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

\+ **<u>CRL.M.C. 4932/2017 & CRL.M.A. 19577/2017, CRL.M.A. 3953/2024</u>**

GROUP CAPTIN V K GANDHI VSM (RETD) ..... Petitioner

Through: Mr. Aadil Singh Boparai, Ms. Srishti Khanna, Mr. Sidhant Saraswat, Mr. Varun Bhati and Mr. Vaibhav Dabas, Advs.

versus

STATE OF NCT OF DELHI & ANR,. ..... Respondents

Through: Mr. Pradeep Gahalot, APP for the State with Ms. Srishti Arora and Ms. Jasmeen Kaur, Advs. with Insp. G. N. Tiwari, PS EOW.

Mr. Viraj R. Datar, Senior Advocate with Mr. Nitish Chaudhary, Mr. Saurav Joon, Mr. Srikant Singh, Ms. Swati Ujjaynwal and Mr. Shaurya Aditya Singh, Advs. for R-2.

\+ **<u>CRL.M.C. 517/2018 & CRL.M.A. 1892/2018, CRL.M.A. 3765/2024</u>**

MAJOR GENERAL (RETD) SATBIR SINGH ..... Petitioner

Through: Mr. Aadil Singh Boparai, Ms. Srishti Khanna, Mr. Sidhant Saraswat, Mr. Varun Bhati and Mr. Vaibhav Dabas, Advs.

versus

THE STATE GOVT OF NCT OF DELHI & ANR ..... Respondents

Through: Mr. Pradeep Gahalot, APP for the State with Ms.

Srishti Arora and Ms. Jasmeen Kaur, Advs. with Insp. G. N. Tiwari, PS EOW.
Mr. Viraj R. Datar, Senior Advocate with Mr. Nitish Chaudhary, Mr. Saurav Joon, Mr. Srikant Singh, Ms. Swati Ujjaynwal and Mr. Shaurya Aditya Singh, Advs. for R-2.

\+ **<u>CRL.M.C. 81/2019 & CRL.M.A. 382/2019, CRL.M.A. 3802/2024</u>**

WING-COMMANDER C.K. SHARMA (RETD.) ..... Petitioner

Through: Mr. Aadil Singh Boparai, Ms. Srishti Khanna, Mr. Sidhant Saraswat, Mr. Varun Bhati and Mr. Vaibhav Dabas, Advs.

versus

STATE & ORS. ..... Respondents

Through: Mr. Pradeep Gahalot, APP for the State with Ms. Srishti Arora and Ms. Jasmeen Kaur, Advs. with Insp. G. N. Tiwari, PS EOW.
Mr. Viraj R. Datar, Senior Advocate with Mr. Nitish Chaudhary, Mr. Saurav Joon, Mr. Srikant Singh, Ms. Swati Ujjaynwal and Mr. Shaurya Aditya Singh, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% 06.05.2024

1. The present petitions are filled seeking quashing of the FIR

bearing FIR No. 153/2016, dated 01.09.2016, for offences under Sections 420/406/120B of the Indian Penal Code, 1860 ('**IPC**') registered with Police Station Parliament Street.

Brief Facts

2. The FIR was registered on a complaint made by Lt. Gen. (Retd.) Raj Kadyan (hereafter '**the complainant**').

3. It is stated that in the month of December 2008, a society by the name of Indian Ex. Servicemen Movement (hereafter '**IESM**') Society, was registered with the office of District Registrar of Societies, Gurgaon, and the complainant was elected as the Chairman of the Society. Ever since the society was registered, it has maintained a bank account bearing No. 00162000001330 with HDFC Bank Ltd., Sec. 22A, Gurgaon, Haryana.

4. It is alleged that in the month of June 2015, some individuals including present petitioners namely Maj. Gen. Satbir. Singh (Retd.) [Petitioner in CRL.M.C. 517/2018]; Group Captain V.K. Gandhi (Retd.) [Petitioner in CRL.M.C. 4932/2017]; and Wing Commander CK Sharma (Retd.) [Petitioner in CRL.M.C. 81/2019], started a protest (Dharna) at Jantar Mantar, New Delhi for the demand of One Rank One Pension (OROP) for the Ex-Servicemen and started collecting donations in the name of IESM society without any authorization. Further in order to collect unaccounted funds in cash, Group Captain VK Gandhi, falsely claimed *vide* his email dated 03.12.15, that the IESM bank account was blocked by the complainant. Whereas, the bank account was never blocked.

5. It is alleged that the petitioners were issuing some kind of receipts for the funds received from the members of the society that is, Ex-Servicemen, widows of Ex-Servicemen and their

family members.

6. It is alleged that there were also instances where no receipt was issued to the donors.

7. It is further alleged that one veteran namely, Mr. Ganju made a similar complaint through email dated 18.03.16 that the receipt given to him does not bear any stamp which renders it useless for purposes of claiming tax rebate. One complaint of an eighty years old ex-serviceman's widow, Smt. Shakuntala Devi, was recorded before the police, alleging that the petitioners did not issue any receipt for Rs. 50,000/- donated by her in cash.

8. The complainant also alleged that huge amounts were collected at Jantar Mantar in the above manner and in just one day, the collection was ₹26,20,000/ - in cash as reflected in an email dated 09.08.15 of Wing Commander CK Sharma and ₹3,86,500/- by cheque and such collections were going on for weeks and months.

9. It is further alleged that the governing body of the IESM Society called a meeting on 07.10.15. The notice for the meeting was sent to all the governing body members including the present petitioners.

10. The minutes of the meeting were also circulated to the entire governing body including the petitioners. Notably, regarding the fund collection, the governing body had sought the details i.e., (a) Date of receipt of funds; (b) Name of the donor/contributor; (c) Amount donated/contributed; (d) Mode of payment i.e., crossed cheque/ self cheque case and; (e) Name of the bank and account number where deposited. But no action was taken by the petitioners on the resolution of the governing body and despite repeated emails sent to Maj. Gen. Satbir Singh on 13.10.15, 23.10.15 and 14.04.16, seeking details of the fund

collection as well as forbidding the petitioners from spending those funds without approval of the governing body, no response was received.

11. It is alleged that no governing body approval was granted for any expenditure.

12. During the Course of preliminary enquiry, it was found that one FIR being FIR No. 71/2016 dated 08.02.16 was registered at Palam Vihar Police Station, Gurgaon, against the present petitioners in which the accused Wing Commander CK Sharma (Retd.) was arrested and was kept in police custody for about a week and the other two accused persons were granted bail by the Hon'ble Punjab & Haryana High Court.

13. It was found that IESM is a registered body and complainant is the chairman of the society. The enquiry revealed that the petitioners had violated the terms and condition of the MOA signed between them as on 10.12.2008. It was also found that FIR No. 71/16 was registered under Sections 406/420/34 of IPC, wherein the allegations were made in regard to misappropriation of funds of the society at its Gurgaon office.

14. The enquiry further revealed that the petitioners had collected the donation at Jantar Mantar after June 2015. The petitioners had not provided any details of the amount collected.

15. During the course of investigation, information as well as documents, in respect of the bank A/c No. 06162000001330 of IESM Society, were obtained from HDFC Bank and scrutiny of the documents revealed that IESM had opened the said bank account with HDFC Bank on 12.12.2008 and at the time of opening of bank account Sh. Raj Kadyan / Complainant was the Chairman, Sh. Satbir Singh / petitioner in CRL.M.C. 517/2018, was the Vice Chairman and one Sh. PK Renjen was the Treasurer

Member of the Core Group of the IESM Society, who were the authorized signatories with operating instructions- jointly by any two.

16. The status report is filed by the State. It is stated that the present petitioners had collected donation from the members of IESM Society by way of false assurances and misrepresentations that the funds collected shall be used for the benefits of the members.

17. The learned Counsel for the petitioners submits that the present petitioners have falsely been implicated in the present FIR. He submits that the present FIR was registered by the complainant to settle personal scores with the petitioners.

18. He submits that unsubstantiated allegations have been made and the continuance of the proceedings in the present FIR would be gross misuse of the process of law.

19. He submits that the funds were collected in the name of IESM, of which the accused, Group Captain VK Gandhi is an office bearer. He further submits that one of the allegations on which the complaint was filed was based on the e-mail received by Veteran Bahadur Almiya, who alleged that appropriate receipt for the donation was not given.

20. The learned counsel for the petitioner submits that Veteran Almiya was, in fact, issued an appropriate receipt under Section 80G of the Income Tax Act and his donation was recorded at ID No. 5278 in donors list. He further submits that the complaint was also allegedly made by Veteran Ganju, who also claimed that receipt for the donation was not issued to him so as to claim rebate under Section 80G of the Income Tax Act. He submits that Veteran Ganju was, in fact, issued an appropriate receipt under Section 80G and he also claimed rebate under the Income

Tax Act.

21. In regards to the allegation made by Shrimati Shakuntala Devi that she had given a donation of ₹50,000/- and was not issued any receipt, the learned counsel for the petitioner submits that she lives in USA for the last many years and had never visited Jantar Mantar. He further submits that the said issue was also part of the allegations which formed the basis of FIR No. 71/2016, which is being investigated by the Gurgaon Police.

22. The learned counsel for the petitioner submits that no case for criminal breach of trust is made out since the money was collected in the account of society which were duly processed by the AGM.

23. It is further contended that the allegations are in the nature of rendition of accounts which is purely a civil dispute.

24. He lastly contends that multiple FIRs on the same allegations cannot be registered. FIR No. 71/2016 registered with PS Palam Vihar, Gurugram, is in relation to the same allegation that is, misappropriation of funds of the society.

25. The petitioner relied upon the following judgments – ***Babubhai v. State of Gujarat & Ors*** : **(2010) 12 SCC 254**; ***Amit Bhai Anil Chandrq Shah v. Central Bureau of Investigation & Ors*** **: (2013) 6 SCC 348**; ***Surender Kaushik and Others v. State of Uttar Pradesh & Ors*** : **(2013) 5 SCC 148**; ***Anju Chaudhary v. State of Uttar Pradesh and others*** **: (2013) 6 SCC 384**; and ***Vijay Kumar Ghai and Ors v. State of West Bengal*** : **(2022) 7 SCC 124**, in support of his arguments that the second FIR is liable to be quashed when filed on the same set of allegations.

26. The learned Additional Public Prosecutor for the State and the learned senior counsel for the complainant opposed the present petition.

27. They submit that the petitioners had conspired together to achieve the unlawful common object to cheat the members of the society.

28. It was submitted that the chargesheet against the petitioners has been filed, and the investigation against them is complete, and the petitioners are at liberty to take all the defences before the learned Trial Court.

29. They submit that the ground of being prosecuted in multiple FIRs is not tenable since the allegations levelled in the present FIR are in respect to the money collected and misappropriated in Delhi during the protest conducted at Jantar Mantar, Delhi.

Analysis

30. The complainant stated that, sometime in June, 2015, the Ex-Servicemen started a protest at Jantar Mantar for the demand of One Rank One Pension for the Ex-Servicemen. It was alleged that the accused persons started collecting donations in the name of IESM Society without any authorisation. It was alleged that, though some kind of receipts were issued to the donors, however, the same was a hoax intended to make wrongful gains.

31. The complainant had mentioned certain incidents where the mails were received from the donors that no appropriate receipts were issued. It is alleged that huge amount of money was received and the same was not accounted for.

32. The details were sought from the accused persons regarding the date of receipts; name of the donor; mode of payment; name of the bank and the bank account number where the money was deposited, however, no response was received despite repeated e-mails being sent to the accused persons.

33. The complainant, at the relevant time, was the Chairman of

the IESM Society.

34. The Status Report has been filed by the State. It is stated that the members of IESM Society have joined investigation. The statements were also recorded under Section 161 of the CrPC of the reported donors. It was found that a sum of ₹4.01 crores was collected for the year 2015-2016 which was shown in the accounts of IESM as maintained by the accused persons. It also showed an expenditure of ₹2.17 crores during the same year. The details of the expenditure as shown to have been incurred was called for further investigation and verification of the quantum of funds. The Status Report further mentions that the minutes of governing body provided by the accused persons did not show that the expenses as claimed, were ever approved. The amounts were shown to have been disbursed, however, no resolution of the governing body for such disbursement was found.

35. It is claimed that the accused persons were responsible for smooth functioning of the society but cheated a number of persons including widows of the Ex-Servicemen Officers who deposited their funds from their hard-earned income and lifetime savings. The funds, as alleged, were misappropriated by showing the expenses for which some false/ bogus bills were submitted.

36. The charge sheet is stated to have been filed against the accused persons. The allegations made in the complaint clearly as a whole, point towards the commission of a cognisable offence. The collection of money from the donors in the name of fulfilling the object of the society and, thereafter, misusing and misappropriating the said funds clearly amounts to cheating. ‘

37. Serious allegations have been made that the accused persons had collected funds when they had no intention to use for

the purpose/ object for which they were collected. The donors parted with their money on a deception and fraudulent inducement by the accused persons which led to delivery of the property (money) to the accused persons.

38. It cannot, thus, be said that the allegations as made in the FIR, if taken at their face value and accepted in its entirety do not constitute any offence. The allegations also cannot be called absurd and, inherently improbable, on the basis of which no prudent persons can reach a conclusion that there is no ground for proceeding against the accused.

39. It is contended that on behalf of the petitioners that the proceedings have been maliciously instituted with an ulterior motive due to personal grudge. The investigation has already been carried out by the State and the charge sheet has been filed.

40. On the perusal of the Status Report, it cannot be assumed, at this stage, that the allegations are totally baseless. The complainant may have some personal grudge with the accused persons, however, the allegations made, have already been investigated, and do not appear to be baseless. Therefore, the FIR cannot be quashed while exercising power under Section 482 of the CrPC.

41. In so far as the contention that no case under Section 406 of the IPC is made out and the ingredients are not satisfied, the same would be considered by the learned Trial Court while hearing the arguments on charge and out ought not to be commented upon, at this stage. The petitioners clearly have an alternate remedy to address arguments at the time of arguments on charge. Once it is clear that the allegations as made by the complainant are not baseless, the High Court ought not to exercise extraordinary powers under Section 482 of the CrPC.

The same has to be used sparingly to secure the ends of justice. The purpose is not to impede the trial.

42. The Hon'ble Apex Court in ***State of Karnataka v. M. Devendrappa* : (2002) 3 SCC 89**, had held that the High Court, while exercising power under Section 482 of the CrPC, should be cautious and ought not to quash FIRs in a routine manner. The power has to be exercised sparingly and that too in rarest of rare cases. The Hon'ble Apex has also given some illustrative categories which are reproduced as under:

> *"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

43. The other ground raised by the petitioner is that the multiple FIRs are not permissible in regard to the same offence. It is contended that the allegations in FIR No. 71/2016 which was registered prior in time, on 08.04.2016, against the petitioner was also in relation to cheating and criminal breach of trust wherein it was alleged that the money of the society was misappropriated. It is contended that, in the present case also, the allegations are in regard to misappropriating the funds of the society and no separate FIR could have been registered.

44. I have gone through the contents of FIR No. 71/2016. The FIR was registered on an allegation that the present petitioners are accused of taking out huge amount of cash from the society's funds. The funds were illegally retained by the accused persons in their personal custody. It was alleged that the amount was withdrawn on different dates, up to July, 2013.

45. It is true that the FIR was registered alleging misappropriation of the society funds by the accused persons. The allegation, however, cannot be termed as same as alleged in the present FIR. The two FIRs cannot be called to have been arising out of the same transaction or to have arisen out of the connected offences relating to the same incident or incidents which are part of each other. The present FIR was registered on an allegation that the funds have been collected illegally by the accused persons from different donors who were participating in the protest for One Rank One Pension for the Ex-Servicemen. It is alleged that the donors had parted with their property on false representation made by the accused persons. The fund was

meant to have been collected for the society but the same was embezzled by the accused persons. Though it is correct that the money was meant for the society and in that sense, cheating can be alleged to have been committed on the society, IESM, however, crux of the allegations is in regard to cheating being committed on the donors who have parted with their money. There may be some overlap in regard to the investigation, however, the same cannot be termed to have been arising out of the same incident or incidents which are part of the same transaction.

46. The learned counsel for the petitioners has relied upon the judgement passed by the Hon'ble Apex Court in ***Babubhai v. State of Gujarat :*** **(2010) 12 SCC 254**. In the said case, the Hon'ble Apex Court had quashed the FIR holding that two FIRs were registered in respect of the same transaction. There is no quarrel as far as the law in that regard is concerned as held by the Hon'ble Apex Court. However, the judgment passed by the Hon'ble Apex Court is not applicable in the facts of the present case. The FIR in the said case was registered after some altercation took place between members of two communities. The Hon'ble Apex Court, after considering the two FIRs, held as under:

> ***"25.*** *While comparing both the FIRs there is no doubt that both the incidents had occurred at the same place in close proximity of time, therefore, they are two parts of the same transaction. More so, the death of Ajitbhai Prahladbhai has been mentioned in both the FIRs. From the report for deletion of Section 302 IPC, it is apparent that it is not the case of the investigating officer that the death of Ajitbhai Prahladbhai had not occurred during the course of the incident in connection with which CR No. I-154 of 2008 came to be registered.*
>
> ***26.*** *It is also evident that houses of the Bharwads were inside the village in contiguous areas and the offence had spread over the entire area as is evident from the panchnama of the scene of*

offence drawn in CR No. I-155 of 2008 as well as from the contents of the said FIR. Same situation regarding the place of occurrence appears from the panchnama of the scene of incident in CR No. I-154 of 2008. Panchnama of the scene of incident of CR No. I-154 of 2008 includes the scene of occurrence of CR No. I-155 of 2008 which makes it clear that both the FIRs pertain to the two crimes committed in the same transaction. The scene of offence panchnamas establish clearly that the incidents in both the cases could not be distinct and independent of each other. In fact, it is nobody's case that the incident relating to CR No. I-155 of 2008 occurred at Dhedhal Chokdi (crossroads).”

47. It is, thus, evident that both FIRs in the said case, pertain to two crimes which were not independent of each other.

48. The petitioners also relied upon the judgment passed by the Hon’ble Apex Court in the case of ***Surinder Kaushik v. State of UP***: **2013 (5) SCC 148**. In the said case, the first FIR was registered against certain accused persons on an allegation that they had prepared fake and fraudulent documents. One of the accused persons had got an FIR registered alleging that he was never a member of the society, was neither present in meeting of the society nor was signatory to the resolution passed in the said meetings. He alleged that certain persons had fabricated his documents with forged signatures. The Hon’ble Apex Court noted that the principal of *sameness* does not get attracted. The Hon’ble Apex Court had refused to quash the FIR and held that the parties are at liberty to move appropriate Court for a trial of both the FIRs in one Court.

49. As discussed above, the allegations in both the FIRs do not fulfil the test of *sameness*. The FIRs in substance are different. The first one relates to the allegations of misappropriation of funds of the society by some of the office bearers for an alleged period, up to July, 2013 and the second FIR relates to unauthorised collection of funds from certain members of the

society. The period during which the offence was committed is also different.

50. There is no cavil with the law laid down in the judgements as relied upon by the leaned Counsel for the Petitioners, but the same is not applicable to the facts and circumstances of the present case, since the second FIR relates to the alleged unauthorised collection of funds in the year 2015. The impugned FIR in the present case relates to an altogether different transaction. The same is not for connected offence relating to the alleged incident referred in the first FIR.

51. In view of the above, this Court finds no merits in the present petition and the same is dismissed.

52. The rights and contentions of the parties are reserved. In regard to the other defences raised during the course of arguments by the learned counsel for the petitioners, the petitioners are at liberty to urge the same before the learned Trial Court during the arguments on charge.

AMIT MAHAJAN, J

MAY 6, 2024