

Mahesh Kumar Agarwal Vs Central Bureau Of Investigation

Court: Delhi High Court

Date of Decision: May 23, 2022

Acts Referred: Code Of Criminal Procedure, 1973 " Section 389, 389(1), 437, 439

Indian Penal Code, 1860 " Section 120B, 376, 420, 471, 511

Prevention Of Corruption Act, 1988 " Section 13(1)(d)(ii), 13(1)(d)(iii)

Hon'ble Judges: Anu Malhotra, J

Bench: Single Bench

Advocate: Abhishek Manu Singhvi, Mudit Jain, Vijay Gupta, Avishkar Singhvi, R.S. Cheema, Tarannum Cheema, Akash Singh, Vijay Aggarwal, Hardik Sharma, Vishal Gourav, Ambrish

Final Decision: Disposed Of

Judgement

Sr.No.,Particulars,"Term Å, of
 imprisonment",Fine,"In the event
 default in
 payment of","of
 fine",
 1.,---,---,---,---,,
 2., "Nirmal Kumar
 Agarwal @
 Nirmal Agarwal","a) U/s 120B, 120B
 r/w 420 IPC-Four
 (4) years rigorous
 imprisonment","a) U/s 120B, 120B
 r/w 420 IPC-
 Rs.10,00,000/-
 (Rs.Ten Lakhs
 Only)","a) Four (4) months
 simple imprisonment.",,
 ,,"b) U/s 420 IPC -

Four (4) years

rigorous

imprisonment.";"b) U/s 420 IPC - Rs.

10,00,000/- (Rs.

Ã, Ten

Lakhs Only).";"b) Four (4) months

simple imprisonment.";;

,"c) U/s 471 IPC -

Four (4) years

rigorous

imprisonment.";"c) U/s 471 IPC - Rs.

10,00,000/- (Rs.

Ã, Ten

Lakhs Only).";"c) Four (4) months

simple imprisonment.";;

3.,"Mahesh Kumar

Agarwal @

Mahesh Kumar

Agarwal";"a) U/s 120B, 120B

r/w 420 IPC-Four

(4) years rigorous

imprisonment";"a) U/s 120B, 120B

r/w 420 IPC-

Rs.10,00,000/-

(Rs.Ten Lakhs

Only");"a) Four (4) months

simple imprisonment.";;

,"b) U/s 420 r/w

511 IPC Ã¢â¬â" Three

years

(3) and Six (6)

months rigorous

imprisonment." , "b) U/s 420 r/w 511

IPC - Rs. 10,00,000/-

(Rs. ₹, Ten Lakhs

Only)." , "b) Four (4) months

simple imprisonment." , ,

., "c) U/s 471 IPC - Four

(4) years rigorous

imprisonment." , "c) U/s 471 IPC - Rs.

10,00,000/- (Rs. Ten

Lakhs Only)." , "c) Four (4) months

simple imprisonment." , ,

Engineering Corporation in this regard and also submitted a false and forged application claiming to have applied to State Pollution,,,,,,

Control Board, Orissa seeking to establish DRI and Captive Power Plant at Kuarmunda, Sundargarh Distt. i.e., letter dated 17.02.2004" ,,,,,,

addressed to the Member Secretary, State Pollution Control Board, Orissa, etc. [All these claims made to Ministry of Steel and Ministry of" ,,,,,,

Coal have been discussed in detail in the order on charge dated 06.02.2017] and by way of various acts of omission and commission,,,,,,

amounting to criminal conspiracy and cheating by the company and its directors and you all thereby committed the offence of criminal,,,,,,

conspiracy being punishable u/s 120-B IPC and within my cognizance.,,,,,,

Secondly, during the aforesaid period and in furtherance of the common object of the criminal conspiracy as described above you all did" ,,,,,,

various acts of cheating as described above and also discussed in order on charge dated 06.02.2017 and qua which substantive charges,,,,,,

have been framed separately and you all thereby committed offences punishable u/s 120-B r/w 420 IPC and within my cognizance.,,,,,,

45. Charge under Section 420 of IPC was framed against A-1, A-2 and A-3 as under: -" ,,,,,,

That you all i.e. M/s. Adhunik Corporation Ltd., Nirmal Kumar Agarwal and Mahesh Kumar Agarwal during the year 2003-06 at West" ,,,,,,

Bengal, Orissa, Chattisgarh, Delhi and other places in furtherance of the common object of the criminal conspiracy (as described in the" ,,,,,,

charge separately framed) hatched by you all cheated Ministry of Coal, Government of India by dishonestly or fraudulently making false" ,,,,,,

claims about the existing production capacity of Sponge iron Plant of M/s Adhunik Corporation at Durgapur, West Bengal and also" ,,,,,,

submitted false Project Report allegedly prepared by M/s. Dimensions Engineering & Consultants Pvt. Ltd., made false claim about" ,,,,,,

appointment of M/s. ITC as consultants for detailed engineering and consultancy supporting it with false and forged letter dated,,,,,,

18.04.2005 i.e. purchase order placed to M/s ITC by M/s ACL beside making false claim about placing of purchase order dated 15.02.2005,,,,,,

with M/s. Beekay Engineering Corporation for purchase of 2 kilns of 350 TPD each and submitted false and forged acknowledgment,,,,,,

allegedly issued by M/s Beekay Engineering Corporation dated 21.02.2005 in this regard and also submitted a false and forged application,,,,,,

claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and Captive Power Plant at Kuarmunda, " ,,,,,,

Sundargarh Distt. i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa, etc.[All these" ,,,,,,

claims made to Ministry of Steel and Ministry of Coal have been discussed in detail in the order on charge dated 06.02.2017] and thereby,,,,,,

induced Ministry of Coal, Govt. of India to allocate ""Patrapara"" coal block in favour of M/s. Adhunik Corporation Ltd. and you all thereby" ,,,,,,

committed offence u/s 420 IPC and within my cognizance.,,,,,,

46. Charge under Section 471 of IPC was framed against Nirmal Kumar Agarwal as under: -,,,,,,

That you Nirmal Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used as" ,,,,,,

genuine false and forged purchase order dated 18.04.2005 having been placed to M/s ITC appointing them as consultant for detailed,,,,,,

engineering and consultancy for your proposed iron plant at Sundargarh, Orissa and also dishonestly or fraudulently used a purchase" ,,,,,,

order dated 15.05.2005 stated to have been placed to M/s Beekay Engineering Corporation for purchase of 2x350 kilns and an,,,,,,

acknowledgement letter dated 21.02.2005 allegedly issued by M/s Beekay Engineering Corporation under the signatures of Sh. K. L.,,,,,,

Agrawal, as genuine and also dishonestly and fraudulently used the letter dated 17.02.2004 stated to have been submitted to Member" ,,,,,,

Secretary, State Pollution Control Board, Orissa for obtaining consent to establish DRI and captive power plant at Sundargarh, Orissa, " ,,,,,,

knowing fully well that the aforesaid documents were not genuine and you had reason to believe them to be forged and you thereby,,,,,,

committed an offence u/s 471 IPC and within my cognizance.,,,,,,

47. Charge under Section 471 IPC was framed against Mahesh Kumar Agarwal,as under:-" ,,,,,,

That you Mahesh Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used a" ,,,,,,

incarceration of the applicant would adversely affect his business prospects and thus cause consequential suffering to the employees of the applicant,,,,,,

and to their families who would be affected.,,,,,,

10. Both applicants submit that their mother is ailing and aged 91 years has multiple ailments and is a patient of paralysis since 1994 and is completely,,,,,,

bed ridden and also a heart patient and also suffering from neurological disorders. The applicant Mahesh Kumar Agarwal, i.e., applicant of Crl M.B." ,,,,,,

No. 513/2022 in Crl.A. No. 189/2022 further submits that he is a patient of high blood pressure and hypertension.,,,,,,

11. The applicant Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No. 192/2022, apart from making submissions qua the" ,,,,,,

ailment of his mother, he being the brother of the co-convict Mahesh Kumar Agarwal, i.e., applicant of Crl M.B. No. 513/2022 in Crl.A. No." ,,,,,,

189/2022, submits that his wife is dependent on him, that he, i.e., Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No." ,,,,,,

192/2022 is an industrialist providing employment to 4000 persons and their families who are dependent on him for their livelihood, that he is a heart" ,,,,,,

patient and has undergone a surgery placing a stent/Angioplasty treatment in the year 2013, that he is a respectable member of society and cooperated" ,,,,,,

during investigation and is responsible for upliftment of his family and furthermore, his son is to be married on 31.5.2022." ,,,,,,

12. The status report that the CBI has submitted does not dispute the condition of the mother of the applicants nor the medical condition of the,,,,,,

applicants themselves. The Nominal Rolls that have been received qua both the applicants indicate that there are no previous adverse antecedents,,,,,,

against them and that their jail conduct has been satisfactory.,,,,,,

13. It has been submitted on behalf of the applicants and not refuted on behalf of the CBI and is borne out through the placement on the record of the,,,,,,

fine receipts of the fine deposited by the applicants, i.e., Mahesh Kumar Agarwal, i.e., applicant of Crl M.B. No. 513/2022 in Crl.A. No. 189/2022 and" ,,,,,,

Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No. 192/2022 that the fines imposed vide the impugned order on sentence" ,,,,,,

dated 25.4.2022 to the tune of Rs.30,00,000/- each has been deposited by both the applicants as well as by the co-convict, ie., accused No.1 M/s" ,,,,,,

Adhunik Corporation Limited vide receipts bearing number 466237,466236 and 466235 all dated 27.4.2022." ,,,,,,

14. Inter alia it has been submitted on behalf of the applicants, i.e. Mahesh Kumar Agarwal, applicant of Crl.M.B. No. 513/2022 in Crl.A. No." ,,,,,,

189/2022 and Nirmal Kumar Agarwal, applicant of Crl.M.B. No.514/2022 in Crl.A.No. 192/2022, that they are first time offenders and that the appeal" ,,,,,,

is not likely to be heard in the near future and thus their continued incarceration would be unjust.,,,,,,

15. On behalf of the applicant Mahesh Kumar Agarwal, applicant of CrI.M.B. No. 513/2022 in CrI.A. No. 189/2022, a catena of verdicts was relied" ,,,,,,

upon i.e.,:" ,,,,,,

* Anil Ari V. State of West Bengal; MANU/SC/0148/2009,,,,,,

* Angana and Anr. V. State of Rajasthan; (2009) 3 SCC 767,,,,,,

* Bhagwan Rama Shinde Gosain and Ors. V. State of Gujarat; MANU/ SC/0347/1999,,,,,,

* Smt. P.M.Singh V. CBI ; 2013 SCC Online Del 3835,,,,,,

* Pritpal Singhal V. State of Delhi; (1999) 1 SCC 169,,,,,,

* Kashmira Singh V. State of Punjab (1977) 4 SCC 291,,,,,,

* Ranjit Kumar V. State; 2012 SCC OnLine Del 100Ã¢â¬â,â,¢,,,,,,

* Chaman Lal & Ors. V. CBI, 2013 (135) DRJ 699" ,,,,,,

* AVUT V. Sushil Ansal and Anr.; (2017) 3 SCC 788,,,,,,

to contend to the effect that the parameters for grant of bail in terms of Sections 437 & 439 of the Cr.P.C., 1973, equally govern the grant of" ,,,,,,

suspension of sentence in terms of Section 389(1) of the Cr.P.C., 1973 to a convict who has assailed the impugned judgment of conviction and the" ,,,,,,

impugned order on sentence.,,,,,,

16. Inter alia, it was contended on behalf of the said applicant that the prolonged litigation in the instant case of about 6 Ã¢â¬½ years has itself been a" ,,,,,,

suffering to the applicant.,,,,,,

17. Reliance was also placed on behalf of the said applicant, i.e., Mahesh Kumar Agarwal, applicant of CrI.M.B. No. 513/2022 in CrI.A. No." ,,,,,,

189/2022, on the verdicts in:" ,,,,,,

* K.C. Sareen V. CBI, Chandigarh; (2001) 6 SCC 584" ,,,,,,

* Suresh Kumar & Ors. V. State; 2001 (10)SCC 338,,,,,,

* Atiquor Rehman V. N.C.T. of Delhi; 1998 [1] JCC 165,,,,,,

* Sheetal (In JC) V. State; 2010 [1] JCC 5,,,,,,

* Hindustan Petroleum Corporation Ltd. V. Dilbahar Singh; 2014 (9) SCC 78,,,,,,

* Sita Ram and Ors. V. State of Uttar Pradesh; (1979) 2 SCC 656,,,,,,

* Shiv Nandan Dixit V. State of U.P. (2003) 12 SCC 636," ,,,,,,

to contend to the effect that each case has to be considered on the basis of its own facts and circumstances but discretion in terms of Section 389 of,,,,,,

the Cr.P.C., 1973, is to be exercised judiciously and no strait jacket formula can be applied in exercising the said judicial discretion. It has also been" ,,,,,,

submitted on behalf of the said applicant that the catena of verdicts relied upon on behalf of the said applicant/appellant brings forth clearly that there,,,,,,

is no embargo to the grant of suspension of sentence qua offences punishable under sections, u/s 120B IPC, 120B IPC read with Section 420 of the" ,,,,,,

Indian Penal Code, 1860, 420 IPC read with Section 511 IPC and 471 of the IPC, for suspension of sentence has even been granted in cases where" ,,,,,,

the accused have been convicted for the commission of the offences punishable under Section 376 of the Indian Penal Code, 1860 and even under the" ,,,,,,

Prevention of Corruption Act, 1988. It was further submitted on behalf of the said applicant that the provisions of the Prevention of the Corruption" ,,,,,,

Act, 1988, have not even been invoked in the instant case and there has been no monetary loss whatsoever to the exchequer." ,,,,,,

18. It has inter alia been submitted on behalf of the said applicant that the verdicts of this Court in Anand Mallick V. Central Bureau of Investigation,,,,,,

and Vikash Patni V. Central Bureau of Investigation in Crl. Appeal nos. 1220/2018 and 1221/2018 whereby Crl.M.B No. 1901/2018 and Crl.M.B No.,,,,,,

1902/2018 had respectively been filed seeking suspension of sentence qua offences punishable under Section 120B r/w Section 420 of the Indian,,,,,,

Penal Code, 1860 and r/w Section 13 (1)(d) (ii) and 13 (1)(d) (iii) of the Prevention of Corruption Act 1988, the sentence of the applicants therein had" ,,,,,,

been suspended subject to the terms and conditions as imposed by this Court.,,,,,,

19. Reliance was also placed on behalf of the said applicant on the verdict of this Court dated 5.8.2020 in Bhoori Singh V. CBI; Crl.A. No. 355/2020,,,,,,

to contend to similar effect.,,,,,,

20. Furthermore, a submission was made on behalf of the said applicant that in the other coal matters in Crl.A.Nos. 413/2016, 414/2016, wherein also" ,,,,,,

the convicts therein had been sentenced to four years of rigorous imprisonment vide orders dated 13.5.2016 and in Crl.A. No. 1221/2018 two convicts,,,,,,

therein had been sentenced to four years of rigorous imprisonment vide orders dated 18.2.2019. The sentences imposed had been allowed to be,,,,,,

suspended during the pendency of the appeals which are still pending.,,,,,,

21. A list of details of the suspension of sentences awarded in coal block cases by this Court has been submitted on behalf of the said applicant to the,,,,,,

effect:,,,,,,

Sr.

No.

1","Case Title

CBI V.

Jharkhand

Ispat Ltd &

Ors.",Convict,Imprisonment,"Date of Appeal in

the Hon'ble HC

& Appeal No.", "Date of

Suspension of

Sentence by

the

Hon'ble

HC",NDOH

.,R.S.Rungta,4 year RI,"29.04.2016

(CRL.A 413/2016)",13.05.2016,14.12.2022

.,R.C.Rungta,4 year RI,"29.04.2016

(CRL.A 414/2016)",13.05.2016,14.12.2022

2,"CBI V.

Rathi Steel

& Power

Ltd. & Ors.",Pradeep Rathi,3 year RI,"17.08.2016 (CRL.A

760/2016)",22.08.2016,

.,Udit Rathi,3 year RI,"17.8.2016

Crl.A 764/2016",22.08.2016,

., "Kushal

Agrawal",2 year RI,"17.8.2016

Crl.A. 759/2016",22.08.2016,

3,"M/s Kamal

Sponge

Steel &

Power Ltd.

& Ors.", "Pawan Kumar

Ahluwalia",3 year RI,"15.6.2017

(Crl.A.622/2017)",10.07.2017,16.09.2022

.,HC Gupta,2 year RI,"06.07.2017

(Crl. A. 642/2017)",10.07.2017,16.09.2022

.,K.S. Kropfa,2 year RI,"14.07.2017

(Crl. A. 688/2017)",14.07.2017,16.09.2022

„K.C. Samria,2 year RI,"14.07.2017

(Crl. A. 687/2017)",14.07.2017,16.09.2022

4,"CBI V.

M/s Vini

Iron &

Steel Udyog

Ltd. & Ors. ", "Sh. Ā, Vijay

Joshi",3 year RI,"20.12.2017

(Crl. A. 1170/2017)",20.12.2017,20.04.2022

„HC Gupta,3 year RI,"25.03.2018

(Crl. A. 141/2018)",06.02.2018,29.08.2022

„,"Ashok Kumar

Basu",3 year RI,"19.01.2018 (Crl.A.

66/2018)",19.01.2018,29.08.2022

„,"Sh. Madhu

Koda",3 year RI,"02.01.2018

(Crl.A. 1186/2017)",22.01.2018,Disposed Off

5,"CBI Vs.

M/s

Gondwan a

Ispat

Ltd Ā, &

Ors.", "Sh. Ashok

Daga",4 year RI,"03.05.2018

(Crl.A. 1186/2017)", "Interim Bail

Granted on

22.01.2018",

6,"CBI Vs.

M/s Vikash

Metal &

Power ltd &

Ors.",Vikash Patni,4 year RI,"10.12.2018

(Crl. A. 1221/2018)",18.02.2019,

„Anand Mallick,4 year RI,"10.12.2018

(Crl. A. 1221/2018)",18.02.2019,

„HC Gupta,3 year RI,"22.01.2019 (Crl.A.

72/2019)",29.01.2019,

„K.S. Kropcha,3 year RI,"21.01.2019 (Crl.A.

62/2019)",21.01.2019,

„K.C. Samria,3 year RI,"21.01.2019

(Crl. A. 67/2019)",21.01.2019,

7,"CBI Vs.

M/s

Pawanjay","Gyanchand

Prasad

Agarwal",3 year RI,"13.12.2019

(Crl.A. 1416/2019)",13.12.2019,

,"steel and

Power ltd &

Ors." ,,,,,,

„,"Umesh Prasad

Agarwal",3 year RI,"13.12.2019

(Crl.A. 1415/2019)",13.12.2019,

„S.K. Kanungo,2 year RI,"10.12.2019

(Crl.A. 1404/2019)",10.12.2019,

8,"CBI Vs.

M/s.

Castron

Technolog

ies Ltd.&

Ors." ,"Mahendra

Kumar

Agarwalla",3 year RI,"25.11.2020 (Crl.A.

590/2020)",25.11.2020,

„Dilip Ray,3 year RI,"27.10.2020 (Crl.A.

533/2020)",27.10.2020,

„,"Pradip Kumar

Banerjee",3 year RI,"29.11.2020 (Crl.A.

574/2020)",25.11.2020,

„,"Nitya Nand

Gautam",3 year RI,"24.11.2020

(Crl.A.585/2020)",25.11.2020,

9,"CBI Vs.

M/s

DOMCO

Pvt. Ltd. &

Ors.,"Vasant

Diwakar

Manjrekar",3 year RI,"18.11.2021 (Crl.A.

349/2021)",18.11.2021,25.04.2022

„,"Parmananda

Mandal",3 year RI,"18.11.2021 (Crl.A.

349/2021)",18.11.2021,25.04.2022

„,"Sanjay

Khandelwal",3 year RI,"08.11.2021 (Crl.A.

321/2021)",08.11.2021,25.04.2022

with directions:,,,,,,

* that the applicants shall not leave the country without permission of this Court and an intimation to this effect be sent to the FRRO and all airports of,,,,,,

the country:,,,,,,

* that the applicants shall keep their mobile phones on and drop a pin on the Google map to ensure that their location is available to the Investigating,,,,,,

Officer of the case:,,,,,,

* the applicants shall commit no offence whatsoever and,,,,,,

* that the applicants shall not make any contact with the prosecution witnesses.

28. The Crl.M.B. No. 513/2022 and 514/2022 are disposed of.