IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201-1 **CRR-471-2019 (O&M)**
Date of Decision : November 04, 2024

ANIL GUPTA **-PETITIONER**

V/S

CENTRAL BUREAU OF INVESTIGATION **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sushant Kareer, Advocate
for the petitioner.

Mr. Akashdeep Singh, Advocate
for the respondent-C.B.I.

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KULDEEP TIWARI, J. (ORAL)

1. Through instituting the instant revision petition, the petitioner assails the order dated 03.12.2018, wherethrough, the Special Judge, C.B.I., Punjab, S.A.S Nagar (hereinafter referred to as the 'C.B.I. Judge'); has chargesheeted the petitioner and his co-accused for commission of offence under Sections 120-B, 418, 420 of the IPC read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

FACTUAL MATRIX

2. On the basis of source information, the C.B.I. registered FIR No. RCCHG2015A0022 dated 28.09.2015, under Sections 120-B, 409, 420, 468 of the IPC and Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, at P.S. CBI, ACB, Chandigarh.

3. The allegations voiced in the present FIR are that, during the period: 2010 to 2012, accused/official(s)/officer(s) of the Northern Railways, criminally conspired amongst themselves and with the petitioner- Anil Gupta,

proprietor of M/s Shree Agarsen Advertisers (hereinafter referred to as the 'accused firm'), in the matter of contract for commercial publicity work at Railway Station, Jalandhar. In furtherance of the criminal conspiracy, wrongful loss to the tune of Rs.1,79,21,571/- (approx.) was caused to the State Exchequer and corresponding wrongful gain was given to the accused firm, through misappropriation of the actual licence fee and security deposit, by forging and fabricating the documents for showing the licence fee instruments to have been deposited, whereas, the same was never deposited/remitted and credited in the concerned bank accounts of the Railways.

4. The C.B.I. conducted thorough investigation and collected incriminatory evidence against the accused in support of the allegations that, (i) Naresh Kumar, the then Office Superintendent, Commercial Branch, Northern Railway, Ferozepur; (ii) the present petitioner, proprietor of the accused firm; (iii) Mohd. Yaqub, the then Dealing Clerk, Commercial Branch, Northern Railway, Ferozepur; criminally conspired with one another and accordingly misappropriated the licence fee and security money, thereby causing wrongful loss to the Railways and corresponding gain to the accused firm.

5. Taking into account the incriminatory evidence collected against the accused, the C.B.I. Judge proceeded to, through drawing the impugned order dated 03.12.2018, frame charges against the petitioner and his co-accused, which caused grievance to the petitioner and triggered him to institute the instant revision petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

6. The learned counsel representing the petitioner vociferously argues that, no offence whatsoever is made out against the petitioner, which

may require him to face trial in respect of the charges framed against him. The C.B.I. has not brought any evidence, which could reflect any nexus between the petitioner and the delinquent official(s)/officer(s) of the Northern Railways. In fact, the petitioner has cleared all dues in respect of the contract in question, and thereupon, a "No Dues Certificate" dated 04.03.2013 (Annexure P-3) has also been issued by the Northern Railways.

7. The learned counsel for the petitioner submits that, in response to an advertisement published in National Daily for grant of rights to display advertisements on an area of 16810 sq. ft. for a period of three years at Railway Station, Jalandhar, the petitioner joined the open tender process and being the highest bidder, he was allotted the contract by the Railways at an annual licence fee of Rs.77,55,555/- per year, i.e. Rs.2,56,70,887/- for three years. The petitioner also deposited a demand draft drawn on Canara Bank, Kamla Nagar, Delhi, for Rs.8,50,000/- as EMD for participating in the tender. The Tender Committee accepted the tender of the petitioner on 14.01.2010 and finally allotment letter was issued in favour of the petitioner's accused firm.

8. The learned counsel for the petitioner further submits that, one Dharminder Kumar, Sr. DCM, who was a part of the Tender Committee and was responsible for fixing the mean commencement date in respect of the present contract, has been declared innocent by the C.B.I. by stating his conduct to be not of criminal nature. Not only this, the C.B.I. has recommended only minor penalty action against one P.C. Dudi (DCM), and, the other responsible official(s)/officer(s) have not been chargesheeted. Therefore, once the C.B.I. has found only minor procedural lapse in fixation of the mean commencement date and delay in collection of payment, hence no offence whatso-

ever is made out against the petitioner.

9. Continuing his arguments, the learned counsel for the petitioner submits that, in case of any dispute regarding interpretation of the agreement, resort ought to have been made to the arbitration clause existing in the agreement, however, without having recourse to the apt arbitration remedy, the instant criminal proceedings have straightaway been initiated by the C.B.I. in respect of a dispute nature whereof is purely civil. Moreover, to submit that deviation from contract or negligence cannot invite criminal proceedings, reliance is also placed upon the judgments rendered in cases titled as ***"Dr. Dhananjai Kumar Pandey Vs. Central Bureau of Investigation", 2015 SCC OnLine Bom 5625***, and, ***"Kailash Verma Vs. Punjab State Civil Supplies Corporation and another", 2005(1) RCR (Criminal) 727.***

10. It is finally submitted that, fraudulent intention must be since the inception and not formed subsequently. In case of nonpayment or underpayment for goods or services availed, it does not amount to cheating and in the instant case also, the ingredients of cheating, as defined in Section 415 of the IPC, are totally absent. To substantiate these submissions, reliance is placed upon the judgments rendered in ***"Hotline Teletubes and Components Ltd. and Ors. Vs. State of Bihar and Anr.", 2005(10) SCC 261***, and, ***"Vesa Holdings P. Ltd. and Anr. Vs. State of Kerala and Ors.", 2015(8) SCC 293.***

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE C.B.I.

11. The learned counsel representing the C.B.I. submits that, the petitioner- Anil Gupta, who is proprietor of the accused firm, entered into criminal conspiracy with his other co-accused working in the Northern Railways and got awarded to his firm the contract for commercial publicity work at Railway Station, Jalandhar. Moreover, the accused misappropriated annual li-

cence fee and security deposit by forging and fabricating documents, thereby causing wrongful loss to the State Exchequer and corresponding wrongful gain to the accused firm.

12. Proceeding with his submissions, the learned counsel for the C.B.I. submits that, one Charanjit Singh, employee of the accused firm, made a request to issue the certificate of Display of Work for their own record, as they had installed their boards on 08.12.2010. The said letter/certificate was used to fix the mean commencement date and to work out the total amount to be deposited. The advertiser, by using the mean commencement date as 10.12.2010, stopped making payment after 09.12.2012 and gave a letter regarding surrendering of the contract one year in advance.

13. It is further submitted that, Rs.38,77,778/- was to be deposited by the contractor as first half yearly installment before commencement of the work and in this regard, a demand draft No.371846 dated 22.01.2010 for Rs.29,97,778/- was received as licence fee, however, it was deposited in the Bank under the allocation head of Indian Railways. Insofar as the remaining amount of Rs.8,80,000/- is concerned, a letter was received from petitioner-Anil Gupta to adjust this amount with the tender security money of Rs.8,50,000/-, which was given for the present tender, along with the security money of Rs.30,000/-, which was given for Chakki Railway Station. However, this adjustment could not have been made with the tender security amount and independent payment had to be made for the half yearly installments.

14. Continuing his submissions, the learned counsel submits that, the cause for advance withdrawal from the tender period was that, although petitioner- Anil Gupta had made the fifth installment through demand draft

No.531693 dated 05.11.2012 for Rs.45,24,074/-, however, the same was illegally returned to him on 18.04.2013 and this demand draft was found in the house of petitioner- Anil Gupta during the course of investigation.

15. Concluding his submissions, the learned counsel for the C.B.I. submits that, as per the investigation, the advertisement work was executed from 13.02.2010 till 12.02.2013 (when the last electricity bill was paid). Therefore, the total loss caused to the Railways is Rs.94,88,222/-. The petitioner, in connivance with his co-accused/official(s)/officer(s) of the Northern Railways, managed to get the contract closed prematurely by showing that it had run only for two years, contrary to the fact that, it had already completed three years. In this way, the petitioner caused loss to the Railways.

ANALYSIS OF SOME SIGNIFICANT JUDICIAL PRECEDENTS GERMANE TO DISPOSAL OF THE INSTANT PETITIONS

16. It is a trite law that, at the time of framing of charges, the Court is required to evaluate the material placed on record by the prosecution to see as to whether any mischief of relevant provisions of law is attracted or not. Gainful reference in this regard can be made to the verdict drawn in ***"Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), reported in AIR 2010 SC 1446,*** wherein, it has been held that *"it is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. At this stage, the court has to consider the material only with a view to find out if there is a ground for presuming that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction".*

17. In the verdict rendered in the case titled as ***"Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Anr.", Criminal Appeal No.714 of 2019, Decided on: 24.04.2019,*** the Hon'ble Supreme Court has, while discussing the law relating to framing of charges and discharge, held that all that is required is the Court must be satisfied that with the material available, a *prima facie* case is made out for the accused to stand trial. A strong suspicion suffices.

18. In ***"State of Bihar Vs. Ramesh Singh", AIR 1977 SC 2018,*** the Hon'ble Supreme Court has rendered the hereinafter extracted relevant observations:-

> *"Reading section 227 and 228 together in juxtaposition, as they got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.*
>
> *The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or u/s 228 of the code. At the initial stage if there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused."*

19. Moreover, in ***"Union of India Vs. Prafulla Kumar Samal and Others", AIR 1979 SC 366,*** it has been held by the Hon'ble Supreme Court that, the court while considering the question of framing of charge under section 227 of the code, has the power to sift and weigh the evidence for the limited purpose of finding whether a *prima facie* case against the accused is made

out or not. It has been further held that where the materials placed before the court disclose a 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.

REASONS FOR DISMISSING THE INSTANT REVISION PETITION

20. This Court has heard the submissions advanced by the learned counsels for the contesting litigants and also made a studied survey of the record. Gauging the validity of the impugned order, on the anvil of the hereinabove discussed legal propositions, this Court does not find any illegality or perversity therein at this stage, especially when nine prosecution witnesses have already been examined.

21. The cause for drawing the inference (supra) stems from there being sufficient material available on record, which invites the mischief of charges framed against the petitioner. Reiteratedly and concisely stated, the allegations constituting the bedrock for registration of the present FIR are that, the petitioner and his co-accused, while being posted in the Northern Railways, criminally conspired amongst themselves in the matter of contract for commercial publicity work at Railway Station, Jalandhar. In furtherance of their criminal conspiracy, the petitioner and his co-accused caused wrongful loss to the State Exchequer and corresponding gain to the accused firm by misappropriation of the actual licence fee and security deposit.

22. Although the petitioner claims to have deposited the amount of licence fee after registration of the present FIR, however, it would not absolve the petitioner from his criminal liability. To the considered mind of this Court, the C.B.I Judge has rightly chargesheeted the petitioner.

23. Taking into account the role of the petitioner and the gravity of

the offence, this Court is not inclined to grant the yearned for relief(s) to the petitioner. Moreover, the other issues raised before this Court are also disputed questions of facts, which cannot be adjudicated by this Court in the instant proceedings, rather the same require theirs becoming adjudicated by the trial Court after appreciation of the evidence, which may become adduced by the parties.

FINAL ORDER

24. In summa, the instant revision petition is **dismissed** being bereft of merits and the impugned order is hereby upheld.

25. Pending application(s) stands disposed of accordingly.

26. Needless to say, anything observed hereinabove is only for the purpose of deciding the instant revision petition and any of the observations rendered hereinabove shall have no bearing on the outcome of the trial.

(KULDEEP TIWARI)
JUDGE

November 04, 2024
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Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**