



2025:DHC:5158



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

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Reserved on: 09th May, 2025

Pronounced on: 30th June, 2025

+ CRL.M.C. 2316/2018 & CRL.M.A. 8217/2018

VIJAY KUMAR KATARIA

.....Petitioner

Through: Mr. R. K. Handoo and Mr. Gaurav
Vishwakarma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Ripu Daman Bhardwaj, SPP.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner, Sh. Vijay Kumar Kataria for setting aside ***Summoning Order dated 22.02.2017*** passed by Ld. MM in RC-07(A)/2013/CBI/AC-III/ND and ***Supplementary Chargesheet under Section 173(8) Cr.P.C. dated 17.02.2017*** and proceedings emanating therefrom.

2. ***Briefly stated***, the case of the Prosecution i.e. Central Bureau of Investigation (CBI), is that Mr. Rakesh Sahni, Executive Engineer (Civil) at Delhi Jal Board (DJB), filed a Complaint on 07.09.2011 with Economic Offence Wing (EOW), Crime Branch, Delhi Police, New Delhi, based on which FIR No.170/2011 under Sections 420/120B IPC was registered on 07.09.2011. The case was forwarded to CBI on 21.10.2013 and CBI registered FIR bearing No.RC-07(A)/2013/CBI/AC-III/ND under Section



13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and Section 120B read with Section 420 Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) got registered on the same day. After conducting investigations, CBI submitted its final report dated 24.12.2014 stating that investigations could not prove any offence and consequently **Closure Report** was filed against the accused person.

3. On 21.10.2016, Ld. Special Judge, CBI directed the I.O. to examine Mr. Hussain Lal Arora, the then Senior Manager, Punjab National Bank and conduct further investigation. Accordingly, he was examined on 28.10.2016 under Section 161 Cr.P.C., wherein new material emerged leading to filing of **Supplementary Chargesheet** under Section 420 IPC against the Petitioner, Sh. Vijay Kumar Kataria.

4. On 22.02.2017, Ld. Judge took cognizance and issued summons to the Petitioner, Sh. Vijay Kumar Kataria.

5. **Petitioner, Sh. Vijay Kumar Kataria has challenged the Supplementary Chargesheet and has asserted** that there is no offence made out from the entire chargesheet or Supplementary Chargesheet, *which is liable to be quashed.*

6. The quashing of Supplementary Chargesheet is sought on the **ground** that no offence whatsoever, much less under Section 420 IPC is made out against the Petitioner, Sh. Vijay Kumar Kataria. There is no material except the bald statement of Mr. Hussain Lal Arora under Section 161 Cr.P.C. to claim that an offence under Section 420 IPC is made out against him. However, Mr. Hussain Lal Arora has not disputed that the Certificate issued was genuine and duly accepted by Delhi Jal Board (DJB) after due verification. In order to make out an offence under Section 420 IPC , it has



to be established that (i) *there was false representation made by a person;* and (ii) *on account of such false representation, there was wrongful loss to a person and wrongful gain to another person so cheated.*

7. It is the case of Respondent, CBI itself in its Closure Report that Evaluation Committee of Delhi Jal Board took the decision to accept Certificate other than Solvency Certificate (SC) of other bidders. The Evaluation Committee also understood that Certificate dated 01.09.2001 was not a '**Solvency Certificate**' but a '**Credit Worthiness Certificate**'. Therefore, there was no question of any misrepresentation or false representation made to Delhi Jal Board.

8. It is further the case of CBI that on account of works that were awarded to *Kaveri Infrastructure Pvt. Ltd. (Company of Petitioner)*, no loss had been suffered by Delhi Jal Board. Thus, even if the statement of Mr. Hussain Lal Arora is taken on its face value, the ingredients of offence under Section 420 IPC are not satisfied.

9. The continuation of present proceedings would amount to abuse of process of the Court and in the interest of justice, the Supplementary Charge sheet along with Summoning Order dated 22.02.2017, be quashed.

10. It is further contended that directions of the Ld. MM to record another statement of Mr. Hussain Lal Arora after submission of Closure Report, is not as per the provisions of Cr.P.C. The subsequent statement of Mr. Hussain Lal Arora taken under Section 161 Cr.P.C. by the IO, is not "*further evidence*" as envisaged under section 173(8) Cr.P.C. After filing of Closure Report, a Supplementary Chargesheet could have been filed only if there was fresh evidence available to the IO. The Police has no power to



conduct further investigations on the facts already investigated, but it is only limited to fresh evidence which may come to the knowledge of the IO.

11. It is contended that even the second statement of the bank Manager does not depict any commission of offence by the Petitioner, Sh. Vijay Kumar Kataria. *It is therefore, submitted that supplementary chargesheet along with summoning order dated 22.02.2017 be quashed.*

12. ***The Respondent, CBI in its Reply, took the preliminary objection*** that Impugned FIR No.170/2011 under Sections 420/120B IPC was forwarded to CBI for investigation with the approval of Ld. Lt. Governor of Delhi vide Order dated 26.09.2012, on the basis of which CBI registered RC No. RC-07(A)/2013/AC-III/CBI on 21.10.2013. It is submitted that the facts relevant for consideration of this Court are as under:

(i) M/s Kaveri Infrastructure Pvt. Ltd. furnished a photo-copy of Certificate dated 01.09.2001 of Rs.100 crore issued by Malviya Nagar Branch, PNB which formed the integral part of pre-bid documents. In fact, this Certificate was not a Solvency Certificate but was issued on the basis of ***“To whom so ever it may concern”***.

(ii) Investigations revealed that the Loans & Advances Circular No. 84/2000 dated 29.08.2000 issued by Punjab National Bank, contained guidelines for issuance of Solvency Certificate. As per procedure, the Solvency Certificate exceeding to Rs. 150 Lacs was required to be approved by the Zonal Head. The Financial documents of the client were to be properly evaluated and proper entry was to be made in the Solvency Certificate issuing register in the bank.



(ii) The photocopy of Certificate issued by PNB and used as a bid document by M/s KIPL was not in the prescribed bank Format. The issuance of Solvency Certificate to the tune of Rs.100 crore was to be approved by the DGM and due charges were to be recovered from the Applicant and the corresponding entries were to be made in the register maintained in the bank. None of these formalities was done before issuance of Certificate dated 01.09.2001.

(iv) Investigation has further revealed that the audited Balance Sheet of M/s KIPL for the financial year 1997-98 to 2001-02, made it clear that the Annual turnover of the Firm was around Rs.5 crore, which cannot be treated as basis for issuance of Solvency Certificate to the tune of Rs.100 crore.

(v) Further investigations also revealed that no information was available with the Branch regarding issuance of Solvency Certificate to the tune of Rs.100 crore in favour of M/s KIPL. The Malviya Nagar Branch of Punjab National Bank did not have any financial information on the basis of which this Certificate was issued to M/s KIPL. No document pertaining to Solvency Certificate issued in favour of M/s KIPL, could be traced in that branch.

13. The aforesaid facts clearly establish that Punjab National Bank had not issued any Solvency Certificate dated 01.09.2001 in favour of M/s KIPL, which was submitted by the Company in pre-bid document as required by the Delhi Jal Board. The Petitioner, Sh. Vijay Kumar Kataria was the sole master-mind behind all these illegal acts. Certificate dated 01.09.2001 was filed and used by the Petitioner for fulfilling the eligibility criteria as such Builder was required to file Certificate as a pre-qualification



document for Tender. It is also established during the investigation that Petitioner had obtained the above Certificate by misrepresenting that it was required for purchase of machinery. Hence, he concealed the material fact from Sh. Hussain Lal Arora that the above Certificate was required to be filed in the Delhi Jal Board as a pre-qualification document. The role of the Petitioner in the entire illegality, is crystal clear. Therefore, the Petitioner has committed an offence punishable under Section 420 IPC.

14. It is further submitted that remedy available under Section 482 Cr.P.C. and Article 227 of the Constitution of India is limited and the allegations collected during the investigation prima facie discloses a case against the Petitioner. It is further submitted that this Court cannot conduct a mini trial at this stage and delve deep into the matter for the purpose of appreciating the evidence and weigh it. At this stage, the court merely has to consider whether a strong suspicion of having committed an offence is made out or not. There is sufficient evidence to raise strong suspicion against the Petitioner.

15. *It is therefore submitted that there is not merit in the present petition, which is liable to be rejected.*

16. ***The Petitioner, Sh. Vijay Kumar Kataria in his Rejoinder Affidavit has reiterated*** his case as stated in the Petition. Written submissions have been filed by the Petitioner, Sh. Vijay Kumar Kataria as well as Respondent, CBI.

Submissions heard and record perused.

17. Brief background of this case is that on Complaint dated 07.09.2011 filed by Executive Engineer (Civil) at Delhi Jal Board (DJB), FIR No. 170/2011 dated 07.09.2011 was registered and on the basis of this FIR, CBI



registered RC-07(A)/2013/AC-III/CBI/ND on 21.10.2013. After conducting due investigations, Closure Report dated 24.12.2014 was filed. However, on the directions of learned Special Judge, CBI, further statement of Mr. Hussain Lal Arora was recorded and the Supplementary Chargesheet under Section 173(8) Cr.P.C. dated 17.02.2017 was filed. Cognizance has been taken and Petitioner has been summoned vide Order dated 22.02.2017. In this backdrop, submissions of the parties may be considered.

18. The facts of the case are that the proposal for '*Rehabilitation of Trunk Sewers through trenchless Technology*' was initiated on 14.02.2001 in Haidarpuri Division of Delhi Jal Board by the Assistant Engineer, as per CPWD Manual allotment of any work for more than Rs.5 crores required the pre-qualification of Contractors. Proposal moved from Assistant Engineer (AE) to Executive Engineer (EE) to Superintending Engineer (SE) to Chief Engineer (Construction) II [CE(C)-II], who recommended that as CEs (C) IV & V had invited Tender for a similar work they may also be called for finalizing the pre-qualification documents. Mr. S. K. Aggarwal, Member (Drainage) directed that the draft pre-qualification documents be circulated to CEs (C) IV, V, VI and Director (F&A) and five Meetings were held to discuss the same. The CEO, DJB constituted a Tender Evaluation Committee on 22.05.2001 under the Chairmanship of Member Drainage and with four Chief Engineers (CE-C II, III, IV, V) and Director (F&A) as members. The Committee finalized the Pre-qualification Documents and the Notice Inviting Tender (NIT) was published on 28.08.2001.

19. The pre-qualification documents were finalized by the Evaluation Committee were deficient on two counts:-



(i) The prequalification documents did not prescribe any format for the '**Solvency Certificate**' to be submitted by the bidders even when Section 35 of the Rules for Enlistment of Contractors laid down in the CPWD Work Manual (Volume II) prescribes a specific format for the same. The Solvency Certificate has to be obtained by the bidder from his bank after payment of the charges prescribed for the same.

(ii) The Pre-qualification documents did not include the requirement for the bidders to submit a '**Letter of Transmittal**', which authorizes the concerned EE to contact the bidder's bank to confirm the correctness of the Solvency Certificate issued by it.

20. The aforesaid two requirements prescribed by the CPWD Manual, were dispensed with by the Evaluation Committee without seeking any specific relaxation on that count. The Enquiry from the Members of the Evaluation Committee, revealed that Pre-qualification of contractors was being done for the first time in a Tender of the Delhi Jal Board and hence, certain provisions of the Manual were not included.

21. The investigations by CBI further revealed that five Meetings were held before the finalization of tender and draft documents. Its Evaluation Committee was constituted by CEO, comprising of seven members. Sh. S. K. Aggarwal, Member (Drainage) was the Chairman of this Committee. He approved the circulation of pre-qualification documents to all the members including the Director (F&A) for comments within three days.

22. On 30.07.2001, these pre-qualification documents were made available to the Members of Evaluation Committee and the NIT was



published on 28.08.2001. In the terms of pre-qualification Notice Inviting Tender (NIT), it was stipulated that the intending Bidder must have an annual turnover of Rs.4 crore in the previous three years up to 2001 and the bidder was to furnish a *Bank Solvency Certificate*.

23. Twelve bid documents were received at the Office of EE, Haidarpuri Division, out of which, four bidders namely M/s Shri Ram Engineering, M/s Envirotech overseas Ltd, M/s Per Aarslef A/S Denmark and M/s Kaveri Infrastructure, were selected. Mr. Vijay Kataria of M/s. Kaveri Infrastructure Private Limited was one of the 12 Bidder. He enclosed Certificate dated 01.09.2001 by PNB, Malviya Nagar Branch, New Delhi, as part of Tender Documents, wherein it was stated that the Bank, if the need so arose, would be able to extend substantial credit to M/s. KIPL up to Rs.100 crore per year, subject to the applicable Rules.

24. The CEO asked Member Drainage to prepare a comprehensive Note giving a background of the reasons for the decision to carry out the pre-qualification of contractor. On 05.11.2001, Member, Drainage gave his recommendations only on Technical part and necessity of the rehabilitation of sewers. On 06.11.2001, these recommendations of Evaluation Committee were approved by the CEO and on 07.11.2001 letters were issued to these four Firms informing them about their pre-qualification.

25. The Technical bids were opened on 14.01.2002. Evaluation Committee after holding various Meetings, recommended three Firms (except M/s Shri Ram Engineering). he CEO accepted the recommendations of the Evaluation Committee, on 11.03.2002.

26. The **Price Bids** were opened on 28.03.2002 and since M/s KIPL was the listed bidder, it was declared successful and Agreement was signed



between M/s KIPL and DJB on 26.11.2002 for the aforesaid work for the cost of Rs.23,64,69,000/- and Rs.9,98,41,000/- for maintenance (total Rs.35,83,10,000/-).

27. It was observed in the Closure Report itself that process of finalisation of pre-qualification documents was not rushed, but was done with the association of all the CEs, who were dealing with the Tenders for similar work in addition to Director (F&A). The pre-qualification documents were approved nearly six months after the proposal was first initiated and that too, after numerous Meetings and deliberations. It was concluded in the Closure Report that any omission by the Committee was not as a part of a pre-planned conspiracy to benefit a particular bidder.

28. It is therefore, evident that the procedure for finalisation of the pre-qualification documents had been done after detailed Meetings and in consultation with all the CEs and Director (F&A). It is further evident that in the finalization of pre-qualification documents, there was no *malafide* or ill intention or that documents had been finalised in order to benefit any particular bidder.

29. The entire case of the CBI rested on a Certificate dated 01.09.2001 issued by Mr. Hussain Lal Arora, the then Senior Manager, Punjab National Bank, which reads as follow:

To Whom It May Concern

“This is to certify that M/s Kaveri Infrastructure (P) Ltd, carrying out their business from 8 years is one of our valued customers.

We can confirm that they have maintained their accounts with us in a very satisfactory manner, and have no outstanding liabilities. Based on their performance, and their creditworthiness, we have no hesitation in stating that the Bank, if the need so arises would be able



to extent substantial credit to them for their purpose in case they so apply, subject to the rules applicable, upto 100 Crores per year.”

30. Mr. Hussain Lal Arora, who was cited as Defence Witness in a similar manner in RC-l(A)/2007-ACU-IX by the Petitioner Sh. Vijay Kataria, had deposed that he had not taken any written request from Sh. Kataria for issuing Letter and did not charge any fee. The investigations revealed that the Bank had no record of issuance of this letter.

31. The Chief Vigilance Officer (CVO), PNB, in his written Reply has stated that Mr. Hussain Lal Arora was not competent to issue a Solvency Certificate for Rs.100 crore and that Solvency Certificate beyond Rs.1.5 crore had to be issued by the Zonal Manager after charging a bank fee of Rs.12,000/-. As per the Balance Sheet of M/s. KIPL and other financial parameters, the Petitioner was eligible for a Solvency Certificate for Rs.05 crore to Rs.10 crore.

32. ***The question, which arises, was whether this Solvency Certificate of Rs.100 crore was issued by Mr. Hussain Lal Arora, after following procedure and without charging any fee.***

33. His statement before the Ld. Trial Court in RC l(A)/2007 reveals that he had not issued any Solvency Certificate and therefore, there was no question of following the procedure as laid down. Moreover, the perusal of the Certificate shows that it was not a Solvency Certificate but only a Certificate indicating that bank may extend Loan upto RS.100/-crores to the Petitioner as per Rules. This is further corroborated from the fact that it was not on the Format prescribed by the guidelines of the bank. Also, this explains why no charges were taken and no entry was made in the Register. It was not a Solvency Certificate but merely a *Credit Worthiness Certificate*



and there are no Rules which disqualified Mr.- Mr. Hussain Lal Arora from issuing this Certificate. No criminality in issuance or procurement of this Certificate has been established, as had rightly been observed in the initial Closure Report.

34. The CBI further asserted that though Mr. Hussain Lal Arora stated that the Petitioner, Sh. Vijay Kumar Kataria was maintaining accounts with the Branch for the last 15 years, but it was only for the last 7-8 years. However, it was found that there was no gain to the Petitioner, in wrongly projecting 15 years' relationship with the PNB, as it was not the requirement for qualification as per NIT. The facts and the circumstances therefore, did not reveal any violation of any rule or guideline of the bank by the bank officials. At best, their conduct could be termed as a case of over-reach in trying to meet the request of the customer.

35. Mr. Hussain Lal Arora in his own estimation after considering the credit worthiness of the Petitioner, Sh. Vijay Kumar Kataria had issued this Credit Worthiness Certificate. Though there was no explanation forthcoming as to how he reached the figure of Rs.100 crore, but there was no Certificate or procedure or parameter/rule of the Bank, which prescribed the manner of issuing the Credit Worthiness Certificate.

36. Therefore, merely because a Credit Worthiness Certificate was issued in favour of the Petitioner, Sh. Vijay Kumar Kataria which was submitted by him as pre-qualification bid document, cannot lead to even *prima facie* inference of any dishonest or fraudulent intent on the part of the Petitioner, Sh. Vijay Kumar Kataria.

Whether any Criminal Offence is disclosed in the Supplementary Charge-Sheet:



37. Pertinently, there was no requirement of submitting any Solvency Certificate, in the Pre-bid documents, as has already been discussed above. The Petitioner, Sh. Vijay Kataria may have submitted a Certificate in regard to his credit worthiness as was issued by Mr. Hussain Lal Arora, but there is no averment nor is there any whisper about this Certificate being issued fraudulently or with any *malafide* intention.

38. It can also not been overlooked that the documents of all Twelve bidders were evaluated by seven Members of the Evaluation Committee, out of which four were cleared by the Evaluation Committee at the pre-qualification stage. The Evaluation Chart was duly prepared by the Committee reflecting important particulars of each bidder based on the scrutiny of pre-qualification documents. In the case of M/s KIPL in the column of Solvency Certificate, it was indicated that the party had submitted Credit Worthiness Certificate. Pertinently, only one of the three successful bidder had submitted Solvency Certificate and other two had submitted simple Certificate from their banks merely reflecting their *bonafides*. The investigations also concluded that Evaluation Committee had taken a conscious decision to accept these Certificates rather than to insist on Solvency Certificate.

39. It is therefore, evident from the investigations of CBI itself that *firstly*, there was no requirement for Solvency Certificate as a Pre-Bid document. Secondly, the two other Bidders and the Petitioner, out of four, had also submitted similar Certificates and not the Solvency Certificate.

40. Therefore, it is evident that the submission of Solvency Certificate was not a document sought by Delhi Jal Board and it was not mislead into holding the company of the Petitioner, Sh. Vijay Kumar Kataria as the



successful bidder. Furthermore, the investigations have not revealed that any special favour was given to M/s KIPL to the exclusion of other bidders.

41. The CBI in its Closure Report has further stated that the investigations were conducted for not including the Solvency Certificate as a pre-qualification bid document, to which it was found that since Delhi Jal Board was resorting for the first time to pre-qualification of bidders, there was a shortcoming in compliance with the CPWD Manual. Had there been requirement of Solvency Certificate and the format was given in the pre-bid documents, then the question may have arisen about the Petitioner not having complied with the requirement.

42. Significantly, there is no averment that the Certificate had not been issued by the Bank. The question of there being any cheating or fraud would have arisen if it was a forged document. If this Certificate did not satisfy the Pre Bid documents requirement, the Bid of the Petitioner, could have been rejected, but definitely, no criminality emerges from the facts under consideration.

43. It is again revealed that there is no requisite *mens rea* established on the detailed investigations. Rather, the Evaluation Committee had taken a conscious decision to not insist on Solvency Certificate. Therefore, there can be no basis to assert that a manipulated document was submitted by the Petitioner.

44. It was further concluded in the investigations that The most pertinent fact to be noticed is that the contracts so awarded to M/s KIPL in the year 2001 were successfully executed without any complaint. The payment of Rs.67.69 crore was made to M/s KIPL by DJB in execution of these two contracts. DJB has given in writing that no loss had been suffered by it on



account of execution of Tender work by M/s KIPL. It is therefore, established that there was no loss caused to DJB.

45. It is most pertinent to observe that the Complaint by Executive Engineer (Civil) of Delhi Jal Board (DJB) made on 07.9.2011, while the Tender pertains to the year 2001 and had been successfully executed. There was no explanation forthcoming from the Executive Engineer (Civil) for having made a Complaint after a gap of 10 years. It is evident that there was no deceive or fraud committed by the Petitioner, Sh. Vijay Kumar Kataria in being successful bidder for the Tender and the Credit Worthiness Certificate had been submitted by him as pre-qualification document, since there was no requirement for submitting the Solvency Certificate. It is also pertinent to note that if the Credit Worthiness Certificate did not meet the requisite requirements, the Evaluation Committee was well within its right to reject the same. There is no deceit or factual misrepresentation in the Credit Worthiness Certificate, which was duly considered by the Evaluation Committee before awarding the tender to M/s KIPL.

46. The Respondent CBI has explained that in the other case bearing RC-1(A)/2007/CC No.36/11, though the Petitioner has been convicted by learned Special Judge, CBI, New Delhi, but the facts involved and the evidence induced against the Petitioner were distinguishable on merits and therefore, it cannot be held as a precedent.

47. Pertinently, the supplementary statement of Mr. Hussain Lal Arora was recorded by the CBI, wherein he stated that Petitioner had represented that he needed the Certificate for the purpose of purchasing machinery. Had he been aware that it was required to be submitted before the DJB for a Tender, he would not have issued the Certificate.



48. It is significant to observe that there was no misrepresentation on the part of the Petitioner. If at all, it is the bank official, who was obligated to issue Certificate as per the facts, the purpose for which the Certificate was being issued was irrelevant. To claim that the supplementary statement reflects any *mala fide* on the part of the Petitioner, is absolutely incorrect.

Conclusion:

49. To conclude, even if all the allegations and the evidence relied upon by CBI, are admitted, no criminal offence is made out and it would not result in any conviction. It is a case where after 10 years of successful completion of Tender, the case has been registered for inexplicable reasons by CBI, against M/s KIPL despite having conclude the contract successfully. Clearly it is a case of misuse and abuse of process of Court for unknown reasons. It is the fit case which mandates the quashing the Chargesheet and all the proceedings emanating therefrom.

50. *Petition is accordingly allowed and Chargesheet along with proceedings therefrom, stand quashed against the Petitioner.* Pending application, if any, also stands disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 30, 2025/R