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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 02.11.2022*

+ CRL.REV.P. 345/2018, CRL.M.A. 7333/2018, CRL.M.A. 7334/2018
CRL.M.A. 41190/2019 & CRL.M.A. 4294/2020

ANIL DUTT SHARMA Petitioner
Through: Ms. Geeta Lutrha, Sr. Adv. with Mr.
Manoj Kr. Dwivedi & Mr. Mayank
Pandey, Advs.
versus

STATE (GNCT OF DELHI) Respondent
Through: Mr. N.S. Bajwa, APP for State.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The present revision petition has been filed against order of framing of charge dated 05.07.2017 and the charges being framed on 10.07.2017 by the learned Special Court in case FIR No. 51/2014 registered under Section 8 of Prevention of Corruption Act, 1988 (hereinafter referred to 'PC Act' read with Section 419/120 B of Indian Penal Code, 1860 (hereinafter referred to 'IPC')).

1.1 The relevant portion of the order on charge is reproduced hereunder:-

"7. There is no teeth in the arguments of learned Counsels for accused persons. The accused Anil Dutt Sharma as per the material on record, was caught red handed with illegal gratification of Rs. One Lakh at the place appointed by him. The statement of complainant Joginder Singh recorded u/s 161 Cr.P.C. and his complaint prima facie reveal that the accused had fixed the meeting time between 3.00 to 4.00 pm on 24.06.2014 at Jafrabad pulia, which the accused had subsequently changed to an earlier time at Ex-Taj restaurant by telephonically informing the complainant. I have also gone, through the call detail record dated 24.06.2014 and the transcription

of the conversation between accused Anil Dutt Sharma and complainant held at 2.24 pm on 24.06.2014 which prima facie supports the case of the prosecution that it was accused Anil Dutt Sharma who had , changed the meeting time to an earlier time and location from Jafrabad pulia to Ex-Taj restaurant.

8. So far as the discrepancies in the statements of the complainant Joginder Singh and Panch Witness Naipal Singh are concerned, they are minor in nature and of n6 importance at this stage. Similarly, the argument: of learned Counsel for accused Anil Dutt Sharma that the complainant had friendly relations with accused Anil Dutt ShaAtia and thus, he was aware of the fact that accused Anil Dutt Sharma was not a public servant or even remotely connected with the MCD is a matter of trial and cannot be ascertained at this stage.

9. Regarding accused Khushi Ram, it is true that there is no conversation or call detail record between him and the complainant which has been placed on record by the prosecution to suggest that accused Khushi Ram was known to the complainant. It is also true that from the conversation between accused Anil Dutt Sharma and accused Khushi Ram, it cannot be concluded that the property which they were referring to was that of the complainant. However, the bare reading of the statements of complainant Joginder Singh and Panch Witness Naipal Singh recorded u/s 161 Cr.P.C. prima facie reflects that when accused Anil Dutt Sharma accepted the illegal gratification from the complainant, he categorically stated that from now onwards JE Khushi Ram will not trouble the complainant regarding this property as his share is. also included in the amount received by him (accused Anil Dutt Sharma). This statement prima facie indicates the nexus and collusion between both the accused persons and that accused Anil Dutt Sharma was not only demanding illegal gratification for himself but also on behalf of accused JE Khushi Ram”.

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13. Hence, I am of the opinion that there is sufficient material on record to prima facie establish that private person namely accused Anil Dutt Sharma who impersonated as JE/MCD and public servant accused Khushi Ram (JE/MCD) both in conspiracy with each other extorted illegal gratification to the tune of Rs.One Lakh from complainant Joginder Singh.

14.In the light of the aforesaid discussion, prima facie offences under Sections 120B/384 IPC and Sections 7/13(2) of PC Act read with 120B IPC are made out against accused Khushi Ram (JE/MCD, public servant) and offences under Sections 120B/384/170 or in the alternative Sec. 419 IPC and Sections 7/13(2) of PC Act read with Section 120B IPC are made out

against accused Anil Dutt Sharma (private person)”.

1.2 The grounds of challenge to the framing of charge are that the petitioner did not make any call except one, i.e., 15 days earlier on 09.06.2014 from the date of the complaint in which there is no demand and threats as stated by the complainant; the FIR contradicts the entire story of the complainant Mr. Joginder Singh got recorded under Section 161 Cr.P.C., the Trial Court fell in error to observe that accused was caught red handed with illegal gratification at the place appointed by him; the Trial Court had gone through only a call dated 24.06.2014 made by the complainant at 2.24 p.m. without connecting the contents of other calls dated 23.06.2014 and 24.06.2014, which do not constitute any crime; the learned Trial Court has wrongly observed that relation of the accused and the complainant is a matter of trial; the learned Trial Court has ignored the conversation dated 18.06.2014 between the complainant and the petitioner, which shows that they were having friendly relations and; the learned Trial Court formed opinion only on the basis of transcripts and not on the basis of audio recording, although it is alleged that mobile phone of the petitioner was on audio recording mode but no such call regarding fixing of meeting has been described in the charge-sheet; the learned Trial Court has erred to form opinion in framing charge under Section 120B/384/170 and Section 7/13(2) PC Act; the prosecution has failed to explain as to how Section 419 IPC has been invoked as per the complaint of the complainant as he has described the petitioner as JE, whereas, the fact that the petitioner is alleged to have been impersonating as JE, came out only during interrogation; the raiding team had raided the petitioner even before receiving the information and a wrong DD has been mentioned; the departure entry is vague; FIR was not

registered before conducting the raid; no preliminary inquiry was conducted; the petitioner is not a government servant so, PC Act cannot be invoked, and certain other minor grounds are also being taken.

2. Notice was issued.

2.1 Status Report has been filed.

2.2 It has been mentioned that petitioner had filed a complaint before the Police Complaint Authority (PCA) alleging therein that he was falsely implicated in case under PC Act and he was illegally detained because he was arrested in FIR No. 51/2014. The PCA vide order dated 30.07.2018 has rejected the complaint of Shri Anil Dutt Sharma.

2.3 In the written submissions submitted by the petitioner he claims to be an RTI activist, a public interest litigator and a whistle blower, who was falsely implicated by the complainant for extorting money. Reference has been made to the telephone calls to show friendly relations between the petitioner and the complainant. Again, it is reiterated that Section 7 and 13(2) of PC Act cannot be invoked against the petitioner; there is no clarity about the property number in question regarding which the alleged bribe was demanded and no raid can be conducted before the registration of the FIR.

3. I have heard learned senior counsel appearing for the petitioner and the learned APP for State.

4. In my view, there is no illegality, infirmity in the order framing charge on the following grounds:-

- (i) The relationship between the complainant and the petitioner is a matter of trial and the petitioner can prove during trial as to whether the complainant was already aware about his antecedents or not;
- (ii) The petitioner was caught red-handed while accepting illegal

gratification of Rs. 1,00,000/- at a place which he himself suggested. Under what circumstances, he has accepted the said illegal gratification of Rs. 1,00,000/-, he will get ample opportunity to prove his version of the events while evidence is lead on behalf of the State and the petitioner himself will get an opportunity to lead evidence in defence;

(iii) The minor discrepancies in the statements of the complainant and the panch witnesses are bound to appear where the statements are recorded in the natural course of business. Rather, when the statements are verbatim replica of each other, the doubts arises regarding their authenticity. The petitioner will get a chance to cross-examine the witnesses and confront them with the statements so recorded.

4.1 The learned Trial Court has rightly concluded that on the basis of statements of complainant and panch witnesses, when the present petitioner accepted the illegal gratification, he had categorically stated that co-accused JE Khushi Ram will not trouble the complainant regarding the property as he has received the share of the co-accused also and this itself is sufficient to frame charge showing nexus and collusion between both of them. Charge of conspiracy has been rightly framed against both of them.

4.2 As far as the main ground raised that the charge against the present petitioner cannot be framed under Section 13 (2) of the PC Act, the attention of the petitioner is drawn to the fact that the major charge in alternative against him is under Section 419 IPC and the said charge is to be jointly read with charge under Section 7/13(2) of the PC Act, with the help of Section 120 B IPC as the charge under Section 7/13(2) PC Act has been framed

against JE Khushi Ram and Section 120 B IPC regarding conspiracy has been also framed against him. There is no illegality in framing the charge in this fashion as both the co-accused have been shown to be in conspiracy with each other and Section 120 B IPC connects the acts of both the accused persons and Section 419 IPC is to be proved by the prosecution relying upon charge under Section 7/13(2) of the PC Act framed against the government servant, i.e., JE Khushi Ram.

4.3 The rest of the grounds raised in the revision petition do not lead to inference that no charge is made out against the present petitioner. The overall reading of the entire charge-sheet makes out a case against the petitioner, for which the charges have been rightly framed.

4.4 The material collected by the prosecution is to be considered at the time of framing of charge and the present petitioner will get a chance to put up his case at the time of leading evidence. As noted earlier, minor gaps or discrepancies in the statements, chronology of events and the relationship between the complainant and the present petitioner are matter of trial and the petitioner will get a chance to cross-examine the witnesses to prove his innocence and he will also get a right to examine the witnesses in support of his defence.

5. The revision petition is without any merit and the same is hereby dismissed.

TALWANT SINGH, J

NOVEMBER 02, 2022/nk

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