HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Revision Petition No. 265/2023

Jitendra Singh S/o Mahendra Singh, Aged About 30 Years, Basti Parasara, P.s. Mundawa, Dist. Nagaur.

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Priyanka Borana
For Respondent(s)	:	Mr. Mohd. Javed Gauri, P.P.

HON'BLE MR. JUSTICE FARJAND ALI

Order

RESERVED ON	**:::**	**17/04/2022**
PRONOUNCED ON	**:::**	**16/05/2023**

BY THE COURT:-

1. The instant revision petition has been filed by the petitioner under Section 397 r/w Section 401 Cr.P.C. against the order dated 10.01.2023 passed by the learned Special Judge (Prevention of Corruption Act), Ajmer in Sessions Case No.19/2018 whereby an order framing charge has been passed against the petitioner under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act read with Section 120-B of the IPC.

2. Learned counsel for the petitioners submit that the impugned order is not sustainable in the eyes of law on the sole count that the learned Court below has not applied its mind to see whether the elements essential to constitute the alleged offences are present or not in the charge sheet filed by the prosecution. It was contended that even assuming all that the prosecution say are

true, the materials are insufficient to support a charge under Section 13(1)(d) of the P.C. Act and Section 120B IPC. While proceeding the investigation in the matter, when the complainant went to the house of Mr. Rakesh Sharma to deliver the illegal gratification, he specifically called his servant and asked him to accompany the complainant to the Rajshree Grosery shop and deliver the same to one Mr. Mahendra Singh. Neither the name of the present petitioner does find mentioning in the FIR nor in the conversation regarding demand of illegal gratification his name has been mentioned. As per the case of the prosecution, it is admitted fact that the name of the petitioner has been mentioned in this case merely because Mr. Rakesh Sharma used to buy groceries from his shop and he had opened a credit account there because he was permanent client of his shop, however, this fact alone is not sufficient to frame charge under Sections 13(1)(d) and 13(2) of PC Act. Merely acceptance of amount at the instructions of Mr. Rakesh Sharma, the recovery of the said amount does not add up to the fact that he was involved in the conpiracy. There are no materials to substantiate the charges levelled against him and merely by saying that there is a conspiracy, without any materials, will not relieve the prosecution from its liability to produce sufficient material to justify a trial under Section 120B of IPC. It is further submitted that a bare perusal of the impugned order available on record does not reflect that the trial court considered the above-mentioned aspects, therefore, the impugned order is not sustainable in the eyes of law and thus, the same deserves to be quashed and set aside because

the petitioner should not be forced to face the rigour of trial on groundless accusations.

3. Per contra, learned Public Prosecutor submits that the prosecution has been able to show a prima facie case by bringing cogent, oral and documentary evidence against the petitioner. According to him the court below has not erred either in appreciating the facts or the law involved in the case.

4. Heard learned counsel for the petitioners as well as learned public prosecutor and perused the entire material available on record.

5. Section 13 of Prevention of Corruption, Act is reproduced as under for ready reference-

"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 one year but which may extend to seven years and shall also be liable to fine."

6. The primary requirement for proving commission of offence under Section 13 is that the person being accused has to be a public servant. It is apparent from the record that the petitioner is not a public servant, there is no evidence that they have accepted gratification for themselves as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of their official function and thus, by any stretch of imagination, he cannot be accused of committing offence under

Section 13(1)(d) of P.C. Act. The law is well settled that demand of illegal gratification is the sine quo non for constituting an offence under the P.C. Act. There is no such transaction account available on record which prima facie reveals the fact of loan transaction or money transaction between Mr. Rakesh Sharma and present petitioner. Mere recovery of tainted currency is not sufficient to convict the accused when substantive evidence in the case is not reliable.

7. In **N. Vijayakumar vs. State of Tamil Nadu** reported in AIR 2021 SC 766, it was held by Hon'ble the Supreme Court that mere recovery of tainted currency not sufficient for conviction under P.C. Act when substantive evidence not reliable. The relevant paragraphs of the afore-mentioned judgment are as follows:

> "It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the Accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala MANU/SC/0274/2009 : (2009) 3 SCC 779 and in the case of B. Jayaraj v. State of Andhra Pradesh MANU/SC/0245/2014 : (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case Under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that Accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption Under Section 20 of the Act can be drawn only after demand for and

acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court……"

8. Although, a private person who is not a public servant can be forced to be tried in a corruption case with the aid of either Section 109 or Section 120-B of IPC. Admittedly, here, no case of abetment or application of Section 109 of IPC is applicable. The petitioner is charged for the offences above with the aid of Section 120-B of IPC. Section 120-B of IPC specifies the penalty for the offence of criminal conspiracy. According to Section 120-A of the IPC, a criminal conspiracy is defined as an agreement between two or more people agree to do or cause to be done an illegal act or an act that is not illegal but is performed through illegal means. Sections 120-A and 120-B of IPC are reproduced below for easy reference:

"**120A. 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.

120B. 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 exceeding six months, or with fine or with both."

9. It is emanating from the definition that there should be agreement between two or more persons to do or not to do an illegal act or an act per se not illegal but done by using illegal means, thus, there should be mutual consent for evil design between two or more persons.

10. A perusal of the impugned order does not reflect as to how offences under Section 120B of the IPC are made out or can be invoked against the petitioner as there is not on iota of evidence in this regard. It is true that at the stage of framing of charge threadbare discussion of the material collected during the course of the investigation is not required but at the same time it is expected from the trial Judge to form an opinion as to whether there are reasonable grounds to presume that the accused should be tried for the offences alleged. It is imperative upon the trial Court to see as to whether the ingredients essential to constitute alleged offences are present or not in the fact situation of the case. Having minutely gone through the entire material available

on record, this Court is of the considered view that the learned Court below has not paid heed to the afore-discussed aspects which are necessary to consider before framing the charge against the accused in any criminal proceeding. There seems no justification to allow the commencement of trial against the accused-petitioner for the alleged offences, elements of which are not available on record and if available, reference of the same should be made in the order but the same is not reflecting from the order impugned.

11. When it comes to the case in hand, where charge under Section 120-B of IPC is framed against the petitioner then it becomes imperative upon the prosecution to show or suggest something which is necessary to invoke charge against him, for which that he should be compelled to face the rigour of trial. For holding a person liable for the offence of criminal conspiracy, it should be established that there was an agreement between the parties. The agreement can be in express or in implied form as the agreement is an important element. The criminal conspiracy does not impose that the evidence should be in favor of all the parties, at least one of the persons establishes that the agreement was made in the purpose of having the similar intention or a meeting of minds then the other conspirator will automatically fall under the provision.

12. In **State of Kerala Vs. P. Sugathan and Ors.** reported in (2000) 8 SCC 203, it was held by Hon'ble the Supreme Court that there is not enough evidence to link the accused to the offence of

criminal conspiracy. There are too many disconnected pieces dispersed all over the place. The relevant paragraphs of the afore-mentioned judgment are as follows:

> "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 by

making 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."

13. This court is aptly guided by the pronouncement made in the case of **Kehar Singh & Ors vs State (Delhi Administration)** reported in AIR 1988 SC 1883, wherein it is propounded that to invoke the charge under Section 120-B of IPC there must be some evidence to show agreement of mind between the perpetrator of the crime and the second person. The relevant portion of the afore-said judgment has been reproduced below:

> "...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."

14. 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.

15. It is generally accepted that in order to prove a conspiracy under Section 120-B, it is essential to show that the participants had an agreement to commit an illegal act. Despite the fact that it can be challenging to prove a conspiracy through direct evidence, it is risky to frame a charge for an offence under Section 120-B of the IPC in the absence of proof that the conspirators were in agreement about the intended goal of committing an illegal act.

16. 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.

17. According to what has been mentioned in the proceedings with regard to the facts of the case, certain important points to be noted are:

a. It is an admitted fact situation that the petitioner is not a public servant.

b. Admittedly, there was no conversation between the petitioner and the principal accused, thus, no call detail in this regard is available on the record.

c. There is no material on the record which shows that there was something more between the petitioner and Mr. Rakesh Sharma, except that somewhere it is stated that accused Mr. Rakesh Sharma occasionally used to buy routine commodities from the shop of the petitioner.

d. There is no direction of the principal accused to the decoy to hand over the amount to the petitioner.

e. In the conversation allegedly made between the decoy and the principal accused, the name of the petitioner does not find place.

f. There is not an iota of evidence to show or suggest that the petitioner knew that the amount allegedly given to

him was an illegal gratification and as such, how can it be assumed that the petitioner accepted the amount knowing it to be the bribe amount. There was no information with the agency to the effect that money was paid to the petitioner in connection of the alleged misconduct of principal accused.

g. It is more than evident that as per the alleged conversation the petitioner is not Mahendra for whom it has been allegedly said in the recording that money would be handed over to him.

h. Although it is not related to the petitioner but it feels appropriate to observe that there is no certificate of Section 65-B Evidence Act with regard to the alleged conversation between the principal accused and the complainant.

18. The ingredients of all the three alleged offences were not found proved in the slightest or a prima facie case could not not be found to be proved so as to form basis for framing of charge under the said three provisions.

19. The judgment passed by a Division Bench of Hon'ble the Apex Court in **Suresh and Ors. vs. The State of Maharashtra** reported in AIR 2001 SC 1375, wherein it was held while framing the charge there has to be sufficient grounds for proceedings against the accused. The relevant portion of the afore-said judgment has been reproduced below:

9. We do not feel it necessary to repeat the discussions on the different points and the decisions which have been referred to in the judgment. However we notice a few recent decisions of this Court touching on the question. In the case of State of Maharashtra vs. Priya Sharan Maharaj and others: 1997CriLJ2248 , this Court referring to the case of Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya: 1990CriLJ1869 , held that at the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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 board probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(Emphasis supplied)

10. In the case of State of M.P. Vs. Mohan Lal Soni: 2000CriLJ3504 , this Court referring to several previous decisions, held that the crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

(Emphasis supplied)

> 11. The learned special Judge in para 18 of the order extracting from the judgment of the Bombay High Court in Rudolf Fernandes vs. State of Goa 1993 M.L.J. 1664, observed and in our view rightly, that each case depends upon its particular facts and circumstances and sometime even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out.

20. The stage of framing of charge is a very significant step in a criminal case and it is the duty of the court to frame a charge against the accused in accordance with the statutory terms stipulated in Section 228 of CrPC. Section 227 of the Code provides that if it is the consideration of the judge, post careful weighing of the record of the case and the documents submitted therewith and after hearing the submissions of the prosecution as well as the accused on this count, that there is lack of adequacy in the grounds on the basis of which the proceedings can move forward against the accused, then the judge shall discharge the accused and record his reasons for said discharge.

21. Forcing a person to go through the rigor of trial without there being apt prima facie material or evidence would surely be direct infringement of his fundamental rights. Of course, if a person has to do nothing in connection with the alleged offence but is still forced to remain on bail and to attend the court

proceedings, then restraining his liberties would tantamount to breach of his fundamental rights.

22. Framing of charge is a determinative action taken by the judge as subject to the decision of framing of the charge against an accused or discharging an accused of the charges leveled against him, two outcomes are generated; either the prosecution(State or complainant) gets a point to moot, i.e. to challenge the order of discharge or the accused is made to face the trial. If the charges are framed without there being even a scruple of the ingredients or circumstances required to constitute an offence under the Sections alleged against the accused, then the accused is made to face the rigour of the trial which may prove to be deleterious to him as he may finally be acquitted of the charges so framed against him.

23. When there was nothing on record, more particularly in the prosecution evidence or other document submitted by prosecution to show a prima facie case against the petitioner then it would not be justifiable for the learned trail court to proceed to frame charge against the petitioner even though the evidence to form basis for the same was absolutely absent in the present case.

24. The charges are proposed to be framed on the relevant material available on record. It is not to be seen that whether the evidence produced on record is sufficient to record conviction or not, thus, probative value of defence is not required to be seen but at the very least, application of mind to see the sufficiency of

material on record is required so as to put the accused to face the rigour of trial. Neither the evidence is required to be discussed in detail nor is the same required to be appreciated.

25. As an upshot of the discussion made herein above, it is observed that sufficient material is not there on record on the basis of which the accused can be put to trial. The order impugned suffers from serious illegality and gross impropriety and therefore, the same is not sustainable in the eyes of law. There is force in the revision petition and therefore, the same deserves acceptance.

26. Accordingly, the petition being S.B. Criminal Revision Petition bearing No. 265/2023 succeeds and the same is allowed. The impugned order dated 10.01.2023 passed by the learned Special Judge (Prevention of Corruption Act), Ajmer in Sessions Case No.19/2018 is hereby quashed and set aside. Since no prima facie case is made out, the accused petitioner is discharged from the offences under Sections 13(1)(d) and 13(2) of P.C. Act read with Section 120-B of IPC. His bail bonds are canceled. The trial may proceed against the other accused.

27. The revision petition is disposed of.

28. Stay petition is also disposed of.

(FARJAND ALI),J

162-Ashutosh/-