retracted. Clearly, therefore, the prosecution necessarily had to point what other material existed that would connect the petitioner with the offence so that if and when the confession is proved, it can assist the court to come to a just decision.*
> *20. The record discloses no independent material against the petitioner. Even the learned Trial Court in the impugned order refers to no such material. Retracted statements of a co-accused will be utterly inadequate to establish, prima-facie, the participation of the petitioner in a conspiracy with the co-accused to facilitate the commission of the offences under Section 109 IPC read with Sections 13(2), 13(1)(e) of the PC Act in respect of which the charge has been framed against the petitioner which was why the learned Trial Court wanted to wait and watch, for a probability that did not exist in the*

immediate present, and which decision of the learned Trial Court cannot be upheld."

and *State of Maharashtra and Ors. vs. Som Nath Thapa and Ors.* in CRL.A.*480/1996* decided on 12.04.1996, wherein it was held:

> *"29. What was stated in this regard in Street Atyachar Virodhi Parishad's case. Which was quoted with approval in paragraph 76 of State of west Bengal vs. Mohd. Khalid, 1995 (1)SCC 684 is that what the Court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into."*

7. It was argued even the CDR would be of no help in view of the facts, the petitioner and Sushil are relatives. He relied upon *Arvind Kumar Jain vs. State of Rajasthan* in S.B.Revision Petition *773/2012* decided on 13.02.2015, wherein it was held:

> *"13. In the case in hand nothing has been brought on record regarding the contents of the conversation and call records alone could not brought the complexities of the petitioner in the crime. It has been stressed upon by the CBI that on the phone calls between the two, the SOG has came in action and they went in search of deceased but the charge-sheet speaks itself that deceased Daria was wanted in many cases he was involved in more than 20 cases and he was a hardened criminal and nothing has been brought on record that after phone call between the two, the petitioner had made phone calls to any members of the SOG or member of SOG has made any phone call to petitioner, hence the chain is not complete and it could not be presumed by reasonable prudence that the phone calls have any probable connection with the murder of deceased."*

8. Thus, it was argued there is no evidence against the petitioner; no conspiracy is made out on a single instance for making payment of money, hence it cannot be said the petitioner ever conspired to purchase leaked papers.

9. Heard.

10. Let us first examine the case of respondent. Supplementary chargesheet filed along with additional affidavit notes as under:

__6.__ It is further established that Rs.2 lacs has been __transferred__ through RTGS in the account of accused Sushil Kumar Bhadu(A-7) (maternal uncle of Ayushi) from the joint accounts of Tejinder Bishnoi(A-8) and his father (Sh.Chander parkash) after the 5 days of HCS(JB) Exams i.e. 21.07.18 and Rs.5 lacs has been __transferred__ through RTGS in the account of Om Parkash Bhadu (father of accused Sushil Bhadu) from the joint accounts of Tejinder Bishnoi and his father (Sh.Chander parkash) after the 4 days of HCS(JB) Exams i.e 20.07.18. lt is pertinent to mention here that the amount of Rs.5 lacs transferred in the account of Om Parkash Bhadu (father of accused Sushil Bhadu) and amount of Rs. 2 lacs transferred in his account, was withdrawn on the same day by accused Sushil Bhadu. Accused Tejinder Bishnoi (A-8) is __held Rank-2 as per the merit list__ and availed the leaked question paper through accused Sushil Bhadu and Subhash Chander Godara. Further, accused Tejinder Bishnoi was arrested in this case on 30.10.18 and he also disclosed in his disclosure statement that he had deal with accused Sunita through Subhash Chander Godara (4-6) and accused Sushil Bhadu (A-7) to get the HCS(JB) Questioned paper in lieu of 25 Lacs and transferred Rs. 07 lacs in the bank accounts of accused Sushil Bhadu(A-7) and his father Om Parkash's bank account.

__21.__ Accused Tejinder Bishnoi came to contact with accused Sunita through accused Subhash Chander Godara and Sushil Kumar Bhadu for availing the leaked HCS (JB) paper 2017. On 15.07.17, he met to accused Sushil Kumar Bhadu at ISBT Sec-17, and Sushil Kumar Bhadu was taken him to Mandir Sec-18 Chandigarh, where accused Sunita had provided the leaked paper of HCS (JB) 2017 to him. As per settlement, after 4-5 days i.e. 20/21.07.17, accused Tejinder Bishnoi, transferred the Rs.7 lacs from his and his father joint account (Rs. 2 Lacs in the account of accused Sushil Kumar Bhadu and Rs. 5 Lacs in the account of Om Bhadu father of accused Sushil Kumar Bhadu) through RTGS in the account of accused Sushil Kumar Bhadu and his father Om Bhadu. As per __CDR__ and tower location of mobile phone of accused Tejinder Bishnoi, it has been proved that __on 15.07.17, he was in sector-17__ and was also with the contact of accused Sushil Kumar Bhadu.

From the investigation conducted in this case so far, documents/ material placed on record/seized verification of record facts, statements of witnesses, it has been established that accused Dr. Balwinder Kumar Sharma, Ex. Registrar Recruitment Cell, Hon,ble PB&HR. High Court, Chandigarh was having control/custody of question paper of HCS (JB) preliminary examination held on 16.07.2017. It is also established during the course of investigation that accused Dr. Balwinder Kumar Sharma and accused Sunita were known to each other since the year 2014. That accused Balwinder Kumar Sharma supplied the question paper of above said examination to accused Sunita 5 days prior to the examination day to favour her in *the examination. The accused Sunita further provided the said question paper to her friend Smt.Sushila and candidates arranged by accused Sunil Kumar @ Teetu, Kuldeep Singh, Subhash Chander Godara & Sushil Kumar Bhadu for consideration of money. From the arranged candidate by the said accused, one candidate named Tejinder Bishnoi arranged by accused Subhash Chander Godara and Sushil Kumar Bhadu has identified, who secured second rank in the merit list of his category. Hence, sufficient evidence has has come on record against the accused Subash Godara S/o Hanuman R/o Vill. Sadalpur, Hissar (HR) (A-6), Sushil Bhadu S/o Om Bhadu R/o Village Sadelpur, Hissar(HR)(A-7), Tejinder Bishnoi S/o Chander Parkash R/o Village, Fatehabad, Haryana(A-8).*

11. The additional affidavit filed by State also is in line of above Supplementary Charge Sheet.

12. Here, I may also refer to *State of Tamilnadu by Insp. of Police Vigilance and Anti Corruption vs. N.Suresh Rajan & Ors.* in CRL.A.*22-23* of *2014* wherein the Hon'ble Supreme Court held as under:

"We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, ***the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.*** *At this stage,* ***probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.*** *In our opinion, what needs to be considered is whether there is a* ***ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.*** *To put it differently, if the court thinks that the* ***accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge;*** *though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."*

13. Further in *State through Deputy Superintendent of Police vs. R.Soundirarasu Etc.* in CRL.A.Nos.*1452-53* of *2022* the Hon'ble Supreme Court has held as under:

> *"**49.** The learned counsel appearing for the State rightly submitted that at the stage of consideration of discharge under Section 239 of the CrPC **only a prima facie case is to be seen** and the Special Court having recorded a satisfaction with regard to the existence of a prima facie case there cannot be said to be any material error or illegality in the orders assailed before the High Court.*
> ***56.** Then again in the case of Som Nath Thapa (supra), a three-Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).*
>> *"32...if on the basis of materials on record, a court could come to the conclusion that **commission of the offence is a probable consequence,** a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."*
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> ***57.** In a later decision in Mohanlal Soni (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7) "7. The crystallised judicial view is that at the stage of framing charge, the **court has to prima facie consider whether there is sufficient ground for proceeding against the accused**. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.""*

14. The fact other accused namely, Sunita, Sushila, Sushil Bhadu were all there at Chandigarh, a day prior to exam and the CDRs show petitioner was also with co-accused Sushil Badhu at Sector-17, Chandigarh a day earlier, coupled with the fact the petitioner had paid Rs.*7.00* lacs to accused Sushil Badhu and his father for no reason; *prima facie* show his involvement in the conspiracy, ***moreso*** when he secured

2nd rank along with co-accused Sunita and Sushila who got top ranks. All this is sufficient to frame a charge against him. The fact viz. the petitioner and Mr.Sushil are relatives or they have money dealings *prior to* and *after* this incident are *all matter of trial*. It cannot be said this case is of *no evidence* against the petitioner.

15. Even otherwise, the charges were framed on 31.01.2020 and though a petition was filed by co-accused for transfer of the case from Chandigarh to Delhi on 27.01.2020 but *admittedly* there was *no stay* granted by the Hon'ble Supreme Court till it was transferred to Delhi on 05.02.2021 *per* consent order. Admittedly, petitioner never challenged the order on charge before the concerned Court at Chandigarh for full one year and once the case was transferred here, he came up with this petition. He cannot be allowed to do forum shopping and his petition rather is liable to be dismissed on grounds of latches.

16. In the result the petition is dismissed. Pending application(s), if any, are disposed of.

YOGESH KHANNA, J.

DECEMBER 19, 2022
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