

Rewati Raman Singh Vs. State

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Court : Delhi

Decided On : Dec-15-2011

Appellant : Rewati Raman Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. No. 3556/2011 %
Judgment reserved on: 16th November, 2011 Judgment delivered on: 15th
December, 2011 REWATI RAMAN SINGH Petitioner Through : Mr.Mukul
Rohatgi and Mr.Neeraj Kishan Kaul, Sr. Advocates with Mr.Arunabh Chowdhry,
Mr.Amit Sharma, Mr.Altaf Mansoor, Mr.Raktha Gogoi, Mr.Vaibhav Tomar and
Mr.Gainilung Panmei, Advocates for the petitioner. versus STATE Respondent
Through : Mr.Mohan Parsaran, ASG with Mr.Pawan Sharma, Standing Counsel
(Crl) with Ms.Laxmi Chauhan and Mr.Harsh Prabhakar, Advs. DCP Ashok Chand
and ACP Rajinder Bakshi, Crime Branch in person. CORAM: HON'BLE MR.
JUSTICE SURESH KAIT SURESH KAIT, J..

1. The instant petition being filed to challenge the order dated 14.10.2011 passed
by Id. Special Judge (ACB) Delhi whereby the said judge is of the opinion that the
petitioner was a part of the criminal conspiracy punishable under Section 120B
IPC. Accordingly, by the said impugned order the Id. Judge summoned the
petitioner to appear on 03.11.2011..

2. The facts in brief of the case are that Crime Branch, Delhi registered an FIR No.

14. on 27.01.2009 under Section 120B IPC read with Section CrI.M.C.3556/2011 *Page 1 of 20* 7/8/12 and 13(1) (d) of Prevention of Corruption Act, 1988 on the basis of a letter dated 17.12.2008 written by Sh. P.D.T.Achary, Secretary General, Lok Sabha and also on the basis of a Report of Parliamentary Enquiry Committee..

3. Facts of the case in brief are that on 22.07.2008 during the debate in motion of confidence in Lok Sabha, Sh. Ashok Argal, Sh. Faggan Singh Kulaste and Sh. Mahavir Singh Bhagora, MPs placed Rs.1 Crore on the table of the house in Lok Sabha Secretariat stating that the whistle blowing operation had been recorded by CNN-IBN News Channel and the money from the bags displayed before the members of Parliament were to tell tale truth of Cash for Vote scandal and exposed the UPAs unethical plot to convert its minority Govt. into a majority Govt. by stooping to any level. The Hon'ble Speaker called for the requisite comments from the aforementioned MPs. In the meanwhile on 23.07.2008, Sh. Rajdeep Sardesai, Editor-in Chief, CNN-IBN Network also provided Video Tapes containing the video footage of sting operation..

4. Thereafter on 25.07.2008, Sh. Ashok Argal, Sh. Faggan Singh Kulaste and Sh. Mahavir Singh Bhagora, MPs submitted a joint signed statement to Hon'ble Speaker, Lok Sabha narrating the sequence of events which took place from the evening of 21.07.2008 till the evening of 22.07.2008. In this background on 26.07.2008, Hon'ble Speaker of Lok Sabha constituted an Enquiry Committee..

5. The Parliamentary Enquiry Committee's report was forwarded by the Ministry of Home Affairs, Govt. of India to the Commissioner of Police, Delhi on 15.01.2009, which was converted into the present FIR. The CrI.M.C.3556/2011 *Page 2 of 20* Hon'ble Speaker of Lok Sabha also fixed a deadline for filing the charge sheet in Court..

6. Mr. Mukul Rohtagi, Id. Sr. Advocate has submitted on behalf of the petitioner that the charge-sheet was filed by the Police on 22.08.2011 against Sh. Amar Singh and 5 other co-accused. The trial court gone through the charge sheet carefully and after application of mind cognizance was taken. It is pertinent to mention, the petitioner was not charge sheeted in the said charge sheet..

7. Ld. Sr. Counsel further submitted that first supplementary charge sheet under Section 173 (8) was filed on 29.09.2011. In the said charge sheet also, there was no allegation against the petitioner, therefore not chargesheeted..

8. He further submitted that second supplementary charge sheet was filed on 03.10.2011. Even in this charge sheet, the petitioner has not been charge sheeted nor even an iota of allegations against the petitioner..

9. Ld. Counsel further submitted, the Joint Parliamentary Committee enquired into the matter extensively and no sufficient material was found against the petitioner. Therefore, he was neither charge sheeted in the first charge sheet nor in the subsequent two supplementary charge sheets..

10. It is further submitted, only additional material on which the Id. Trial Judge has relied was the CD of the sting operation carried out by CNN-IBN News Channel, which is worthless. He argued that there is no discussion of money transaction nor even the talk in the CD is audible, therefore on the basis of that CD, the petitioner cannot be prosecuted. CrI.M.C.3556/2011 Page 3 of 20.

11. He further submitted that for the sake of arguments, if it is presumed that there is some mentioning of his role in the present case, then the Id. Judge should have issued direction to investigate further and only thereafter, if some material is on record, the action would have been taken accordingly. He further submits that once a court has taken cognizance in the matter, that court has no power to review its own order until and unless there is a material or evidence before the court, summoning the petitioner amounts to review its order, which is not permissible under the law..

12. Ld. Sr. Counsel has pointed out that in joint statement 3 MPs named above stated that one of the inter-mediatories took them to Le-Meridien Hotel where they were to meet a Senior Congress Leader, however the meeting did not materialize..

13. In the impugned order, the Id. Trial Judge has recorded that in the joint statement, signed by all the 3 MPs, it is stated that late in the evening on 21.07.2008, a message was received from petitioner that he would meet them at

the residence of Sh. Ashok Argal at 4, Feroz Shah Road, New Delhi. Petitioner came after mid-night and he promised them that their interest would be taken care of and he further mentioned that they would have a face to face meeting with Sh. Amar Singh, MP and that he would settle all issues including the amount payable to them..

14. It is further recorded in the impugned order that the entire meeting and conversation was recorded by CNN-IBN team which had bugged the room with hidden cameras. The above-named 3 MPs stated that the next morning on 22.07.2008, two of them, namely Sh. Ashok Argal and Sh. Faggan Singh Kulaste were taken for the meeting with Sh. Amar Singh at his residence at Crl.M.C.3556/2011 Page 4 of 20 27, Lodhi Estate, New Delhi in Maruti Zen and the car was also followed by the Car of CNN-IBN and visit was also recorded by CNN-IBN Reporter..

15. Ld. Sr. Counsel further submitted that the aforesaid discussion was pointed out, by Sh. Anil Soni, Advocate appearing on behalf of accused Faggan Singh Kulaste, during the course of arguments. He submitted before the trial judge that the prosecution had failed to carry out fair investigation and even though the petitioner was handed in gloves and there were allegations against him, however the prosecution had not charge sheeted him..

16. It is submitted that only on the submission of Id. Counsel appearing for one of the accused, Id. Trial Judge has passed the impugned order without application of mind and without due process of law. Whatever material, Id. Trial Judge has relied upon, the same material was available when she took cognizance first time. If the said Id. Trial Judge was convinced to take cognizance, then the judge would have asked for further investigation and to file the Report on all the particular issue, which Id. Judge totally failed to do. Ld. Judge has taken cognizance only on the joint statement of 3 MPs who all are accused in the very case itself. Their statement has no weight in the eyes of law. The said statement cannot be even used against them and to using the same against the petitioner does not arise..

17. Ld. Sr. Counsel further submits that Id. Trial Judge in the impugned order held that material so placed on record and signed statement of 3 MPs was sufficient to

show prima facie case that none-else but the petitioner was the person who led the 3 MPs and arranged meeting with Sh. Amar Singh and mentioning them that their interest would be taken care of and if they Crl.M.C.3556/2011 *Page 5 of 20* had a face to face meeting with Sh. Amar Singh, he would settled issue including the amount payable to them..

18. It is also recorded by the Id. Trial Judge that the petitioner was a part and parcel and an important link to the chain of events of alleged criminal conspiracy and it is settled law that for an offence under Section 120B IPC, it is not necessarily to be proved that perpetrators expressly agreed to do or cause to be done illegal act..

19. However, further it is also recorded that the settled law is that mere presence of a person would not make him a part of criminal conspiracy..

20. Ld. Sr. Counsel has pointed out that report dated 30.10.2008 of Joint Parliamentary Committee had given a clean chit to the petitioner and recommended as under:- "The committee after taking into account their findings and conclusions in the matter (as detailed in Para 141 particularly at (xiv) to (xvii) relating to the roles of Sh. Sanjeev Saxena, Shri Sohail Hindustani and Sh. Sudheendra Kulkarni], recommend that this matter may be probed further by an appropriate investigating agency. The Committee further recommend that the procedure for requiring appearance of member of one House before other House or Committee thereof, as recommended by the Committee of privileges (Second Lok Sabha) in their Sixth Report in 1958, needs to be reviewed to bring it at par with the position as is obtaining now in Parliament of United Kingdom (as stated in para no.

167. of the Report).".

21. He has further submitted that even on the sting operation, the said Parliamentary Committee already looked into and in Para 97 of the report of Joint Parliamentary Committed it is noted as under:- Crl.M.C.3556/2011 *Page 6 of 20* "The Committee, note that the tapes initially furnished by CNN-IBN were not audible. However, the video aired by CNN- IBN on their channel on 11th August,

2008 evening, did indicate this conversation. The Committee also notes that the same was a result of audio video mix blending done by CNN- IBN for their feature on TV."

22. In the said Parliamentary Committee Report it is also noted as under:- "The extracts of our conversation with Shri. Rewati Raman Singh, inter alia, include the following relevant sentences as would be evident from the audio and video recording available with you. Rewati Raman Singh:I am with you, let's go, I am there with you, come, I am with you*..... Rewati Raman Singh: Come on, enough now, let's go, you come with me, I will talk in front of you, otherwise whole night we will keep saying that you go and talk. I have already spoken and that's why I have come here. Mahavir Singh: No it was something else. Rewati Raman Singh: What is the matter, tell me..... Mahavir Singh: You would have not talked about the amount..... Rewati Raman Singh: I have not talked about the amount, I have not spoken, and we shall talk about the amount in front of you only. We shall talk in front of you, you talk it will be done. If you want to talk about money, you talk otherwise you go to your home.....about the amount....we shall talk, how can I talk.....how do I know that you have..... Faggan Singh: No that is not the issue see after talking only a person gets an idea? Rewati Raman Singh: Talks are held everywhere, we talk face to face, and we talk at the back also. If you like the offer then it is ok, why are you getting Crl.M.C.3556/2011 *Page 7 of 20* so upset about it? I have come to your residence..... Rewati Raman Singh: That's why I am saying, lets go and talk face to face, if you like then it is ok, if not then leave it. Nobody is forcing you. If you say, I can still postpone it. If you like then only you talk, if you don't like then it is over. Then you go to your home and I shall go to mine. No, we shall talk face to face. Al you three should be satisfied. NO one would come to now there, come on let's go. Rewati Raman Singh: What is there to feel upset about. It is only a matter of 10 minutes. Just sit for 10 minutes and everything will be over. What do I talk on phone, what can I talk on phone..

23. Ld. Counsel has argued that instant FIR no. 14/09 was registered in 27.01.2009. The petitioner was not named in the said FIR. In first charge sheet dated 22.08.2011, it is clearly recorded that during investigation sufficient evidence was not on record regarding the adverse role of the petitioner regarding soliciting,

tempting, taking or giving of bribe to 3 BJP MPs during the motion of confidence slated for 22.07.2008 in the Parliament. It is further recorded although there is some recording during the night of 21-22.7.2008 at the residence of Sh. Ashok Argal at 4, Feroz Shah Road, New Delhi in which the petitioner is also seeing talking to 3 BJP MPs, but there is no sufficient evidence in support of the allegation of BJP MPs that he had come there to discuss regarding a deal with Sh. Amar Singh, MP for the monetary consideration during the voting on motion of confidence. Moreover, he did not go with BJP MPs to the residence of Sh. Amar Singh, MP in the morning of 22.07.2008. There is no evidence to prove that petitioner had fixed a meeting of BJP MPs with Sh. Amar Singh, MP in the morning of 22.07.2008. Besides this he has not played any further role in the alleged delivery of bribe to BJP MPs by Sh. Sanjeev Saxena. The 4 witnesses of CNN-IBN team and Sh. Hasmat Ali has also not discussed anything against the petitioner in their statements regarding taking or giving bribe money to BJP MPs. In these circumstances, there was no sufficient evidence to arrest or chargesheet the petitioner in the case..

24. Ld. Counsel further submitted, it is recorded in the charge sheet that on 25.07.2011, Sh. Ashok Argal, MP joined the investigation and he stated that at that point of time, he was sitting with MP of BJP from Bhind. The constituency at that time during 14th Lok Sabha, which he represented was Morena, which was a reserved Constituency, but after delimitation became general Constituency. He further stated that due to delimitation, there were rumors that he was a candidate for Horse Trading. On 21.07.2008, in the evening at the instance of Sh. Sudheendra Kulkarni, he went to 17, Balwant Rai Mehta Lane, residence of Sh. Sudheendra Kulkarni along with Sh. Mahavir Singh Bhagora, Sh. Faggan Singh Kulaste and met Sh. Sudheendra Kulkarni and Sohail Hindustani. He was informed by Sh. Sudheendra Kulkarni that a sting operation of Senior of Congress Leader Sh. Ahmed Patel, with whom Sohail Hindustani had already fixed a meeting, was to be conducted. They waited for the CNN-IBN team. The team arrived late and its members were introduced as Sh. Siddharth Gautam, Sh. Saif Kidwai, Sh. Karamveer and Sh. Sudesh Bhatt..

25. It is further recorded that Sohail Hindustani in the meantime said that they were late for meeting with Ahmed Patel at his residence and so now they had to go to Le Meridien Hotel for the said meeting. The team of CNN- IBN fitted hidden cameras on Sh. Faggan Singh Kulaste and Sh. Mahavir Crl.M.C.3556/2011 *Page 9 of 20* Singh Bhagora, MPs. However, Sh. Ashok Argal stated that he was not sure whether Sh. Mahavir Singh Bhagora had left for Le-Meridien Hotel. After some time they came back and said that Sh. Ahmed Patel did not come to the hotel and hence no recording could be done. They all came back to his residence at 4, Feroz Shah Road, New Delhi..

26. Sh. Ashok Argal also stated that Mr. Sudheendra Kulkarni then decided that Sohail Hindustani should divert his efforts between Samajwadi Party leaders as time was running out. Sohail Hindustani revealed that he was making efforts to contact Sh. Amar Singh through petitioner Sh. Rewati Raman Singh, Senior Leader of Samajwadi Party. Sohail Hindustani was asked by Sh. Sudheendra Kulkarni to start his efforts in the direction of Sh. Amar Singh, MP and it was decided that CNN-IBN team will fix hidden cameras in the drawing room of Sh. Ashok Argal and if Sohail Hindustani succeeds then he would bring a leader of Samajwadi Party to his residence..

27. Ld. Sr. Counsel further submits that 3 BJP MPs were intentionally trying to name someone in the discussion, therefore they were moving leader to leader, party to party. There were no efforts from the petitioner side to contact them or to contact any of the members of Parliament whatsoever. Therefore, the efforts made by 3 MPs, Sudheendra Kulkarni and Sohail Hindustani were failed and could not be succeeded in their intention and motivated agenda..

28. Ld. Counsel further submits that they wanted to malign the reputation of the Congress Party and of the Samajwadi Party as well. Therefore, they firstly tried to fix Ahmed Patel and thereafter the petitioner. In such a Crl.M.C.3556/2011 *Page 10 of 20* situation when the petitioner had not made any efforts either to contact or to give the bribe, the petitioner cannot be prosecuted..

29. Ld. Counsel has referred Pepsi Foods Limited Vs. State Judicial Magistrate (1998) 5 SCC 749 wherein in Para 28 it is held as under:- "28: Summoning of an

accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused."

30. Ld. Counsel further submitted that there was no material before Id. Special Judge to summon the petitioner under Section 120B Indian Penal Code, 1860. Therefore, the impugned order has been passed in mechanical manner. He further submitted that the Id. Special Judge did not take the cognizance against the petitioner on three chargesheet being filed whereas the cognizance was taken against other accused persons. However, cognizance against the petitioner was taken on the same set of materials, Crl.M.C.3556/2011 *Page 11 of 20* amounts to review of its earlier order dated 25.08.2008, which is impressible in law..

31. Ld. Counsel in support of his arguments has relied upon Judgment of this Court in Anirudh Sen Vs. State of Delhi 2009 (93) DRJ 70, wherein in Para 19 it is held as under:- "19: From the discussion so far it appears that a decision was taken by the District Magistrate not to issue summons so far as the petitioner is concerned. This decision has been reversed by virtue of the impugned order. It would definitely in my opinion, amount to a Review of the earlier order. The Ratio of Adalat Prasad's case (Supra) would clearly apply and the impugned order would be bad because the Magistrate did not have the power of Review. Although the position in Adalat Prasad's case (supra) was the other way round, that is , that a summoning order was recalled subsequently. In find that it would not make the

slightest difference and the ratio would clearly apply in the fact situation obtaining in the present case. What has happened here is that initially, the magistrate decided not to summon and subsequently after an interval of four and a half years, on the basis of the same material, decided to summon the petitioner. Although the non- summoning precedes the summoning order in the present case and is just the reverse of the sequence of events in the case before the Supreme Court in Adalat Prasad (Supra), the ratio is that the Magistrate has no power to review. That being the case, the impugned order would be bad, in as much as it would amount to a review of an earlier order by the Magistrate when he did not possess any such power under the criminal procedure code."

32. Ld. Counsel further argued that Criminal Courts have no power to review its own order. The criminal procedure code does not contemplate a review of an order as the law is very settled in case of Adalat Prasad Vs. Crl.M.C.3556/2011 *Page 12 of 20* Rooplal Jindal, (2004) 7 SCC.

338. Therefore, he submitted that the impugned order dated 04.10.2011 tantamount to a review of the order taking cognizance by the Special Judge without any additional material on record..

33. Ld. Counsel further argued that the repeated cognizance of offences by the Criminal Court is impermissible and would render the powers conferred under Section 319 of the code nugatory. It is trite that "Cognizance" of the offence in a case is taken only once and not repeatedly. Repeated cognizance by the Court would render Section 319 of the Code otiose. Reliance has been placed on the judgment of Bombay High Court in Hemant P. Vasanji v. Mulshankar Shivram Rawat (1991)Crl. Law Journal 3144 wherein it is held as under: "S.319 of the Code shows that the policy of the code is that the offence can be taken cognizance of once only and not repeatedly upon discovery of further particulars. If it was permitted to take cognizance of the same offence repeatedly, then it was unnecessary for the legislature to have put S.

319. on the Statute book as it would be redundant."

34. Ld. Counsel further submits that on the other issue of prior sanction being not taken under Section 197 of Cr.P.C. from the appropriate authority which was mandatory before taking cognizance by the Special Judge. Ld. Counsel further submitted that the petitioner was a sitting member of Parliament at the time of the alleged incident and continued to remain so even on the day of cognizance against him by the Id. Special Judge on 14.10.2011. Against the petitioner, being "Public Servant" required sanction to prosecute, was mandatory under Section 197 Cr.P.C. and the court of Id. Special Judge erred in taking cognizance of the offence qua the CrI.M.C.3556/2011 *Page 13 of 20* petitioner. Rather the impugned order does not discuss at all on the requirement of sanction and the Ld. Special Judge was oblivious of the fact that the petitioner is a public servant and required the prosecution to obtain prior sanction before taking cognizance against the petitioner..

35. Ld. Sr. Counsel has placed reliance on the decision of Hon'ble Supreme Court in case of Shankaran Moitra Vs. Sadhna Das 2006 (4) SCC 584 wherein in Para 22 it is held as under:- "22. Section 197 (1), its opening words and the object sought to be achieved by it, and the decision of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a Public Servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage.".

36. Ld. Sr. Counsel has further relied upon another judgment of the Hon'ble Supreme Court in State of H.P. v. M.P. Gupta 2004 (2) SCC 349 wherein in Para 10 it is held as under: "10. So far as the Public Servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed, was in discharge of the official duty. The Section not only specifies the person to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression. "no court shall take cognizance

of such offence except with the previous sanction". Use of the words "no" *Crl.M.C.3556/2011 Page 14 of 20* and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to the Blacks Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

37. Ld. Counsel further submitted that the requirement of sanction has not even been discussed, much less considered by the Special Judge in the impugned order..

38. Ld. Counsel further argued that by the impugned order, Ld. Special Judge has taken cognizance of the offence under Section 120B Indian Penal Code, 1860 and therefore in view of Section 196(2) of the code, prior sanction from the State Government or District Magistrate was mandatory. In operative part of the impugned order it is recorded as under:- "In my considered view there is sufficient material on record to form an opinion that Rewati Raman Singh was a part of the alleged criminal conspiracy and I take cognizance of the offence u/s 120B IPC against Rewati Raman Singh. He be summoned to appear on 03.11.2011 and summons be handed over to IO ACP Rajender Bakshi for effective service on accused Rewati Raman Singh..

39. On the other hand, Sh. Mohan Parasaran, Ld. Addl. Solicitor General has submitted that after detailed investigation, final report under Section 173 Cr.P.C. (Chargesheet) was filed on 24.08.2011 against six accused persons *Crl.M.C.3556/2011 Page 15 of 20* namely (i) Sanjeev Saxena (ii) Sohail Hindustani (iii) Sudheendra Kulkarni (iv) Amar Singh (v) Faggan Singh Kulaste (vi) Mahavir Singh Bhagora..

40. Ld. Addl. Solicitor General further submitted that during the course of investigation, the role of the petitioner has been examined in detail and it was found that there was no sufficient evidence to chargesheet the petitioner..

41. Ld. Addl. Solicitor General further submitted that as per the direction of this Court, CD and Forensic Report of CFSL, which had been examined with greater care and DV tape was produced. The CD was also played before this Court and Forensic Report was also placed before the court for perusal. Forensic report certifies that there was no tampering or editing with the tapes and the sound quality is poor..

42. It is pertinent to mention here that vide order dated 24.10.2011, Id. Counsel for the respondent was directed to produce audio / video recording if any on the next date of hearing..

43. Pursuant to order referred above, the said audio / video tapes / CDs were played in the open court. Firstly, I found that the voice quality is so poor, no one can understand the discussion. I note Id. Special Judge did not even bother to go into the detail or material against the petitioner. At least Id. Special Judge would have seen the CD in question, thereafter only would have been passed the impugned order. I am recording this fact because of the reason that when I played the CD in the open court, except the visible meeting between Faggan Singh Kulaste and the petitioner, nothing is clear and no clear voice at all..

44. Ld. Addl. Solicitor General produced the FSL Report on the CDs, wherein it is recorded firstly, that there is no editing, tampering with the tapes and it is also mentioned that the sound quality is poor. The shocking CrI.M.C.3556/2011 *Page 16 of 20* one is that CDs / tapes in question are of the year 2003 and not of 2008 of the alleged offence..

45. If the CDs/ tapes itself do not make the chain as claimed by the joint statement of the 3 BJP Mps, then material is not on record against the petitioner to prosecute him..

46. Firstly in 3 chargesheets, the petitioner has not been charge sheeted. Secondly, there is no additional material evidence on record to take cognizance against the petitioner..

47. Ld. Special Judge merely took the cognizance on the submission of the Id. Counsel Sh. Anil Soni, appearing on behalf of accused Ashok Argal. Ld. Trial Judge has wake up and issued summon saying that there is sufficient material against the petitioner. Admittedly, the same material was on record when the two charge sheets were filed and the Id. Special Judge took the cognizance against the accused persons..

48. Even otherwise, if it is presumed that there is a talk in the CD / tapes or there was a meeting with the petitioner, then as per the FSL Report this CD itself is not pertains to year of the offence i.e. 2008, however, the CD / tape are of the year 2003..

49. Ld. Trial Judge had to carefully scrutinise the evidence brought on record. The cognizance in the instant case has already been taken against the accused persons and not against the petitioner. Vide the impugned order earlier decision has been reversed. The impugned order is bad in law because the said Judge had no power to review. No doubt, the powers are provided under Section 319 of Cr.P.C. to proceed against the person during inquiry or trial, if appears from the evidence that any person not being the accused has committed any offence for which such person could be tried *CrI.M.C.3556/2011 Page 17 of 20* together with the other accused person. However, this stage never came before Id. Judge..

50. More so, the Coordinate Bench of this Court on 16.11.2011 while admitting six accused on bail in Bail Appl. No. 1510/2011 titled as Ashok Argal vs. State as a lead matter has recorded the submission of Id. Counsel for petitioners that there is nothing on record to show that there was any mens rea on the part of any of the petitioners to conspire with each other or with the bribe givers to accept bribe. The motive of this entire episode was to expose horse trading which was to take place in the Trust Motion in the Parliament. That being the only motive of the petitioners, the organizing of sting operation could not be described as criminal conspiracy..

51. It is also observed and was of the opinion, apparently there does not appears to be any reason to disagree with the Id. Counsel for the petitioners. If there was any conspiracy between the petitioners inter se or with bribe givers, they would have associated themselves with CNN-IBN News Channel and exposed

themselves to the act of taking money before the Camera..

52. In the said order, this Court was of the view after going through the voluminous chargesheet, the brother Judge could not find any prima facie evidence on record of demand and acceptance of illegal gratification by the three MPs..

53. Further it is recorded that admittedly, there was neither any tampering nor editing in the video/audio recording done by the CNN-IBN team. This fact was so confirmed by the report of CFSL. None of the petitioners were beneficiary of the amount received by 3 MPs from petitioner namely Sanjeev Saxena. In fact it was the prosecution's own case that the MPs did CrI.M.C.3556/2011 *Page 18 of 20* this act to entrap Congress and Samajwadi Party so as to expose them. If the intention of the petitioner MPs was to receive bribe, they would have done so and kept the amount so received silently instead of producing the same in the Parliament immediately thereafter. If, that was so, even according to the prosecution the basic requirement of mens rea to accept and receive bribe so as to (bring it) within the ambit of Prevention of Corruption Act, 1988 was lacking on the part of all the petitioners. All the star witnesses of the prosecution in their statements under Section 161 Cr.P.C. have stated this incident to be sting operation and none of them has stated acceptance of illegal gratification by the petitioner MPs..

54. It is further recorded that the Parliament itself was supreme and competent enough to take action against the Members. If there was any such acceptance of illegal gratification by the three MPs, it would have taken some action against them. Admittedly, no action was taken by the Parliament except that of appointing a Parliamentary Enquiry Committee. It is also noted that some of the Members of the Parliamentary Enquiry Committee have also given dissenting views with regard to the recommendation of initiation of action against the petitioners..

55. Though the Id. Sr. Advocate has argued on prior sanction, however in the circumstances as discussed above, I am not giving any opinion on this issue for the reason that I am of the view the Id. Special Judge has wrongly without application of mind and only on the submission of Id. Counsel of accused has issued the impugned order..

56. Keeping the submission of Id. Counsel for parties, afore discussion and the observation made by the Coordinating Bench of this Court vide order dated 16.11.2011 into view; I find that there was no material available Crl.M.C.3556/2011 *Page 19 of 20* before the Id. Special Judge. Accordingly, I quash the summoning order dated 14.10.2011 against the petitioner..

57. Consequently, Crl. M.C. 3556/2011 is allowed..

58. No order as to costs. SURESH KAIT, J December 15, 2011 jg
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