

**K. Vijayan Vs. Central Bureau of Investigation**

**K. Vijayan Vs. Central Bureau of Investigation**

**SooperKanoon Citation :** [sooperkanoon.com/705629](http://sooperkanoon.com/705629)

**Court :** Delhi

**Decided On :** Oct-30-2001

**Reported in :** 94(2001)DLT831

**Judge :** S.K. Agarwal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 160, 161, 309, 357, 359 and 397; [Prevention of Corruption Act, 1988](#) - Sections 8

**Appeal No. :** CrI. R. No. 31/99

**Appellant :** K. Vijayan

**Respondent :** Central Bureau of Investigation

**Advocate for Def. :** A.K. Dutt, Adv.

**Advocate for Pet/Ap. :** K. Sukumaran, Sr. Adv.,; Karthika S. and; N.R. Shonker,

**Disposition :** Petition dismissed

**Judgement :**

**S.K. Agarwal, J.**

1.This revision petition under Section 397 Cr.P.C. is directed against the order dated 21.11.1998 passed by the court of Sh. Dinesh Dayal, Special Judge Delhi, holding that form the transcript of the conversation between the petitioner and

respondent recorded at spot and other material collected during investigations, prima-facie case for framing charge under Section 8 of the [Prevention of Corruption Act, 1988](#) (for short, 'POC Act'), is made out in the case RC No. 60(A)/1991/CBI/ADC dt. 4.10.1991, and dismissing petitioner's application for discharge.

2.The complainant -A.K. Krishna Rao lodged a report with the CBI alleging: that his father is facing a CBI probe in the case RC 23(A)/91-DLI; petitioner (Ex-Superintendent of Police, CBI), contacted the complainant, informing him that he had worked with CBI at Senior levels and had maintained close contacts with its officers; on 2.10.1991 petitioner called the complainant to his house and demanded Rs. 1,00,000/- for helping his father. The complainant showed reluctance. Petitioner again called him at his house Vasant Kunj and asked him to pay Rs. 20,000/- by 4.10.1991, as initial payment for mobilising resources in the CBI to get the said case reach to a favorable stage. The compliant was not willing to pay the amount and informed the CBI. FIR was registered and raiding party was formed including two independent witnesses, Smt. S. Vilasini and V.S. Dhankhar and complainant was introduced to both the witnesses. Currency notes of Rs. 10,000/- were tainted with phenolphthalein powder, after practical demonstration, were handed over to the complainant, to be given to the petitioner, on his specific demand. A micro-cassette recorder, containing blank micro-cassette was also given to the complainant for recording conversation at the post. Smt. S. Vilashini, independent witness was directed to act as shadow witness and to give signal when the transaction was completed. Before proceedings to the residence of the petitioner, telephone call was made at his residence, which was also recorded on the micro cassette. The complainant introduced to the petitioner shadow witness as his wife and tape-recorder was switched on. The conversation between the petitioner and complainant was duly recorded in the presence of Smt. S.Vilashini. After the transaction was over , Smt. S. Vilashini. After the transaction was over, Smt. S. Vilashini gave the appointed signal and petitioner was overpowered, Rs. 10,000/- which he had kept between two pillows in his bed room, were recovered. Hand was of petitioner and of the pillow cover, where money was kept, were taken in sodium carbonate solution, which turned pick. Micro-cassette containing conversation between the complainant and petitioner was heard and seized after

all other legal formalities. Investigations revealed that the petitioner had demanded Rs. 1,00,000/- for influencing Senior officers of the CBI, in the case being investigated, against the father of complainant, and petitioner accepted Rs. 10,000/- as the initial payment. After completion of investigation challan was filled on 30.6.1992. Cognizance was taken. Petitioner appeared before the trial court and moved an application for supply of more documents.

3. He simultaneously filed a petition (Crl.M.(M) No. 2765/93) for quashing of the FIR. CBI filed counter-affidavit in reply, copy of the seizure/recovery memos were also filed. On 11th December, 1992, petitioner filed rejoinder-affidavit and pleaded that he was engaged as counsel for complainant's father Shrinivasa Rao' that on 4th October, 1991 CBI seized papers vide item No. 4 file containing notice issued by Inspector S.N. Saxena under Section 160 Cr. P.C., observations memo, papers seizure memos, notes of the cases in RC No. 28-A/21/DL-2 ACR containing pages ate 1 to 36. Along with the rejoinder affidavit, photocopy of the hand-written letter dated 18.7.1991, stated to have been written by the petitioner to the complainant's father was also filed as Annexure F (hereinafter, alleged opinion letter), claiming that the letter supports his stand Rs. 10,000/- was received by him towards the legal fee and the advice given by him to the complainant's father. On 20.4.1993, Mr. Lal, Standing Counsel for CBI raised an objection that the alleged opinion letter was not filed with the main petition and that if the document was seized, the same must have been filed along with charge-sheet. Trial Court Record was summoned for 21.5.1993. As per the order-sheet dated 21.5.93, counsel for the CBI admitted that the letter was also seized. Thereafter matter was adjourned an on 8.12.1993 considering the material on record, petition was disposed of. Petitioner was directed to approach was trial court and was granted liberty to produce the opinion letter dated 18.7.1991 addressed to Sri Niwasa Rao before the learned Special Judge. However, no finding was recorded whether said letter was seized by the CBI from the spot or not.

4. The petitioner thereafter moved an application before the trial court for discharge, he also produced the said opinion letter dated 18.7.1991. By a detailed order dated 23.5.1995, learned trial court held that prima facie case for the offence under Section 8 of the POC Act, is made out against the petitioner and on

18.7.1995 charge was framed.

5. Against the said order of framing the charge, petitioner filed a revision petition (CrI.R.No. 160/95) and again raised the grievance that he had produced the said letter dated 18.7.1991, but the trial court neither made any reference nor dealt with the arguments in respect to the said opinion letter. By order dated 22.2.1996, the trial court was directed to consider the matter fresh after taking into account the said letter and arguments based there on and revision was disposed of. Learned trial court heard the matter again. The Investigating Officer filed reply affidavit and denied that the said letter was ever seized by the CBI. Petitioner filed a petition (CrI.M.(M) No.3111/97) this time praying that the CBI cannot be permitted to wriggle out of the 'admission by the counsel.' The petition was dismissed on 7.11.1997 as per-mature.

6. By impugned order dt. 21.11.1998 after hearing arguments again and considering rival contentions of the parties, regarding of the letter dt. 18.7.1991 learned trial court held that the 'admission by counsel for CBI' on 21.5.1991 was not correct and against the record. Further learned trial court held that the stand taken by petitioner. In the letter dated 18.7.1991 was contradictory to the stand taken by him in another letter dated 20.11.1991, written by him to the Director. CBI, copy of which was filed by him in the High Court as Annexure-H, on 20.5.1993. Lastly, it was held that in view of the statements of the witnesses, tape-recorded conversation and other material, prima facie case under Section 8 of POC Act, is made out against the petitioner. This order has been challenged by way of this petition.

7. I have heard learned counsel for petitioner and Mr. A.K. Dutt, counsel for CBI. Learned counsel for the petitioner argued that on 21.5.1993, Standing Counsel for CBI admitted that the opinion letter dt. 18.7.1991 was seized by the CBI and this being a judicial record no court could record a finding to the contrary. Admittedly, petitioner did not file the opinion letter in question, along with the main petition. Hand-written letter dated 18.7.1991, purported to but the legal advice was filed as (annexure F.), along with the rejoinder affidavit on 11.12.1992. When the matter came up for hearing and the issue was raised, learned counsel for the CBI

objected to the production of the letter along with the rejoinder and argued that if any such letter was seized, the same would be with the judicial file. Trial court record was summoned for 21.5.1993. On that day it came to be recorded that the letter in question was seized. Since on that date judicial record was before the Court, any oral admission against the record would have no value. The petitioner did not press the matter further, the case was finally heard and disposed of on 8.12.1993. No finding was recorded with regard to this letter. Petitioner was only permitted to produce copy of the letter before the trial court. In the same matter along with additional affidavit, petitioner had also filed another letter (annexure H) dt. 20.11.1991 written by him to the Director CBI after the raid. The contents of this letter dated 20.11.91 (Annexure H), do not support the opinion letter dt. 18.7.1991. Its contents are rather contrary to the same. In this letter petitioner claimed that he had several sittings in the month of August, 1991 with the complainant, and that professional fee of Rs. 20,000/- was charged. There is no mention of any legal advice given by letter dated 18.7.1991. If the petitioner had the sittings with his client in the month of August, 1991, the question of any legal advice prior to that did not arise. All this shows either there was some typing error or incorrect admission was made, which is against the record. The trial court rightly observed that each page of the file seized at the spot was marked and was duly signed by the witnesses at the spot and that the argument that the letter dated 18.7.1991, was left out is not sustainable. It is also settled proposition of law that in appropriate cases, the concession given on wrong appreciation of facts can always be withdrawn. The Supreme Court judgment relied upon by learned counsel for the petitioner in State of Maharashtra v. Ram Das Shri Nivas Nayak AIR 1982 SC 1219 itself supports this view.

8. It is needless to point out that the prosecution case is based on tape-recorded conversation between the petitioner and the complainant, statement of witnesses recorded under Section 161 Cr.P.C. and the other connecting materials seized at the spot. an admission made by the counsel for CBI regarding the opinion letter cannot help the petitioner. Petitioner would be at liberty to establish his defense during the trial by cross-examining the witnesses or by producing defense. The same would be evaluated at the end of the trial like any other piece of evidence. As per the settled law at the charge stage even a grave suspicion is enough and

appreciation of evidence is not permissible. Reference in this regard can be made to the Apex Court decision in VOI v. Prafulla Kumar Samal and Anr. : 1979 CriLJ154 and several other subsequent decisions.

9. Petitioner is an Ex-Superintendent of Police, CBI This is his 5th round of litigation in this court. The alleged offence was committed on 4th October,1991 and the matter is still at the charge stage. The trial has been delayed on account of the repeated petitioners filed by the petitioner in this court which tendency ought to be deprecated. Expeditious trial is the core of criminal jurisprudence, the delay defeats justice. Section 309 Explanationn 2 provides that in appropriate cases, costs can be imposed on the prosecution or the accused for adjournment or postponement of the hearings. Sections 357 and 359 empower the Court to order payment of compensation for defraying the expenses incurred by the prosecution etc. No doubt, there is no specific provisions for imposition of costs while exercising revisional or inherent jurisdiction, nonetheless, the principles contained in these Sections can be applied in suitable cases to secure the ends of justice and to prevent abuse of the process of the court.

10. In the facts and circumstances noticed above, the petition is dismissed with costs of Rs. 5,000/- to be deposited within one month and in default of payment of costs, simple imprisonment for 15 days. Trial court record be send back forthwith. Trial court is directed to expedite the trial.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**