HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Revision Petition No. 307/2023

Rajesh Kumar Meel S/o Shri Raju Ram, Aged About 46 Years, R/o Meelon Ka Bas Post Badwasi Tehsil Nawalgarh Dist. Jhunjhunu Presently Posted As Assistant Commercial Texation Officer Ward No. 04 Dist. Churu Raj.

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Shri Subhash Kumar S/o Shri Man Singh, R/o Jalingpura Tehsil Malsisar Dist. Jhunjhunu Raj.

----Respondents

For Petitioner(s) : Mr. Naman Mohnot
For Respondent(s) : Mr. Surendra Bishnoi, PP
Mr. S.K. Poonia

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

Reserved on :- 02/09/2024
Pronounced on :- 09/09/2024

1. Petitioner Rajesh Kumar Meel is aggrieved by refusal of prayer for discharge under Section 227 CrPC by order dated 01.06.2022 passed in Sessions Case No.16/2017. By the impugned order, the learned trial judge, after rejecting the prayer of the petitioner, has ordered for framing of charges under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and under Section 120 B of the IPC.

2. The prosecution case is that on 10.09.2013, respondent No.2 Shubhash Kumar made a complaint to the Anti-Corruption Bureau, Bikaner that on 30.08.2013, the complainant was carrying diesel

on a truck. In the midway, the petitioner, an Assistant Commercial Tax Officer along with his driver and two others, stopped the vehicle and asked about what is there in the container. The complainant responded that he was carrying diesel. The petitioner asked for bill of purchase of the diesel which was not with the complainant. Then, the petitioner threatened him that since the complainant was engaged in illegal business he will seize his vehicle. On request of the complainant the petitioner let the vehicle go as the complainant had agreed to pay Rs.80,000/- as bribe within a day or two. On 02.09.2013, as directed by the petitioner, the complainant paid Rs.50,000/- to Yogendra Rathi at Rajgarh. The petitioner had asked the complaint that if he wants to continue in the illegal trade of diesel, he would be required to pay Rs.30,000/- per month. Then the complainant on 10.09.2013 made a complaint to ACB, Bikaner and the Authorities of ACB organized a trap and trapped Yogendra Rathi along with Rs.30,000 which was put in an envelope thereat by the complainant. Yogendra Rathi stated that the complainant had given him money for giving it to the petitioner and on previous occasions also complainant/Shubhash had handed over Rs.50,000/-. The complainant had informed to Mr. Rathi that the money was for the vehicle. After investigation of FIR No.412/2013, registered with ACB, Jaipur, the police submitted charge-sheet against both the accused persons including the petitioner. Accordingly, the aforesaid session trial was registered before the Special Judge.

3. The petitioner challenged the first order of charge dated 18.01.2018 in *S.B. Criminal Revision No.244/2018*, which was

heard by a Bench of this Court on 10.08.2021 and the matter was remitted back to the trial judge for passing fresh order with regard to the charge in relation to the present petitioner after an opportunity of hearing.

In Criminal Revision No.244/2018, the Bench has observed as follows:-

> "However, even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the Court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the Court will be justified in rejecting the prayer for discharge and in granting opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

4. Thereafter, after hearing the parties, the impugned order was passed. While issuing notice to the respondent, a Bench of this Court stayed the trial proceeding against the petitioner by order dated 12.04.2023.

5. Learned counsel for the petitioner submits that ingredients of none of the offences where under charges have been framed, are made out on bare perusal of the prosecution case and material collected during investigation.

Learned counsel contends that it is not disputed that the petitioner was posted as Commercial Tax Officer and it was not official business of the petitioner to check the vehicles which were found violating the requirements of the Essential Commodities Act. Only the authorities of supply department and the local police are

competent to make search and seizure for such violation. As such no work of the complainant was pending before the petitioner in his official capacity on the date of complaint or on the date of trap.

Learned counsel next contends that to attract the offence under Section 7 of PC Act, demand etc. must be relatable to dishonest or improper performance or forbearance of public duty by the petitioner himself or with the assistance of any other public servant. It is not the prosecution case that work of the complainant was pending before the petitioner in any capacity for which money was demanded.

Learned counsel for the petitioner contends that if a public servant is alleged to have committed any other offence, charge cannot be framed under the provisions of PC Act.

6. Learned counsel for the respondent – State fairly concedes that on the date of complaint or trap, no work of the complainant was pending before the petitioner in his official capacity.

7. Section 7 of the Prevention of Corruption Act as prevailing on the date of incident and prior to amendment w.e.f. 26.07.2018 reads as follows:-

> "**7. Offence relating to public servant being bribed**.-- Any public servant who,-
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> (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
> (b) obtains or accepts or attempts to obtain, an ude advantage from any person as a reward for the improper or dishonest performance of a public duty or for

forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

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.

Explanation 1. - For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.- A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration car application on time. 'S' is guilty of an offence under this section.

Explanation 2.- For the purpose of this section,-

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.]

8. Section 13 of the Prevention of Corruption Act as prevailing on the date of offence reads as follows:-

13. Criminal misconduct by a public servant.—
(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 3[four years] but which may extend to 4[ten years] and shall also be liable to fine."

9. In ***Soundarajan Vs. State*** represented by the Inspector of Police, Vigilance, Anti-Corruption, Dindigul ***reported in AIR 2023 SC 2136*** the Hon'ble Supreme Court was considering an appeal

against conviction. In para-11, it was stated that to attract Section 7 of the Prevention of Corruption Act, there has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification.

10. In ***A. Subair Vs. State of Kerala*** reported in ***(2009) 6 SCC 507***, the Hon'ble Supreme Court held that in order to secure order of conviction of offence punishable under Section 7, 13(1)(d)/13(2) of the Prevention of Corruption, the prosecution has to establish following ingredients:-

> "1. Demand and acceptance of bribe money.
> 2. Handling of tainted money by the accused on the day of trap (colour test).
> 3. Work of complainant must be pending as on the date of trap with the accused."

11. In ***Chandresha Vs. State of Karnataka Lokayukt Police Kalburgi*** vide ***Criminal Appeal No.200105/2015*** decided on 16.02.2022, the Hon'ble Karnataka Court held that when work of the complainant was not pending before accused as on the date of trap, the important ingredient to attract and complete the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act cannot be sustained. Thus, it is evident that to attract the mischief under Section 7 and 13(1)(d)/ 13(2) of PC Act, the Act of demand etc. must be relatable to the discharge of public duty by the public servant. If the public servant was not assigned with the public duty, the offences under the Act would not be attracted.

12. In ***Bharatlal Saini VS. State of Rajasthan & Ors.*** in ***Criminal Misc. No.8406/2022*** decided on 04.08.2023, this

Court considered similar situation, wherein public servant (accused) was not assigned with the task for which he allegedly demanded money. This court held that offence under the aforesaid sections of the PC Act would not attract.

13. From the record, it is evident that no work of the complainant was pending with the petitioner on the date of making complaint or effecting trap against another accused, hence, prima facie offence under Section 7, 13(1)(d)/13(2) of the Prevention of Corruption Act are not attracted.

14. There is no evidence that the money paid by the complainant to co-accused was money of gratification. Co-accused has stated that the same was paid by the complainant saying that it is the money of the truck deal. There is no evidence that any amount said to be paid by the complainant was accepted or obtained by the complainant.

15. In ***Neeraj Dutta Vs. State (Govt. of NCT, Delhi),*** the constitution Bench while answering the reference said that the demand and acceptance can be proved by direct evidence as well as by circumstantial evidence. In the case on hand, acceptance is not alleged by any direct evidence. There is no link of circumstantial evidence. Though, statement of co-accused before the police while in police custody has no evidentiary value, assuming the correctness of the statement of co-accused Yogendra Rathi what emerges is that Yogendra Rathi had paid Rs.50,000/- to ‘someone’ for giving it to the petitioner. That ‘someone’ is not known after completion of investigation. Hence,

the link that the money was received by the petitioner is miserably missing.

16. The prosecution is bound to disclose a case of demand and acceptance. In absence of evidence of acceptance, the charge under Section 13(1)(d)/13(2) cannot be framed.

17. There is complete lack of allegation or material on record to substantiate that the petitioner and co-accused Rathi had agreed beforehand what is alleged. Neither the complainant has stated so nor the statement of Mr. Rathi or any other evidence goes to suggest that there was prior meeting of mind by the two accused persons to attract the offence of criminal conspiracy. Therefore, no charge under Section 120 B is apparently made out.

18. The provisions of Section 120 A and 120 B of the Indian Penal Code are being reproduced below:-

"**120 A. Definition of criminal conspiracy.--**
When two or more persons agree to do, or cause to be done,--
(1) an illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
Explanation. - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120 B. Punishment of criminal conspiracy.--
(1) whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of

such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeds six months, or with fine or with both."

19. In ***State of Kerala Vs. P. Sugathan & Ors.*** reported in ***(2000) 8 SCC 203***, in para – 12 of the judgment, the Hon'ble Supreme Court stated the law as follows to allege and establish a case of criminal conspiracy:-

"12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in

time than the actual commission of the offence in furtherance of the alleged conspiracy. 13. In Kehar Singh v. State, it was noticed that Section 120 A and Section 120 B IPC have brought the Law of Conspiracy in India in line with English Law bymaking an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whether any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code."

20. Prior to that in ***Kehar Singh & Ors. Vs. State (Delhi Administration)*** reported in ***AIR 1988 SC 1883***, it was said:-

> "The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

21. Again in ***Yogesh Vs. State of Maharashtra*** reported in ***AIR 2008 SC 2991***, wherein Hon'ble the Supreme Court summarized the core principles of law of conspiracy in the following words:-

> "23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy

> but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

22. It is trite law that at the stage of charge, the Court has to see whether prima facie offences are made out whereunder charges are to be framed. To examine this, only prosecution material collected during investigation is to be looked into and not any material placed by the defense. If the prosecution material raises strong suspicion, the Court may go with the charge. The Court must examine that the materials placed before the Court were wholly sufficient to go with the trial. A roving enquiry is not required at this stage. The court is only to see what is placed before it, as it is.

23. As has been noticed above, no official duty was pending with the petitioner of the complainant at any point of time, especially on the date of making complaint or putting trap against the co-accused. Likewise, there is complete lack of evidence that the petitioner had accepted/obtained any amount said to be the money of gratification. There is no prosecution case that the petitioner and co-accused were hand in glove, since prior to the alleged incident. No other evidence has come that the co-accused had knowledge of what the complainant was giving to him was bribe money.

24. In view of lack of complete evidence to attract the ingredients of offence whereunder charges have been framed against the petitioner, the impugned order of charge is fit to be set aside.

25. Learned counsel for the petitioner has raised issue of territorial jurisdiction and biasness on the part of the complainant. Learned counsel submits that the complainant is a distant relation (brother-in-law) of the petitioner. There was some personal grudge for non refund of borrowed money and that is why the case was planted. The incident took place in the district of Churu, where office of ACB was there, but the complainant without any reasonable excuse chose to file the complaint with ACB, Bikaner. There is reference of this fact in the charge-sheet without any explanation. Learned counsel for the petitioner submits that soon after his arrest, the petitioner stated to the police that the complainant is known to him and he was a witness in some document of the complainant.

26. Learned counsel for the complainant submits that now the differences between the complainant and the petitioner have been settled, hence, the complainant does not want to prosecute the petitioner.

27. Though the aforesaid cannot be a ground to interfere with the order of charge, however, the court can take notice, in view of the assertion of the complainant, that the sole evidence of demand is the complainant, who is not going to prove the case of demand. Hence, fate of the trial is known.

28. Since ingredients of the offences for which charges have been framed are not prima facie attracted on the basis of available prosecution material in the nature of charge-sheet and since the trial judge is required by Section 227 and 228 to apply its mind on the material on the record which it has failed to do, the impugned order suffers from impropriety, as such the same is set aside qua the petitioner and the petitioner is discharged of the allegation and the case.

29. Accordingly, this criminal revision stands allowed.

(BIRENDRA KUMAR),J

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