

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

**CRL.REV.P. 832/2019 and CRL.M.A.33415/2019**

Reserved on : 06.07.2022

Date of Decision : 20.07.2022

IN THE MATTER OF:

LT. GEN (RETD.) TEJINDER SINGH

..... Petitioner

Through: Mr. Siddharth Luthra and Mr. Pramod Kumar Dubey, Senior Advocates alongwith Mr. Anurag Andley, Mr. Sheezan Hashmi, Mr Kaustub Chauhan & Mr. Akshat Kumar, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Anil Grover, SPP for CBI alongwith Mr. Neeraj Bhardwaj & Mr Anurag Agarwal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**J U D G E M E N T**

**PURUSHAINDR KUMAR KAURAV, J.**

1. This Revision under Section 397 read with Section 482 of Cr.P.C., is directed against the order dated 02.08.2019, passed by the learned Special Judge, CBI Rouse Avenue Courts, New Delhi, framing charge against the petitioner under Section 12 of the Prevention of Corruption Act, 1988 ('hereinafter referred as PC Act, 1988').

2. The brief facts of the case are that the complainant General V.K. Singh, the then Chief of Army Staff (COAS) vide his letters dated 30.03.2012 and 10.04.2012 alleged that during a meeting in his office on 22.09.2010, the

petitioner had offered him a bribe of Rs. 14 Crore on behalf of one *Mr. Ravi Rishi* to clear the file for procurement of 1676 HMVs (High Mobility Vehicles) including Tatra vehicles by the first week of October, 2010.

3. Based on the complaints so received, preliminary inquiry being AC-1 2012 A 0003 dated 11.04.2012 came to be registered which was converted into FIR No. RC AC1 2012A0014/CBI/AC-1 dated 19.10.2012 under Section 12 of PC Act, 1988.

4. After completion of the investigation, the chargesheet bearing No. 04/2014 was filed by the CBI before the competent court. The Special Judge Patiala House took cognizance of the offence on 28.08.2014. The learned Special Judge, CBI vide impugned order dated 02.08.2019, framed charges under Section 12 of the PC Act, 1988 against the petitioner. It is stated at the Bar that out of 21 witnesses, 12 witnesses have already been examined and the trial is in progress.

5. Mr. Siddharth Luthra & Mr. Pramod Kumar Dubey, learned Senior Counsels appearing on behalf of the petitioner submitted that the impugned order on framing of charge is contrary to the settled legal position, inasmuch as no offence under Section 12 of the PC Act, 1988 is made out. According to them, keeping in view the language of Section 12 of the PC Act, 1988 the essential ingredients i.e., demand for the purpose of Sections 7 & 11 of the PC Act, 1988 is necessary and the said ingredient is missing in the instant case. According to them, no demand was ever made and the alleged offer was at best a voluntary act of the petitioner. They also submit that there is an unexplained delay in filing of the complaint and lodging of the FIR. The incident is of 22.09.2010, but the complaint was made on 30.03.2012 and then on 10.04.2012. Based on the same, a preliminary inquiry was lodged on

11.04.2012. They also submit that no audio/video recording of the alleged conversation between the complainant and the petitioner was produced, whereas, the complainant in his statement dated 12.12.2013 claimed that he had recorded the alleged conversation which he had allegedly handed over to the CBI.

6. Learned Senior Counsel, Mr. Luthra placed reliance on the decisions of this Court in the matters of *Ashok Argal v. State*<sup>1</sup> & *Rewati Raman Singh v. State*<sup>2</sup> and *Jatinder Pal Singh v. Central Bureau of Investigation*<sup>3</sup>. He also relied on the decision of the High Court of Kerala at Ernakulam in the matter of *N.A. Abdul Rahiman v. State of Kerala*<sup>4</sup>, decision of the High Court of Allahabad in the matter of *Ganesh Sharma Vs. State of U.P. & Ors.*,<sup>5</sup> and the decision of High Court of Judicature at Bombay in the matter of *Kishore Khanchand Wadhvani & Ors. v. State of Maharashtra*<sup>6</sup>.

7. Learned Senior Counsel for the petitioner also submitted that the Special Judge has wrongly relied on the decision in the matter of *R.P. Malik v. State*<sup>7</sup>. The said decision is *per incurium* in view of overlooking earlier binding precedent of this Court in the matter of *Rewati Raman Singh (Supra) & Ashok Argal (Supra)*.

8. It is also submitted that the learned Special Judge has committed an error while placing reliance on Section 116 of the IPC. According to him the offence under Section 12 of the PC Act, 1988 is a distinct offence from Section 116 of the IPC which deals with the abetment of offences for which no express

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<sup>1</sup> 2011 SCC OnLine Del 4788

<sup>2</sup> 2012 (127) DRJ 176=2011 SCC OnLine Del 5407

<sup>3</sup> 2022 SCC Online Del 135 : 2022 (287) DLT 334

<sup>4</sup> MANU/KE/0951/2015:2015 SCC OnLine Ker 14979

<sup>5</sup> Manu/UP/0697/2019 in case No. 6126/2019

<sup>6</sup> MANU/MH/2028/2019

<sup>7</sup> 2013 SCC onLine Del 2096

provision is provided in the Code. He placed reliance on the decision of the Hon'ble Supreme Court in the matter of *Bhajahari Mondal v. State of West Bengal*<sup>8</sup> (Para 9). He further states that the language of Section 116 of IPC itself excludes operation of the Section as and when a special provision exists as to abetment. He therefore, submits that an interference is called for, and the entire proceedings pending before the Special Judge requires to be quashed.

9. Mr. Anil Grover, learned Standing Counsel appearing on behalf of the CBI/respondent vehemently opposed the present petition. He submits that the entire petition is without any merit and the petitioner is not entitled for any relief under Section 482 of Cr.P.C. According to him, the order passed by the learned Special Judge does not call for any interference and the exercise at this stage should be confined to consider whether the material on record *prima-facie* proves that the offence is committed or not. According to him there is ample incriminating material available on record to establish the charge against the petitioner. He referred to letter dated 30.03.2012 by the complainant to the Special Director, CBI, Diary entries of the Complainant, the testimony of (PW-12), A.K. Antony, (the then Defence Minister), document pertaining to procurement of Tatra vehicles and Rajya Sabha debate dated 27.03.2012 etc. He submitted that the mere absence of certain electronic evidence does not negate the entire case of the prosecution as other material on record is equally relevant to establish the guilt of the accused which has been rightly observed by the Special Judge in the order on charge. He further submitted that the complainant as per the rules/manuals had informed his higher officials after the incident. A question of reasonable time is a matter of determination by the Court in each case and the delay is not fatal to the prosecution. The reliance is placed on a

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<sup>8</sup> 1959 SCR 1276 : AIR 1959 SC 8

decision of the Hon'ble Supreme Court in the matter of *Apren Joseph & Ors. v. State of Kerala*<sup>9</sup>.

10. Learned Standing Counsel for the CBI further submitted that the act of the petitioner during the meeting with the complainant on 22.09.2010 clearly attracts the provision of Section 12 of the PC Act, 1988. Offer to a public servant to receive a gratification in order to do an official act in an illicit manner to clear the file for procurement of Tatra vehicles clearly constitutes an offence under Section 12 of the PC Act, 1988. He emphasized that Section 12 states that whoever abets any offence punishable under Sections 7 or 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided there under. It is thus clear that abetment of any offence punishable under Section 7 & 11 is itself a distinct offence. The actual commission of offence under Sections 7 & 11 is of no consequence. He placed reliance on a decision of the Hon'ble Supreme Court in the matter of *State Through Central Bureau of Investigation v. Parmeshwaran Subramini & Anr.*<sup>10</sup>. He further submitted that at this stage it is not required to go into various factual aspects of the matter as the same would prejudice the case of either side before the Special Judge.

11. I have heard the learned counsel appearing for the parties and perused the record.

12. This Court is consciously referring to the facts and the arguments in brief so that the rights of the parties are not adversely effected during trial.

13. A perusal of FIR shows that as per the records of Military Information Support Operation (MISO) and Ordinance Services (OS Directorate), there was

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<sup>9</sup> 1973 SCC (Cri.) 195 : (1973) 3 SCC 114

<sup>10</sup> MANU/SC/1625/2009 : (2009) 9 SCC 729

a net deficiency of 1676 HMV as per the Annual Provision Review for the year 2009-2010. The procurement was recommended by the Master General of Ordnance on 04.08.2010 and the file was pending for decision in September, 2010. It further shows that after due approval from competent authorities, the Chief of Army staff marked the file to DGMO and DGPP for their comments on 19.08.2010. When the file was in intra departmental movement, on 22.09.2010 the petitioner visited the office of the complainant V.K. Singh, the then Chief of Army Staff (COAS) after making necessary entries in the reception Register maintained at Gate No. 9 South Block vide entry No. 3 dated 22.09.2010 at 12:07 hours. The petitioner met the complainant for about 10-15 minutes. During the said meeting, the petitioner allegedly offered the complainant a bribe of Rs. 14 Crore to clear the said pending file of procurement of Tatra vehicles on behalf of Ravi Rishi of Tatra Sipox, UK Ltd. The FIR also states that after departure of the petitioner, the complainant directed his subordinate not to accept the request for appointment of the petitioner in future. The said incident was immediately brought by the complainant to the notice of the then Defence Minister and he had recorded it in his personal note book in the ordinary course, in his own handwriting. When the matter was reported to the CBI vide letters dated 30.03.2012 & 10.04.2012, a preliminary inquiry was conducted by the CBI and having satisfied with the sufficiency of the *prima-facie* case being made out against the petitioner an FIR in question was registered.

14. The pre-amended provisions of Section 12 of PC Act, 1988 which are applicable in the instant case reads as under:-

*“Punishment for abetment of offences defined in Section 7 or 11-*

*Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term*

*which shall not be less than six months but which may extend to five years and shall also be liable to fine”.*

15. Thus, this Court has to examine whether in view of the aforesaid language of Section 12, there exists any material against the petitioner to be charged for the said offence.

16. It is to be noted that the Act of 1988 came to be extensively amended by (Amendment Act, 2018). The amended Section 12 reads as under:-

*“Punishment for abetment of offences – Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.”*

Prior to the amendment, an offence of abetment under Section 7 or 11 was made punishable under Section 12 of the Act. However, after the amendment, the position has changed and whoever abets any offence punishable under any of the provisions of the Act is made punishable under Section 12 of the PC Act.

17. A bare reading of the pre-amended Section 12 of the PC Act, would further show that whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which may not less than six months but may not extend to five years and shall also be liable to fine. Since the abetment has not been defined in the PC Act, 1988, therefore, in view of the mandate of Section 28 of the PC Act, reliance can be placed to Section 107 of the IPC, where ‘abetment of a thing’ is defined. A perusal of Section 107 of the IPC would reveal that to constitute abetment of an offence there must be some instigation to do an act, which would amount to an offence, or the alleged

abettor must have intentionally aided or facilitated the commission of a crime, or the alleged abettor must have engaged in some conspiracy with one or more other person or persons for the commission of an offence.

18. In the instant case a perusal of the FIR and the final report submitted by the CBI before the trial court clearly establishes that an element of abetment that is “offer of bribe” is very much in existence for doing a particular thing. Whether the offence under Section 7 or 11 is committed or not has no relevance to attract the provision of Section 12 of the PC Act, 1988. This view is also supported by paragraph No. 17 of the decision of the Hon’ble Supreme Court in the matter of *State through CBI v. ParmeshwaranSubramani & Ann*<sup>11</sup>, which states that Section 12 of the PC Act, in clear and categorical terms, speaks that whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided there under. It has also been held that abetment of any offence punishable under Section 7 or Section 11 is itself a distinct offence. The offence punishable under Section 7 or Section 11 whether actually committed by a public servant is of no consequence.

19. If a person gives illegal gratification to a public servant, he will have two options, he can either accept it with the knowledge that it is illegal gratification or he can reject it and make a complaint against the person who paid it. If it is accepted, the public servant, and also the person who makes payment will be liable for punishment. The public servant will be liable under Section 7 of PC Act, 1988, and the person who makes the payment for bribe will be liable under Section 12 of the said Act. But in a case where the illegal gratification is rejected by a public servant, the public servant will have to make a complaint against the

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<sup>11</sup> 2009 SCC 729



person who makes the payment and in such a situation, the person who makes such payment will be liable under Section 12 of the PC Act, 1988. In the instant case, an attempt was made by the petitioner to offer illegal gratification, the same would certainly fall within the purview of abetment as per Section 12 of the PC Act, 1988. Almost a similar view is taken by this Court in the matter of ***R.P. Malik v. State of NCT of Delhi & Others***,<sup>12</sup>, wherein in paragraph No. 36 of the said decision, it has been held that for an offence under Section 12 of PC Act, 1988 offer to bribe would amount to abetment irrespective of the fact whether cash was placed before the public servant or not and whether he agrees to accept the same or not. The *mens rea* of the bribe giver is a relevant consideration for purpose of an offence under Section 12 of the PC Act, 1988. The learned Special Judge, CBI has rightly placed reliance on the said decision and hence the order impugned does not call for any interference.

20. The legal position is well settled that if on the basis of materials on record, a Court could come to the conclusion that commission of an offence is a probable consequence, a case for framing of charge exists. At the stage of framing of a charge probative value of the materials on record cannot be gone into. The material brought on record by the prosecution has to be accepted as true at that stage. At the stage of considering quashment of charges the recital in the FIR may not represent the entire evidence of the case. The trial court is not to examine and assess in detail the materials placed on record by the prosecution nor it is for the Court to consider the sufficiency thereof. Unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed, and an order

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<sup>12</sup> Supra note 7

of quashment of charge should not be passed. Such an order can be passed only in exceptional cases and on rare occasions.

21. In the matter of *Ashok Argal* and others, this Court was considering the entitlement of the applicants for grant of anticipatory/regular bail in connection with offence punishable under Section 7/8/12/13(1)(d) of the PC Act read with Section 120 (b) of IPC. In the case of *Ashok Argal*, it was alleged that the accused including *Ashok Argal* (who was a Member of Parliament) came to the Lok Sabha with two bags of currency notes which they took out and started placing on the table on the House. The accused on 25.07.2008 made a joint statement before the Hon'ble Speaker, stating therein that they were approached by intermediaries of power brokers and they are having decided to expose the mastermind of "Cash for Vote" racket. The CNN-IBN News Channel designed a whistle blowing sting operation. In paragraph No. 4 of the order, this Court had noted that the State did not object in granting bail to the applicants and since the submissions were made by the learned counsel for the applicants on merit, therefore, the observations were made by this Court that if the, intention of the petitioner, those who were members of the Parliament 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. In that context, it was observed that the basic requirement of *mens rea* to accept and receive bribes so as to (bring it) within the ambit of Prevention of Corruption Act, 1988, was lacking on the part of the petitioners. Therefore, under the facts of the present case, the decision in the case of *Ashok Argal* has no application.

22. So far as the decision in the matter of *Rewati Raman Singh (Supra)* is concerned, which has also arisen from the same incident of "Cash for Vote" as in the case of *Ashok Argal*. In the said case the challenge was made by *Rewati Raman Singh* to the order passed by the learned Special Judge (ACB), Delhi,

whereby an opinion was recorded by the Court concerned that the petitioner was a part of the criminal conspiracy. The petitioner in that case was summoned for the commission of offence of criminal conspiracy punishable under Section 120 B of IPC. The order on summoning was under challenge. The facts of that case was that Crime Branch, Delhi registered FIR under Section 120B read with Section 7/8/12/13(1)(d) of the PC Act, 1988 on the basis of letter dated 17.12.2008 written by *Shri P.D.T. Achary*, Secretary General, Lok Sabha and also on the basis of report of Parliamentary Enquiry Committee. In the case of ***Revati Raman Singh (Supra)*** submission was made that the chargesheet was filed against *Shri Amar Singh* and five other co-accused and no chargesheet was filed against ***Rewati Raman Singh***. It was also stated that even the supplementary chargesheet was filed on 29.09.2011 under Section 173(8) of Cr.P.C., and there was no allegation against ***Rewati Raman Singh***. The second supplementary charge sheet was also filed on 03.10.2011 and even in that charge sheet also ***Rewati Raman Singh*** was not chargesheeted. It was the case of ***Rewati Raman Singh*** that only on the submission of learned counsel appearing for one of the accused, the trial Judge passed the impugned order therein without application of mind and without due process of law. It was the case of ***Rewati Raman Singh*** that when the prosecution did not file any chargesheet against him, the trial court had committed an error while summoning him. Besides other cases, the reliance was also placed in that case in the matter of ***Pepsi Foods Limited v. State Judicial Magistrate***<sup>13</sup>, to argue that summoning of an accused in a criminal case is a serious matter. It was also argued that in view of the law laid down by the Hon'ble Supreme Court in the case of ***Adalat Prasad v. Rooplal Jindal***<sup>14</sup>, Criminal Courts have no power to review its own order. While taking cognizance against other accused persons, no cognizance was taken

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<sup>13</sup> (1988) 5 SCC 749

<sup>14</sup> (2004) 7 SCC 338

against **Rewati Raman Singh**, therefore, in absence of any provision in a Criminal Procedure Code to review an order, the concerned Court had committed an error while passing impugned order therein. It is also seen that under the aforesaid circumstances this Court in the case of **Rewati Raman Singh (Supra)** has noted that the trial Judge had to carefully scrutinize the evidence brought on record. The cognizance in the concerned case had already been taken against the accused persons and not against **Rewati Raman Singh**. The impugned order therein was found to be bad in law as the same was passed without any material. The reference was also made to the earlier decision dated 16.11.2011 which relates to the same incident while bail application of **Ashok Argal** and Others (Supra) was decided.

23. A careful perusal of both the decision **Ashok Argal (Supra)** and **Rewati Raman Singh (Supra)** would show that the same are not on the issue as to what would mean by abetment for the purposes of attracting Section 12 of the Prevention of Corruption Act, 1988. So far as the decision of the High Court of Judicature at Bombay in the matter of **Kishore Khanchand Wadhvani & Anr. (Supra)** is concerned, firstly the same is not binding on this Court. Secondly, the facts in the said case were different. Even, in para-14 therein, it has been held that mere recovery of currency cannot constitute offence under Section 7 of the PC Act, 1988, unless it is proved beyond reasonable doubt that the accused has voluntarily accepted the money knowing it to be a bribe. In the said case, the charges were with respect to Section 7 and Section 12 of the PC Act, 1988. In that case, it was held that without prove of demand the recovery of currency notes from the accused would not bring the act under Section 7 of the PC Act, 1988. This Court is not persuaded to follow the judgment of the Division Bench of the Hon'ble High Court of Judicature at Bombay. So far as the decision of the High Court of Allahabad in the matter of **Ganesh Sharma (Supra)** is

concerned the same would also be not binding and secondly the facts of the case are also different.

24. So far as the decision of this Court relied upon by learned Senior Counsel for the petitioner in the matter of *Jatinder Pal Singh (Supra)* is concerned, the same also would not have any application in the instant case for the reason that in paragraph No. 80 of the said decision, this Court has clearly held that the sanction is a condition precedent for the prosecution of a public servant under Section 19(1)(a) of the PC Act, 1988. Due to lack of sanction the entire proceedings were found to be vitiated and the same was declared as *non est* in the eyes of law. Moreover in paragraph No. 88 it has been clearly held that to attract provisions of Section 12 of the PC Act, 1988 there has to be a demand or offer of a bribe. Since in the present case, the allegation is of offer of a bribe, and, therefore, the principle laid down in the matter of *Jatinder Pal Singh (Supra)* would not help the petitioner in the instant case. The present case has its peculiar facts unlike the other cases as cited above. In the instant case, the public servant himself is the complainant and has lodged an FIR for abetment of commission of an offence under Sections 7 & 11 of the PC Act, 1988. It is settled legal position that a decision is binding not because of its conclusion but in regard to its *ratio* and the principle laid down therein.

25. So far as the arguments with respect to various omission and contradictions in the case of the prosecution are concerned, the same are the subject matter of trial and the present case cannot be said to be a case of no material.

26. In view of the aforesaid, the revision petition stands dismissed alongwith pending application. It is made clear that the observations made in this judgment are only for the purpose of deciding the issue of legality of the order

framing charge. This court has not expressed any opinion on the merits of the matter, which would be determined by the trial court after the conclusion of trial and appreciation of evidence on record.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**JULY 20, 2022**  
*p'ma*

