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

Date of decision: 23.05.2023

+ CRL.M.C. 942/2021 & CRL.M.A. 4728/2021

DR. SUKHWINDER SINGH & ANR. Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Amarjeet Singh Bedi, Ms. Punya Rekha Angara, Ms. Sharian Mukherji, Mr. Siddharth S. Yadav, Mr. Mohd. Qasim, Mr. Varun Deswal, Mr. Vaibhav Sharma, Mr. Prateek Bhalla, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita, Adv.

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+ CRL.M.C. 1148/2022 & CRL.M.A. Nos. 4990/2022, 25839/2022

DR. SUKHWINDER SINGH & ANR. Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Amarjeet Singh Bedi, Ms. Punya Rekha Angara, Ms. Sharian Mukherji, Mr. Siddharth S. Yadav, Mr. Mohd. Qasim, Mr. Varun Deswal, Mr. Vaibhav Sharma, Mr. Prateek Bhalla, Advs.

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CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. CRL. MC. 1148/2022 is seeking setting aside of the impugned order dated 01.06.2012 passed by the learned Special Judge (CBI), Patiala House Courts, New Delhi in CC No. 11/2012 (New No.09 of 2017 and CC No. 384 of 2019) titled '*CBI vs. Dr. Ketan Desai & Ors.*' being



Case No. RC 02(A)/2010/CBI/ACU-IX/New Delhi.

2. As per the impugned order, the petitioners have been charged under Section 12 of the Prevention of Corruption Act, 1988. The relevant portion of the Impugned Order reads as under:

“CHARGE

I, Swarana Kanta Sharma, Special Judge, CBI-05, Patiala House Courts, New Delhi do herewith charge you

accused:

Dr. Sukhvinder Singh, S/o Sardar Kartar Singh, R/o Kothi no. 1905, Sector 64, Mohali, (Punjab) as under:

That you during the period November 2009 to April 2010 while working as Vice Chairman, Gian Sagar Educational & Charitable Trust, Mohali, Punjab contacted your co-accused Sh. Jatinder Pal Singh to obtain clearance from Medical Council of India for Gian Sagar Medical College & Hospital, Patiala for admission of 4th Batch of MBBS students for the academic session 2010-2011, who assured you to help and further you arranged Rs. Two crores with the help of Sh. Nirmal Singh Bhangoo to be given as illegal gratification to your co-accused Dr. Ketan Desai, a public servant and abetted to accept illegal gratification for a motive or reward of giving a favourable compliance inspection report and thereby you committed an offence u/s 12 of Prevention of Corruption Act 1988 and within my cognizance

And I hereby direct that you be tried on the aforesaid charge by this court.



CHARGE

I, Swarana Kanta Sharma, Special Judge, CBI-05, Patiala House Courts, New Delhi do herewith charge you accused:

Dr. Kamaljeet Singh, S/o Sh, Avtar Singh, R/o House no. 3003, Phase II, Arban Estate, Patiala (Punjab)/Village Jaffar Nagar, PO Janhirian, Tehsil Patiala, District Patiala, Punjab as under:-

That you during the period November 2009 to April 2010 while working as Chief Executive Officer, Gian Sagar Medical College & Hospital, Patiala collected the amount of Rs. Two crores from your co-accused Sh. K.A. Paul as directed by your co-accused Dr. Sukhvinder Singh at Delhi and further delivered it to your co-accused Sh. Jatinder Pal Singh at his residence at Delhi, which further was meant to be given to your co-accused Dr. Ketan Desai as illegal gratification for giving a favourable compliance inspection report and thereby you committed an offence u/s 12 of Prevention of Corruption Act 1988 and within my cognizance.

And I hereby direct that you be tried on the aforesaid charge by this court.”

3. The basis for framing the charge as per the Impugned Order is:-

“13. The investigation also revealed that accused Sukhvinder Singh had arranged Rs. 2 crore as illegal gratification with the help of accused N.S. Bhangoo, father



of Sh. Harvinder Singh, Chairman of Gian Sagar Educational and Charitable Trust, Mohali under whose aegis Gian Sagar Educational and Charitable trust, Mohali is run.”

4. A perusal of the aforesaid shows that it is alleged that the petitioners had arranged Rs. 2 crores to be given to Mr. Jatinder Pal Singh (middleman) to be given to Dr. Ketan Desai, the President of Medical Council of India (MCI).
5. The reason for this illegal gratification was that NoC was required from MCI for admission to 4th year MBBS course at Gian Sagar Medical College and Hospital, Patiala (hereinafter referred to as “GSMCH”).
6. Mr. Hariharan, learned senior counsel for the petitioner states that in the present case, Mr. Jatinder Pal Singh, the person to whom the money was given for giving it further has been discharged by this Court. Dr. Ketan Desai, the then President of MCI who was to receive the bribe has been discharged for want of sanction by an order dated 12.12.2018 passed by this Court. Both the orders have not been challenged by the respondent and hence, have attained finality. In addition, there is also no sanction for the approver Suresh C. Shah to give evidence against the petitioners.
7. He further states that the tape-recorded conversation on the basis of which charges have been framed is inadmissible in evidence.
8. Mr. Kumar, learned SPP has relied upon para 101 of the impugned order which reads as under:-

“101. I, however, do not agree with this contention since as I have already discussed the intercepted conversation in the



preceding paras where accused Sukhvinder Singh in call no. 4 has specifically discussed with accused J.P. Singh that “there is, shortage of doctors” and has specifically requested accused J.P. Singh that it is very difficult to “arrange deficient staff again and again as one of the doctor Is to be brought from America since he is suffering from cancer”, he has also discussed with accused J.P. Singh that doctor of “Tuberculosis” is not available throughout India and therefore, it will be difficult to arrange him if second inspection is carried out. It clearly points out that accused Sukhvinder Singh was trying to obtain a favourable report by two ways first either by ensuring that no second inspection is carried out and hence, he tells accused J.P. Singh “dubara hun na karwai”, “Idda vi rukwa”. He also tells accused J.P. Singh that the inspector who came during first inspection was not good when he was referring to Dr. Shah. J.P. Singh tells him that Dr. Shah is a good man and during the second inspection when he will come he will do their work. As a perusal of the second inspection will show that report Dr. Shah had again inspected the college for second time and had co-operated with the college as is clear from their conversation as accused Sukhvinder Singh tells accused J.P. Singh in call no. 29 dated 24.03.2010 that the team members of the second inspection team including Dr. Shah were very good and had even told them as to what should



be written by them in compliance which was clear reference to undertaking regarding auditorium for procuring a favourable report.”

9. Mr. Kumar, learned SPP states that these are all disputed questions of fact and can only be proved once the parties enter into the witness box. He also states that these are all issues which require evidence and cannot be adjudicated in a summary manner. He states that the allegations against the petitioners are of bribing a government officer and hence, very serious in nature. He further states that there are some factual errors in CRL.M.C. 3118/2012 titled '*Jatinder Pal Singh vs. CBI*' [2022:DHC:183] and hence, the same should not be relied upon.
10. Mr. Kumar, learned SPP has relied upon "*State through CBI, New Delhi vs. Jitender Kumar Singh*", [(2014) 11 SCC 724] to state that an offence under Section 7 or 11 could also be abetted by a non-public servant for which punishment has been prescribed under section 12 of the PC Act. An offence under section 8, 9 or 12 can be committed by a public servant or by a private person or by combination of both. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or combination of both. Therefore, section 8 & 12 is independent of presence of public servant.
11. I have heard learned counsel for the parties.
12. The Coordinate Bench in *Jatinder Pal Singh* (supra) while discharging the co-accused Jatinder Pal Singh has categorically stated as under:-



“74. The entire controversy has arisen out of an alleged bribery made for allowing the admissions into the 4th Batch of MBBS of the GSMCH, Patiala by bypassing the alleged deficiencies in the process. The Petitioner is accused of having acted as a middleman in the alleged bribery. However, no direct or indirect evidence implicating the petitioner is available on record that can be legally relied on to proceed with the matter. The evidence collected and produced by the investigation agency before the Court below is fraught with illegalities and no sufficient cause is made to proceed with the case qua the petitioner for the reasons as detailed hereunder:

- i) The main basis of the matter for which the bribe was allegedly given i.e., the auditorium was not actually required to be constructed as a condition precedent for conducting admissions of the 4th batch of MBBS course. The factum has been verified by the appropriate authorities at various stages as stated above, hence there is no rationale of committing the alleged offence of giving of bribe.*
- ii) Further, the Approver on the basis of whose statement petitioner has been made an accused, was impleaded in the case without sanction from the appropriate authorities and his statement is thus inadmissible.*
- iii) Nothing as alleged in the recorded conversation intercepted by the investigating agency forms direct basis or has any connection whatsoever with the need for*



bribery, nor is there any rationale for offering of the alleged bribe. The recovery made has also been explained and accounted for by the Petitioner with evidence as being a part of the advance received by the Petitioner in lieu of sale of his village land.

iv) Tape records of the calls intercepted in the instant case are not admissible since the due procedure for such interception as mandated by the Telegraph Act and the Rules framed thereunder has not been followed. Further, even the same has not been verified in the FSL report. No further witness/evidence to implicate the petitioner is on record.

v) Additionally, the public servant who is alleged to have been involved in the said transaction has already been discharged and cannot, therefore, be prosecuted under the PC Act.

Thus, in an offence alleging conspiracy, where the main conspirator has been discharged and in the absence of evidence implicating the petitioner as a co-conspirator alleged to be a middle-man, there is no point in continuing with the case and keep the entire criminal justice machinery running endlessly especially in light of the fact that the criminal proceedings had been initiated ten years back and has stayed pending ever since.”

13. Allegedly, the bribe was stated to be given for NoC for 4th year batch of



MBBS course. However, the judgement of *Jatinder Pal Singh* (supra) has categorically held that there was no requirement for an auditorium to be constructed at GSMCH, Patiala at the stage of admission of the 4th year batch of MBBS course. Hence, the reason for which the alleged bribe was to be given itself was not there.

14. The tape-records of the calls intercepted on the basis of which charges have been framed under Section 12 of the PC Act cannot be looked into as due procedure for interception as mandated by the Indian Telegraph Act, 1885 was not followed and was also not verified in the FSL report. The said findings of the Coordinate Bench has attained a finality as the respondents have not challenged the same before the appellate authority.
15. In addition, I am also persuaded by the fact that in the present case, the person who is alleged to forwarding the bribe (Jatinder Pal Singh) has already been discharged. The person who was to receive the alleged bribe i.e, Dr. Ketan Desai has been discharged. The recipient of the alleged bribe and the person who was to give the bribe have all been discharged and the person who is alleged to be the middleman is being prosecuted. Thus, in an offence alleging abetment, the main abettors having been discharged and in the absence of any evidence implicating the petitioner as a co-abettor alleging to be a middleman, the proceedings need to be quashed.
16. I am also in respectful agreement with the observations made in *Jatinder Pal Singh* (supra) which read as under:-



“78. Apart from the aforesaid, in this case, the public servant who was said to be involved in the alleged transaction has already been discharged and is not being tried for any offence under the PC Act. That leaves only the private individual i.e., the petitioner/alleged middleman to face trial for charges under Section 12 of the PC Act, read with Section 120B of the IPC, and that too without any material in the charge-sheet that the Petitioner either instigated the public servant or entered into a conspiracy with the public servant and/or the bribe giver. As such, the facts and circumstances of the present case fall within the scope of the third category set out in Section 107 of the IPC. Therefore, permitting the trial to continue would be untenable in light of the judgment of the Hon'ble Supreme Court in CBI v. V.C. Shukla, (1998) 3 SCC 410, which similarly dealt with accused who had acted as middlemen, holding that:

“47. Even if we are to accept the above contentions of Mr Altaf Ahmed the entries, (which are “statements” as held by this Court in Bhogilal Chunilal [AIR 1959 SC 356 : 1959 Supp (1) SCR 310] and hereinafter will be so referred to), being “admissions” — and not “confession” — cannot be used as against Shri Advani or Shri Shukla. However, as against the Jains the statements may be proved as admissions under Section 18 read with Section 21 of the Act provided, they relate to “any fact in issue or relevant fact”. Needless to say, what will be “facts in issue” or “relevant facts” in a criminal trial will depend upon, and will be delineated by, the nature of accusations made or charges levelled against the person indicted. In the two cases with which we are concerned in these appeals, the gravamen of the charges which



were framed against the Jains in one of them (quoted earlier) and were to be framed in the other pursuant to the order of the trial court (quoted earlier) is that they entered into two separate agreements : one with Shri Shukla and the other with Shri Advani, in terms of which they were to make certain payments to them as a gratification other than legal remuneration as a motive or reward for getting their favour while they were “public servants” and in pursuance of the said agreements payments were actually made to them. Thereby the Jains committed the offence of conspiracy under Section 120-B of the Penal Code, 1860; and under Section 12 of the Prevention of Corruption Act, 1988 (Prevention of Corruption Act for short), in that, they abetted the commission of offences under Section 7 of the Act by Shri Shukla and Shri Advani.

49. Thus said we may now turn our attention to Section 12 of the Prevention of Corruption Act. That section reads as under:

“12. Punishment for abetment of offences defined in Section 7 or 11.—Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

50. Undoubtedly for a person to be guilty thereunder it is not necessary that the offences mentioned therein should have been



committed pursuant to the abetment. Since “abetment” has not been defined under the Prevention of Corruption Act we may profitably refer to its exhaustive definition in Section 107 of the Penal Code, 1860. As per that section a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses:

- (i) instigates any person to do that thing, or*
- (ii) engages with one or more other person or persons in any conspiracy for the doing of that thing ..., or*
- (iii) intentionally aids, by any act or illegal omission, the doing of that thing.*

So far as the first two clauses are concerned it is not necessary that the offence instigated should have been committed. For understanding the scope of the word “aid” in the third clause it would be advantageous to see Explanation 2 in Section 107 IPC which reads thus:

“Explanation 2. —Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

It is thus clear that under the third clause that when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence. In other words, unlike the first two clauses the third clause applies to a case where the offence is committed.



51. Since in the instant case the prosecution intended to prove the abetment of the Jains by aiding (and not by any act falling under the first two clauses adverted to above) and since we have earlier found that no *prima facie* case has been made out against Shri Advani and Shri Shukla of their having committed the offence under Section 7 of the Prevention of Corruption Act, the question of the Jains' committing the offence under Section 12 — and, for that matter, their admission in respect thereof — does not arise. Incidentally, we may mention that the abetment by conspiracy would not also arise here in view of our earlier discussion.

80. Lastly, the charge-sheet against the petitioner is underpinned by the allegation of abetment under Section 12 of the PC Act without there being any admissible evidence of the demand or offer of bribe. Needless to state, such a trial would be an exercise in futility, more so because there are judicial precedents to the effect that a demand of illegal gratification is imperative for punishment (for abetment as an offence) under Section 12 of the PC Act. In fact, the judgment of the Hon'ble Supreme Court in *State of Punjab v. Madan Mohan Lal Verma*, (2013) 14 SCC 153, which reads as under, is applicable here:

“11. The law on the issue is well settled that demand of illegal gratification is *sine qua non* for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the



accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide Ram Prakash Arora v. State of Punjab [(1972) 3 SCC 652 : 1972 SCC (Cri) 696 : AIR 1973 SC 498], T. Subramanian v. State of T.N. [(2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401], State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] and Mukut Bihari v. State of Rajasthan [(2012) 11 SCC 642 : (2013) 1 SCC (Cri) 1089 : (2013) 1 SCC (L&S) 136].)''



17. In the present case, I am of the view that if trial is permitted to be continued, it would be an exercise in futility. The person who is stated to be accepting the bribe has already been discharged. The person who is stated to give the bribe has also been discharged. The demand of bribe and offer of bribe are conditions sine qua non for charging an accused u/s 12 of P.C. Act.
18. Moreover, In ***Jatinder Pal Singh*** (supra), the amount of 2 crores has been satisfactorily explained.
19. In this view of the matter and for the aforesaid reasons, I am of the view that the impugned order cannot be sustained. I am inclined to allow the present petition. The impugned order dated 01.06.2012 passed by the learned Special Judge (CBI), Patiala House Courts, New Delhi in CC No. 11/2012 (New No.09 of 2017 and CC No. 384 of 2019) titled '*CBI vs. Dr. Ketan Desai & Ors.*' being Case No. RC 02(A)/2010/CBI/ACU-IX/New Delhi framing charges against the petitioners is hereby set aside.
20. In view of the order passed in CRL.M.C. 1148/2022, the learned counsel does not press CRL.M.C. 942/2021. The same is dismissed as withdrawn.
21. The petitions are disposed of in the aforesaid terms.

JASMEET SINGH, J

MAY 23, 2023 / (MS)

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