

(2013) 07 DEL CK 0401**Delhi High Court****Case No:** Criminal M.C. 932 of 2012 and Criminal M.A. 3263 of 2012

Mohan Lal and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 29, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 193, 313, 461
- Penal Code, 1860 (IPC) - Section 120B, 420, 468, 471
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2)

Citation: (2013) 3 JCC 2231**Hon'ble Judges:** S.P. Garg, J**Bench:** Single Bench**Advocate:** R.P. Shukla, for the Appellant; Sonia Mathur, for the Respondent**Final Decision:** Dismissed**Judgement**

S.P. Garg, J.

Present petition u/s 482 Cr.P.C. has been preferred to quash proceedings in Complaint Case No. 13/2006 titled "CBI vs. B.N. Dhawan & Ors." It is contested by CBI. I have heard the learned counsel for the parties and have examined the Trial Court record minutely. RC DST/2005/S/0008 was registered in STF, CBI on 14.12.2005 against officials of Registrar Co-operative Housing Societies, Govt. of NCT Delhi and Ors. Enquiries were made in PE No. 4(E) 2005/EOW-1/Delhi dated 08.08.2005 in compliance of the orders of this Court in Crl. Writ Petition No. 10066/2004. After completion of investigation, a charge-sheet u/s 120B read with Section 420/468/471 IPC and Section 13(2) read with Section 13(1)(d) of PC Act was filed in the Court of Sh. Sunil Gaur, the then Spl. Judge, CBI against the petitioners and five others. The petitioners have raised a legal question "whether the cognizance taken on remand application would be considered as cognizance taken in this case". Petitioners' counsel urged that after the filing of the charge-sheet on 14.11.2006 before Sh. Sunil

Gaur, Spl. Judge, CBI, the case was assigned on the same day to the Court of Sh. G.P. Mittal, the then Spl. Judge, CBI where FIR in question was pending. No cognizance was taken by the Court of Sh. Sunil Gaur that time. On 15.11.2006, it was mentioned in the order-sheet that Sh. Sunil Gaur had already taken cognizance of the case. The trial of the case proceeded in the absence of cognizance i.e. judicial application of mind of the documents, contents of the charge-sheet and FIR. Documents and statements of the witnesses u/s 161 Cr.P.C. were produced in the Court of Sh. G.P. Mittal, Spl. Judge, CBI on 16.11.2006. It was clear that there was no material before the Court prior to 16.11.2006 to take cognizance. He further urged that taking cognizance is not an empty formality and it requires utmost application of mind. Once a charge-sheet is filed u/s 173 Cr.P.C. all the documents including statements of the witnesses recorded u/s 161 Cr.P.C. and other documents attached therewith are required to be scrutinized before the Magistrate forms his opinion whether the offence was made out or not. In the instant case, no such cognizance was taken either by Sh. Sunil Gaur or Sh. G.P. Mittal at any stage as none of them applied judicial mind. u/s 461 Cr.P.C. the entire proceedings are void and without jurisdiction and are liable to be quashed. Reliance was placed upon Ajit Kumar Palit Vs. State of West Bengal, State of Karnataka and Another Vs. Pastor P. Raju, ; Jagdish Ram Vs. State of Rajasthan and Another, ; Bhushan Kumar and Another Vs. State (NCT of Delhi) and Another, ; Dharmatma Singh Vs. Harminder Singh and Others, & R.R. Chari Vs. The State of Uttar Pradesh, 7. Counsel for CBI urged that on 14.11.2006, the Investigating Officer had moved an application for extension of judicial remand of the accused in custody. Sh. Sunil Gaur, Spl. Judge, CBI, on remand application took cognizance. Since the FIR was pending in the Court of Sh. G.P. Mittal, Spl. Judge, CBI the case was assigned to that Court. On 14.06.2007, after hearing the petitioners and others, charge was ordered to be framed against them. The trial of the case has reached at a crucial stage. CBI has already examined its witnesses. Statements of the accused persons have been recorded u/s 313 Cr.P.C. Intention to file the petition is to delay the trial.

2. I have considered the submissions of the parties and have gone through the citations on record. It is not disputed that FIR (Ex. PW-46/A) was lodged in compliance of the order of this Court in Criminal Writ Petition No. 10066/2004 on 02.08.2005. The investigation continued thereafter and on its completion, a charge-sheet was filed against the petitioners and five others on 14.11.2006 in the Court of Sh. Sunil Gaur, Spl. Judge, CBI. The case was assigned to the Court of Sh. G.P. Mittal, Spl. Judge, CBI, Delhi on 14.11.2006 itself as the FIR in question was pending in the said Court. Apparently, at that stage of mere assignment of the case to the Court of Sh. G.P. Mittal, there was no application of judicial mind and Sh. Sunil Gaur had not taken cognizance. However, when CBI sought extension of judicial remand of the accused who were in custody and moved an application for that purpose in the Court of Sh. G.P. Mittal, Spl. Judge, it revealed that Presiding Officer was on half day leave (second half). Again, the matter went to the Court of Sh. Sunil

Gaur, Spl. Judge, CBI and a report was called. It was informed that Sh. G.P. Mittal, Spl. Judge was on half day leave. At this stage, Sh. Sunil Gaur, Spl. Judge, CBI passed a detailed order dated 14.11.2006 which reads as under :

14.11.2006

Present: Shri Rajesh Malhotra, Sr. P.P. for CBI alongwith Inspector Sunil Singh Rawat (IO).

All the four accused persons produced in custody.

This is an application for JC remand. Cognizance has been taken and since the FIR is pending in the court of Shri G.P. Mittal, Ld. Special Judge, therefore, the challan has already been sent to that court. Let the IO is directed to produce the accused persons before the court of Shri G.P. Mittal, Id. Special Judge, Delhi tomorrow.

Sd/-

SUNIL GAUR

Special Judge CBI

Delhi.

14.11.2006

3. From the contents of the order, it is crystal clear that while considering the request of the CBI for sending the accused (in custody) to judicial remand, Sh. Sunil Gaur, Special Judge had applied judicial mind and before ordering the Investigating Officer to produce them before the Court of Sh. G.P. Mittal the next day, "cognizance" was taken. It was specifically mentioned in the order "cognizance has been taken". In the absence of cognizance, Sh. Sunil Gaur, Spl. Judge, CBI could not have dealt with the judicial custody remand application and direct to produce them before the Court of Sh. G.P. Mittal next day. When the matter came up before the Court of Sh. G.P. Mittal, the next day, it was recorded that Sh. Sunil Gaur had already taken the cognizance on 15.11.2006. Copies of the documents were supplied to A-4 to A-7. Sri Chand and Anna Wankhede were directed to be produced by issuance of production warrants. Summons were also issued to accused B.N. Dhawan, who was not arrested. Bail applications were taken on record and fixed for disposal for 16.11.2006. None of the accused raised any objection or challenged the cognizance taken by Sh. Sunil Gaur. In fact, at no stage, prior to moving the application in January, 2012, none of the accused ever claimed that the trial was vitiated for want of valid cognizance either by Sh. Sunil Gaur or Sh. G.P. Mittal. All the accused actively participated in all the proceedings throughout with their counsel. The prosecution has already examined all the witnesses. Statements of the accused persons have been recorded u/s 313 Cr.P.C. Some defence witnesses have also been examined. The petitioners did not offer any explanation for inordinate delay in filing the present petition for quashing of the proceedings when they were aware that

order-sheets dated 14.11.2006 and 15.11.2006 specifically recorded that cognizance of the case has been taken. There was no illegality when the Court of Sh. Sunil Gaur took cognizance of the case on the application seeking judicial custody remand of the accused in custody on 14.11.2006. The peculiar facts of the case were that when the charge-sheet was filed in the Court of Sh. Sunil Gaur, it was assigned to the Court of Sh. G.P. Mittal where FIR in question was pending. Had Sh. G.P. Mittal been on duty, the cognizance could have been taken by him and the custody remand of the accused could have been extended. However, Sh. G.P. Mittal was on leave after lunch and there was none else to extend the custody remand, the matter again came before Sh. Sunil Gaur who could not have dealt with the application without taking cognizance of the offence after the filing of the charge-sheet. For technical irregularity, the entire proceedings culminating into defence evidence cannot be quashed when at no stage prior to January, 2012, the petitioners or other accused challenged the cognizance. In Rattiram and Others Vs. State of M.P., the Supreme Court has held that trial would only be vitiated if the failure of justice has in fact been occasioned thereby or the accused can establish that he has been prejudiced thereby. In the said case, there was irregularity in committal proceedings and the cognizance was taken by Sessions Court without commitment of the case by the Magistrate in accordance with Section 193. In the instant case also, nothing has been brought on record if any prejudice was caused to the petitioners due to taking of cognizance on remand application which was part and parcel of the charge-sheet. The Trial Court in the order dated 17.02.2012 has given detailed reasons while dismissing the applications dated 06.01.2012 and 20.01.2012 filed by the petitioners-Mohan Lal and Sri Chand. I find no illegality or irregularity in the reasoning recorded by the Trial Court. The present petition is unmerited and is dismissed. Application stands disposed of. Trial Court record be sent back forthwith.