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

\+ CRL.M.C. 3481/2018, CRL.M.A. 12633/2018, CRL.M.A. 13566/2023

KRISHNA KUMAR .....Petitioner

Through: Mr.Mohit Mathur, Sr.Adv. with Mr.Vikram Singh Panwar, Mr.Vikas Walia, Mr.Saksham Kumar, Mr.Piyush Kumar, Mr.Sumit Verma, Mr.Akash, Ms.Shreshtha Arya and Ms.Vijaya Singh, advts.

versus

CENTRAL BUREAU OF INVESTIGATION .....Respondent

Through: Mr.Ravi Sharma, SPP for CBI, Mr.Praphull Kumar, Mr.IshannBhardwaj and Ms.Madhulika Rai Sharma, Advts.s

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **21.08.2024**

1. Present petition has been filed challenging the order dated 14.09.2009 & 15.10.2009 and and order on charge dated 04.04.2012 whereby learned Special Judge, P.C.Act, CBI-III, Rohini Courts, Delhi *inter alia* found that there is a *prima facie* case against petitioner for offence under Section 120B IPC read with Section 420/467/468/471 IPC Section 13 (1) (d) of P.C.Act. Learned special Judge has found the petitioner to have prima facie committed the offence punishable under Section 13(2) read with 13(1)(d) of P.C. Act, 1988. Pursuant to the

charge, the formal charge was framed against the petitioner on 23.04.2012 to which the petitioner pleaded not guilty and claimed trial. The petitioner vide the present petition has challenged the predominantly order on taking cognizance and order on charge.

2. Mr. Mohit Mathur, learned Senior Counsel for the petitioner has submitted that the perusal of order dated 14.09.2009 makes it clear that on that day there was no sanction against the present petitioner who was a public servant and the learned Special Judge despite there being no sanction, took the cognizance against the private persons and *inter alia* observed that since sanction for prosecution in respect to the public servant including the petitioner had not been received as yet, cognizance be taken against the remaining eight accused private persons. The learned Special Judge *inter alia* held that the sanction for prosecution would be filed as and when the same is received against the abovesaid three accused persons. Learned Senior Counsel submits that on 15.10.2009 after the sanction was filed under Section 19 of the Prevention of Corruption Act, the summons were issued to the present petitioner. Learned Senior Counsel submits that the order taking cognizance by the learned Special Judge is totally erroneous and illegal. Learned Senior Counsel would submit that cognizance is taken of the offence and as in absence of the sanction, the cognizance could not have been taken and, therefore, the cognizance against the private persons is bad in law. Learned Senior Counsel further submits that even on the merits no case is made out against the present petitioner and the learned trial court has fallen into grave error by ordering for framing of the charge against the petitioner.

3. To buttress his arguments, learned senior counsel has invited the attention of the court towards the role of petitioner as detailed in the charge-sheet. The learned senior counsel submits that the mere allegation against the petitioner is that he conspired with other accused persons in order to get the freeze list of 300 members of New Hind CGHS approved from RCS and sent the same to DDA for allotment of land. Learned Senior Counsel further submitted that even in the order on charge learned Special Judge *inter alia* observed that the petitioner was working as a Joint Registrar in the office of RCS during the relevant period and he forwarded the recommendation of the accused P.N.Manchanda and endorsed the office noting without getting verified, the genuineness of the members and their whereabouts and also recommended the approval of the freeze list which contained non-existing members. The learned Special Judge also observed that the petitioner failed to notice that there was no record pertaining to resignation of members which were manipulated by the society in the office of the RCS.

4. Learned Senior Counsel submits on the identical facts, the Coordinate Bench of this Court in ***Rakesh Bhatnagar vs. Central Bureau of Investigation***2023 SCC Online Del 7440 discharged the petitioner on the ground that in absence of sanction under Section 197 Cr.P.C., the cognizance could not have been taken against the petitioner. The learned Senior Counsel submits that the allegations against Rakesh Bhatnagar as recorded by the coordinate bench of this court are as under:

"2.9 That the investigation revealed that the accused/petitioner

Rakesh Bhatnagar (A-7) was working as Joint Registrar in Registrar Cooperative Societies office, New Delhi and he had recommended the note sheet of J.S. Sharma (A-6) in a most irregular manner. Before recommending the note sheet, he did not ensure about the revival of the Society and he did not raise any query about liquidation or revival of Arvind CGHS Ltd. He endorsed the recommendation of J.S. Sharma (A-6) for the approval of freeze list of the members of the Society and forwarded the same to DDA for the allotment of land.

2.10 That, the investigation also revealed that the accused/petitioner being a Joint Registrar was duty bound to point out that the Arvind Cooperative Group Housing Society was under liquidation and hence before getting revival, the same could not have been considered for allotment of land. Some of accused tried to get land allotted by forging records of the said Society, introduced some new members by getting' fake resignation of existing members and to fulfil their ill design, they involved accused/petitioner Rakesh Bhatnagar (A-7) in conspiracy and the petitioner Rakesh Bhatnagar (A-7) in pursuance of said conspiracy~ concealed the fact that said Society was under liquidation as no land could be allotted without revival of said Society."

5. Learned Senior Counsel further submits that, in that case, the charges framed against the petitioner were under Sections 420, 468, 471 read with Section 120B IPC, and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, as in the present case. The learned Senior Counsel also noted that Coordinate Bench of this Court, after a detailed hearing of arguments from both parties and examining the jurisdiction to be exercised at the stage of framing charges, allowed the petition and discharged the petitioner due to the absence of sanction under Section 197 Cr.P.C. from the Competent Authority.

6. Mr. Ravi Sharma, learned Special Counsel for the CBI, has fairly submitted that no sanction under Section 197 Cr.P.C. has been obtained, but the CBI has obtained sanction under Section 19 of the P.C. Act. However, Mr. Sharma contended that sanction under Section 197 Cr.P.C. is not required in this case, as the petitioner falsified the entry in question. He drew the Court's attention to the charge sheet, which specifically alleges that the note dated 05.09.2000 by R.K. Srivastav, RCS, regarding the permissibility of the adoption of an earlier Management Committee decision by the existing Management Committee, was affirmatively replied to by the petitioner, the then Joint Registrar. The petitioner stated that once the society had been revived, the Management Committee, in a fresh resolution like that dated 23.07.2000, could rectify resignations and enrolments made during the period of liquidation, asserting that there was no legal hindrance in such cases. Learned counsel for the CBI submits that there was, in fact, no meeting of the Management Committee dated 23.07.2000 were found to have been held. Learned Counsel contends that the facts in the present case are distinguishable from those in Rakesh Bhatnagar (supra), as pointed out by the learned Senior Counsel.

7. Regarding the challenge to the order taking cognizance, learned Counsel for the CBI submits that it is a mere irregularity. Reliance has been placed on the judgment passed by the Supreme Court in ***Pradeep S. Wodeyar vs. The State of Karnataka***, Crl. Appeal No. 1288/2021wherein it was *inter alia* held that the Special Court's order taking cognizance under the MMDR Act without committal by a Magistrate was deemed irregular, but not sufficient to vitiate the

proceedings under Section 465 Cr.P.C. Additionally, the power of the Special Court to take cognizance and conduct a joint trial under the MMDR Act, alongside the applicability of Section 220 CrPC, was upheld, with no failure of justice demonstrated.

8. I have considered the submissions. The scope of jurisdiction to be exercised at the stage of framing charges is well-settled. The jurisdiction at this stage is described under Sections 227 and 228 Cr.P.C. Charges can be framed against the accused if the court, after hearing both the accused and the prosecution, considers that there are grounds for presuming that the accused has committed an offense. Conversely, the accused shall be discharged if there are no sufficient grounds for proceeding against them. The court at this stage is not required to hold the mini trial and meticulously examine the probative value of the witnesses. The court is also not required to frame the charge at the mere asking of the prosecution. It is also a settled proposition that if two views are possible, the view favorable to the accused should be taken. In ***Union of India v. Prafulla Kumar Samal***, (1979) 3 SCC 4, the Supreme Court *inter alia* held that at the stage of framing charges, the Trial Court can sift and weigh evidence for the limited purpose of determining whether a prima facie case exists against the accused. Charges should be framed not on mere suspicion but on facts that create grave suspicion of the accused's involvement in the offense.Charges framed against a person must be based on grave suspicion, as they have a significant impact on the individual's liberty.

9. The case against the present petitioner, according to the chargesheet, is that Krishan Kumar, who served as the Joint Registrar in the office of

RCS during the relevant period, played a significant role in the fraudulent revival of the society by simply forwarding the recommendations of the accused P.N. Manchanda without verifying the authenticity of the members or their whereabouts. He endorsed office notings and recommended the approval of a freeze list that included non-existing members, further compounding the fraud. Additionally, petitioner failed to notice the absence of records related to the resignation of members, which had been manipulated by the society. His actions, marked by a lack of due diligence, contributed to the fraudulent activities being carried out unchecked. This negligence ultimately facilitated the society's unlawful revival and the subsequent allotment of land.

10. The submission of learned counsel for the CBI that the fact regarding the Management Committee meeting dated 23.07.2000 was fabricated by the petitioner is not correct. The office noting of the Assistant Registrar (S) dated 05.09.2000 reads as follows:-

> *With reference to objections raised by the Ld. RCS on pre page it is submitted that the society was sought clarification in this regard vide ourletter dated 20.03.2000. the society vide its letter dated 31.08.2000 had stated that the enrolments and resignations which had taken place during the period under which the societywas placed under liquidation, was done by the previous managing committee which was in power in those years, which isagainst the act/ rules. <u>However, the present managing committee vide its meeting dated 23.07.2000 had confirmed and accepted all the enrolments and resignations which had taken when the society was placed under liquidation i.e. 12.02.1992 to 29.06.2000. The society has produced the original records which were verified and the copy of the same isplaced from page 544/cto 549/c. In view of the circumstances, list of members as reproduced from page 36/N</u>*

<u>to 41/N may be approved and then maybe forwarded to DDA for allotment of land</u>.

11. A review of the notations indicates that the meeting held on 23.07.2000 was communicated to the petitioner by the Assistant Registrar. The Apex Court, in ***A. Srinivasulu v. State Rep. by the Inspector of Police***, 2023 SCC OnLine SC 900, considered the observations made in ***Parkash Singh Badal v. State of Punjab***, (2007) 1 SCC 1. It was held that the observations contained in paragraph 50 of the decision in ***Parkash Singh Badal*** (*supra*) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 1208 cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription.

12. In ***Rakesh Bhatnagar*** (supra), a Co-ordinate bench of this Court observed that, according to the ratio laid down in ***A. Srinivasa Reddy v. Rakesh Sharma,*** 2023 SCC OnLine SC 952, the individual against whom the allegations are made must be a 'Public Servant' whose appointing authority is either the Central Government or the State Government to be entitled to the protection under Section 197 Cr. P.C., and this protection does not extend to every public servant. In the present case, it is undisputed that the petitioner is a DANICS officer

and his appointing authority is the Central/State Government. There is equally no doubt in the mind of this Court that the allegations against the petitioner pertain to offenses committed in the discharge of his official duties, and as such, the rigors of ***Prof. N.K. Ganguly v. CBI New Delhi,*** 2015 SCC OnLine SC 1205 shall apply in full. Therefore, it would be imperative for the prosecution to have obtained sanction under Section 197 Cr. P.C. before proceeding. In the absence of the appropriate sanction, the prosecution of the petitioner for the aforesaid offenses would be untenable.

13. In ***Subramanian Swamy v. Manmohan Singh & Anr***., 2012 (1) SCC 1041, the Supreme Court held that if a public servant is accused of an offense related to any recommendation made or decision taken while discharging official duties, then sanction under Section 197 of the Cr.P.C. is required. Similarly, in ***Rakesh Kumar Mishra vs. State of Bihar and Ors.***, AIR 2006 Supreme Court 820, the Apex Court held that if the act is intrinsically linked to official duties, sanction is required. However, if the act has no connection with the duties of the public servant, then the protection under Section 197 Cr.P.C. does not apply.

14. Besides this, all the facts of the present petition are identical to those in the case decided by this Court in ***Rakesh Bhatnagar*** (supra). Admittedly, the CBI has not obtained sanction under Section 197 Cr.P.C.I consider that nothing would further detain this court in deciding this petition as on the similar proposition the petitioner has been discharged in ***Rakesh Bhatnagar*** (supra).

15. Hence, the petition is allowed. The impugned order dated 04.04.2012 is

set aside. All the pending applications also stand disposed of.

DINESH KUMAR SHARMA, J

AUGUST 21, 2024/rb/na...