



\$~54

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

+ **CRL.M.C. 5463/2022 & CRL.M.A. 21669/2022**

VIJAY THAKUR

.....Petitioner

Through: Mr. Tarun Chandiok, Adv.
through V.C.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Ripudaman Bhardwaj
with Mr. Kushagra Kumar,
Mr. Abhinav Bhardwaj,
Advs. & PI (IO)
Deepinder Badan.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

04.10.2024

%

1. The present petition is filed against the proceedings and order dated 25.10.2019 (hereafter '**impugned order**') passed by the learned Special Judge, RACC, New Delhi in CBI Case No. 189/2019 titled *CBI vs. B. M. Sethi*.

2. By impugned order, the learned Trial Court noted that in light of Section 10 of the Indian Evidence Act, 1872, since the petitioner is facing trial for the offence of conspiracy under Section 120B of the Indian Penal Code, 1860 ('**IPC**'), in addition to other substantive offences, the entire testimony of a prosecution witness needs to be put to the accused in his examination under Section 313 of the Code of Criminal Procedure, 1973 ('**CrPC**') even if any part/ whole may not directly inculcate the accused but inculcates the other co-

CRL.M.C. 5463/2022

Page 1 of 8



conspirators. The petitioner is also aggrieved by the proceedings carried out under Section 313 of the CrPC inasmuch as the questions put to him did not directly inculcate him.

3. The FIR No. RC.09(A)/2006/SCU.V/CBI/SCR-II dated 29.09.2006 was registered at Police Station CBI under Sections 120B/419/420/468/471 of the Indian Penal Code, 1860 ('IPC') and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It is alleged that numerous Cooperative Societies registered during 1970s and 1980s were not allotted land by the DDA, and consequently they became defunct and nonfunctional. On being defunct, these societies were wound up by the Registrar of Cooperative Societies Delhi under the provisions of Section 63(2) of the Delhi Cooperative Societies Act, 1972, and were later revived on the basis of false and forged documents. It is alleged that post the revival of the society, the Registrar of Cooperative Societies made recommendation to DDA for allotment of land to the society.

4. It is alleged that several persons including Shri Gopal Dixit, B.M Sethi, Karamvir Singh, Narender Singh, Mahanand Sharma, Pankaj Madan, Ashwani Sharma, Ashutosh Pant, Sudarshan Tandon, Ramesh Bajaj and other persons entered into a criminal conspiracy pursuant to which they cheated the Government of NCT Delhi by committing the offences of impersonation, cheating, forgery and abuse of official position being public servants, in reviving Safdarjung CGHS Ltd., and in fraudulently securing allotment of land measuring 5000 square metres at Plot No. 4, Dheerpur, Delhi from the DDA.

5. Chargesheet in the present case was filed under Sections 120B/420/467/468/471 of the IPC and Section 13(2) read with



Section 13(1)(d) of the PC Act against 15 accused persons including the petitioner.

6. The allegation against the petitioner is that an account was opened by the petitioner on the merged Oriental Bank of Commerce with the petitioner portraying himself as the President of Safdarjung Cooperative Group Housing Society. It is alleged that the petitioner in connivance with accused Vikas Madan fraudulently opened the bank account as President of the Society. It is alleged that the petitioner signed on various pages as President of the society despite the fact that he was never elected as President. It is alleged that the said account was opened by the petitioner as President, accused Vikas Madan as Secretary, and Poonam Awasthi as treasurer of the Society.

7. The grievance of the petitioner at this stage is that the learned Trial Court erred in not framing proper questions, and putting it to the petitioner in consonance with Section 313 of the CrPC.

8. He relies upon the judgment of this Court in ***Shri Bal Kishan vs. State : CRL. M.C. 3643/2022 & CRL.M.A. 15303/2022*** to contend that the purpose of Section 313 of the CrPC is to afford the accused an opportunity to establish his innocence. He submits the object of Section 313 of the CrPC is to give the accused an opportunity to provide an explanation regarding the incriminatory evidence against him, and not all the evidence in general. He submits that no such question which contained any incriminatory evidence was put to the petitioner.

9. *Per contra*, the learned counsel for the respondent submits that the allegation against the petitioner is one of conspiracy. He submits that the mandate under Section 10 of the Indian Evidence



Act, 1872 is clear which provides that in cases of conspiracy, anything said or written against any one of the persons in reference to their common intention is a relevant fact against each of the accused persons who are believed to be conspiring, and is also relevant for the purpose of proving the existence of conspiracy. He submits that in terms of the mandate provided under Section 10 of the Indian Evidence Act, 1872, the entire evidence which relates to the conspiracy can be considered.

10. *In arguendo*, he submits that the petitioner has even otherwise not answered any question, therefore, no prejudice is caused to the petitioner.

11. It is seen that the accused is charged for an offence under Section 120B of the IPC. In this regard, Section 10 of the Indian Evidence Act, 1872 provides as under:

“10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it”

12. A bare reading of Section 10 of the Indian Evidence Act, 1872 makes it clear that where two or more persons conspire to commit an offence, then anything said or done by any person involved in reference to the common intention is a relevant fact. In this regard, the learned Trial Court rightly noted that in offences involving Section 120B of the IPC, a person can be convicted on the basis of the acts of the co-accused persons.



Consequently, it was noted that any portion of the evidence of the prosecution which may not directly inculcate the accused, would be read in evidence against the accused insofar as the charge of conspiracy is concerned. For the same reason, it was noted that the entire testimony of the prosecution witness is to be put to the accused in his examination under Section 313 of the CrPC, even if, it does not directly inculcate him but inculcates the other co-conspirators.

13. Section 313 of the CrPC reads as under:

“313. Power to examine the accused.—

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

14. The purpose of Section 313 of the CrPC is to afford an opportunity to the accused to establish his innocence. The



answers given by the accused assume relevance not only in determining the truth but also in testing the case of the prosecution. For this reason, Section 313 of the CrPC cannot be regarded as a mere formality, and casts a mandate on the Courts to question the accused generally on the case so as to enable the accused to explain all or any circumstance appearing in evidence against the accused. The usage of the word “shall” under Section 313(1)(b) of the CrPC is meant to act as a mechanism to enable a direct discourse between the accused and the Court.

15. At this stage, the contention of the petitioner is that the questions ought to have been framed in a manner that only such questions which were incriminatory in nature ought to have been put to him. This Court does not find merit in the contention of the petitioner. This Court is in agreement with the observations made by the learned Trial Court that since the allegations against the petitioner was one of conspiracy, evidence which does not directly inculcate the petitioner but inculcates the other co-conspirators could also have been put to him.

16. Even otherwise, at this stage, it is apparent that no prejudice has been caused to the petitioner merely because the questions put to him did not pertain only to the incriminating circumstances against him. It has also been pointed out that the petitioner has even not replied to the questions put to him. It has been reiterated in a catena of judgments by the Hon’ble Apex Court that not questioning the accused regarding incriminating circumstances against him would vitiate the trial if the same results in material prejudice to the accused. Consequently, even if the case of the petitioner is taken at the highest, it is apparent that no prejudice has been caused to the petitioner at this stage, and



the same would be tested once the trial concludes. The benefit of the irregularity would even otherwise be available to the petitioner at the stage of final arguments. At the initial stage, the challenge to the format of questions itself, being framed under Section 313 of the CrPC, is nothing but an attempt to delay the trial.

17. It is also pertinent to note that the impugned order was passed way back in the year 2019. The present petition, however, challenging the impugned order, and the proceedings has been filed much later in the year 2022. The learned Trial Court, in the impugned order, records that the petitioner was to file written statement in his response to the questions framed in accordance with Section 313(5) of the CrPC. It is informed that the petitioner has still not replied to the questions framed under Section 313 of the CrPC. The same clearly demonstrates the *mala fide* attempt of the petitioner to delay the trial.

18. The petition at this stage therefore appears to be frivolous, and would unnecessarily impede the trial.

19. The Hon'ble Apex Court in ***K Vadivel vs. K. Shanthi and Others* : 2024 SCC OnLine SC 2643** while setting aside the judgment of the Madras High Court ordering further investigation after the final arguments in the matter had concluded observed as under:

“46. The legal profession has an important role to play in the process. Any proceeding or application which prima facie lacks merit should not be instituted in a court. We are constrained to observe this because of late we notice that pleadings/petitions with outrageous and ex facie unbelievable averments are made with no inhibition whatsoever. This is especially so in some family law proceedings, both civil and criminal. Reading some of the averments therein, we are left to wonder whether at all the deponents were conscious of what has



been written purportedly on their behalf, before appending their signatures. These misadventures directly impinge on the rule of law, because they add to the pendency and the consequential delay in the disposal of other cases which are crying for justice. It is time that such frivolous and vexatious proceedings are met with due sanctions in the form of exemplary costs to dissuade parties from resorting to such tactics. If we have desisted from such a course in this case, it is only because the High Court allowed the petition and it is here that we have, reversing the High Court, dismissed the petition for further investigation.”

20. It is a common tendency of the litigants to unnecessarily prolong the trial, and inundate the Court with frivolous applications and petitions thereby adding to the pendency and consequential delay in the disposal of cases to the detriment of other litigants.

21. In view of the aforesaid, this Court finds no reason to interfere with the impugned order or the proceedings under Section 313 of the CrPC.

22. The present petition is accordingly dismissed with a cost of ₹50,000/- to be paid by the petitioner to the Delhi Police Welfare Society within a period of four weeks from date.

AMIT MAHAJAN, J

OCTOBER 4, 2024

“SK”