Ajit Singh Vs. Cbi

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Court : Delhi

Decided On : Jul-29-2013

Judge : G.P. Mittal

Appellant : Ajit Singh

Respondent : Cbi

Advocate for Def. : Ms. Sonia Mathur

Advocate for Pet/Ap. : Mr. Dinesh Mathur, Mr. Amish Dabas

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

26. h July, 2013 Pronounced on:

29. h July, 2013 + Crl. M.C.4187/2011 AJIT SINGH Through: ..... Petitioner Mr. Dinesh Mathur, Sr. Advocate with Mr. Amish Dabas, Advocate versus CBI Through: ..... Respondent Ms. Sonia Mathur, Standing Counsel CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. By virtue of this Petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, the Petitioner seeks to challenge an order dated 08.11.2011 passed by the learned Special Judge whereby charges for the offence punishable under Section 120-B read with Sections

419/420/467/468/471 IPC and Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988(the P.C. Act) was ordered to be framed against the Petitioner.

2. The prosecution was launched against the Petitioner on the basis of allegations, which can be culled out from paras 1 and 2 of the impugned order hereunder:

1. The case of the CBI, in brief, is that Mansarovar Cooperative Group Housing Society (CGHS) Ltd was registered on 07.12.1983 with Registrar of Cooperative Societies(RCS), New Delhi vide registration No.1005-H on application of P.N. Pandey, the then Secretary of the society, with its 75 members. The society was having its address at 70, Church Road, Bhogal, Jangpura, New Delhi. The Freeze strength of the society became 116 members. Smt. Madhu Aggarwal, the President of the society, is wife of accused Gokul Chand Aggarwal who had played a vital role in revival of many other co-operative Group Housing Societies. The society in question was fraudulently managed/controlled by Smt. Madhu Aggarwal and her husband accused Gokul Chand Aggarwal on the strength of forged documents and fake members. Accused Gopal Singh Bisht, the dealing assistant, accused Man Singh, the then AR(South) and accused Narayan Diwakar, the then RCS, conspired with Smt. Madhu Aggarwal, accused Gokul Chand Aggarwal and others without making proper verification regarding the existence of the society and its office bearers/members and approved the list of fictitious and nonexisting members of the society. Thereafter the same was submitted to DDA for allotment of land.

2. Accused Gokul Chand Aggarwal purchased the documents of the society for rs.60,000/- from accused Subhash Choudhary, formerly Secretary and promoter members of the society. Subsequently, accused Gokul Chand Aggarwal suomoto filed forged registration of 20 promoter members of the society by ante-dating the same to 25.05.1990 and enrolled 20 fictitious members in the society. On 23.02.2003, the General Body Meeting of the society was held which was chaired by accused Subhash Choudhary and purportedly attended by 27 members. In this meeting a resolution was passed for shifting the office of society from 70, Church Road, Jangpura, Bhogal, New Delhi, to 86, 2nd Floor, Vinoba Puri, Lajpat Nagar, New Delhi. Accused Gokul Chand Aggarwal impersonated himself as R.P. Saxena

and the Secretary of the society sent a letter to AR (South) on 20.05.2003 which was processed by accused Gopal Singh Bisht, the then Dealing Assistant, who recorded a note dated 23.05.2003 that an approved list of 116 members as on 31.07.1985 had been forwarded to DDA for allotment of land after necessary verifications. Accused Gopal Singh Bisht recommended that no further verification was required since list of members had already been approved by RCS. Thereafter the file was submitted to accused Rakesh Bhatnagar, the then JR, through accused Man Singh, the then AR, who recorded noted dated 26.05.2003 detailing that enrollment and resignation of members had not been verified by the RCS and, therefore, society may be directed to submit their audit and election report within 15 days. Accused P.K. Thirwani, the Sr. Auditor, was appointed by J.S. Sharma, the then AR (Audit), to undertake the audit of the society for the period 1990-2003. However, accused P.K. Thirwani did not visit the office of society and prepared an audit report thereby he violated provisions of Delhi Cooperative Societies Act, 1972(hereinafter referred to as the DCS Act) and the Rules framed thereunder. The minutes of General Body Meeting, Management Committee Meeting. Resignation and enrollment of members and balance sheet for the period 1990-2003, receipts and payments etc. were prepared at the instance of accused Gokul Chand Aggarwal and accused Ashwani Sharma. Accused Narayan Diwakar without looking into the fact that out of 20 members who had been shown as resigned in General Body Meeting relied upon recommendation made by accused Gopal Singh Bisht and accused Man Singh, the then AR, and approved fresh list of 116 members on 01.08.2003 which was forwarded to DDa for allotment of land. The DDA sent a letter dated 31.10.2003/03.11.2003 and another dated 10.12.2003 to the society in which address of the society was given as 206, 2nd Floor, New Delhi House, Barakhamba Road, New Delhi and the said address belonged to accused Ajit Singh who confirmed having received the aforesaid letters.

3. It is urged by the learned senior counsel for the Petitioner that as per the case of the prosecution, a letter dated 31.10.2003/03.11.2003 and another letter dated 10.12.2003 addressed to the Secretary/President of Mansarover Cooperative Group Housing Society Ltd. was sent at the address 206, 2nd Floor, New Delhi House, Barakhamba Road which was the address of another society, namely,

Vishrantika CGHS Ltd. of which the Petitioner was the President. It is urged that according to the prosecution, scrutiny of bank accounts of M/s. Baltic Construction Pvt. Ltd., a partnership concern, whereof Petitioner was one of the partners, showed that a cheque for `12 lakh was issued on 07.09.2004 in favour of M/s. Purnima Projects (P) Ltd., a partnership concern of co-accused Gokul Chand Agarwal and Madhu Agarwal. It is urged that this by itself was not sufficient to show the Petitioners nexus or complicity in forging the list of members allegedly forwarded to the DDA or allotment of the land to Mansarover Cooperative Group Housing Society Ltd. at a subsidized rate.

4. The learned counsel urges that to prove charge of conspiracy, the prosecution has to establish that there was an agreement between the accused to do or caused to be done an illegal act or an act which is not illegal by illegal means. It is urged that the allotment of the land was done even before the issuance of the alleged cheque by the partnership concern M/s. Baltic Construction Pvt. Ltd.(of the Petitioner) to M/s. Purnima Projects (P) Ltd. (of the co-accused) and the said circumstance cannot be taken into account by the prosecution to show that the Petitioner conspired with the co-accused, particularly Gokul Chand Agarwal and Smt. Madhu Agarwal to get the allotment of the land from DDA. Therefore, it is urged that there is no direct or circumstantial evidence to connect the petitioner with the conspiracy. The Petitioner, according to the learned counsel, is, therefore, entitled to be discharged. (CBI v. K. Narayana Rao, (2012) 9 SCC 512.Sherimon v. State of Kerala, (2011) 10 SCC 76.and Esher Singh v. State of Andhra Pradesh, AIR 200.SC 3030).

5. On the other hand, the learned Standing Counsel for the CBI urges that at the stage of framing of the charge, the evidence is not to be meticulously examined and if on the basis of material collected by the prosecution the Trial Court forms an opinion regarding existence of the factual ingredients constituting the offence alleged, the Trial Court would be justified in framing the charges against the accused. It is urged that writing of the letters dated 31.10.2003/03.11.2003 and 10.12.2003 addressed to the Secretary/President of Mansarover CGHS Ltd. at the address of the Petitioner clearly established his complicity unless he(the Petitioner) offers an explanation with regard to the same.

6. It is not in dispute that 206, 2nd Floor, New Delhi House, Barakhamba Road, New Delhi was the address of Vishrantika CGHS Ltd. of which the Petitioner was the President. The prosecution relies on the letter dated 31.10.2003/03.11.2003 received by Smt. Neeru Gupta, employed in the office of the Petitioner. The receipt of the letter shows the stamp of the Vishrantika CGHS Ltd. Statement of Smt. Neeru Gupta further shows that the said letter was handed over to one Shri Rajan Sareen who was working in the office of Ajit Singh and who used to handle all the correspondents pertaining to the Housing Society. Vishrantika CGHS Ltd. belonged to Petitioner Ajit Singh and receipt of this letter at this address and its response by Mansarover CGHS Ltd. would be sufficient to raise a strong suspicion against the Petitioner. The fact that a cheque for `12 lakh was later on issued on 07.09.2004 from the account of M/s. Baltic Construction Pvt. Ltd., a partnership concern belonging to the Petitioner in favour of M/s. Purnima Projects (P) Ltd., a partnership concern of Gokul Chand Agarwal and his wife and co-accused Smt. Madhu Agarwal and its subsequent return by the co-accused is only corroborative evidence.

7. It is well settled that a charge cannot be framed merely on suspicion against the accused. But at the same time at the stage of framing the charge the court is only to take a tentative view on the basis of material on record. If the court is of the view that the accused might have committed the offence it would be justified in framing the charge against the accused. In Sheoraj Singh Ahlawat & Ors. v. State of Uttar Pradesh & Anr. 2012 (11) SCALE 107 the Supreme Court relied on its various earlier decisions in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561.State of Karnataka v. L. Muniswamy, 1977 Crl.L.J.

1125, State of Maharashtra v. Som Nath Thapa (supra), State of M.P. v. Mohanlal Soni, 2000 Crl.L.J.

3504 and Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 and observed as under:11. In Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561.. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. (emphasis supplied) 12. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L. Muniswamy 1977 Cri.LJ 1125.State of Maharashtra v. Som Nath Thapa 1996 Cri.LJ 244.and State of M.P. v. Mohanlal Soni 2000 Cri.LJ 3504.In Som Nath's case (supra) the legal position was summed up as under:if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. (emphasis supplied) 13. So also in Mohanlal's case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision inMohanlal's case (supra) is in this regard apposite:

8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. x x x x x x x

x x x 16. To the same effect is the decision of this Court in Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4.where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge: (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out: (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

8. The material collected does raise strong suspicion that the Petitioner was part of the conspiracy to obtain allotment of the land by the main accused (Gokul Chand Aggarwal). K. Narayana Rao and Esher Singh relied upon by the learned Senior Counsel do not help the Petitioner. Thus the learned Special Judge was fully justified in framing the charge against the Petitioner.

9. In view of the above discussion, I do not find any ground to interfere in the impugned order. The Petition is without any merit; the same is accordingly

dismissed. (G.P. MITTAL) JUDGE JULY 29 2013 pst/vk