

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1590-2019 (O&M)
Date of decision: 16.04.2024

Amrish Kumar Gupta

.....Petitioner

Versus

Central Bureau of Investigation, Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.S. Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocate
for the petitioner.

Ms. Shubhra Singh, Advocate
for the respondent-CBI.

MANJARI NEHRU KAUL, J.

CRM-20360-2019

For the reasons mentioned in the application, the same is
allowed and delay of 22 days in filing the revision petition is condoned.

CRR-1590-2019

1. The petitioner is challenging the order dated 07.03.2019
vide which an application filed by the petitioner seeking discharge
under Section 227 of the Cr.P.C. has been dismissed by the learned
Trial Court and consequently charges under Section 120-B read with
Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of
the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC
Act') have been framed against the petitioner, in case FIR No.RC 05
(A)/2014-CBI/ACB/Chandigarh dated 16.06.2014 under Sections 120-
B read with Section 420 of the IPC and Section 3(2) read with Section
13(1)(d) of the PC Act registered at Police Station

CBI/ACB/Chandigarh.

2. **Submissions by learned counsel for the petitioner:-**

2 (a). That the SGPC floated a tender for the insurance coverage of its employees, inviting applications from all public sector insurance companies. Ultimately, the contract was awarded to the Oriental Insurance Company (hereinafter referred to as 'Insurance Company') from among the applicants.

2 (b). That the crux of the matter in this case revolves around the allegations that since the contract was awarded through a tender process, without the involvement of any employee of the Insurance Company, consequently, no commission should have been remitted to any agent(s).

2 (c). That allegedly a sum of Rs.14 lakhs was disbursed as commission to the co-accused, agents, a payment which could not have been made since the contract had not been secured through these agents; the disbursement of commission was purportedly contingent upon agents being explicitly named by clients, a criterion which was not met in the instant case.

2 (d). That the petitioner was neither an agent nor a development officer but was merely a supervisory authority over the agents, holding the position of Chief Regional Manager (hereinafter referred to as 'CRM') of the Insurance Company at the relevant time. The petitioner had been falsely embroiled in the matter, solely based on the assumption that, as CRM, he should have been cognizant of the impropriety surrounding the rules and policy of disbursement of commissions.

2 (e). That the allegations against him stem from a departure from “common prudence” rather than a breach of any law/rule/regulation. Notably, the CBI while filing challan conceded the absence of any circular or directive prohibiting the payment of agency commission in contracts procured through open tenders. In support, learned counsel has drawn the attention of this Court to the following relevant portions of the challan filed by the CBI (Annexure P-3):-

“16.42 During investigation, file related to GMP and GPA insurance of employees of SGPC for the year 2012 was seized and the members of the SGPC sub-committee constituted for the purpose of opening the quotations were examined. Sh. Sudhindra Trivedi, the then Manager (Vigilance) in Corporate Office of OICL at Delhi, Sh. R.L. Baleem, the then Vigilance Officer, Chandigarh and Sh. Shyam Sundaram Mundhra, Chief Manager (Vigilance), Oriental Insurance Company Limited, Head Office, Delhi were also examined. Their examination revealed that in case of Insurance business procured through open tenders, if the client specifically mentions the name of any agent, only then agency commission is paid, otherwise not. As per the quotations asked for by SGPC, Amritsar, there was no reference of any agent/agency to be involved. No mandate for commission was given by SGPC to Oriental Insurance Co. Ltd. for Involving any agent/agency. No approval of agent/agency was taken by Oriental Insurance Co. Ltd. from SGPC for the GMP and GPA Policy for the year 2012. Since the contract was awarded to Oriental Insurance Co. Ltd. on the basis of open tenders, so no efforts were made by any agent to procure the business. Hence, no commission was legally permissible to agents in the GMP and GPA policy of SGPC for the year 2012. GMP and GPA Insurance business of SGPC for the year 2012 was awarded to Oriental Insurance Co. Ltd. on 12.12.2011, thus procurement of GMP and GPA Insurance business of SGPC for the year 2012 was one time affair and after allotment of GMP and GPA insurance business to SGPC on 12.12.2011, premium from all institutions of SGPC would have definitely come to Oriental Insurance Co. Ltd. only. The payment of agency commission to four agents itself manifested that there was no role of any agent in procurement of business. As regards to payment of agency commission, the common prudence leaves no room for any intermediary under open tender business unless there is separate mandate from the Insured for engaging

*any intermediary also for procurement of the same business. **However, no circular/order could be procured regarding bar on payment of agency commission in business procured through open tenders.***”

2 (f). That the petitioner did not contravene any organizational norms let alone any written rules, as is evidenced by an earlier instance in the year 2008; during which a contract was awarded to the Insurance Company through an open tender, commission was disbursed to agents as is also apparent from a perusal of Annexure P-6 i.e. order of the learned Trial Court dated 07.03.2019 wherein it finds mentioned that a commission of Rs.9 lakhs had been disbursed as agency commissions in the year 2008;

2 (g). That additionally, it is not disputed by the investigating agency that neither did any amount given as agency commission to the co-accused ever flow into the account of the petitioner, nor was he a recipient of the commission in any capacity. Even in the order of framing of charges (Annexure P-6), it stands delineated that the amounts of commission were received by the co-accused and there is no mention of any funds/money reaching the petitioner;

2 (h). That while being implicated as an accused in the FIR, the petitioner was alleged to have prepared a comprehensive note regarding commission quotations in an email addressed to the head office of the Insurance Company. However, this allegation was later found belied when it was revealed that the email in question had been authored by Jaideep Mahajan, Assistant Manager (Health) and merely forwarded by the petitioner, then, to his superiors. In support, learned counsel has

drawn the attention of this Court to the copy of the email annexed as **Annexure P-8**.

2 (i). That Jaideep Mahajan, who has been cited as a witness, claimed during investigation that it was the petitioner who had asked him for quotations for the Group Mediclaim policy and Group Personal accident for the SGPC employees in the year 2012, through an email. Said Jaideep Mahajan also claimed that he had calculated the rate of commission to be paid, only on the oral directions of the petitioner, and nothing had been given to him in writing by the petitioner. Thus, the crux of the allegations against the petitioner hinges on Jaideep Mahajan's allegations that he had added commission to the quotations based on the petitioner's oral instructions. However, apart from this self serving statement of Jaideep Mahajan, there was no corroborative evidence on record to show that the petitioner had ever requested him or ordered him to add commission to the quotations. In support, learned counsel has drawn the attention of this Court to **Annexure P-7**, which is a statement made by Jaideep Mahajan.

2 (j). That Jaideep Mahajan had also emailed to the then Branch Manager, Savita Bakshi, stating that all the policies of SGPC should be 'underwritten' in the name of Sukhwant Singh, the main accused in the present case. Concededly, no such directive even as per the case of the prosecution had been issued by the petitioner either to Jaideep Mahajan or any other official of the Insurance Company to consolidate the business under the name of the agents. In support, learned counsel has drawn the attention of this Court to paragraph 16.41 of **Annexure P-3**, which is reproduced as under:-

“16.41 Investigation has also revealed that on receiving email on 24.01.2012 from Smt. Savita Bakshi for approval of GMP policies in the system by CRM, It was observed by CRM at the time of approval that Branch Office has underwritten some proposals under code of Development Officer Sh. Hari Krishan. Accordingly on instructions of CRM, Sh. Jaideep Mahajan conveyed to Smt. Savita Bakshi that all policies of SGPC shall be underwritten in code of Sh. Sukhwant Singh, Development Officer. It was also stated in the email to make sure, if any proposal is underwritten in other Development Officer code, It should be immediately underwritten/shifted in Development Officer code of Sh. Sukhwant Singh. Vide email dated 25.01.2012, Smt. Savita Bakshi, Branch Manager, OICL, BO-III, Dharam Singh Market, Amritsar replied to Sh. Jaideep Mahajan with cc to Sh. A.K. Gupta that the contents of the email dated 24.01.2012 have been noted and Sh. Sukhwant Singh, Development Officer had been asked not to cede any business to any of the Development Officer... However, no instructions were issued by Amrish Gupta or other officials for booking the business in the name of one agent only.”

2 (k). That pertinently the petitioner was not even the final authority to take a decision in the matter pertaining to disbursement of commission to the co-accused agents; it was also a matter of record that all the recommendations were duly approved by Mr.P.A. Nair, Chief Manager (Health), Head Office, New Delhi of the Insurance Company, who had not even been made an accused in the present case.

2 (l). That the then Branch Manager, of the Insurance Company, Savita Bakshi, to whom the email had been sent and who had allowed the business to be underwritten in the name of Sukhwant Singh had been strangely declared innocent by the CBI. Not only this, qua the other development officers, who had been sought to be arraigned as accused by the CBI, the department had declined to grant sanction to prosecute them.

2 (m). That it was abundantly clear that the petitioner was being made a scapegoat and an accused in the present case only because he had retired, and thus, no sanction was required to prosecute him under Section 19 of the PC Act in view of his status of being a retiree.

2 (n). That cognizance had been taken by the learned Trial Court for offences under the IPC whereas no sanction had been obtained qua the petitioner being a public servant as mandated under Section 197 of the Cr.P.C., and on this ground alone, the charges framed against the petitioner were liable to be quashed.

3. **Submissions made by learned standing counsel for the respondent-CBI:-**

3 (a). That the petitioner's involvement in the crime in question is writ large as he actively conspired and contributed to the losses suffered by the Insurance Company by recommending payment of commission totalling Rs.14 lakhs to the co-accused i.e. the 04 agents, which they were not entitled to.

3 (b). That no doubt there was no official directive prohibiting payment of commission in contracts obtained through tenders, however, it was a well established practice that only those agents were remunerated who had played a direct role in securing business for the Insurance Company and furthermore had been explicitly named by the client. Therefore, prudence dictated against the payment of commission when the agents had not contributed to securing business, particularly through an open tender; notably the 04 co-accused agents had admitted that they had played no role in securing business from the Insurance

Company at their own level.

3 (c). That although there is no evidence indicating whether the petitioner personally benefitted from or received any amount, his involvement in the crime in question was clearly outlined in the statement made by Jaideep Mahajan, Assistant Manager (Health).

3 (d). That Jaideep Mahajan categorically revealed that despite the petitioner being informed that payment of commission could not be made to the 04 agents due to the tender being advertised in newspapers, the petitioner still insisted to include commission and disburse them to the agents, by verbally instructing Jaideep Mahajan. The petitioner directly, thus, participated in disbursing the commission to the co-accused agents.

3 (e). That Savita Bakshi, the then Branch Manager of the Insurance Company, was rightly found innocent as she had no involvement in the calculation of premium, much less for the disbursal of the commission, to the co-accused agents.

3 (f). That the petitioner did not qualify for protection under Section 197 of the Cr.P.C. as he could not be considered a public servant within the definition of the statute and his services from the Insurance Company could be terminated without the approval of the Government. In support, reliance has been placed upon ***A. Sreenivasa Reddy Vs. Rakesh Sharma and another : 2023(3) RCR (Criminal) 836.***

3 (g). That all the grounds raised and argued by the petitioner were part of his defence which could not be delved into at this stage.

4. **Rebuttal by the learned counsel for the petitioner:-**

4 (a). That the petitioner qualifies as a public servant under Section 197 of the Cr.P.C. due to the provisions of Section 107A of the Insurance Act, 1938 (hereinafter referred to as 'Insurance Act'), wherein Insurance Company employees had been designated as public servants for the purpose of Chapter IX of the IPC. Although these provisions were subsequently omitted on 26.12.2014, however, since the FIR in question was lodged well before this omission i.e. on 16.06.2014, sanction under Section 197 of the Cr.P.C. would be mandated in the case of the petitioner.

FINDINGS OF THE COURT

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The petitioner has approached this Court to impugn the order passed by the learned Trial Court wherein the application filed by him for his discharge was dismissed and consequently charges were framed against him (**Annexure P-6**).

7. It is imperative to emphasise that at the stage of framing charges, the role of the Court is to just assess the material gathered by the investigating agency during investigation, so as to determine whether prima facie evidence supporting the alleged offences against the accused exists or not. If, based on the material and documents presented by the prosecution, the Court finds reasonable grounds to believe that there is a likelihood that the accused has committed the alleged offences, it must proceed to frame charges against him in

accordance with law. However, if upon scrutiny of the material placed before it by the prosecution, the Court concludes that the essential ingredients of the alleged offences are not attracted, there should be no hesitation in discharging the accused of the offences alleged against him.

8. In the present case, the petitioner has presented two sets of arguments to support his plea for setting aside the charges framed against him. Firstly, that the ingredients of the alleged offences are not made out against the petitioner, and secondly, cognizance of the offences alleged could not have been taken due to the absence of sanction to prosecute under Section 197 of the Cr.P.C.

9. Addressing the issue of sanction under Section 197 of the Cr.P.C., it is pertinent to refer to the observations made by Hon'ble the Supreme Court in *A. Sreenivasa Reddy's case (supra)* with regard to availability of protection under Section 197 of the Cr.P.C. to bank employees. It was laid down in *A. Sreenivasa Reddy's case (supra)* that the appellant in that case, being a bank employee, in a nationalized bank, could not claim protection under Section 197 of the Cr.P.C., unless it was established that he was a public servant removable from office, only with the sanction of the Government. It was further emphasized that even if the banking sector is considered a limb of the State under Article 12 of the Constitution of India and deemed public servants under certain provisions, the protection under Section 197 of the Cr.P.C. would not be automatically extended to offences under the IPC unless certain conditions laid down under Section 197 of the Cr.P.C. were met. It would be apposite to reproduce the relevant

observations of Hon'ble the Supreme Court in *A. Sreenivasa Reddy's case (supra)*:-

“48. It was argued before the Court that he may be discharged on account of non-compliance under Section 197 of the CrPC. The Chief Metropolitan Magistrate (South), Saket Court rejected the application filed by the appellant therein, seeking discharge for want of sanction. The matter reached up to this Court. This Court held in paras 10 and 12 respectively as under:

“10. The appellant being a Manager in a nationalised bank whether can claim that before prosecuting him sanction is required under Section 197. The CMM having come to the opinion that the appellant having not satisfied that he was a public servant not removable from his office save by or with the sanction of the Government, Section 197 CrPC was not attracted with regard to the appellant. After coming to the above conclusions, it was not necessary for the CMM to enter into the question as to whether the acts alleged against the appellant were discharged in performance of official duty.

xxx xxx xxx

12. The High Court in its impugned judgment has not adverted to the above aspect and has only confined to the discussion as to whether the acts alleged of the appellant were in discharge of official duty. The High Court also had relied on the judgment of this Court in Parkash Singh Badal [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] . We, having come to the conclusion that the appellant being not a public servant removable from his office save by or with the sanction of the Government, sanction under Section 197 CrPC was not applicable. The appellant cannot claim protection under Section 197 CrPC. We are of the view that examination of further question as to whether the appellant was acting or purporting to act in the discharge of his official duty was not required to be gone into, when he did not fulfil conditions for applicability of Section 197(1) CrPC.” (Emphasis supplied)”

49. It is pertinent to note that the banking sector being governed by the Reserve Bank of India and considered as a limb of the State under Article 12 of the Constitution and also by virtue of Section 46A of the Banking Regulation Act, 1949, the appellant herein is deemed to be a “public servant” for the purpose of provisions under the PC Act, 1988. However, the same cannot be extended to the IPC. Assuming for a moment that the appellant herein should be considered as a “public servant” for the IPC sanction

also, the protection available under Section 197 of the CrPC is not available to the appellant herein since, the conditions in built under Section 197 of the CrPC are not fulfilled.”

10. It was vehemently argued by the learned counsel for the petitioner that the status of the employee of an Insurance Company differed from that of a bank employee, as Section 107 of the Insurance Act, had designated employees/managers of the insurer as public servants for the purpose of Chapter IX of the IPC. Furthermore, learned counsel also contended that although this provision was omitted from the Insurance Act on 26.12.2014, however, the aforesaid provision would be still applicable in the case of the petitioner because when the FIR was registered on 16.06.2014, the provision was still in existence and was omitted much later.

10 (a). This Court, however, is disinclined to concur with the argument put forth by the learned counsel for the petitioner: A minute reading of Section 197 of the Cr.P.C. reveals that it prohibits the Court from taking cognizance of offences allegedly committed by public servants without prior sanction. Thus, Section 197 of the Cr.P.C. does not prohibit the registration of an FIR or lodging of a complaint but serves only as a protection against the Court taking cognizance of the offence allegedly committed by the public servants, without prior sanction of the authorities concerned. The challan in this case was presented on 28.12.2015 by which time sanction under Section 107A of the Insurance Act had already been omitted by the Legislature meaning thereby, on the date the Court had taken cognizance, there was no

existing provision in the Insurance Act which conferred the status of 'public servant' on employee of an insurance company. Considering this specific omission by the Legislature and the law laid down by Hon'ble the Supreme Court, the contention of learned counsel for the petitioner qua the protection available to him under Section 197 of the Cr.P.C., is not tenable and deserves to be rejected.

11. Moving forward to the second limb of argument, which was raised by learned counsel for the petitioner for his discharge from the instant case, was that the ingredients of the offences alleged against him were not made out. Thus, it would be apposite to reproduce the FIR in question (**Annexure P-1**) and also the provisions of Section 13(1)(d) of the PC Act and Section 420 of the IPC, which read as under:-

FIR in question

“The said preliminary enquiry PECHG2013A0002 was registered against Shri Amrish Kumar Gupta, Chief Regional Manager, Oriental Insurance Company Ltd., Regional Officer, Chandigarh, Shri A.S. Dhingra, the then Senior Divisional manager, OIC, Ltd. Branch Office, Amritsar, Punjab, Shri Sukhwant Singh, the then Development Officer, OIC, Ltd. Branch Office, Amritsar, Punjab, S/Sh Navdeep Singh, Sukhwinder Singh, Sanjeev Grover, Vikas interest of the company causing wrongful loss to the State Exchequer and corresponding gain to themselves when the company provided medical insurance under Group Medi-Claim Family Floater Policy (GMP) and Group Personal Accident Policy Kumar, all Agents OIC Ltd., Branch Office, Amritsar, Punjab and others unknown persons on the basis of Source Information Report. The matter pertains to misuse of official powers and act of negligence shown by the above said officials in connivance with the company agents and other unknown persons failing to protect the (GPA) to the employees of Shiromani Gurudwara Parbandak Committee, Golden Temple, Amritsar, Punjab for the period of 01.01.2012 to 31.12.2012.

It has been alleged that the said SGPC-2011 deal for the year of 2012 was finalized by the Oriental Insurance Company Limited being successful bidder in

open tender published by SGPC in the national daily news papers. There was no individual effort made by any of the agents to procure the said business of SGPC for Oriental Insurance Company Limited yet the agency commission to the tune of Rs.14 lakhs approximately was paid to four agents namely S/Shri Navdeep Singh, Sukhwinder Singh, Sanjeev Grover and Vikas Kumar.

The Enquiry has revealed the following points:-

1. That, SGPC, Amritsar advertised open tenders in national daily newspapers from PSU Insurance Companies and asked to file quotations for providing insurance to the employees of SGPC under Group Medi claim policy and Group Personal Accident Policy vide its advertisement dated 19.11.2011 for the year of 2012.

2. The previous insurers of SGPC, Amritsar for last 3 years was United India Insurance Company, DO, Amritsar.

3. OICL, DO-2, Amritsar, mooted the proposal to RO vide e-mail dated 28.11.2011 of Sr. DM, Shri A.S.Dhingra. The email message of Sr. DM was comprised of claim experience and a very brief reference previous insurance policy and no reference of any agency.

4. Shri Amrisha Gupta, CRM, RO, Chandigarh prepared a detailed note to HO Health Department vide his email dated 29.11.2011 detailing on previous policy and recommended premium rates. The premium rates suggested was based on OUTGO basis and one of the component being "TPA, ME, MI and commission" with loading of 20%. The GMP rate recommended by CRM was Rs.689/- per lac plus tax.

The email categorically mentioned that "Quotation for SGPC employees have been called by SGPC, Amritsar from PSU insurers only vide newspaper advertisement dated 19.11.2012." There was no reference of any Agency or brokerage as regard to procurement of business; however, a passive reference of commission as one of the component in getting on outgo basis was there in the said email.

5. Vide email dated 29.11.2011, Shri P.A. Nair, CM, HO Health agreed to recommendations sent by CRM, RO, Chandigarh.

6. SDM, DO-2, Amritsar, Shri A.S.Dhingra and Development Officer, BO Dharam Singh Market, Amritsar, Shri Sukhwant Singh jointly submitted the quotation to SGPC, quoting rates for GMP at Rs.900/- per lac plus service tax and for GPA at Rs.0.60 per mille inclusive of service tax.

7. The business was allotted to Oriental as lowest rate was quoted by OICL. After negotiation the rate of GMC was finalized at Rs.940/- per lac including tax @ 10.3%.
8. Shri Maiya Das, AO (D) of Ull protested vide his email dated 04.01.2012.
9. Eventually the business was booked by the Branch Office, Dharma Singh Market, Amritsar.
10. An MoU dated 30.12.2011 in this regard is also submitted by the Branch (between SGPC and OICL), signed by Shri A.S.Dhingra, SDM, DO-2, Amritsar and Shri Sukhwant Singh on behalf of the Company.

The Enquiry further revealed following points:-

1. On going through the underwriting dockets, it was observed that the business was booked through covernotes issued by Shri Sukhwant Singh, Development Officer and under his agents Shri Sukhwinder Singh and Shri Navdeep Singh.
2. The agency codes are marked by the Development Officer, Shri Sukhwant Singh on the covernotes. Some covernotes are accepted by the Branch Manager, Smt. Savita Bakshi and some are directly underwritten.
3. The Agency commission payments/vouchers of the Development Officers comprising of commission relevant to SGPC business were approved by the Branch Manager, Smt. Savita Bakshi.
4. Most of the policies have been approved by Shri A.K.Gupta, CRM in the system.
5. Some business is also booked in the kits (with agency) of Shri Hari Krishan and Shri Naresh Vashisht, other Development Officers of the Branch.
6. The summary of the business booked is as hereunder (as provided by the BM, vide her email dated 18.10.2012):

Sr. No.	Name of Agent	Concerned Dv. Officer	Premium Booked	Commission paid
1.	Sh. Sukhwinder Singh	Sh. Sukhwant Singh	16307418	815412
2.	Sh. Navdeep Singh	Sh. Sukhwant Singh	8795799	439787
3.	Sh. Sanjeev Grover	Sh. Hari Krishan	1929430	96725
4.	Sh. Vikas Kumar	Sh. Naresh Vashisht	1919202	95960

7. Taking note of underwriting in the kit of Shri Hari

Krishan, Shri Jaideep Mahajan, Health Manager, vide email dated 24.01.2012, advised the BM, Mrs. Savita Bakshi, with copies to Sr. DM and CRM, to ensure that the proposal/policies of SGPC should be underwritten in the code of Sh. Sukhwant Singh, Development Officer.

8. It was noticed from the figures provided by United Insurance Company that the company continued to quote the very less premium for GMP and GPA, either at break even premium for GMP or rate below the claim cost for GPA as per following table.

GMP

<i>Year</i>	<i>Premium</i>	<i>Claim Paid</i>	<i>ICR</i>
<i>2009</i>	<i>11054801</i>	<i>12867813</i>	<i>116.45</i>
<i>2010</i>	<i>127334692</i>	<i>14322786</i>	<i>112.47</i>
<i>2011</i>	<i>15457333</i>	<i>16568022</i>	<i>107.18</i>
<i>2012</i>	<i>39245826</i>	<i>43758621</i>	<i>111.50</i>

GPA

<i>Year</i>	<i>Premium</i>	<i>Claim Paid</i>	<i>ICR</i>
<i>2009</i>	<i>2248000</i>	<i>2248000</i>	<i>167</i>
<i>2010</i>	<i>2604000</i>	<i>4248000</i>	<i>163</i>
<i>2011</i>	<i>2527000</i>	<i>6879000</i>	<i>272</i>

9. Vide email dated 04.07.2012 of Shri Maiya Dass, AO (D), it is confirmed that by Ull office that no commission/brokerage was paid by them for SGPC business on previous policies with them.

10. As per email dated 21.12.2012, of Smt. Savita Bakshi, Branch Manager, of the concerned Branch the ICR of GPA is 150% and GMP is 121% of SGPC business as on 07.12.2012.

11. On perusal of copies of the statements of Bank accounts of both the agents namely Shri Sukhwinder Singh and Shri Navdeep Singh of Sh. Sukhwant Singh (in whose kit the business of SGPC was put) it was revealed that the Agency Commission was deposited in their respective bank accounts was further transferred in the bank account of Shri Sukhwant Singh, Development Officer. It was also revealed that the Agency code of Shri Navdeep Singh was used as dummy by Shri Sukhwant Singh, Dev. Officer for the purpose of booking the premium, and the commission for that premium was credited in the Bank Account No.05291000028646 (Punjab and Sindh Bank, Amritsar) of Shri Navdeep Singh, Agent and the same was returned to Shri Sukhwant Singh, Development Officer.

12. PE further revealed that the agency code of Shri Sukhwinder Singh, Agent was also used as dummy by Shri Sukhwant Singh, Development Officer for the purpose of booking the premium and the commission for that premium was credited in the Bank Account No.05291000026555 (Punjab and Sindh Bank, Amritsar) of Sh. Sukhwinder Singh, Agent and the same was transferred to the bank account No.052911000022147 of Shri Sukhwant Singh.

13. PE further revealed that Shri Navdeep Singh and Shri Sukhwinder Singh had nothing to do with SGPC insurance business and they did not make any effort to procure the business of SGPC, Amritsar for OICL.

14. PE further revealed that Shri Sanjeev Grover, Agent has received Rs.87.052/- as agency commission in his IDBI Bank Account No.0072104000222693 and handed over the said amount to Shri Sukhwant Singh, Development Officer in three instalments of Rs.35,000/-, Rs.30,000/- and Rs.22,000/- respectively. Rs.30,000/- and Rs.22,000/- was given in cash whereas Rs.35,000/- was withdrawn by Shri Sukhwant Singh, Development Officer by using a blank signed cheque No. 197761 from Shri Sanjeev Grover. The said cheque was credited in the account of one Shri Jasvir Singh. Enquiry also revealed that Shri Sanjeev Grover did not make any effort to procure the business of SGPC-2011 for the year of 2012 and no business of SGPC was ever procured by him for OICL. He even did not know any employee of SGPC, Amritsar. His agency code was used as dummy by Shri Sukhwant Singh, Development Officer only to generate agency commission and for his own purposes.

15. PE Further revealed that Shri Vikas Kumar, agent has received Rs.88,520/- in his bank account No.758101011000649 of Vijaya Bank, Guru Nanak Dev University, showroom No.10, GNDU, Shopping Complex, Lahore Gate Road, Amritsar, as an agency commission for the business booked by Shri Sukhwant Singh, Development Officer in his agency's code. The said amount of commission was credited in his account by Smt. Savita Bakshi, the then Branch Manager, Branch Office, OICL, Dharam Singh Market, Amritsar. Enquiry also revealed that on the directions of Shri Naresh Vasishata, Development Officer, he withdrew the amount of Rs.88,000/- and handover the same to him (Shri Naresh Vasishata). Shri Naresh Vasishata told him that he would hand over the same amount of commission i.e. Rs.88,000/- to Shri Sukhwant Singh, Development Officer. Enquiry also revealed that he did not make any effort to procure the business of SGPC-2011 for the year 2012 and no business of SGPC was ever procured by him for OICL. He even did not know any employee of SGPC Amritsar. It came out that his agency code was used as dummy by Shri

Sukhwant Singh, Development Officer only to generate agency commission and for his own purposes.

FRESH ALLEGATIONS IN BRIEF FOUND DURING ENQUIRY:

PE also revealed that the Oriental Insurance Company Limited also did not the same business with SGPC, Amritsar in the year of 2008 while providing the insurance cover to the employees of SGPC, Amritsar under GPA and GMP policies. At that time, the business was also procured through open tender being successful bidder but the premium was shown procured by agents and was booked in the kit of Shri Sukhwant Singh, Development Officer Near about Rs.9,00,000/- was given as agency commission to the agents at that time, whereas no agency commission was payable at that time also. At that time, Shri A.S. Dhingra, the then Sr. DM, DO, Amritsar in connivance with Shri Sukhwant Singh, Development Officer and some agents caused wrongful loss to the company and corresponding gain to himself and other company officials.

LOSS TO THE COMPANY:-

As per the email of BM, Rs. 14,47,884/- was paid, in total, as agency commission under SGPC business till 18.10.2012. The outgo could have been saved, as no commission was required to be paid in open tender through newspaper (by the insured) and the same was not paid by the UIIC also in the expiring policy. It is also revealed that there was no role of agents in this business and agents were used as dummy agents to generate the agency commission.

This was undue favour to Shri Sukhwant Singh, Development Officer by allowing him to book the business under his dummy agencies, as far as, bookir.g of SGPC business is concerned.

Further, business credit was given to two other Development Officres (Shri Hari Krishan and Shri Naresh Vashishta) for Rs.19,29,430/- and 19,19,202/ respectively and agendy commission was also paid through their respective agents.

The above facts prima facie reveal commission of offence u/s 120-B, 420 of IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against Shri Amrish Kumar Gupta, Chief Regional Manager, Orier.tal Insurance Company Ltd., Regional office, Chandigarh (now retired), Shri A.S.Dhingra, the then Senior Divisional Manager, OIC Ltd. Branch Office, Amritsar, Punjab, Smt. Savita Bakshi, the then Branch Manager, Branch Office, Dharam Singh Market, Amritsar, Punjab, Shri Sukhwant

Singh, the then Development Officer, OIC Ltd. Branch Office, Amritsar, Punjab, S/Shri Navdeep Singh Sukhwinder Singh, Sanjeev Grover, Vikas Kumar all agents, OICL Branch Office, Amritsar, Punjab and other unknown officials. A regular case is, therefore, registered under the above mentioned sections of law.”

Section 13(1)(d) of the PC Act

“13. Criminal misconduct by a public servant.-

(1) xxx xxx xxx

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

xxx xxx xxx”

Section 420 of the IPC

“420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. ”

12. It would also be pertinent to refer to the observations made by Hon'ble the Supreme Court explaining the offence under Section 13(1)(d) of the PC Act in ***Chittaranjan Shetty Vs. State by C.B.I.***

Bangalore : 2015(4) RCR (Criminal) 525, which read as under:-

“19. After carefully perusing the material on record, including the judgments and orders passed by the Courts below, the appellant’s case fails to convince us. This

Court, in M. Narayanan Nambiar v. State of Kerala, 1963 SCR Supl. (2) 724 gave a broad interpretation to Section 5(1)(d) of the Prevention of Corruption Act, 1947, which is in pari materia with Section 13(1)(d) of the Act and held:

“First taking the phraseology used in the clause, the case of a public servant causing wrongful loss; to the Government be benefiting a third party squarely falls within it. Let us look at the clause “by otherwise abusing the position of a public servant”, for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers acts done "otherwise" than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this clause is that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage.

"Abuse" means misuse i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word 'otherwise' has wide connotation.... The juxtaposition of the word or otherwise' with the words "corrupt or illegal means" and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within, the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the section. 'Obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage... On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself, or for any other person, by abusing his position as a public servant falls within the mischief of the said clause.” Following this decision, in SK Kale v. State of Maharashtra, 1977 SCR (2) 533, this Court held that the abuse of position by a public servant must necessarily be dishonest and it must be proved that the accused caused deliberate loss to the department:

“The abuse of position, as held by this Court, must necessarily be dishonest so that it may be proved that the appellant caused deliberately wrongful loss to the Army by obtaining pecuniary benefit for P.W. 2.” The dictum in this judgment was followed in SP Bhatnagar v. State of Maharashtra, 1979 SCR (2) 875, where the importance of the element of dishonest intention was again reiterated.

On a perusal of the abovementioned judgments, it can be concluded that in order to prove the offence under Section 13(1)(d)(ii) of the Act, it must be established that a public

servant has abused his position in order to obtain for himself or for any other person, any valuable thing or pecuniary advantage, and that, in this context, the “abuse” of position must involve a dishonest intention.””

13. Upon a meticulous reading of the aforesaid provisions of law and the law laid down by Hon'ble the Supreme Court, it is abundantly clear that the offences alleged against the petitioner hinge on the presence of dishonest intention, which forms the crux of the matter. It is also crucial to note that the prosecution under the PC Act necessitates a higher threshold than mere violation of departmental rules and conventions and the prosecution must be able to demonstrate an actual abuse of official position by the accused.

14. In the instant case, the allegations against the petitioner amount to, at worst, inclusion of payments of commission to agents (co-accused) through oral instructions given to Jaideep Mahajan, Assistant Manager (Health) who had been tasked with preparing the quotation of premiums. Even if presumed true, the prosecution has failed to produce any rule, regulation or official circular prohibiting payment of commissions in tender-obtained contracts. Since prosecution under the PC Act carries significant ramifications for the public servant involved, hence, mere allegations that the petitioner, in the present case, deviated from common prudence, without any evidence of any personal gain or benefit, would fall short of constituting an offence under Section 13(1)(d) of the PC Act.

15. It is also noteworthy, and as not disputed by the learned standing counsel for CBI also, the petitioner was not the final authority

in approving the quotations for premiums, including payment of commission; the final approval rested on one Mr. P.A. Nair, Chief Manager (Health), Head Office, New Delhi, who has not been arraigned as an accused in the present case. Additionally, Jaideep Mahajan, who was responsible for preparing the quotations, and had sent email/note containing commission payment instructions, and had also forwarded an email for underwriting the business in the name of accused Sukhwant Singh, has not been made an accused, and instead cited as a witness by the prosecution. Furthermore, Savita Bakshi, the then Branch Manager, who received the email, prepared and drafted by Jaideep Mahajan for underwriting business in the name of Sukhwant Singh, and had allowed the same, was declared innocent by the CBI, albeit deemed negligent in her duties.

16. As a sequel to the above, after considering totality of the allegations against the petitioner, this Court has no hesitation to conclude that the ingredients of the offences alleged against the petitioner remain unsatisfied. Therefore, continuation of criminal proceedings against the petitioner would be a blatant misuse of the process of the Court. Accordingly, the instant petition is allowed and the impugned order dated 07.03.2019 framing charges (Annexure P-6) is set aside and the petitioner is discharged of the offences under Section 120-B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

16.04.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No