



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

%

Reserved on : 20.07.2023

Pronounced on : 29.11.2023

+ **CRL.REV.P. 328/2020**

AMITESH PANDEY

..... Petitioner

Through: Petitioner in person.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Raghuvinder Verma, APP for the State with SI Naresh Kuamr, PS Anti-Corruption Branch.

Ms. Kumud Lata Das, Mr. Manoj Singh, Mr. Harsh Ajay Singh and Ms. Pooja Rathore, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By way of this judgment I shall dispose of the present revision petition filed on behalf of the revisionist under Section 397 and 401 Cr.P.C.
2. The instant revision petition has been filed against the order dated 07.02.2020 passed by Learned Special Judge (PC act), Rouse Avenue Courts, Delhi whereby the complaint case under Section 200 Cr.P.C. and application under Section 156(3) Cr.P.C. was dismissed.
3. Heard.



4. Records perused.
5. During the course of the arguments learned counsel for the petitioner submitted that the Ld. Trial court had ignored the merits of the case and the impugned order is grossly erroneous. He further submitted that the Ld. Trial court had ignored the settled provisions of law, and the findings recorded in the impugned order is not based on material evidence produced through complaint and also failed to appreciate that there are clear averments against the respondent no.2 in the complaint, supported by documents. He further submitted that it is settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint and it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. He further submitted that Ld. Trial court wrongly observed that complainant had not given names of any other Nursing Home except one but as a matter of fact only one instance of dishonesty is enough to proceed against the respondent no.2. he further submitted that Ld. Trial court should have enquired from the complainant about other nursing homes running in disregard of the law.
6. In the instant case, for proper adjudication, it is necessary to look into to the impugned order dated 07.02.2020 passed by learned Special Judge PC Act. The relevant portion of the same dealing with



the grounds preferred by the learned counsel for the petitioner reads as under:-

7. *My Ld. Predecessor Court, on receipt of the complaint sought status report from the ACB. Vide its status report dated 24 .10.2019, SHO, Anti Corruption Branch replied that the complaint was though received in ACB but it was concerning merely non-following of certain rules under Nursing Home Registration Act and was accordingly forwarded to the Principal Secretary of Health & Finance Welfare, . Govt. Of NCT of Delhi for necessary action at their end vide letter dated 03.05.2019. It is specifically mentioned in the reply that no inquiry was being conducted by the ACB on this complaint.*

8. *As is apparent from the above discussion, the entire complaint of the complainant is based on presumption of facts that certain Rules & Regulations were not followed and complied with in grant of registration/provisional registration certificate to Guru Gobind Singh Hospital , Sant Nagar, Burari , Delhi. It is also based on presumption that if any such violation of Rules & Regulations occurred , it must have been because of demand and obtaining of bribe. As mentioned above, the complainant has preferred this complaint specifically U/s 7 Clause (a) of Prevention of Corruption Act, 1988.*

9 . *Section 7 (a) of the POC Act provides that if a public servant obtains or accepts or attempts to obtain an 'undue advantage' with the intention to perform or cause performance of public duty improperly or dishonestly or to forebear or cause forbearance to perform any such duty by himself or by any other public servant, then such public servant shall be punished. Clause (b) of Section 7 similarly requires obtaining, accepting or attempting to obtain undue advantage as a reward for improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant. Clause (c) makes punishable where any public servant either performs or induces another public servant to perform the public duty improperly or dishonestly or to forebear performance of such duty in anticipation of or in consequence of accepting undue advantage.*

10. *U/s 7, it is necessary that demand has to be there. Law on this point is no more res integra that without there being a demand the ingredients of Section 7 of Prevention of Corruption Act will not get attracted. The complainant during arguments tried to cover his case under Explanation II of Section 7 claiming that undue advantage was extended by the respondent to the nursing home. But in the considered*



opinion of this Court, the interpretation of Section 7 or its Explanation sought by the complainant, does not flow in the manner claimed. Under the Explanation what is covered is undue advantage accepted or obtained by the public servant for himself or for another person by abusing his position. As mentioned above in the present case obtaining or accepting any undue advantage is nothing but purely assumed by the complainant.

*11. Law is well settled that for Section 7 of the Prevention of Corruption Act, 1988, demand and acceptance of bribe has to be proved beyond reasonable doubt. Demand is sine quo non for a charge U/s 7 of PC Act. In **State of Gujarat v. Navinbhai Chandrakant Joshi**, (2018) 9 SCC 242, it is held as follows:*

*"8. It is well settled that to establish the offence under Sections 7 and 13(1)(d) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. In **B. Jayaraj v. State of A.P.** [B. Jayaraj v. State of A.P. , (2014) 13 sec 55 : (2014) 5 sec (Cri) 543] , it was held as under: (SCC p. 58, para 7)*

*"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that **demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.** The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in **C.M. Sharma v. State of A.P.** [C.M. Sharma v. State of A.P., (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and **C.M. Girish Babu v. CBI** [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] "*

12. Even if it is assumed that there is certain violations of Rules and Regulations by the respondent in grant of provisional registration certificate to the offending nursing home, there can be no presumption in law that bribe was demanded or any undue advantage was demanded or accepted or obtained.

13. The ingredients of the complaint does not even invoke Section 11 of the Prevention of Corruption Act or Section 13 of the Prevention of Corruption Act, 1988.

14. Rather, Section 17A inserted by the legislature w.e.f. 26.07.2018 makes clear that in case during the course of performance of duty by the public servants certain recommendations are made or decisions are taken, then without previous approval of the concerned department i.e. previous sanction of the department the police officer cannot even conduct an inquiry or investigation. The said section has



been introduced with a view to protect undue harassment of public servants by mischievous persons in those cases where recommendations are made or decisions are taken by the public servant in discharge of official duties and functions.

15. In the present matter also the grant of provisional certificate to the nursing home is a decision during the course of performance of duty by the public servant and taken in discharge of official duties by a public servant and, therefore, without prior sanction of the authority concerned, the matter cannot even be investigated.

16. Section 19 of POC Act, which has also been amended w.e.f. 26.07.2018 provides that even a public person is debarred from approaching the appropriate government or competent authority to seek sanction unless such person had filed a complaint in a competent Court and the Court does not dismiss the complaint U/s 203 Cr.P.C. and the Court directs the complainant to obtain sanction for prosecution against the public servant. It is also provided that if any such request from any person other than a police officer or an officer of an investigating agency or law enforcement authority is received, sanction cannot be accorded without giving the public servant an opportunity of being heard.

17. These provisions were introduced in the Prevention of Corruption Act to protect unnecessary harassment of public servants.

*18. In the present complaint, there is no proof or even strong suspicion that any offence under the Prevention of Corruption Act was committed. Mere disregard to the relevant provisions or ignoring circulars and departmental orders and rules & regulations, do not by themselves establish the commission of criminal offence even wanting any further enquiry. At best the respondent committed administrative irregularity but it cannot be presumed to have been done with corruption or dishonest intention. One may place reliance in this regard upon the cases of **C. Chenga Reddy & Ors. Vs. State of A. P. AIR 1996 Supreme Court 3390; Abdulla Mohammed Pagarkar Vs. State (Union Territory of Goa Daman & Diu) AIR 1980 Supreme Court 499; J.Siri Ram Surya Prakash Sharma Vs. State of A.P. 2011 CrL.LJ 2027.***

19. Setting law into motion on such a complaint against public servants would be nothing but causing unnecessary harassment. Courts are not a place where complainants can be allowed to experiment and have roving enquiry against someone, that too with hidden agendas and possible ulterior motives. Considering the allegations in the complaint, there is no sufficient ground for



proceeding against anybody in the present matter. The complaint and the application U/s 156(3) Cr.P.C are dismissed

7. Upon a thorough examination of the impugned order, it becomes apparent that the Learned Special Judge, in rendering the impugned order dated 07.02.2020, meticulously addressed each concern raised by the revisionist. In a comprehensive manner, the Learned Special Judge not only acknowledged but also provided findings on every ground presented during the proceedings. The discerning analysis and considered responses to the revisionist's grievances are indicative to a fair and just adjudication.

8. Consequently, after a careful perusal, in my opinion, that there exists no discernible infirmity in the impugned order dated 07.02.2020, accordingly the present revision petition stands dismissed along with pending applications, if any.

RAJNISH BHATNAGAR, J

NOVEMBER 29, 2023

P