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

\+ CRL.REV.P. 276/2024

STATE ..... Petitioner

Through: Ms. Shubhi Gupta, APP for State with SI Naresh Kumar, PS: Anti-Corruption Branch.

versus

DR. VIJAY KUMAR JHA & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **16.04.2024**

<u>Crl. M.A. 6168/2024 (for condonation of delay)</u>

1. This is an application filed on behalf of the State under Section 5 of the Limitation Act, 1963 read with Section 482 Cr.P.C. for condonation of delay of 350 days in filing the present revision petition.

2. Having perused the application, I find that the Petitioner has made out sufficient cause for condonation of delay. Accordingly, the application is allowed and the delay of 350 days in filing the revision petition is condoned.

3. Application stands disposed of.

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4. This revision petition has been preferred by the State challenging order dated 12.09.2022 passed by learned Special Judge, PC Act, Rouse Avenue District Courts, New Delhi in case FIR No. 16/2013 registered under Section 12 of the Prevention of Corruption Act, 1988 ('PC Act') and Sections 116/120B IPC at PS: Anti-Corruption Branch, whereby Respondents have been discharged.

5. Facts to the extent necessary are that on 20.09.2013, Ashwani Bagri, a social worker and President of Rahul Vichar Parchar Samiti (registered) filed a complaint before the ACP, Anti-Corruption Branch against Government doctors Sudesh Kumar and V.K. Jha for giving him bribe to withdraw his complaint dated 13.09.2013. It was alleged that despite a grant of Rs.98 crores by Delhi Government in last 4 years, condition of Babu Jagjivan Ram Memorial Hospital was bad and private contractors under the protection of DMS Suresh Seth were giving only Rs.2,500/- to Rs.4,000/- per month to sweepers, security guards and other staff members, although the minimum wage was more than Rs.7,000/- per month. Suresh Seth posted Sudesh Kumar and V.K. Jha in the mortuary, although they did not possess a forensic degree, in order to give them opportunity to conduct post-mortems. Misusing his official position, Suresh Seth had allocated days for them in the postmortem department. Complaint was made to the Health Minister, who ordered an inquiry by Secretary, (Health). Finally, after several efforts, a meeting of Patient Welfare Committee was called on 14.09.2013 chaired by the SDM, who issued directions to transfer Sudesh Kumar and V.K. Jha from the postmortem department. Both approached the complainant to withdraw his complaint, in lieu of which V.K. Jha offered to pay Rs.50,000/-. On 20.09.2013, Sudesh Kumar called the complainant and again offered to pay money for withdrawing the complaint. He also conveyed that Suresh Seth, Mishra and Gopal were also ready to give him money, if complaints against them were withdrawn.

6. On receipt of the complaint, raid was conducted at the office of the complainant where Sudesh Kumar and V.K. Jha forcibly gave cash of Rs.50,000/- to the complainant in presence of a *panch* witness and both were apprehended. Upon conclusion of investigation, charge sheet was filed on

07.09.2021, wherein Section 116 IPC was added and the Respondents were charge sheeted under Section 12 PC Act read with Section 116/120B IPC. It was further stated that the accused persons, while posted in the Medicine Department of the hospital, had committed an offence under Section 12 of PC Act read with Sections 116/120B IPC in their private capacity and there was no wrongful loss or gain caused to the Government or any individual. Therefore, Sections 8 and 13 of the PC Act and Sections 417/418 IPC were removed, in the absence of any concrete evidence to attract these Sections. After hearing detailed arguments on charge, learned Special Judge discharged the Respondents vide the impugned order dated 12.09.2022, which is assailed by the State in the present petition.

7. Learned Special Judge examined the provisions of the PC Act and IPC invoked against the Respondents and held that Section 12 of the PC Act would be attracted against the accused persons, allegedly giving bribe in their personal capacity, only if they abetted offences under Sections 7 or 11 of the PC Act i.e. had taken gratification as 'public servant' other than legal remuneration in respect of any official act or as 'public servant' obtained valuable things without consideration from a person concerned in any proceeding or business transacted or about to be transacted. In the present case, complainant is not a public servant and thus no offence of abetment, as defined in Sections 7 or 11 of PC Act, was made out to attract provisions of Section 12 of the PC Act. Insofar as invocation of Section 12 of the PC Act with the aid of Section 116 IPC was concerned, learned Special Judge observed that in order to constitute abetment by conspiracy, there must be a combination of two or more persons and the act or illegal omission must be pursuant to the conspiracy. Section 116 of IPC comes into play only if the abetted offence, which is punishable with imprisonment be not committed in

consequence of the abetment and in the present case, there was no material to show that the Respondents in their private capacity, abetted any offence by giving bribe to a public person i.e. the complainant as defined under the PC Act or committed any other offence pursuant to their conspiracy, which is punishable with imprisonment, even if not committed pursuant to such abetment. Learned Special Judge noted that going by the charge sheet, prosecution had dropped Sections 8/13 of the PC Act and Sections 417/418 IPC, as no evidence of wrongful loss or gain had come forth during investigation.

8. With respect to the allegation of falsification of postmortem reports for extortion of money from families of deceased persons, basis was the recovery of one post-mortem report dated 07.01.2010 bearing PM No.1336/10 (carbon copy) from the locker of V.K. Jha, purportedly of one Rani, aged 12 years, in respect of which a second copy was found in hospital records, with a different cause of death. Trial Court was of the view that no criminal liability could be imposed on V.K. Jha as no investigation was conducted with respect to the handwritings on the two carbon copies, in the absence of the original report/ MLC, which was never recovered, besides the fact there was no complaint made by any person against him regarding the postmortem report.

9. State has challenged the impugned order of discharge but noticeably, grounds in the petition are skeletal and broadly focussed on abetment within the meaning of Sections 7 and 8 of PC Act, premised on the sole motive of the Respondents to compel the complainant to withdraw the complaint, for which they offered and paid Rs.50,000/- to him. Learned APP argues that Respondents had a motive to pay the bribe amount as they were desperate to be posted back to the postmortem Department of the hospital, where

they were fabricating/falsifying reports and extorting money from the families of the deceased. Respondents were caught red-handed giving bribe of Rs.50,000/- to the complainant in the presence of *panch* witness and therefore, ingredients of Section 13 of PC Act are made out. It is further argued that the learned Trial Court failed to appreciate that at the stage of framing of charge, only *prima facie* case is to be seen and Court is not to conduct a mini-trial. Reliance is placed on the judgment of the Supreme Court in ***Union of India v. Prafulla Kumar Samal and Another, (1979) 3 SCC 4,*** where the Supreme Court observed that at the stage of considering the question of framing charges under Section 227 Cr.P.C., Court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused and where the material on record discloses grave suspicion against the accused, which has not been properly explained, Court will be fully justified in framing the charge and proceeding with trial.

10. Heard leaned APP for the State and examined the arguments raised in light of the material on record, to test the legality of the impugned order.

11. The first issue that arises for consideration is the scope and ambit of revisional jurisdiction in a case where a siege is laid to an order of discharge of the accused persons. In ***Amit Kapoor v. Ramesh Chander and Another, (2012) 9 SCC 460,*** the Supreme Court elucidated on the revisional power under Section 397 Cr.P.C. as follows:-

> *"**12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court,*

it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. *Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.*

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27. *Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

27.1. *xxx xxx xxx*

27.2. *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

27.3. *xxx xxx xxx*

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

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27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

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27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."*

12. In ***State of Rajasthan v. Ashok Kumar Kashyap, 2021 SCC OnLine SC 314***, the Supreme Court observed that at the stage of framing of the charge or considering a discharge application, mini-trial is not permissible and the Judge is merely required to sift the evidence to ascertain if a *prima facie* case is made out. Revisional Court has to consider the correctness, legality or propriety of the order impugned before it and/or if the proceedings suffer from any irregularity but while doing so, Court will not delve at length into facts or evidence. In ***Prafulla Kumar Samal (supra),*** the Supreme Court laid down the following principles to be kept in mind by the Courts while framing charges or discharging an accused:-

"10. *Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

13. In ***B.N. Rao v. State (CBI), 1997 SCC OnLine Del 308***, this Court held as follows:-

"7. *After the charge sheet is filed in Court, the prosecutor has to inform the Court as to what is the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. It is at that stage that the Court is to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has thereafter to pass an order either under Section 227 or 228 of the Code of Criminal Procedure (in short referred to as "the Code"). If the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so as enjoined by Section 227 of the Code. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing the charge against the accused as provided in Section 228 of the Code. Therefore, at the time of framing of charge, the Court is not required to meticulously judge the truth, veracity and effect of the evidence which the prosecutor proposes to adduce at the trial. It is not obligatory for the Judge at that stage 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. The standard of test if 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 of the matter under Section 227 or Section 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. 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 will not be open for the Court to say that there were no sufficient grounds for proceeding against the accused. It was, therefore, held by the Supreme Court in State of Bihar v. Ramesh Singh, 1977 (4) SCC 39, that if the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if on the other hand, the scales are even at the initial stage of making an order under Section 227 or Section 228 of the Code, then in such a situation, ordinarily and generally, the order will have to be made under Section 228 and not under Section 227 of the Code. The test is whether there is sufficient ground for proceeding and not whether there are sufficient grounds for conviction."*

14. Since the inherent jurisdiction of this Court under Section 482 Cr.P.C. is also invoked, it would be relevant to pen down that the Section unambiguously provides that inherent powers are meant to be exercised: (a) to give effect to any order under Cr.P.C.; (b) to prevent abuse of the process of any Court; and (c) to secure the ends of justice. In this context, it would be apposite to allude to one of the recent judgments of the Supreme Court in ***Jitul Jentilal Kotecha v. State of Gujarat and Others, 2021 SCC OnLine SC 1045.***

15. I would now examine the impugned order and the contentions raised on behalf of the State, in light of the provisions invoked against the Respondents and in the backdrop of the aforementioned judgments, laying down the scope of interference in an order of discharge in a revisional jurisdiction. It bears repetition to state that the thrust and focus of the grounds of revision and the oral arguments on behalf of the State is that ingredients of Sections 7/8/13 of the PC Act are made out against the Respondents, since they paid bribe to the complainant with the sole motive of compelling him to withdraw the complaint. The argument is wholly misplaced and completely overlooks the fact that in the charge sheet itself, it is noted that '*.....the investigation conducted so far, reveals that both the*

accused persons were posted in medicine department and committed the offence u/s 12 PC Act r/w 116/120-B IPC in their own private capacity not in the capacity of public servant. It is further submitted that no wrongful loss or gain to the government, or individual were detected, thus Sections 8, 13 of PC Act and Section 417/418 IPC are not attracted in the present case, hence, the above Sections 8, 13 of PC Act and 417/418 IPC have been removed as no sufficient and specific concrete evidence come up on surface.' Therefore, while filing the charge sheet, Sections 8 and 13 of the PC Act were dropped, in the absence of sufficient and concrete evidence and these Sections cannot be pressed at this stage by the State.

16. Charge sheet was filed under Section 12 of the PC Act read with Sections 116/120B IPC. As per the charge sheet, Respondents were prosecuted for offence under Section 12 of the PC Act read with Sections 116/120B IPC in their private capacity and not as 'public servants'. It is an admitted case that the complainant Ashwani Bagri was a social worker, to whom allegedly Respondents had offered and given bribe of Rs.50,000/- for withdrawing the complaint. Section 8 of the PC Act applies where a private person accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induces a public servant, by corrupt or illegal means to perform or to cause performance of a public duty improperly. Section 12 of the PC Act before amendment by Act 16 of 2018 w.e.f. 26.07.2018 read as follows:-

> *"**12. Punishment for abetment of offences defined in Section 7 or 11. –** whoever abets any offence punishable under Section 7 or Section 11, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."*

17. A bare perusal of the provisions of Sections 8 and 12 of PC Act shows

that the same would be attracted against the Respondents if they, in their private capacity, abetted offences defined under Sections 7 or 11 of the PC Act. An offence is committed by a 'public servant' under Section 7 of PC Act when he obtains, accdelayepts or attempts to obtain/accept gratification other than legal remuneration in respect of an official act and Section 11 is attracted when a 'public servant' obtains valuable things without consideration from the person concerned in proceedings or business transacted by the public servant. As the complainant is not a public servant, he cannot be made liable for offences under Sections 7/11 of PC Act and thus the offence of abetment cannot be made out against the Respondents to attract Section 12 of the PC Act, as rightly held by the Trial Court.

18. The next question that posits an answer is whether Section 12 is attracted with the aid of Section 116 IPC. Section 116 IPC reads as follows:-

> *"**116. Abetment of offence punishable with imprisonment—if offence be not committed.**— Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both."*

19. Abetment has not been defined in the PC Act but by virtue of Section 28 of the said Act, it is permissible to look into the definition of abetment as appearing under Section 107 of IPC. Section 107 is extracted hereunder for ready reference:-

> *"107: Abetment of a thing. – A person abets the doing of a thing, who –*
>
> *First. – Instigates any person to do that thing; or*
>
> *Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

> *Thirdly. – Intentionally aids, by any act or illegal omission, the doing of that thing.*
>
> *Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*
>
> *Explanation 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."*

20. Section 116 IPC comes into play when there is abetment of an offence punishable with imprisonment, if that offence be not committed in consequence of the abatement. As defined in Section 107 IPC, a person abets the doing of a thing when he: (a) instigates any person to do that thing; or (b) engages with one or more persons in a conspiracy for the doing of that thing and if an act or illegal omission takes place in furtherance thereof; or (c) intentionally aids the doing of that act. It is not the case of the prosecution that any conspiracy was hatched to do the alleged illegal act. Instigation or aiding has to be seen in the context of the offence under Section 12 of PC Act, which as aforenoted is not attracted as the complainant is not a public servant and the allegations against the Respondents are not of accepting gratification other than legal remuneration in respect of any official act or obtaining valuables without consideration from persons concerned in proceedings or business transacted by such public servant, which are the essential ingredients of Sections 7 and 11 of PC Act, respectively. Therefore, in my considered view, Trial Court has rightly held that even on a *prima facie* threshold, offence under Section 12 is not made out even if read with Section 116/120B IPC.

21. Coming to the alleged falsification of postmortem reports, as noted by the Trial Court, a committee was constituted by Deputy MS of the Hospital

to open the lockers of both the Respondents. From the locker of V.K. Jha, allegedly a carbon copy of one post-mortem report bearing No.1336/10 dated 07.01.2020, was recovered and as per the prosecution case, another report with the same number was found in the hospital records but with a different cause of death. Argument of the defence counsel was that the complaint was filed in connivance with one Dr. Bhim Singh, In-charge of mortuary of Babu Jagjivan Ram Memorial Hospital, who had a previous enmity with the Respondents, which fact was apparent from his statement recorded under Section 161 Cr.P.C. It was urged that as per the notifications on the issue, which were also part of the Charge Sheet, any doctor having MBBS degree was empowered to conduct the post-mortem on dead bodies and there was no requirement to possess a separate forensic degree. It was denied that copy of a post-mortem report of Rani was recovered from the locker with a different opinion on the cause of death and the case set up was that Dr. Bhim Singh had planted the report in the locker. Trial Court notes that no investigation was carried out to compare the handwritings on the carbon copies and the original was never recovered. Trial Court also notes that no complaint was received from any person regarding the post-mortem report. None of these facts are controverted in the grounds in the present petition or even during arguments today.

22. In view of the aforesaid facts and circumstances including the legal provisions, this court finds no infirmity with the impugned order warranting interference by this Court in its revisional jurisdiction.

23. Revision petition is accordingly dismissed being bereft of merit.

JYOTI SINGH, J

APRIL 16, 2024/*DU/shivam*