2024:DHC:7258

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:20.09.2024

\+ **CRL.REV.P. 236/2023, CRL.M.A. 6205/2023 & CRL.M.A. 23810/2023**

SWATI MALIWAL ..... Petitioner

versus

STATE ..... Respondent

\+ **CRL.REV.P. 276/2023 & CRL.M.A. 6824/2023**

SARIKA CHAUDHARY & ANR. ..... Petitioners

versus

STATE ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Ms. Rebecca John, Sr. Advocate with Mr. Chirag Madan, Mr. Harsh Bora, Ms. Ravleen Sabharwal, Mr. Rahul Agarwal, Mr. Pravir Singh, Mr. Nilanjan Dey, Mr. Tushar Yadav, Mr. Zillur Rehman & Ms. Anshuka Baruah, Advocates

For the Respondent : Mr. Yoginder Handoo, Special Counsel with Mr. Ashwin Kataria, Mr. Garvit Solanki & Mr. Medha Gaur, Advocates
Ms. Rupali Bandhopadhya, ASC for the State with Mr. Abhijeet Kumar, Advocate
Mr. Sanjeev Bhandari, ASC for the State

2024:DHC:7258

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**'), challenging the order on charge dated 08.12.2022 (hereafter '**impugned order**'), in CC No. 107/2019 arising out of FIR No. 15/2016, registered at ACB, whereby the learned Trial Court had directed for charges to be framed against the accused persons for the offences under Section 120B of the Indian Penal Code, 1860 ('**IPC**') read with Sections 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 ('**PC Act**') as well as for the substantial offence under Section 13(2) read with Section 13(1)(d)(ii) of the PC Act.

BRIEF FACTS OF THE CASE

2. On 11.08.2016, an undated complaint of Ms. Barkha Shukla Singh, Ex- MLA, was received in the Anti-Corruption Bureau, Delhi. The gist of the complaint was that the Government of Delhi had adopted several untoward and illegal practices to benefit the aids and associates of Aam Aadmi Party ('**AAP**'). It was alleged that the benefits were financial in nature and were being provided by the exchequer of Delhi by irregularly engaging the associates of the Party on contract basis. It was alleged that one such organisation where such appointments were made was Delhi Commission for Women (hereafter '**DCW**'), where

several individuals, who are/were associated with AAP, were appointed without following the due procedure and without any publication of vacancies and inviting applications. It was alleged that as such, pecuniary benefits were granted to said individuals by engaging their service on contract basis.

3. On the complaint, a preliminary inquiry was conducted and thereafter, the FIR was registered on 19.09.2016, for the offences under Sections 13(1)(d) of the PC Act and Sections 409/120B of the IPC. Pursuant to the registration of the FIR, the investigation was conducted and the chargesheet was filed.

4. During investigation, it was learnt that DCW was reconstituted and notified on 27.07.2015 by the Government of NCT of Delhi, with the accused Swati Maliwal as its Chairperson. The other three accused persons were members in DCW. On investigation, it was found that the accused persons had made appointments of 87 persons as against the existing sanctioned posts of 26 in DCW between 06.08.2015 to 01.08.2016, and out of those 87 persons, at least 20 persons were directly found to be associated with AAP.

5. During investigation, the accused Swati had claimed that 90 appointments were made between 06.08.2015 to 01.08.2016, however, the investigating agency could only ascertain the appointment of 87 persons and could not find any documentary proof of the remaining three appointments.

6. It was also alleged that all the appointments were made without following any procedure, rules and regulations and the General Finance

Rules ('**GFR**') were flouted while fixing, enhancing and disbursing remuneration to those appointed persons.

7. Further, allegations were made that one person, namely, Mr. Prem Prakash Dhal had been appointed as Member Secretary of DCW without approval of the Lt. Governor without following the prescribed rules and regulations. It was also alleged that against the budget estimate of ₹7 crores, a lump sum of ₹6.76 crores was released to DCW in one go instead of in instalments.

8. It is alleged that no information was provided by DCW to the Department of Women and Child Development ('**WCD**') regarding the increase of the strength of the staff, despite the written request and visit of WCD officials. The DCW, during the investigation, had replied that it had conducted interviews for the alleged recruitments but no such record was ever provided. It is alleged that even though the investigation agency had sought for the details of the interviews conducted by the DCW for the recruitments made, however, no details of the same were provided.

9. It is also alleged that no advertisements for any post in DCW were published apart from the advertisements for the post of legal counsellors. It is alleged that while the advertisement for legal counsellors was published on 26.04.2016, however, the legal counsellors had already been appointed even prior to the same.

10. It is thus the case of the prosecution that there was a lack of transparency in the appointments and the same were made without creation of any posts, publication of vacancies or considering the

academic or extracurricular excellence of the appointed individuals. It is alleged that apart from the illegal appointments, salaries of those employees were enhanced arbitrarily and illegally, at the cost of public money and the government exchequer.

11. The learned Trial Court, in the impugned order, opined that there was *prima facie* sufficient material to frame charges against the accused persons for the offence under Section 120B of the IPC read with Sections 13(1)(d)/13(2) of the PC Act as well as the offence under Section 13(2) read with Section 13(1)(d)(ii) of the PC Act. Charges were framed against the accused persons by a separate formal order on the same date.

12. Aggrieved by the same, the present petitions were filed by the petitioners.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

13. Ms. Rebecca M John, learned Senior Counsel appearing on behalf of the petitioners submitted that the learned Trial Court has erroneously charged the petitioners without appreciating that the alleged offences are not made out.

14. She submitted that "Dishonest intention" is an essential ingredient for attracting an offence under Section 13(1)(d) of the PC Act and there is no allegation that the accused persons gained any valuable thing or pecuniary advantage *in lieu* of the appointments. She placed reliance on the judgment of ***C.K. Jaffer Sharief v. State (Through CBI)*** : **(2013) 1 SCC 205** in this regard.

15. She further submitted that charge of conspiracy is not made out against the accused persons as it is settled law that a few bits here and a few bits there cannot be held adequate to hold accused persons guilty of criminal conspiracy [Ref. ***State of Kerala v. P.Sugathan & Anr*** : **2000 SCC (Cri) 1474**].

16. She submitted that the Court cannot act merely as a post office or a mouthpiece of the prosecution, and has to consider the broad probabilities of the case [Ref. ***Dilawar Balu Kurane v. State of Maharashtra*** : **2002 (2) SCC 135**].

Appointments made by the petitioners suffered from no infirmities

17. She submitted that the allegation in the impugned order *qua* creation of 87 posts as against the sanctioned 26 posts is incorrect. She submitted that the 87 persons were not appointed against any posts, but were merely appointed on short term emergent basis. She submitted that the said appointments were done due to exponential increase in the work carried out by the DCW after the accused Swati Maliwal took charge in the year 2015. She submitted that no particulars of the rules that have been allegedly violated have been provided in the separate order dated 08.12.2022 by which the charges were framed.

18. She submitted that the increase in work was due to creation of Rape Crisis helplines, Crisis Intervention Centres, 181 women's helpline etc. She submitted that the petitioner – Swati Maliwal in her reply provided all the details of work done by DCW to the investigating agency, due to which, the emergent appointments were made.

Prosecution has failed to establish nexus between AAP and the appointees

19. She submitted that the first allegation with respect to the appointment of 87 persons who were either associated with AAP or were known to the Petitioner No.1 is unmerited.

20. She submitted that out of 87 appointments the prosecution has been able to identify only 20 individuals who are allegedly connected with AAP, wherein apart from one person, namely, Mr.Raj Mangal Prasad, who is at serial no.1 in the list, there is no evidence that others are members or have any association with AAP.

21. She submitted that even Mr. Raj Mangal Prasad was highly qualified for his position, having served as a former chairperson of the Child Welfare Committee.

22. She submitted that some of the other members, that is, the members placed at serial nos. 4, 7, 15, 16, 17 and 20, are all lawyers and some of them are quite eminent in their field and there is no evidence to suggest that these appointments were due to any association with AAP.

23. She submitted that for the remaining persons there is nothing on record apart from the hearsay evidence of some police officials who are stated to have conducted the verifications.

24. She submitted that all the statements recorded during the course of investigation do not mention the name from where the said information is obtained or any details about the verification.

25. She submitted that the statements are recorded in a mechanical manner whereby it is stated that the people living nearby have informed the verification officer that the alleged persons are associated with AAP.

26. She submitted that no membership records have been recovered by the investigating agency to prove their membership with AAP.

DCW is an autonomous body and empowered to sanction expenses to meet its functions

27. She submitted that DCW is an autonomous body and is not answerable or controlled by the Women and Child Welfare Department of GNCTD ('**WCD**'). She submitted that DCW has the powers to make short-term contractual appointments under Section 11 of the Delhi Commission for Women Act, 1994 ('**DCW Act**').

28. She submitted that DCW also has the power to spend such sums as it thinks fit for performing its functions, and Rule VIII of the DCW Rules of Business, allows it to approve and sanction any expenditure for its purposes. She had relied on the note dated 01.03.2016 in which the Deputy Director, WCD had stated the DCW had administrative and financial powers.

29. She submitted that as per Section 14 of the DCW Act, the annual report and the audit report are placed before the Delhi Legislative Assembly and all the expenditures incurred by the DCW are ratified by the Assembly. She submitted that the expenditure cannot be considered as illegal due to the multi-layered ratifications incorporated in the DCW Act and Rules of Business.

GFRs are executive instructions and cannot be deemed to be binding

30. She submitted that GFRs are not binding and the violation of any guideline is not a criminal offence. She placed reliance on ***Shri Manak Chand Vaidya v. State of Himachal Pradesh*** **: 1975 SCC OnLine HP 12**, where it was held that GFR do not carry the force of law.

31. She also placed reliance on the judgement passed by the Hon'ble Supreme Court in the case of ***R. Sai Bharathi v. J.Jayalalitha & Ors*** : **(2004) 2 SCC 9**, to contend that a violation of a document that does not have statutory force and is not enforceable in a court of law, nor has any sanction or procedure for dealing with a contravention cannot be construed as a prohibition.

32. She submitted that the only remedy against violation or breach of non-statutory guidelines will be to bring it before a higher authority and the same will not confer any right to seek any direction in a Court of law to seek compliance of such guidelines [Ref. ***Syndicate Bank v. Ramachandran Pillai*** : **(2011) 15 SCC 398**; ***G.J. Fernandez v. State of Mysore*** **: (1967) 3 SCR 636**].

Even if there was any infirmity, the same would only warrant Departmental Proceedings

33. She contended that assuming that procedure was not followed in appointment, it would only lead to departmental enquiry and in absence of any specific allegation for cheating or corruption, no criminal liability can be fastened upon the accused persons.

34. She placed reliance on the judgment of in ***Dhananjai Kumar Pandey v. CBI*** : **2015 SCC OnLine Bom 5625**. It was contended that the said decision was also affirmed by the Hon'ble Supreme Court.

No particulars of rules, regulations and guidelines which are violated have been given in the chargesheet and impugned order

35. She submitted that the entire chargesheet, the impugned order as well as the charges framed are predicated on the assumption that there has been a violation by the petitioners of the rules, regulations and guidelines. She submitted that there is not a single rule or any law mentioned in the entire chargesheet which the petitioners are stated to be in violation.

36. She further submitted that the GFR rules have not been made part of the chargesheet and the same can thus not be relied upon by the prosecution. She stated that the non-application of the mind of the Trial Court is evident from the same as the charges are to be framed from the material on record.

37. She relied upon ***Vinay Tyagi v. Irshad Ali*** **: (2013) 5 SCC 762** to contend that all the documents on which the prosecution proposes to rely and the statements of witnesses under Section 161 CrPC are required to accompany the report submitted before the learned Trial Court unless some part thereof is excluded by the Investigating Officer in exercise of its powers under Section 173(6) of the CrPC.

38. She also relied on the judgement passed by the Bombay High Court in the case of ***State of Maharashtra v. Plethico***

***Pharmaceuticals*: 1995 SCC OnLine Bom 478** where it was held that the learned Revisional Court had exceeded its jurisdiction and powers vested in it by placing reliance on the material which was not placed before the learned Trial Court.

Appointment of Mr. Prem Prakash Dhal was in accordance with law

39. She submitted that the learned Trial Court has framed no charge in respect to the allegation that the appointment of Mr. Prem Prakash Dhal as Member secretary was not in accordance with rules. She placed reliance on the judgment in ***PB Desai v. State of Maharashtra*** : **(2012) 2 SCC 648**, to contend that the accused is only required to meet the specific charge framed against him and the prosecutions is not permitted to go beyond the particular charge.

40. She further submitted that the allegation is completely baseless and the appointment was made on *ad hoc* basis to fill up the gap in the central functioning of the DCW.

41. She submitted that his appointment was made by the Hon'ble Chief Minister on the basis of the judgment passed by the Constitution bench of the Hon'ble Supreme Court in ***Government of NCT of Delhi v. Union of India* : Civil Appeal No. 2357/2017 decided on 11.05.2023**, wherein it was held that the GNCTD has the exclusive legislative and executive powers over the Services except public order, police and land.

DCW not responsible for release of amount in one go

42. She submitted that the allegation with respect to the release of ₹6.76 crores as against the ₹7 crores in one go is also without any basis. She submitted that according to the chargesheet, the release of the amount is stated to be in violation of guidelines on "Pattern of Assistance".

43. She submitted that these guidelines were only draft guidelines and there is no evidence that they were implemented. She lastly submitted that the issue of release of funds whether in instalments or in one go, was never in control of DCW and it had no control as to the manner in which the funds were released. She submitted that if there is a violation of any rule, it was done on the end of GNCTD and not DCW.

44. She submitted that in the formal charge framed on the same day as the impugned order, no charge was framed in regard to the release of funds to DCW in one go either.

SUBMISSIONS ON BEHALF OF THE PROSECUTION

45. The learned Additional Standing Counsel for the State and the learned Special Public prosecutor for the State have jointly argued and vehemently opposed the present petition.

46. The learned Additional Standing Counsel and Special Public Prosecutor for the State submitted that the learned Trial Court had rightly appreciated the material on record and opined that the alleged offences are *prima facie* made out against the petitioners.

47. They submitted that the petitioners had arbitrarily and illegally appointed the persons associated with AAP/ known to accused Swati and the said persons have benefited out of the recruitments. They relied upon the judgement passed by the Hon'ble Apex Court in the case of ***Neera Yadav v. CBI*** **: (2017) 8 SCC 757**, where the Hon'ble Apex Court held that if any of the three elements as prescribed under Section 13 (1)(d) of PC Act are met, the same would be sufficient to constitute an offence under the Section 13(1)(d) of PC Act. It was also held that all the three elements are independent, alternative and disjunctive.

48. They also submitted that the Court in exercise of revisional jurisdiction has to observe a very significant caution and it cannot examine the facts, evidence and materials on record to determine that the case would lead to conviction. It is to be seen whether the allegations, when taken as a whole, would constitute the offence. They placed reliance on ***State of Rajasthan v. Fateh Karan Mehdu*** **: (2017) 3 SCC 198.**

Excessive appointments against the sanctioned strength

49. They contended that the accused persons had abused their official position and had deliberately not followed the procedure as specified under the GFR and other rules. They submitted that as per the reply of accused Swati, 90 persons were appointed, however, records were only available for 87 appointees and no record is available for the remaining three persons. They further submitted that the persons who were

appointed were either close associates of the accused Swati or were closely related to the functionaries of the AAP.

50. They also submitted that as per the official record of DCW that was received from Mr. Gautam Majumdar, who was working as Assistant Secretary in DCW, a total of 71 persons were appointed on a contractual basis between 06.08.2015 to 01.08.2016 in DCW and a total of 16 persons were appointed for dial 181 service.

51. They submitted that as per the letter bearing No. F.l (20)/DCW/2003/3154 dated 22.06.2007 provided by the parent department of DCW, that is, WCD, the sanctioned posts for DCW, including for contract workers, was only 26, despite which, 87 appointments were made. The said letter records that –

> "*The A.R. Deptt. has examined the proposal of creation of the posts in Delhi Commission For Women. The Staff Assessment Committee, A.R. Deptt. has examined the proposal taking in to consideration, the existing work load, the committee has agreed to provide 26 additional posts against the demand of 28, out of these 26 posts, 15 posts (2 Sr.P.A.,2 stenographer Gr.C, 2 UDC, 6 LDC and 3 drivers) may be created and 11 persons i.e (2 Project Coordinators, 5 Legal Councils, 2 Peon and 2 Safai Karamcharies) may be engaged on contract basis*".

52. They further submitted that despite multiple requests by the investigating agency, record regarding the increase of staff strength was not provided by DCW. It was submitted that the appointments in excess of the sanctioned strength were arbitrary, bad in law and have been carried out with an ulterior motive to benefit the associates of AAP.

Appointees were associated with accused persons and AAP

53. It is alleged that the said appointments were made without following the proper procedure and the salaries of the said appointees were also arbitrarily doubled in a very short span of time without any approvals. The details of some of the appointees as mentioned in the status report are reproduced hereunder:

i. *Mr. Gautam Singh, Research Asstt./ DCW and Mr. Banteshwar Singh, Personal Asstt/Chairperson DCW were erstwhile associates of Ms. Swati Maliwal. Both these officials were her colleagues in the Office of the Chief Minister, GNCT of Delhi from 2015 onwards. Ms. Swati Maliwal was working the Advisor to the Chief Minister (Public Grievance), where they were handling the grievance in Chief Minister's "JantaSanvad". The noting (page no. 22/C concerning Mr. Banteshwar Singh and page no. 13/C concerning Mr. Gautam Singh) of DCW file, received during inquiry, includes a letter bearing no. D.O. No. ADVCMPG/02 dated 15.07.2015 and bearing no. D.O. No. ADVCMPG/01 dated 15.07.2015, issued by Ms. Swati Maliwal, in favour of both of the above persons. The commission came in existence on 27.07.2015 and both of these persons were issued appointment letters on 06.08.2015 at monthly remuneration of Rs 25000/- and Rs 22,000/- respectively. They were re-designated on 06.04.2016 and their salary was whimsically increased to Rs. 50,000/- and Rs. 40,000 + 5000/- per month respectively without following any rules/regulation and transparency.*

ii. *Sh. Raj Mangal Prasad (Child Right Activist associated with Arvind Kejriwal) was appointed as Advisor to DCW on the salary Rs. 1,00,000/- per month, without going through any transparent procedure for appointment in DCW. It is pertinent to mention here that **Sh. Raj Mangal Prasad is associated with Aam Admi Party and contested election on the ticket of the AAP from Vaishali (Bihar) in the Lok Sabha Election, 2014**.*

iii. *Sh. Bhupender Singh was initially appointed as Media Advocacy officer with the remuneration of 30,000/- per month on 06.04.2016 and his salary was whimsically increased to Rs. 70,000/- per month without following any rules/regulation and transparency. During verification his address was found fake.*

iv. *Ms. Divya Balaji was appointed by this commission as a consultant with the remuneration between Rs.25,000/- per month, 30,000/- per month (Notesheet 21-N). On 06.04.2016 her salary was whimsically increased to Rs. 70,000/- per month without following any rules/regulation and transparency.*

v. *Ms. Keshar Praveen was appointed by this commission as a legal counsellor with the remuneration of Rs. 1,500/- per day. On 06.04.2016 her salary was whimsically increased to Rs. 60,000/- per month without following any rules /regulation and transparency.*

vi. *Ms. Biji Anil was appointed by this commission as a legal counsellor with the remuneration of Rs. 40,000/- per month. On 06.04.2016 her salary was whimsically increased to Rs. 60,000/- per month without following any rules /regulation and transparency.*

vii. *Ms. Firdos was appointed by this commission as a Coordinator Mahila Panchayat with the remuneration of Rs. 17,000/- per month. On 06.04.2016 her salary was whimsically increased to Rs. 25,000/- per month without following any rules/regulation and transparency.*

viii. *Ms. Meena Kumari was appointed by this commission as a Coordinator with the remuneration of Rs. 17,000/- per month. On 06.04.2016 her salary was whimsically increased to Rs. 25,000/- per month without following any rules /regulation and transparency.*

ix. *Ms. Jyoti Mala Sinha was appointed by this commission as a Coordinator Help Desk with the remuneration of Rs. 17,000/- per month. On 06.04.2016 her salary was whimsically increased to Rs. 25,000/- per month without following any rules/regulation and transparency.*

x. *Ms. Madhuri Kashyap was appointed by this commission as a Coordinator Help Desk with the remuneration of Rs. 15,000/- per month. On 06.04.2016 her salary was whimsically increased to Rs. 25,000/- per month without following any rules/regulation and transparency.*

54. It was submitted that the aforesaid appointments were not the only appointments that were made but at the same time, other appointments were also made without following any transparent procedure. It was submitted that the statements of independent witnesses were also recorded, through field verifications of the

appointees, and upon scrutiny, most of the appointees were found to be associated with AAP and Petitioner No.1.

DCW is not an autonomous entity and was required to follow GFR and other rules and regulations

55. They submitted that the DCW could not have appointed the appointees without sanction. It was submitted that it is right to contend that WCD is the parent department of DCW, and the DCW has to function in accordance with the DCW Act. They further submitted that in consonance with Section 11 of the DCW Act, it is the function of the Government to provide grant and staff to the Commission, and consequently, it is for the Commission to spend such amount as it deems fit to perform the functions specified under the Act.

56. They submitted that investigation was done regarding whether DCW is autonomous and information was sought from WCD department of GNCTD and Finance Department, GNCT of Delhi. It was found that financial autonomy of every grantee institution is limited and every grantee institution, given that it is receiving grants from the government, is bound to follow the provisions of GFR and conditions of grant-in-aid. Thus, while the DCW has autonomy, the same is within the GFR, condition of grant-in-aid and DCW Act.

57. They submitted that the said stand was supported by the statement tendered by Mr. Manoj Kumar, Deputy Secretary-V (Finance) as well his note sheet, that is, DCW/3444/CP/20l6 dated 09.02.2016. They also relied upon the Office Memorandum dated

06.09.2011, issued by the Finance Department on "pattern of assistance" and Grant-in-Aid to Grantee institutions to contend that the release of grant by itself is not a license to spend money.

58. They submitted that in reference to the letter dated 01.03.2016, the Deputy Director, WCD, who had given the said letter, replied that the same does not mention "autonomy" in regards to Section 5(i) of the DCW Act, which stipulates that the Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the DCW.

59. They submitted that while it is argued that GFR has no statutory force and is a mere executive instruction, however, DCW could not have used the funds without adhering to the same. They argued that irrespective of GFR not having statutory force, the compliance of the same is necessitated as it establishes a crucial and beneficial procedure ensuing transparency. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh v. Chandra Mohan Nigam and Others*** **: (1977) 4 SCC 345**.

60. They submitted that in ***Sham Lal and Anr v. Munni Lal and Ors*****.: 1971 SCC OnLine P&H 254**, the Punjab and Haryana High Court held that the Court in terms of Section 57(1) of the Indian Evidence Act, 1872, shall take a judicial notice of all laws in force in the territory of India and Section 56 of the Indian Evidence Act lays down that no fact of which the Court will take judicial notice need to be proved.

No advertisements were made regarding the vacancies and no proof of any interviews being conducted

61. They vehemently argued that no advertisements were made before the alleged recruitment took place and also submitted that though DCW had stated that interviews were conducted, however, no information was given to the investigating agency despite pointed queries as to when and where those interviews were conducted. They submitted that no list was ever provided by DCW of the details of the candidates who were present for the interview either.

62. They submitted that the IT Department, GNCTD, in their reply dated 26.04.2016, also confirmed that advertisements were published only for the post of legal counsellor on DCW's website. They submitted that, however, the legal counsellors were appointed by the DCW prior to such advertisement.

63. They submitted that in the absence of any record, the reply of the petitioner Swati Maliwal, is of no relevance who, in writing, had stated that interviews were conducted for all the recruitments.

64. They submitted that the same clearly shows that the accused persons had no intention to appoint people in a fair and transparent manner.

Grant not released in accordance with the relevant guidelines

65. They submitted that ₹6.76 crores were erroneously released to DCW in one go. They submitted that the funds that were to be released to DCW had to be in accordance with the guidelines dated 03.05.2012

issued by the Finance Department, whereby while the release of funds in itself was not a criminal act, however, the overall conduct of the accused persons highlight that the DCW was in a hurry to acquire funds to give benefits to their supporters and the associates of the AAP.

ANALYSIS

66. The law in regard to discharge and framing of charge is provided in Sections 227 and 228 of the CrPC respectively. For the sake of convenience, the statutory provisions are reproduced hereunder:

> *"**227. Discharge.***
> *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*
>
> ***228. Framing of charge.***
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;*
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
> *(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

67. It is trite law that the Trial Court, while framing charges under Section 228 of the CrPC, is not required to conduct a mini trial and has

to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI*** **: (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.*
> *(ii)* ***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.***
> ***(iii) The court cannot act merely as a post office or a mouthpiece 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***
> ***(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
> *(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as*

> *gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
> *(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*
>
> (emphasis supplied)

68. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction is limited and ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily.

69. In the case of ***Amit Kapoor v. Ramesh Chander :*** **(2012) 9 SCC 460**, the Hon'ble Apex Court had noted that while considering the point of charge, the Court is required to consider the record of the case and discern whether there are grounds to believe that the accused has committed the offence. It was noted that the Court has to satisfy itself as to the existence of elements of the alleged offence. The Hon'ble Apex Court, adverting to a catena of precedents, had also noted that the test for quashing an order on charge in exercise of revisional jurisdiction or inherent jurisdiction is limited to whether the allegations, as made from the record of the case, taken at their highest, are patently absurd and whether the basic ingredients of the offence, for which the charge is framed, are not made out. The relevant portion of the said judgment is reproduced hereunder:

> "***17.*** *Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code.* ***Under both these provisions, the court is required to consider the "record of the***

case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. *This presumption is not a presumption of law as such.* ***The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.*** *There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative.* ***Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.***

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27. *Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

27.1. *Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and

inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.8. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.*

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his

> ***acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.***
>
> ***27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. <u>The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.</u>***
>
> ***27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.***
>
> ***27.15.*** *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge.* ***The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist…"***
>
> (emphasis supplied)

70. It is clear that this Court, at this stage, is not required to revaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether the Court could form an opinion that the accused might have committed the offence on the basis of the material placed before it.

71. It is the case of the prosecution that the accused persons, in conspiracy with each other, abused their position as public servants and obtained pecuniary advantage for the aides and associates of a particular political party by employing them illegally and arbitrarily against non-existent posts due to which the said individuals gained the pecuniary

benefit of salaries and wrongful loss was caused to the Government exchequer.

72. The learned Trial Court had aptly summarised the allegations levelled against the accused persons in Paragraph 5 of the impugned order. The same is reproduced hereunder:

> "*5. The entire allegations against the accused persons can be categorised under three heads, viz.,*
> *a) as against 26 sanctioned posts, the accused persons appointed 87 persons in DCW during the impugned tenure, out of whom most of the persons were acquaintances or party workers or associated with A1 and AAP;*
> *b) Mr.P. P. Dhal was appointed as MS on 05.04.2016 contrary to the prescribed Rules & Regulations and without approval of the competent authority;*
> *c) a sum of Rs. 676 Lakhs were released to DCW against the Budget Estimate Rs. 700 Lakh in one go, whereas it should have been disbursed in three instalments.*"

73. It was contended by the learned Senior Counsel for the petitioners that the learned Trial Court, in the charge dated 08.12.2022, has framed no formal charge in relation to release of the amount of ₹6.76 crores in one go to DCW instead of in installments or in relation to the appointment of Mr. P.P. Dhal. It was argued that the accused is only required to meet the specific charge framed against them.

74. Firstly, it is argued by the petitioners that DCW is an autonomous body under Sections 9, 10, and 11 of the DCW Act and it has the power to make short-term appointments and spend funds as it deems fit to perform its functions. The appointments were not made against any posts and were contractual in nature. The audit reports were also duly placed before the Delhi Legislative Assembly. The appointments were

not made against any posts and instead on short-term emergent basis due to increase in work.

75. The prosecution has contested the same and argued that DCW is not an entirely autonomous body and it has to act within the purview of the GFR, grant-in-aid considerations and DCW Act. They further relied on the reply by the Deputy Director, WCD to contend that while the DCW may have financial powers, it has no autonomy in regards to Section 5(i) of the DCW Act. It was argued that the petitioners had committed the alleged offences by making excessive appointments against the sanctioned strength. It was further argued that the Sanction orders dated 10.06.2016 and 31.03.2015 issued by WCD provide that the grant in aid institution shall not undertake any activity which entail additional financial liability for the Government without due approval of the administrative and finance department, including, creation of posts, grant of pay scale higher than those of corresponding posts, etc.

76. Reliance has been placed on Sections 9, 10 and 11 of the DCW Act. Section 9 of the DCW Act provides that the Commission or committee thereof shall meet at such time as it may think fit and it shall regulate its own procedure. Section 10 of the DCW Act stipulates the functions of the Commission. Section 11 of the DCW Act provides that the Commission may spend the sums paid to it by way of grants from the Government in such manner as it thinks fit for performing its functions. The learned Trial Court in the impugned order rejected the argument of the petitioners and observed that the said sections do not empower the DCW to create any post or incur any expenditure of

recurring nature towards the salaries, etc. The learned Trial Court also appreciated the clauses (i) and (ii) of Section 5 of the DCW Act which stipulate that it is the Government which is to provide such officers and employees as may be necessary for the efficient performance of functions under the DCW Act and that that the salaries and term of service of such officers or employees shall be as may be prescribed.

77. The DCW Act explicitly provides that the employees and officers of the Commission are to be provided by the Government and the DCW itself was seeking sanction of posts *vide* note dated 28.10.2015. Moreover, as noted by the learned Trial Court, the letter dated 22.06.2007 through which 26 additional posts were created *prima facie* reveals that DCW was not competent to create posts. Out of the sanctioned posts, some were contractual in nature. Thus, it *prima facie* appears that even contractual positions were to be sanctioned by WCD. It was also noted that the letter dated 22.06.2007 through which 26 additional posts were created *prima facie* reveals that DCW was not competent to create posts. In view of the same, in the opinion of this Court, the learned Trial Cout rightly observed that considering that DCW had sought sanction of posts, the same created a strong suspicion that the other recruitments were made arbitrarily.

78. *Secondly*, it was argued by the petitioners that the GFR were merely statutory instructions and the same were not binding on the Commission. It was argued that the breach of non-statutory guidelines is not enforceable in a Court of law and the only remedy against violation is to bring it before a higher authority. It was further argued

that the GFR is not a document that has been relied upon by the prosecution before the learned Trial Court and the State could not be permitted to produce documents at his stage when charges have been framed. While it is stated in the charge dated 08.12.2022 that the appointments were made "*against Rules and Regulations, against procedure, in contravention of GFR Rules, Office Orders, Office Memorandum of the Government and Finance Department issued from time to time and also in contravention of DCW Act 1994*", however, no particulars of the particular provisions that have been violated are mentioned.

79. The prosecution has contested the same and argued that the DCW was bound to follow the provisions of GFR. They have also relied upon the statement and note of Mr. Manoj Kumar, Deputy Secretary-V (Finance) in this regard. It was argued that it is sufficient that GFR establishes a crucial and beneficial procedure and it is immaterial whether GFR can attain status as statutory instructions. It was argued that the GFR provides that expenditure from public funds cannot be incurred without sanction from the competent authority and the same cannot be incurred for the benefit of any particular person or section of people. It was also argued that the same provides for an elaborate mechanism for procurement of services that was not followed in the present case. It was further argued that the GFR is a public document and the contents of the same cannot disputed.

80. It is relevant to note that the allegations against the petitioners is not in regard to simpliciter violation of GFR. The case is that the

petitioners arbitrarily recruited people that were associated with AAP or known to them by abusing their positions as public servants, without advertising the posts, in violation of the GFR, office orders and office memorandum that were issued from time to time by the Government and Finance Department to arbitrarily appoint. Insofar as the argument regarding GFR not being a relied upon document is concerned, the petitioners have placed reliance on the cases of ***Vinay Tyagi v. Irshad Ali*** (*supra*) and ***State of Maharashtra v. Plethico Pharmaceuticals*** (*supra*). In the first case, the Hon'ble Apex Court had made an observation that it was required that all the documents the prosecution seeks to rely upon and the statements of witnesses under Section 161 of the CrPC are to be made part of the chargesheet. In the latter case, the document in question that had not been made a part of the chargesheet was the report of the Central Drugs Laboratory, Calcutta. The judgements relied upon are not relevant in the facts of the present case.

81. In the present case, the document has been contended to have not been listed as a relied upon document and still finds mention in the impugned order is the GFR. The same is undisputably a public document. It is not the case of the petitioners that the prosecution misled the learned Trial Court with regard to the contents of the GFR and there were no provisions in the same regarding appointments or expenditure, but rather, that GFR are not binding to begin with and even if so, GFR have not been violated.

82. As noted above, the allegations in the present case are not in regard to the violation of the GFR by itself but that the petitioners

appointed people known to them and associated with AAP, in excess of the sanctioned strength, in an opaque manner without advertising the posts or following any rules and regulations. The petitioners will have an opportunity during the course of trial to show that GFR was not violated or that the same is not applicable. The order framing charge will not be vitiated merely due to a reference of a public document which is not filed by the prosecution as a relied upon document. The charges are framed on allegations and grave suspicion that accused might have committed an offence. Non-support of the allegation with adequate evidence may accrue to the benefit of defence during the course of the trial, however, at this stage, the same cannot vitiate the trial especially when the document in question is a public document. The learned Trial Court has referred to the same in broad terms while discussing that it appears that *prima facie* no procedure at all was followed to recruit the appointees.

83. *Thirdly*, it was argued that even if any rules had been violated and the proper procedure had not been followed, the proper recourse against the same would be initiation of a Departmental Enquiry. Reliance was placed on ***Dhananjai Kumar Pandey v. CBI*** **: 2015 SCC OnLine Bom 5625**. In the said case, the Hon'ble High Court of Bombay had explicitly noted that in the absence of any specific allegation of corruption, no criminal liability could be fastened on the petitioners therein, and even if any concession was given to them, the same could only give rise to a departmental enquiry. In the present case, however, specific allegations have been made that the accused persons misused their positions to

recruit and grant pecuniary advantage by nepotism to certain persons who were associated with a particular political party or known to them. Thus, the said case is distinguishable on facts.

84. *Fourthly*, it is argued that the prosecution had only been able to identify 20 individuals out of the appointed 87 persons that allegedly had any relation with AAP. It was argued that apart from Mr. Raj Mangal Prasad (placed at serial no.1), there was no evidence or tangible material to show that the other appointees had any association with AAP or that they were the members of the said Party apart from hearsay evidence of police officials who had done verification. No membership records were seized and there is no evidence that any enquiry was ever made either. The allegation, thus, at this stage are only based on random statements at best. Arguments regarding merit of the appointees were also made and it was contended that there is no rule against appointment of AAP members. It was also argued that it is not alleged that the appointees pocketed the renumeration amount without working.

85. The State has contested that the appointees were associated with AAP and Petitioner No.1. It was argued that one of the appointees had contested elections on ticket of AAP (serial number 1), there are photographs of three of the listed twenty appointees (placed at serial numbers 9, 10, and 11) campaigning for AAP, two others had worked under the office of Advisor to Chief Minister (placed at serial numbers 2 and 3) and a few others were found to be workers of AAP or associated with it as per field verification by police officers. It was argued that the appointments were made in an opaque manner and the

salaries of appointees were doubled in a short span without any approvals. Specific details were also provided in this regard. Reliance was placed on the statement of Ms. Usha Ganguly under Section 161 of the CrPC who had served as the Chairperson of DCW from the year 2008 till July, 2015 wherein she had stated that the DCW performs its functions under the guidance of WCD and the expenses incurred are to comply with GFR. She also stated that the process being adopted for appointments under the petitioner Swati was arbitrary and orchestrated to benefit people associated with AAP.

86. The learned Trial Court has extensively discussed the anomalies in the process of engaging the appointees and taken note of the lack of transparency and advertisement for the positions. A few of the cases discussed by the learned Trial Court are summarized hereunder:

a. The learned Trial Court also observed that the appointments of Gautam Singh (earlier worked under accused Swati at the office of Advisor to the Chief Minister), Bhupinder Singh and Banteshwar Singh (earlier worked under accused Swati at the office of Advisor to the Chief Minister) were made in an opaque manner without advertising the vacancies etc. which clearly reflected nepotism. It was noted that the posts for the said persons were created on 29.07.2015 even though there were no vacant posts for these categories as per the letter of Department of Social Welfare dated 22.06.2007. The resumes of these individuals were placed before accused Swati on 06.08.2015 who approved them on the same day. It was noted that these individuals were asked to

furnish their academic certificates on 05.08.2015, however, the appointment of Bhupinder Singh was confirmed without the same. Their appointments were thereafter continued as well.

b. Appointment of Chand Ram was also discussed. The learned Trial Court noted that it was unclear as to how he applied for the post of Data Entry Operator or why he was considered for the same in exclusion of others.

c. It was noted that the note dated 02.02.2016 regarding extension of period of engagement of 7 staff members was approved on 10.02.2016, in which, it was noted that Mr. Prem Sagar Pal is assisting accused Sarika and he should be compensated for the same. He was thus belatedly appointed from the prior date of 01.02.2016.

d. The learned Trial Court also took note of the drastic enhancement in renumeration of the appointees. It was noted that the manner of appointment coupled with the increase in their renumeration to almost double the initial amount creates a strong suspicion to frame charge under Section 13 (1) (d) of the PC Act. The relevant paragraph is reproduced hereunder:

> *"Just to mention a few Gautam Singh was appointed as Research Assistant on 06.08.2015 and his remuneration was increased to Rs. 50,000/- p.m. from Rs. 25,000/- p.m. Similarly, Bhupender Singh was appointed as Media Advocacy Officer on 06.08.2015 and his remuneration was increased to Rs. 70,000/- p.m. from Rs. 30,000/- p.m. Similarly, Banteshwar Singh was appointed as PA to A1 on 06.08.2015 and his remuneration was increased to Rs. 40,000/- p.m. from Rs. 22,000/- p.m."*

87. The learned Trial Court has also extensively discussed the appointment of Mr. P.P. Dhal as Member Secretary. It was noted that while his appointment was initially claimed to be on a pro bono basis, however, his renumeration was fixed within two months. It was observed that the appointment of Mr. P.P. Dhal was *prima facie* in violation of the DCW Act and indicated nepotism.

88. The petitioners have emphasised on the merit of some of the candidates and contended that the appointees performed their services and did not take renumeration for no effort, however, it cannot be denied that the manner of appointment is not transparent. It is not the case of the prosecution that the offence is made out merely because the appointees were associated with AAP, but that the appointments were made without any proper procedure for the same or call for applications. While the petitioner Swati in her reply had contended that interviews were conducted to assess the suitability of candidates, no record of the same was adduced. The IT Department in its reply has stated that the advertisements were issued only for the posts of legal counsellors, however, even the legal counsellors had already been appointed prior to the same. The same raises a question as to the manner in which the accused persons came to recruit the appointees specifically against other candidates, if any. Without any opportunity to the public to compete, the recruitment of the appointees, irrespective of their merit, gives rise to grave suspicion. The learned Trial Court has rightly noted that the opaque manner of appointment along with the prior association of a number of candidates with AAP and petitioner Swati creates

sufficient suspicion to frame charges. Insofar as the association sought to be established on the basis of field verifications is concerned, it is trite law that the testimonies of the police officers cannot be discarded merely because the same is not corroborated by independent evidence. The veracity of the statements of the police officers who conducted the field verifications will be tested during the course of the trial.

89. *Fifthly*, it is argued that the petitioners have been erroneously charged under Section 120B of the IPC read with Sections 13(1)(d)/13(2) of the PC Act as well as the offence under Section 13(2) read with Section 13(1)(d)(ii) of the PC Act. It is argued that there is no allegation that the petitioners obtained any pecuniary advantage *in lieu* of the appointments and the offence as alleged is thus not made out.

90. In view of the aforesaid discussion, it is now to be seen whether the alleged offences are *prima facie* made out against the accused persons when there is no allegation that they gained any direct pecuniary advantage from the appointments.

91. Sections 13(2) of the PC Act prescribes the punishment for the offence of criminal misconduct by a public servant while Section 13(1)(d) elaborates as to when it can be said that public servant is committing criminal misconduct. The relevant portion of Section 13 of the PC Act reads as under:

> "***13. Criminal misconduct by a public servant****.—(1) A public servant is said to commit the offence of criminal misconduct—*
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>
> *(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*
>
> xxx
>
> *(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.*"
>
> (emphasis supplied)

92. From the above, it is evident that the essential ingredients to constitute the offence under Section 13(1)(d)(ii) of PC Act is if the public servant, by abusing his position, obtains any valuable thing or pecuniary advantage either for :

a. himself; or

b. any other person.

93. Thus, Section 13(1)(d)(ii) of the PC Act makes it amply clear that it is not necessary that the public servant by abusing his position should only obtain for himself any valuable thing or pecuniary advantage. The public servant can be said to have committed the offence under Section 13(1)(d)(ii) of the PC Act, even if the said public servant, by abusing his position, obtains any valuable thing or pecuniary advantage for any other person (who may not be a public servant). A public servant causing wrongful loss to the government by benefitting a third party by favouring a person known to them or to the undue benefit of the people associated with a particular group or political party would squarely fall within the definition of Section 13(1)(d) of the PC Act.

94. In the present case, the allegations are in relation to nepotism by the petitioners to obtain favourable positions for the appointees who were known to them or associated with AAP. The learned Trial Court has rightly placed reliance on the judgment of the Hon'ble Apex Court in ***Neera Yadav v. CBI*** (*supra*) where it was noted that promoting the interest of near and dear ones and nepotism, as alleged in the facts of the case, was also a form of corruption. The relevant portion of the said judgment is reproduced hereunder:

> *"**2.** It is a harsh reality that corruption has become all-pervasive in the present system of bureaucracy. It is a fact that rich and powerful try to stall the trial and conviction. However, fortunately, the present case has risen as an exception.*
>
> xxx
>
> ***16.** Section 13 of the PC Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of "criminal misconduct". Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of the PC Act lays down the essentials and punishment respectively for the offence of "criminal misconduct" by a public servant…*
>
> ***17. A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of "criminal misconduct" under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i), obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning "obtaining a valuable thing or pecuniary advantage" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.***
>
> **xxx**
>
> ***54. <u>A particular kind of corruption that has become more rampant of late is nepotism to promote the interests of those near and dear</u>***

> ***to them. Nepotism is in a sense a greater evil since it involves dispersal of favours by patrons amongst their arm coterie, depriving others of a career or office they deserve more.*** ***The practice of promoting the interest of few individuals to the detriment of many others is wholly reprehensible and deserves to be condemned.***
>
> **xxx**
>
> ***59.*** *Every country feels a constant longing for good governance, righteous use of power and transparency in administration. Corruption is no longer a moral issue as it is linked with the search of wholesome governance and the society's need for reassurance that the system functions fairly, free from corruption and nepotism. Corruption has spread its tentacles almost on all the key areas of the State and it is an impediment to the growth of investment and development of the country. If the conduct of administrative authorities is righteous and duties are performed in good faith with the vigilance and awareness that they are public trustees of people's rights, the issue of lack of accountability would themselves fade into insignificance."*
>
> (emphasis supplied)

95. The petitioners have relied upon the judgments in the cases of ***CK Jaffer Sharief v. State*** **: (2013) 1 SCC 205** and ***K.R. Purushothaman v. State of Kerala*****: (2005) 12 SCC 631**.

96. The relevant paragraph of ***CK Jaffer Sharief v. State*** (*supra*) is reproduced hereunder:

> "***17.*** *It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under*

Section 161 CrPC show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. ***As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms.*** *But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct.* ***That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant.*** *A similar view has also been expressed by this Court in M. Narayanan Nambiar v. State of Kerala [AIR 1963 SC 1116 : (1963) 2 Cri LJ 186 : 1963 Supp (2) SCR 724] while considering the provisions of Section 5 of the 1947 Act."*

(emphasis supplied)

97. The relevant paragraph of ***K.R. Purushothaman v. State of Kerala*** (*supra*) is reproduced hereunder:

"***21.*** *To attract the provisions of Section 13(1)(d) of the Prevention of Corruption Act, a public servant should obtain for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.* ***Therefore, for convicting a person under the provisions of Section 13(1)(d) of the Prevention of Corruption Act, 1988, there must be evidence on record that the accused has obtained for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant obtains for himself, or for any person, any valuable thing, or pecuniary advantage without any public interest.*** *What we find in the present case is that there is no evidence on record to prove these facts that the appellant-accused had obtained*

> *for himself or for any other person any valuable thing or pecuniary advantage. We may clarify that the charge of conspiracy being not proved under Section 120-B IPC, the appellant-accused could not be held responsible for the act done by A-3. The prosecution has failed to prove that he has obtained for himself or for any other person any valuable thing or pecuniary advantage. Similarly, we do not find any evidence on record to convict the appellant-accused under Sections 403 and 477-A IPC.*"
>
> (emphasis supplied)

98. Insofar as ***CK Jaffer Sharief v. State*** (*supra*) is concerned, the learned Trial Court had adequately noted that the same is distinguishable on facts. In that case, the issue was in regard to certain officials accompanying the accused to London. There it was held that it was up to the accused to choose which officers should accompany him. In the present case, the issue is in regard to appointment of persons who were associated with a certain party and/or known to the petitioner.

99. The judgment in the case of ***K.R. Purushothaman v. State of Kerala*** (*supra*) supports the proposition that it is not necessary that for constituting the offence, the petitioners needed to obtain any pecuniary advantage themselves. The allegations as levelled by the prosecution are also not that the petitioners were appointing the people known to them to gain any direct advantage themselves, but rather, that by arbitrarily appointing the said persons, the petitioners sought to obtain pecuniary advantage by way of renumeration for the said appointed persons, who were associates and aides of AAP.

100. The very fact that admittedly appointments have been made and there is material in the chargesheet that persons who have been appointed without due process and proper assessment against non-

existent posts and are given renumeration (pecuniary advantage), *prima facie*, satisfies the ingredients of Section 13(1)(d)(ii) of the PC Act and attracts grave suspicion against the accused persons. The allegations are serious in nature and revolve around alleged nepotism by the accused persons to promote appointments of people known to them and associated with AAP. As noted by the Hon'ble Apex Court in the case of ***Neera Yadav v. CBI*** (*supra*), nepotism is also a type of corruption. The same can be especially damaging when it is propagated in an organisation meant to secure the interests of public as it not only hollows the administrative machinery, but it also damages the trust of the public in the institution and deprives eligible candidates of a fair opportunity to secure the appointments. At this stage, in the absence of any cogent material to suggest that a fair and transparent method was adopted by the petitioners to recruit the appointees, the learned Trial Court rightly rejected the claim made by the accused persons that they did not abuse their position in order to obtain pecuniary advantages for other persons or that there was no dishonest intention.

101. The learned Trial Court also rightfully rejected the claim of the accused persons that there was no criminal conspiracy among the accused persons on the ground that the decisions in the meetings for appointments were said to be unanimous. It is not denied that the accused persons were signatories and parties to the various meetings where the decision for creation of posts, appointments and increasing renumeration were made. The learned Trial Court noted that none of the accused persons ever gave any dissenting note regarding the

appointments or objected to the same. They were part of the arbitrary unanimous decisions. It was in the light of the aforesaid circumstances that the learned Trial Court observed its satisfaction that there was a strong indication that there was a conspiracy between the accused person.

102. In view of the aforesaid discussion, in the opinion of this Court, the learned Trial Court after a detailed reasoned order had come to a *prima facie* conclusion that there was sufficient material to proceed to charge the accused.

103. In view of the above, this Court finds no infirmity in the impugned order.

104. The present petitions are dismissed in the aforesaid observations. Pending applications also stand disposed of.

105. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024