



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% *Date of decision: 20th September, 2023*

+ **CRL.M.C. 6827/2023 & CRL.M.A. 25504/2023 (stay)**

PRAKASH CHAND Petitioner

Through: Mr.Yash Kadyan, Advocate.

versus

STATE Respondent

Through: Ms.Nandita Rao, ASC for State.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CRL.M.A. 25505/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 6827/2023

3. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) impugning the following orders passed by the learned Special Judge:

- i. Order dated 1st July, 2022, whereby the closure report was rejected and the investigation officer (IO) was directed to make a request to the concerned sanctioning authority for grant of sanction against the petitioner in terms of Prevention of Corruption Act, 1988 (PC Act).

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 25.09.2023
12:49:25



ii. Order dated 13th December, 2022, whereby cognizance of offences under Sections 7/13(1)(d) of the PC Act and Section 120B of the Indian Penal Code, 1980 (IPC) was taken against the petitioner.

iii. Order dated 17th August, 2023, whereby charges have been framed against the petitioner.

4. Counsel for the petitioner challenges the aforesaid orders on the following grounds:

i. The Special Judge, not having accepted the closure report, should have directed reinvestigation in the matter. Reliance in this regard is placed on the judgment of the Supreme Court in ***Vasanti Dubey v. State of Madhya Pradesh***, (2012) 2 SCC 731.

ii. The Special Judge could not have directed the IO to seek sanction to prosecute the petitioner from the concerned sanctioning authority under the PC Act. Reliance in this regard is placed on ***Mansukhlal Vithaldas Chauhan v. State of Gujarat*** (1997) 7SCC 622.

iii. The order framing charges against the petitioner is based on hearsay evidence of the two complainants, namely Krishna Devi and Vandana Sharma, who have since passed away.

5. Per contra, learned APP submits that all the aforesaid orders passed by the learned Special Judge are in accordance with law and there is no infirmity in the said orders.

6. In the judgment of the Supreme Court in ***Vasanti Dubey*** (supra), the learned Special Judge having not accepted the closure report had directed reinvestigation of the case, whereas in the present case, reinvestigation has not been directed by the Special Judge. In fact, in the said judgment, while placing reliance on another judgment of the Supreme Court in ***Bains v. State***



1980 (4) SCC 631, it has been specifically stated that court can take cognizance without directing reinvestigation. The relevant observations of which are set out below:

“

1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:

(i) If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

(ii) He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.

(iii) Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the Magistrate cannot direct the police to straightaway submit the charge-sheet as was the view expressed in Abhinandan Jha (supra) which was relied upon in Ram Naresh Prasad (supra).”

7. A perusal of the aforesaid findings shows that if the magistrate does not agree with the police report, he can still take cognizance of an offence. In the present case, since there was sufficient material to proceed against the accused, the Special Judge has correctly decided to take cognizance and



proceed against the accused. The relevant observations in the impugned order dated 1st July, 2022 are set out below:

*“After considering the above facts and the statements of witnesses and other material placed on record, it is very strange to note that ACP M.L. Meena has filed the report U/s 173 Cr.P.C. while mentioning the name of Sh. Prakash Chandra, (AE/L&M), DDA in column no. 12 while observing that there is no evidence against Sh. Prakash Chandra. However, **after considering the report, aforesaid facts and material placed on record, I am of the opinion that there is sufficient material to proceed against the accused Sh. Prakash Chandra, (AE/L&M), DDA.**”*

8. As regards the issue of sanction, the relevant observations in the impugned order dated 1st July, 2022 are set out below:

*“In view of the above **IO is directed to make a request to the concerned sanctioning authority as per Prevention of Corruption Act for grant of sanction against accused Prakash Chandra (AE/L&M), DDA at the earliest whose name is mentioned in column no. 12.** It is relevant to note that the complaint was forwarded to Addi. C.P., ACB by the order of Hon'ble L.G. on 12.06.2008 and the report U/s 173 Cr.P.C. was filed on 03.01.2022 till the time one of the accused expired.*

ACP M.L. Meena who is present in court submits that he has been transferred from ACB to Sub-Division Dwarka and as such prays that any further compliance be directed to be made by ACB. In view thereof let a copy of order be sent to Special C.P., ACB with a direction to depute some responsible officer to obtain the sanction as per Prevention of Corruption Act against accused Sh. Prakash Chandra (AE/L&M), DDA without any further delay.”

9. A reading of the aforesaid extract from the impugned order shows that the Special Judge found sufficient material to proceed further against the



petitioner and therefore, directed the Investigating Officer (IO) to make a request to the concerned sanctioning authority for grant of sanction to prosecute the petitioner. It is pertinent to note that pursuant to such request, sanction was duly accorded by the sanctioning authority and the said sanction has not been challenged by the petitioner. Thereafter, the learned Special Judge proceeded to take cognizance vide order dated 13th December, 2022.

10. In the judgement in *Mansukh* (supra), the court directed the concerned sanctioning authority to grant sanction to prosecute the appellant, whereas in the present case only a direction was given to IO to request the concerned sanctioning authority to grant sanction to prosecute the petitioner. The Special Judge did not direct the sanctioning authority to grant sanction to prosecute the petitioner. In fact, the sanctioning authority applied its own mind while granting sanction.

11. Next, the petitioner challenges the order on charge dated 17th August, 2023 framed by the Special Judge on the ground that two of the complainants have already expired and therefore, their statements would be inadmissible in evidence as the same would fall within the purview of rule of hearsay evidence. Whether the said complainants have expired or not and whether their statements would be hearsay, is a matter of trial. However, it is undisputed that one of the complainants, Sanjay Jain is alive and he has specifically given statements regarding commission of the offence by the petitioner. In this regard, the relevant findings from the impugned order are set out below:

“Complainant Sh. Sanjay Jain gave his hand written statement dated 28.06.2008, which is also signed by Sh. Ravi Kaul,



Secretary of Residents Welfare Society, Karala, Delhi and attested by IO, wherein he specifically stated that on negotiation, both DDA officers i.e. Sh. Jagdish Chandra, FI and Sh. Prakash Chandra, AB agreed to accept Rs.50,000/-, which he arranged from Balwan Singh, who brought Rs.50,000/- in denomination of currency notes of Rs.500/and same were given by him to Sh. Jagdish Chandra, FI in the presence of Sh. Prakash Chandra, AB and after accepting the said amount, they both alongwith demolition squad and police force went away, Sh. Rakesh Solanki, who was called by complainant Sh. Sanjay Jain when accused persons reached at the house of complainant. with JCB, stated that both the accused Sh.Jagdish Chandra, FI and Sh.Prakash Chandra, AE were sitting in the drawing room with Sh.Sanjay Jain who told him that they are demanding Rs.2 lacs to spare his property and after negotiation they agreed to accept Rs.50,000/- which complainant arranged from his known fellow and paid to Sh.Jagdish Chandra, FI.”

12. Further, it has been noted in the charge framing order that the petitioner and the FI Jagdish Chandra together hatched a conspiracy to visit the house of the petitioner and demand bribe from the complainant for not demolishing the property of the complainant despite knowing that no demolition order was passed against the property of the complainant. Therefore, even if the name of the petitioner is not mentioned in DD No.34-B dated 6th June, 2008 at PS Sultanpuri, which was recorded for providing police force with the DDA Demolition Squad, it cannot be said that the petitioner was not a part of the Demolition Squad that visited the house of the complainant.

13. It is a settled position of law that the trial court is not required to see the probative value of the evidence or the sufficiency of material at the stage of framing of charges. The court only has to examine the evidence for a limited purpose of finding whether the prima facie case is made out against



the accused. Reliance in this regard is correctly placed by the Trial Court on the judgment of this court in *Settu v. State of NCT of Delhi*, 2022 SCC Online Del 735. The relevant observations of the said judgment are set out below:

“It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. 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 of framing of charge exists.

11. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.”

14. In the present case, based on the material placed on record, the Special Judge came to the conclusion that prima facie a case for the offence under Sections 7/13(1)(d) of the PC Act and Section 120B of the Indian Penal Code, 1980 (IPC) is made out against the petitioner and therefore, framed charges against the petitioner.

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 25.09.2023
12:49:25



2023:DHC:6973



15. In view of the aforesaid, I do not find any infirmity in the impugned orders. The present petition is dismissed.

16. All pending applications stand disposed of.

AMIT BANSAL, J.

SEPTEMBER 20, 2023

sr

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 25.09.2023
12:49:25