



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRM-M No.60887 of 2022 (O&M)

Surinder Pal Singh

... Petitioner

Versus

Union of India & others

... Respondents

2. CRM-M No.8549 of 2023 (O&M)

Vishal Kapoor & another

... Petitioners

Versus

Central Bureau of Investigation

... Respondent

Date of decision: 23rd May, 2024

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Amit Kumar, Advocate for the petitioner
in CRM-M-60887-2022.

Mr. R.K. Handa, Ms. Gauri Handa, Mr. Kulwinder
Bhargav & Mr. Dharambir Bhargav, Advocates
for the petitioners in CRM-M-8549-2023.

Mr. Somesh Gupta, Sr. Panel Counsel for Union of India.

Mr. Deepak Sabherwal, Spl. Public Prosecutor for CBI.

MANJARI NEHRU KAUL, J.

1. The petitioners in both the petitions detailed hereinabove are seeking quashing of FIR No.217219A007 dated 15.10.2019 under Sections 120-B, 420, 467, 468, 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as, 'the PC Act') registered at Police Station CBI/ACU/IV, AC-II, New Delhi along with all consequent proceedings including report under Section 173 Cr.P.C. dated 29.12.2021 as well as



**CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)**

2

summoning order dated 05.07.2022 passed by the Court of learned Special Judge, CBI, Mohali. Since both these petitions emanate from the same FIR, they are being taken up together for disposal by way of this common order.

**Submissions made by learned counsel on behalf of petitioner-
Vishal Kapoor:**

2. Learned counsel for the petitioner asserts that he has been falsely implicated in the present case. Petitioner, who initiated his electrical contracting business (M/s Kay & Kay Enterprises) in the year 1996, has a commendable record of successfully completing various contracts, including those for the Central Public Works Department (CPWD) and the Indian Railways since the year 2004, without any complaints regarding the quality or timeliness of his work.

3. Learned counsel, while drawing the attention of this Court to the FIR, annexed as Annexure P-1, has further submitted that allegations in the present case pertain to the allocation and execution of electrical works for the Northern Railways, which otherwise were carried out in strict accordance with the specifications and requirements detailed in the tender agreements. Furthermore, all projects were executed under the direct supervision of Railway officials at the designated sites ensuring compliance with all contractual obligations and standards.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

3

4. Learned counsel has also emphasized that the petitioner's track record demonstrates his commitment to maintain the high standards of workmanship and reliability in fulfilling contractual duties. Given his unblemished record and the adherence to specified guidelines and supervisory protocols in the present case, it has been contended that the allegations levelled against the petitioner are baseless and unfounded.

5. It has been vehemently argued that CBI registered the present FIR under Section 13(2) read with section 13(1)(d) of the PC Act, which is fundamentally flawed. Section 13(1)(d) of the Act was repealed in the year 2018, and since the FIR was registered on 15.10.2019, the CBI lacked the jurisdiction to investigate under this section. Furthermore, learned counsel has pointed out that the CBI failed to conduct a preliminary enquiry before lodging the FIR. Such an enquiry would have disclosed that the petitioner's work was meticulously documented in 22 Measurement Books prepared by the Railway authorities themselves, which would have then negated the accusations against him.

6. The learned counsel has also argued that the ingredients of the offences alleged are not made out as there is no evidence of any corruption or exchange of money between the contractor and the Railway officials. Further, there is no expert opinion suggesting



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

4

falsification of documents or forgery connecting the petitioner to any wrong doing. The tenders were allocated and executed in accordance with the guidelines issued by the Railways, with no indications whatsoever of any irregularities. Moreover, there are no allegations of bribe or illegal payment in the tender award process or the passing of bills. Therefore, it has been submitted that the elements of the alleged offences under the PC Act are also not made out against the petitioner.

7. Learned counsel has also elaborated that the tender allocation process, within the Railways involves multiple departmental wings, with work allotted against tenders only after obtaining necessary approvals. A tender Committee evaluates and approves tender, after which contracts are formalized between the Railway department and the contractor. The petitioner was awarded 17 tenders for various works at Railway Stations in the Ferozepur division and Ludhiana. These contracts were executed to the satisfaction of the Railway officials, with comprehensive documentation maintained in the measurement books. A thorough examination of the challan presented by the CBI clearly reveals no irregularity, let alone illegality in the tender allotment to the petitioner.

8. The learned counsel has further detailed the execution process, highlighting that every step from contract allocation to work completion was meticulously recorded and verified by various Railway



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

5

officials. Bills for payment were prepared based on extensive documentation and inspection reports, ensuring transparency and accuracy. As per the Indian Railway Engineering Code, the petitioners were subject to 100% inspection by Railway officials at different levels. The completed work was meticulously documented in a measurement book maintained by the Railway officials and was also verified by the petitioner. Payments were processed solely based on the entries in the measurement book, rather than on separate bills raised by contractors, ensuring rigorous adherence to procedural and regulatory standards.

9. Learned counsel has further contended that during a site inspection on 18.03.2020 at three Northern Railway Stations, the CBI verified that the Aluminum Conductor Steel Reinforced (ACSR) conductors met the contract specifications. However, in its response to the present petition, the CBI has contradicted its own findings by incorrectly stating that the contractor failed to supply the conductors. Further, when inspecting 327 LED lights, five years after their installation, the CBI found that 276 were operational, with 51 lights missing. Given the extended period of over 5 years, the shortfall of 51 lights out of 327 could not reasonably be attributed to the petitioner. Factors, such as wear and tear, theft, power fluctuations, or technical issues over time could account for this shortfall, and the contractor i.e.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

6

the petitioner, cannot be held responsible for maintenance, which was outside the scope of his contract.

10. It has been further asserted that a perusal of the challan, annexed as Annexure P-2, indicates that there is absence of prima facie evidence to support the claim that payments were made without work completion. Inspections by various officials of the Railways confirm that the petitioner executed the work according to the contract agreements; discrepancies noted by the CBI, particularly regarding the installation of LED lights, reveal calculation errors and some misunderstandings. As far as the allegations concerning the inclusion of non-scheduled items are concerned, it is documented that such inclusion followed internal Railway procedures and was beyond the control of the petitioner.

11. The learned counsel has still further argued that the entire challan fails to provide any prima facie evidence of criminality, much less of bribes or illegal payments. The tender process adhered strictly to Railway rules and regulations, with all work accurately recorded in the measurement book by the Railway officials. The petitioner executed all work under the supervision of various Railway officials, with no reported defects. The Railway authorities inspected and accepted the work upon its completion. Post installation, the contractor had no role in the maintenance or operation of the LED lights. Therefore, given



**CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)**

7

these circumstances, the FIR against the petitioner, who was merely a contractor, deserved to be quashed as it constituted an abuse of the legal process. In support, learned counsel has placed reliance upon the ratio of law laid down by Hon'ble the Supreme Court in '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604.

Submissions made by learned counsel on behalf of petitioner-Surinder Pal Singh:

12. Learned counsel for the petitioner submits that the CBI has presented a wholly distorted version of events. While drawing the attention of the Court to complaint, annexed as Annexure P-2, learned counsel submits that it was a matter of record that neither was the petitioner named in the original vigilance complaint moved by Railways in the year 2016, nor in the FIR which came to be lodged in the year 2019. Still further, he was not even posted in the Division where the alleged scam took place. Drawing the attention of this Court to the challan, annexed as Annexure P-3, learned counsel has emphasized that the accusations of the CBI against the petitioner-claiming he manipulated addendums for non-scheduled (NS) items to keep costs within the authority of Sunil Kumar Senior DEE/G/NR/FZR-are baseless and unfounded. It has been asserted that the addendums were prepared according to the recommendation of the field officers who identified these requirements during the execution of



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

8

the project. As a field supervisor, the role of the petitioner was limited to documenting the demands raised by field officers and presenting them to the competent authority for approval. He neither initiated nor approved these demands but acted merely as an intermediary between the field officers and the approving authority. Furthermore, instructions of the Railway Board provide that written demands from field officers are not required for urgently needed items for project completion, further validating the actions of the petitioner.

13. Learned counsel further submits that the allegations against the petitioner of preparing an addendum worth ₹4,96,400/- for 73 LED Façade lights of 18 watts each and facilitating its approval, is also unfounded. The petitioner meticulously followed all procedures; the field supervisor's request, received by the field officer was processed and submitted to the Senior DEE/G/FZR for approval. The demand was then sent to the Finance Department for vetting, and only after thorough processing and compliance with the Standard Operating Procedure (SOP) was the proposal finally approved. The petitioner's involvement was restricted to preparing the addendum based on the demands received from the field and thereafter forwarding it for necessary approvals, without any personal manipulation or deviation from the procedure.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

9

14. It has been further argued that moreover, the allegations of a false bill dated 13.03.2015 amounting to ₹1,23,200/- is equally unfounded. The relevant work, including the supply and installation of 280 LED tube lights, is accurately documented in measurement book number 92055, with all entries duly verified and recorded according to contractual agreements. The material and work execution details are properly logged in the measurement book, which was signed by both Railway officials and the contractor, ensuring transparency and adherence to departmental procedures.

15. Learned counsel has furthermore submitted that the measurement books provide a clear and precise record of the work performed, fully aligning with the allocated tasks. The petitioner prepared the bills with meticulous attention to detail, adhering strictly to all prescribed rules and regulations. According to Chapter 13, Clause 15, of the Engineering Code of Railway, the Senior Section Engineer (SSE) is entirely responsible for the execution and field work, while the Assistant Divisional Electrical Engineer (ADEE) and Divisional Electrical Engineer (DEE) bear partial responsibility for test checks. The petitioner, while serving as an SSE, diligently fulfilled his duties by fully complying with the relevant guidelines and procedures.

16. Learned counsel has still further submitted that a critical oversight in the CBI's investigation is the failure to conduct any



**CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)**

10

physical site visits related to the contracts given in the years 2014 and 2015. This significant lapse raises doubts about the validity of the claims of the CBI, especially considering the potential changes, removal, or replacement of articles, over time, due to wear and tear. Additionally, at the time of the original Vigilance complaint by the Railway Department, the petitioner was posted in Jammu Tawi and was not named in the complaint, further indicating his innocence and non-involvement in the alleged activities during that period.

17. Furthermore, learned counsel has argued that the CBI has not demonstrated any financial loss to the Northern Railways or any wrongful gain to the petitioner, which negates the applicability of Sections 420, 467, 468 and 471 of the IPC. The petitioner has consistently performed his duties with integrity and without any misconduct. The Investigating Agency has failed to establish any connection either oral or documentary in their chargesheet to link the petitioner and the contractor nor have they proven any abuse of his official position. The investigation, on the face of it, appears to be based on speculation and there is absence of any cogent evidence against the petitioner. Learned counsel has asserted that the petitioner, who has dedicated nearly 40 years of unblemished service to the Railways, has been wrongly implicated in the FIR in question,



**CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)**

11

therefore, the same deserved to be quashed. Learned counsel, in support has also placed reliance upon **Ch.Bhajan Lal's case (supra)**.

Submissions made by learned Spl. Public Prosecutor on behalf of the respondent-CBI

18. Learned Special Public Prosecutor for the CBI assisted by the learned counsel for the Railways has vehemently opposed the prayer and submissions made by the opposing counsels. Drawing the attention of this Court to the allegations levelled in the FIR (Annexure P-1), learned counsel have argued that there are serious allegations levelled against the petitioners. They are accused of conspiring to benefit M/s Kay & Kay Enterprises, of which petitioner-Vishal Kapoor is a Proprietor, resulting in a monetary loss exceeding ₹3.11 crores to Northern Railways.

19. It has been further contended by the learned counsel that the reliance placed by the petitioners on the amendment to the Prevention of Corruption Act, specifically regarding Section 13(1)(d) would not further their case. The amendment does not apply retrospectively, i.e. to offences that were committed before its enactment. It has been asserted that the Legislature did not intend to nullify the previous law with this amendment. Since the alleged offences were committed while the earlier law was still in force, there is no impediment to registering the FIR and proceeding with the investigation.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

12

20. While drawing the attention of this Court to the Challan (Annexure P-2), learned counsel have submitted that a thorough and detailed investigation by the CBI revealed that Sunil Kumar, the then Sr. DEE/G/Ferozepur, B.C.Azad, the then DEE/G/Northern Railways/Ferozepur (FZR), Neeraj Sharma, SSE/PS/N.Railway/Ludhiana (LDH), Bhuvnesh Kumawat, SSE/PS/N.Railway/Jalandhar City (JUC), Ashwani Kumar, SSE/Tech/N.Railway/Ferozepur and Ashok Kumar, SSE/PS/Northern Railway, Amritsar (ASR) along with others, entered into a criminal conspiracy to award 17 contracts to M/s Kay & Kay Enterprises, owned by petitioner Vishal Kapoor. The investigation uncovered multiple irregularities in the execution of these contracts. The contractor failed to supply ACSR conductors and other materials and did not even complete the awarded works. General conditions, rules, and guidelines common to all tenders and contracts were disregarded, and payments were released to M/s Kay & Kay Enterprises without the contracted items or materials being supplied or the works being executed.

21. Learned Spl. Public Prosecutor for CBI has further submitted that the investigation uncovered gross irregularities, with payments made based on fraudulent bills, falsely indicating the supply of items and the execution of works per contract agreements. At the request of the contractor, the inspection by RITES was waived, and the



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

13

contractor was granted an extension for supplying materials without any valid reason. It was discovered that proposal for 18-watt Façade lights was prepared against a demand for 50-watt LED lights. The contractor supplied 50-watt LED lights of local brands (i.e. SVICH, HYGLOW, CLAIR) instead of the specified brands (i.e. PHILIPS, OSRAM, SEOUL, LUMILEDS, NICHIA). Although M/s Kay & Kay Enterprises was contracted to supply 310 LED fittings, only 200 were supplied, leaving 110 fittings deficient on-site. Nevertheless, payment was made for all 310 LED fittings. Additionally, non-scheduled (NS) items worth ₹71.38 lacs were incorporated into 15 contracts without proper justification.

22. Learned Spl. Public Prosecutor for CBI has still further submitted that Sunil Kumar, the then Sr. DEE/G/Ferozepur, B.C.Azad, the then DEE/G/Northern Railways/Ferozepur (FZR), Neeraj Sharma, SSE/PS/N.Railway/Ludhiana (LDH), Shiv Kumar, SSE/PS/N.Railways/Ferozepur (FZR), Bhuvnesh Kumawat, SSE/PS/N.Railway/Jalandhar City (JUC), Ashwani Kumar, SSE/Tech/N.Railway/Ferozepur, S.P.Singh, the then SSE/Tech/N.Railways/FZR(DEFO), Surinder Pal Singh, SEE/PS/N.Railways/Amritsar, Sanjit Singh, then ADEE/G/N.Railway/Amritsar abused their official positions by conspiring with each other and the contractor, Vishal Kapoor



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

14

(Proprietor of M/s Kay & Kay Enterprises), with dishonest intentions to defraud Northern Railways. They created false documents, certificates, bills and Measurement Books, providing undue advantage to the contractor and causing a wrongful loss of ₹3,11,83,053/- to Northern Railways.

23. Furthermore, it has been argued by the learned counsel that the collusion of all the accused including the petitioners in the present scam is evident from the fact that NS items worth ₹71,46,056/- were added to 15 contracts through addendums without proper justification and in violation of the SOP. According to the SOP, NS items can only be added to a contract under unavoidable circumstances, but here, they were added without meeting such criteria. The investigation also revealed that against the contract agreement for 327 LED Façade lights (310 of 18 watts and 17 of 30 watts), M/s Kay & Kay Enterprises supplied only 49 LED Façade lights, yet payments were made for all 327 lights. During spot inspection, none of the LED Façade lights matched the contract specifications. Learned counsel also contended that further irregularities included the supply and execution of ACSR conductors and other items. For instance, M/s Kay & Kay Enterprises was awarded a contract for supplying and executing 12015 kgs (6/1/3.35 RABBIT) and 6407 kgs (6/1/2.59 WEASEL) overhead ACSR conductors and other materials worth ₹52,60,395/-, later increased to



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

15

₹57,56,595/- through an addendum. Payment of ₹9,85,572/- was made without the supply. Not only this, investigation also revealed that the contractor had not supplied 998 kgs (RABBIT) and 350 kgs (WEASEL) ACSR conductors, yet payment of ₹4,89,172/- was made to the contractor petitioner Vishal Kapoor.

24. Regarding petitioner Surinder Pal Singh, learned Spl. Public Prosecutor for the CBI submitted that he was working as Senior Section Engineer/Power Supply/Northern Railways/Jalandhar City and there is documentary evidence showing that he issued false bills amounting to ₹6.21 lacs and recorded measurement books (MBs). While working as Senior Section Engineer in Ferozepur, he also prepared 4 corrigenda amounting to ₹12.00 lacs in four contract agreements and forwarded various bills and MBs for payments. The criminal conspiracy and fraudulent activity caused a huge loss to the Northern Railways amounting to ₹3,11,83,053/-.

25. In the light of the above, learned Spl. Public Prosecutor for the CBI vehemently asserted that since there are grave allegations against the petitioners which are supported by substantial documentary evidence. The case is still pending consideration on charge, and the arguments of the petitioners regarding their alleged false implication are premature defences that should not be addressed at this stage, as they are issues which can be delved into only during trial. It has also



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

16

been contended that a detailed and meticulous evaluation of evidence would be inappropriate at the stage of proceedings under Section 482 of the Cr.P.C. more so when the case is still pending consideration on charge. In support, learned counsel has placed reliance upon '**State of Madhya Pradesh vs. Kunwar Singh**' CRA-709-2021 (decided on 30.07.2021), which underscores the principle that the merits of evidence should be assessed during trial rather than in preliminary enquiries.

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

27. Undoubtedly, Section 482 of the Cr.P.C. confers extraordinary powers upon this Court, however, these powers must be exercised sparingly and with a great deal of circumspection. While considering a petition to quash FIR and all criminal proceedings arising therefrom, the Courts must take care not to prematurely stifle the prosecution. The learned counsel for the petitioners have heavily relied on the judgment of Hon'ble the Supreme Court in '**State of Haryana v. Ch.Bhajan Lal**' (supra). This landmark judgment specifies that an FIR or complaint can be quashed only if the allegations made therein, even when taken at face value and accepted in their entirety, do not prima facie constitute any offence against the accused.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

17

28. In the present case, a thorough examination of the FIR as well as the accompanying challan (Annexures P-1 & P-3 respectively) indicates the prima facie commission of offences under Sections 120-B, 420, 467, 468, 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act. Determining whether the petitioners had any role in the alleged crime, or whether the contract in question was awarded and executed according to the prescribed procedure without any irregularities, necessitates a detailed evaluation of the evidence which can be done only when the parties lead their respective evidence, which in turn would be tested on the touchstone of cross-examination by the CBI. This Court therefore cannot be expected to carry out a meticulous appreciation of the evidence at this juncture. Moreover, the allegations in the FIR are not manifestly attended with malafide intentions nor do they appear to be maliciously instituted with an ulterior motive for vengeance. Rather the FIR clearly discloses the commission of cognizable offences, justifying investigation by the Investigating Agency under Section 156(1) of the Cr.P.C. Consequently, the prayer of the petitioners to quash the FIR in question along with all consequent proceedings arising therefrom does not fall within any of the specific categories outlined by Hon'ble the Apex Court in **Ch.Bhajan Lal's case (supra)**.

29. As a sequel to the above, both the petitions stand dismissed.



CRM-M Nos.60887 of 2022 (O&M) &
CRM-M No.8549 of 2023 (O&M)

30. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

May 23, 2024
rps

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