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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 01.03.2023

Pronounced on: 18.07.2023

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CRL.REV.P. 221/2022, CRL.M.A. 7091/2022

HOM KARAN

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Advocate
with Ms. Simran Khurana, Advocate.
versus

STATE, GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Ajay Vikram Singh, APP.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J

1. This is a CRL. Revision Petition seeking the following prayers:

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- i. *call for the records of the case titled "State Versus Hom Karan, decided by the Ld. Court of Ms. Kiran Bansal, Spl. Judge, PC Act(ACB-01), Rouse Avenue District Court, New Delhi having C.C.NO.289/2019;*
- ii. *set aside the impugned order dated 09.03.2022 passed by Ms. Kiran Bansal, Special Judge, PC Act (ACB-01) RADDC, New Delhi in C.C.No.289/2019, FIR No.183/2014, U/s. 13.1(c) POC Act and Section 409 of IPC, P.S. I.P. Estate, titled "State Vs. Hom Karan";*



2. Brief facts of the case are:

- i. On 01.03.2014, the Revisionist, who held the post of Assistant Commissioner in the Trade & Taxes Department, had seized 24 cartons of unaccounted goods at Old Delhi Railway Station. For security reasons, these goods were stored in the officer's room within the Conference Hall on the 13th Floor, Vyapar Bhawan.
- ii. On 5.3.2014, a Committee was constituted by the Joint Commissioner Sh. Ashish Mohan (Enf.-II) for preparing inventory. During preparation of the inventory, it was revealed that the said bags were containing costly items like gold, silver and diamond jewelry and cash besides other goods/articles. Police protection was requested for ensuring the safe custody of the sealed goods. However, the same was declined and the police personnel advised the officer to deploy their own guards from the department.
- iii. On 11.03.2014, an inventory was prepared and the seized goods were securely sealed. To ensure their safety, a committee constituted by the Joint Commissioner assigned two existing security guards from the department, namely Ajay Pal and Devender Sharma. Additionally, two more guards namely Puran Chand and Pitamber Mehto from the Caretaking Branch of the department were also deployed for the same.
- iv. On 07.05.2014, a meeting took place in the Conference Hall, and it was discovered that the seal was intact. Around 10:30 am on 10.05.2014, the guard namely Ajay Pal notified the



Revisionist that the locks of the Conference Hall had been broken. Upon inspection, the Revisionist found that the lock on the glass gate was broken, but the lock of the Conference Hall was intact. Using his keys, the Revisionist opened the lock of the Conference Hall and discovered that the lock on the gate inside the Conference Hall had been broken, and the seized goods were stolen. The matter was immediately reported to the Commissioner of Sales Tax, and the police was called. On the complaint of the Revisionist, FIR No. 183/2014 was registered u/s 454 and 380 of the Indian Penal Code at P.S. I.P. Estate.

- v. On 17.05.2014, one of the guards namely Pitamber Mehto allegedly committed suicide. In his suicide note, he accused the Revisionist and other officials of theft of the seized goods and held them accountable for his death. Thereafter, Priya Mehto, the deceased guard's daughter, filed a complaint with the Station House Officer (SHO) at P.S. Ranhola, New Delhi.
- vi. On 19.09.2014, the Crime Scene Report was submitted by the FSL. According to the report, it was suggested that the door of the room connected to the Conference Hall, where the seized goods were stored, might have been broken using a tool with a flat tip, approximately 9 cm in width. However, on the contrary, the FSL Report dated 20.02.2015 stated that the lock of the Conference Hall had been opened using the original keys only.
- vii. On 20.10.2015, the statement of Puran Chand, one of the guards deployed for the protection of the seized goods was recorded wherein he had disclosed that the incident of theft occurred on



09.05.2014. However, he did not provide any explanation as to why the incident was not reported to the police. Subsequently on 07.12.2015, the police arrested the Revisionist and remanded him to Police Custody.

- viii. On 03.03.2016, a chargesheet was filed u/s 13(1)(c) of Prevention of Corruption Act (hereinafter referred to as “P.C. Act”) and section 409 IPC against the Revisionist. On 15.03.2019, sanction was granted by the sanctioning authority u/s 19 of P.C. Act against the Revisionist u/s 7 r/w section 7A of P.C. Act and section 120B IPC. The chargesheet was filed on 03.03.2016 u/s 13(1)(c) of P.C. Act r/w section 409 IPC.
- ix. On 09.03.2022, the learned Special Judge (PC Act), Rouse Avenue was pleased to frame charges u/s 409 IPC and section 13(1)(c) of P.C. Act against the Revisionist. This order has been challenged in the present revision petition.

3. It is submitted by Ms. Geeta Luthra, learned senior counsel for the Revisionist that the impugned order is grossly erroneous since the charges against the Revisionist have been arbitrarily framed without any application of judicial mind. It is argued that the sanction order dated 15.03.2019 does not mention the offences for which the Revisionist has been charged.

4. She submits that section 19 of the P.C. Act requiring prior sanction is necessary for prosecution as it is important to ensure that no frivolous and false prosecution is framed against the public servant. She states that the offences under the sanction order are distinct from the offences under the chargesheet. It is stated that the sanction order was granted for section 7 of P.C. Act and section 120B IPC r/w 7 and 7A of the P.C. Act (as amended in



2018) whereas as per the chargesheet, the Revisionist has been charge-sheeted u/s 13 (1) (c) of P.C. Act and section 409 IPC and charges have also been framed under the same sections.

5. In this regard, she has relied upon the judgement of “**Gadhia Bhanuchandra Vallabhadas v. State**” [MANU/GJ/0055/1953] which reads as under-

“7...No doubt evidence can be adduced under the Sub-section in respect of a specific charge under any of the clauses of Section 5(1), but in order that an accused can be tried on that specific charge a sanction has to be given at the, outset. The rule in Sub-section (3) has nothing to do with sanction and this contention of the learned Advocate General must therefore fail.

8... Now here the defect is really not one of stating the facts constituting the offence. The facts in so far as they relate to the sum of Rs. 5700/- are sufficiently stated. What is lacking is that the sanction does not relate to other offences at all. In fact the sanction relates to this particular offence and none other and no question of the inadequacy of facts constituting those other offences therefore really arises in this case. Therefore the position, is that there is no sanction at all in respect of the charges on counts 1 and 4 the charge, and the trial is therefore without jurisdiction.”

6. She further states that the sections under which the sanction has been granted and under which the Revisionist has been charged are distinct offences and have separate ingredients. She draws a comparison:-



Sec. 7 & 7A PC Act r/w 120B (for which sanction has been granted)	Sec. 13 PC Act & 409 IPC (under which revisionist has been charged)
7. Public servant taking gratification other than legal remuneration in respect of an official act.- (imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.) 7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.- (imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to years, and shall also be liable to fine)	13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. 409. Criminal breach of trust by public servant, or by banker, merchant or agent.- (imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine)



120B. Punishment of criminal conspiracy.-

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

7. Ms. Luthra further states that the sanctioning authority cannot review or reconsider its decision per se on the same materials in absence of sanction. To support her argument, she has placed reliance upon “*State of Himachal Pradesh v. Nishant Sareen*” [(2010) 14 SCC 527], and more particularly para 12 and 13 which read as under-

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not



unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course.”

8. She has also relied upon “**Ashok Shankarrao Chavan v. Vidyasagar Rao**” [2017 SCC OnLine Bom 9434] to urge the same contention.

9. As regards the merits of the sanction order are concerned, it is stated by learned senior counsel that there are discrepancies in the alleged suicide



note of the deceased Pitamber Mehto since the suicide note and the complaint made by the daughter of the deceased both mentions the name of the Revisionist as “Om Karan” and not “Hom Karan”. It is further stated that there has to be a proximate link between the occurrence and the subsequent suicide to constitute an offence, mere mention of the name in the suicide note is not to be treated as gospel truth until the ingredients of the offence are made out. Additionally, the deceased was not well versed with reading and writing and even as per the FSL Report dated 28.04.2017, no definite opinion was formed as to whether the handwriting on the suicide note was that of the deceased.

10. Ms. Luthra states that there is no shred of evidence against the Revisionist. As per the statement of Puran Chand dated 20.10.2015, he states that after locking the Conference Hall, he used to handover the keys to the caretaker namely Rajender Prasad. Thereafter, as per his statement dated 16.12.2015 u/s 164 CrPC, he stated that on 09.05.2014, the keys of the Conference Hall were stolen, whereas the theft took place on 10.05.2014. She further states that Sh. Jogender Singh, Asst. Commissioner who had conducted the raid with the Revisionist has never been taken as a suspect by the prosecution and also no evidence was found against the guards/member of Inventory Team since Ajay Pal and Ajay Arora were declared medically unfit for nacro-analysis and there was no fruitful lead from the brain finger printing test conducted on Ajay Pal and Ajay Arora.

11. Learned senior counsel for the Revisionist submits that factum of exclusive possession is sine qua non for section 409 IPC. She submits that before imposition of section 409 IPC, two essential ingredients must be fulfilled, i.e a) the factum of entrustment and b) the factum of the entrusted



articles. She further submits that in the present case, section 409 IPC cannot be invoked keeping in view both the statements of Puran Chand dated 09.05.2014 and 20.10.2015. She relies upon the judgement of “***Maheswar Seth v. Republic of India***”[2017 SCC OnLine Ori 564] and more particularly para 27 and 28 which reads as under-

“27. If the accused is taking a plea that in his absence, somebody else was in charge of the property and immediately after his joining, the missing of the property was detected and accordingly reported, it is the duty of the prosecution to prove that the period in which the other person was in charge of the property, there was no possibility of pilferage. Similarly if the accused is not in the exclusive control of the place where the properties were stored and others have access to such place, the possibility of others committing any pilferage of the properties are also to be ruled out.

28. In case of Janeshwar Das Aggarwal v. State of U.P. reported in (1981) 3 SCC 10 : A.I.R. 1981 Supreme Court 1646, in a case of conviction under section 409 of the Penal Code, 1860, it is held that when the godowns were open and accessible to all and sundry, the possibility of goods having been pilfered or stolen away by others cannot be excluded. It was further held that merely because the appellant has not given any explanation for the shortage, he cannot be presumed to have misappropriated the articles kept in the godown.”



12. It is stated by Ms. Luthra that the Revisionist was taken into 6 days police custody, however, no recovery has been made either from the Revisionist or from his premises or relatives. She states that mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust, unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention. Additionally, the seized goods were also retained by Sh. Jogender Singh and his team, who along with the Revisionist had conducted the raid, however neither their statements have been recorded nor any action has been taken against them.

13. Furthermore, learned senior counsel for the Revisionist submits that the incident of theft took place due to the ill support system and lack of infrastructure with no CCTV cameras and armed guards.

14. Mr. Singh, learned APP for the State submits that in the present case, the distinction of offences in the sanction order and the chargesheet have not resulted in the failure of justice. He has placed reliance upon the judgement of the Allahabad High Court titled as ***“Dr. Abhai Ranjan v State of U.P and Another”*** [2021:AHC:171668] to support his arguments.

15. He further submits that only the irregularities in sanction orders which have resulted in failure of justice can be said to be bad in law. He states that the sanctioning authority had rightly applied its mind and has also considered relevant documents in this regard.

16. I have heard learned counsel for the parties.

17. In the present case, the first aspect to be dealt with is whether the impugned order framing charge u/s 13(1)(c) of P.C Act and section 409 IPC can be sustained, keeping in view the sanction order lacking those sections.



18. The relevant portion of the sanction order dated 15.03.2019 reads as under-

“AND WHEREAS, after carefully examining the above mentioned record, the undersigned being the authority competent to remove the said Sh. Hom Karan, Assistant Commissioner, Trade and Taxes Department, Government of NCT of Delhi from his office, has reached to the conclusion that there are sufficient material available for prosecuting Sh. Hom Karan, Assistant Commissioner, Trade and Taxes Department, Government of NCT of Delhi under Section 7 of Prevention of Corruption Act, 1988 and Section 120B read with Section 7 and 7A of Prevention of Corruption Act, 1988 (as amended in 2018) since above-mentioned facts and circumstances prima facie constitute the offence committed by Sh. Hom Karan, Assistant Commissioner.”

19. The relevant portion of the order framing charge reads as under-

“27. Thus, at the stage of charge, the court is not to see the probative value of the evidence nor the sufficiency of material is to be gone into. Whether the trial would eventually result into conviction of the accused or not, is also not material.

28. In view of the aforesaid discussions, prima facie case for the offences under Section 13 (l)(c) POC Act r/w Section 409 IPC is made out against accused Hom Karan. Accordingly, charge for the same be framed against him.”



20. Section 19 of P.C. Act deals with the necessity of a prior sanction order. The Supreme Court in “**Manzoor Ali Khan v. Union of India**” [(2015) 2 SCC 33] enumerated the reason for obtaining prior sanction. It opined that-

“13... A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.”

21. The purpose of taking prior sanction is thus to strike an equilibrium between safeguarding public servants from baseless or malicious prosecutions on one hand and ensuring accountability for public servants involved in corruption on the other. It aims to prevent frivolous legal actions against public servants, while also addressing allegations of corruption and ensuring honest and corruption free conduct in public service. A prior sanction serves as a mechanism to carefully navigate the interests of both- protecting innocent public servants and holding corrupt officials accountable when credible and sufficient evidence exists against them.

22. I am in respectful agreement with the judgement of “**Dr. Abhai Ranjan v State of U.P and Another**” (supra), wherein it was observed that-

“26...In this judgment, reliance has been placed on a judgment of Hon’ble Apex Court in the case of Dinesh Kumar v. Chairman, Airport Authority of India and another, (2011) 4 SCC 402 where after referring the judgment of Prakash Singh Badal and another v. State of Punjab and others, (2007) 1 SCC, it has been opined that



there is difference between absence of sanction and validity of sanction. The issue regarding absence of sanction can be raised at the inception by the aggrieved person, however, where the sanction order exists, the issue regarding its validity has to be raised only during course of trial. Relevant paragraphs of Dinesh Kumar's case (supra) are being extracted herein below :

“10. The provisions contained in Section 19(1),(2),(3) and (4) of the P.C. Act came up for consideration before this Court in Parkash Singh Badal and another⁵. In paras 47 and 48 of the judgment, the Court held as follows:

“47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.”

23. In ***Parkash Singh Badal v. State of Punjab***”[(2007) 1 SCC 1], the Supreme Court was of the view that:-



“29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on “failure of justice” and that too “in the opinion of the court”. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the “failure of justice” is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case.

24. In this view of the matter, I hold that the sanctioning authority has duly applied its mind after considering the various materials and documents placed before it. Only thereafter, the sanctioning authority granted a sanction for prosecuting the Revisionist. The variation in the sections under the sanction order and the chargesheet and the order framing charge has not resulted in the failure of justice. At best, this can be a mere error/omission or irregularity in the sanction order. In addition, the sanctioning authority is not required to specify each of the offences against the public servant. Hence, the argument of the Revisionist regarding the variation of sections in the sanction order and that in the chargesheet and the order framing charge making the order dated 09.03.2022 erroneous is rejected.

25. The Revisionist has emphasised that exclusive possession is sine qua non for invoking section 409 IPC. In the present case, the statement of Puran Chand clearly shows that the goods were entrusted to the Revisionist and



were also in exclusive possession of the Revisionist His statement reads as under:-

“As far as I remember after keeping the goods in the room inside conference hall Hom Karan and members of his team and two guards used to visit for two-three days. They used to lock conference hall from inside. Thereafter also Hom Karan and 4-5 members of his team used to go 5-6 times in the internal room where goods were kept and used to come out after 1-2 hours.”

26. The learned Special Judge has correctly observed that the goods were in exclusive possession of the Revisionist. The relevant para of the order framing charge reads as under-

“25. Accused Hom Karan was posted in year 2014 as Assistant Commissioner, Sales Tax in Trade & Taxes Department, GNCT of Delhi, when on 01.03.2014, he seized certain articles without having proper bills, outside Old Delhi Railway Station, Delhi, as per list seized vide seizure memo Mark-A1 and kept the same in I.P. Power House and later-on transferred the said articles to the Officer Room in Conference Hall at 13th Floor of Sales Tax Building, GNCT of Delhi and on 11.03.2014 after preparing inventory of those articles, the said Officer Room in Conference Hall where all those articles were kept was sealed and the keys of said sealed room and Conference Hall always remained in his possession and on 10.05.2014, he reported that he has been informed by the guard that locks of the Conference Hall were broken and those articles were found missing, but during



investigation it was found that he has dishonestly or fraudulently misappropriated or otherwise converted for his own use, the aforesaid missing articles as per list seized vide seizure memo Mark-B, which were under his custody and entrusted him and under his control as public servant.”

27. In this view of the matter, *prima facie*, the exclusive possession of the goods with the Revisionist is established and the ingredients of section 409 IPC are made out.

28. The other contention which was raised is that there are material contradictions in the statements of Puran Chand dated 20.10.2015 and 16.12.2015 where on one hand, it is stated that the keys of the conference hall were given to the caretaker and on the other hand, it is stated that the keys of the conference hall were stolen. These contradictions can always be put to the witness at the time of cross examination. At present, the order under challenge is at the stage of framing of charge. The Supreme Court in “*State of Rajasthan v. Ashok Kumar Kashyap*” [(2021) 11 SCC 191] has stated that the Court, at the time of framing charge, is not to hold a mini trial or go into the merits/details of the case.

29. The Court, at the time of framing of charge, is only required to sift and weigh the evidence and take a *prima facie* view on framing of charge by looking into the materials placed before it. In “*Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*” [(2022) 12 SCC 657], the Supreme Court opined that-



“23. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228CrPC. The principles which emerged therefrom have been taken note of in para 21 as under : (SCC pp. 376-77)

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.



(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

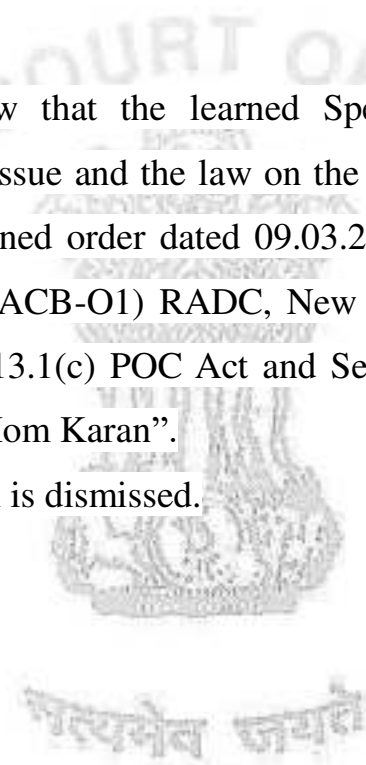
30. Hence, I do not find any merit in this argument and the same is rejected as the learned Special Judge has correctly sifted and weighed the *prima facie* material.



31. It is further argued by the learned senior counsel that there is discrepancy in the suicide note of Pitamber Mehto. The discrepancy which has been pointed out in the present case is that the name of the Revisionist has been written as “Om Karan” instead of “Hom Karan”. I am of the view that the discrepancy in the suicide note is not germane to the issue in the controversy in the present petition. Additionally, this discrepancy is of a minor character and does not call into question the veracity of the suicide note.

32. I am of the view that the learned Special Judge has correctly appreciated the facts in issue and the law on the subject. I see no reason to interfere with the impugned order dated 09.03.2022 passed by the learned Special Judge, PC Act (ACB-O1) RADDC, New Delhi in C.C.No.289/2019, FIR No.183/2014, U/s. 13.1(c) POC Act and Section 409 of IPC, P.S. I.P. Estate, titled "State Vs. Hom Karan".

33. Hence, the petition is dismissed.



JASMEET SINGH, J

JULY 18th, 2023 / (st)

Click here to check corrigendum, if any