

Rakesh Bhatnagar Vs Central Bureau of Investigation

Court: Delhi High Court

Date of Decision: July 29, 2013

Acts Referred: Constitution of India, 1950 " Article 227
Criminal Procedure Code, 1973 (CrPC) " Section 197, 227, 482
Penal Code, 1860 (IPC) " Section 120B, 419, 420, 467, 468
Prevention of Corruption Act, 1988 " Section 13(1)(d), 13(2), 19

Citation: (2013) 3 JCC 1990

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: Ramesh Gupta and Mr. Hrishikesh Baruah, for the Appellant; Sonia Mathur for CBI and IO Mr. Bodh Raj Hans, for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

By virtue of this Petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, the

Petitioner seeks to challenge an order dated 08.11.2011 passed by the learned Special Judge whereby charges for the offence punishable u/s 120-

B read with Sections 419/420/467/468/471 IPC and u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (the P.C. Act)

was ordered to be framed against the Petitioner. The prosecution was launched against the Petitioner on the basis of allegations which can be

culled out from paras 1 and 2 of the impugned order hereunder:

1. The case of the CBI, in brief, is that Mansarovar Cooperative Group Housing Society (CGHS) Ltd. was registered on 07.12.1983 with

Registrar of Cooperative Societies(RCS), New Delhi vide registration No. 1005-H on application of P.N. Pandey, the then Secretary of the

society, with its 75 members. The society was having its address at 70, Church Road, Bhogal, Jangpura, New Delhi. The Freeze strength of the

society became 116 members. Smt. Madhu Aggarwal, the President of the society, is wife of accused Gokul Chand Aggarwal who had played a

vital role in revival of many other co-operative Group Housing Societies. The society in question was fraudulently managed/controlled by Smt.

Madhu Aggarwal and her husband accused Gokul Chand Aggarwal on the strength of forged documents and fake members. Accused Gopal

Singh Bisht, the dealing assistant, accused Man Singh, the then AR(South) and accused Narayan Diwakar, the then RCS, conspired with Smt.

Madhu Aggarwal, accused Gokul Chand Aggarwal and others without making proper verification regarding the existence of the society and its

office bearers/members and approved the list of fictitious and non-existing members of the society. Thereafter the same was submitted to DDA for

allotment of land.

2. Accused Gokul Chand Aggarwal purchased the documents of the society for Rs. 60,000/- from accused Subhash Choudhary, formerly

Secretary and promoter members of the society. Subsequently, accused Gokul Chand Aggarwal suo-moto filed forged registration of 20 promoter

members of the society by ante-dating the same to 25.05.1990 and enrolled 20 fictitious members in the society. On 23.02.2003, the General

Body Meeting of the society was held which was chaired by accused Subhash Choudhary and purportedly attended by 27 members. In this

meeting a resolution was passed for shifting the office of society from 70, Church Road, Jangpura, Bhogal, New Delhi, to 86, 2nd Floor, Vinoba

Puri, Lajpat Nagar, New Delhi. Accused Gokul Chand Aggarwal impersonated himself as R.P. Saxena and the Secretary of the society sent a

letter to AR (South) on 20.05.2003 which was processed by accused Gopal Singh Bisht, the then Dealing Assistant, who recorded a note dated

23.05.2003 that an approved list of 116 members as on 31.07.1985 had been forwarded to DDA for allotment of land after necessary

verifications. Accused Gopal Singh Bisht recommended that no further verification was required since list of members had already been approved

by RCS. Thereafter the file was submitted to accused Rakesh Bhatnagar, the then JR, through accused Man Singh, the then AR, who recorded

noted dated 26.05.2003 detailing that enrollment and resignation of members had not been verified by the RCS and, therefore, society may be

directed to submit their audit and election report within 15 days. Accused P.K. Thirwani, the Sr. Auditor, was appointed by J.S. Sharma, the then

AR (Audit), to undertake the audit of the society for the period 1990-2003. However, accused P.K. Thirwani did not visit the office of society

and prepared an audit report thereby he violated provisions of Delhi Cooperative Societies Act, 1972(hereinafter referred to as "the DCS Act")

and the Rules framed thereunder. The minutes of General Body Meeting, Management Committee Meeting. Resignation and enrollment of

members and balance sheet for the period 1990-2003, receipts and payments etc. were prepared at the instance of accused Gokul Chand

Aggarwal and accused Ashwani Sharma. Accused Narayan Diwakar without looking into the fact that out of 20 members who had been shown as

resigned in General Body Meeting relied upon recommendation made by accused Gopal Singh Bisht and accused Man Singh, the then AR, and

approved fresh list of 116 members on 01.08.2003 which was forwarded to DDA for allotment of land. The DDA sent a letter dated

31.10.2003/03.11.2003 and another dated 10.12.2003 to the society in which address of the society was given as 206, 2nd Floor, New Delhi

House, Barakhamba Road, New Delhi and the said address belonged to accused Ajit Singh who confirmed having received the aforesaid letters.

2. It is urged by the learned senior counsel for the Petitioner that the role attributed to the Petitioner is stated in para 18 of the charge sheet which is

extracted hereunder:-

18. Investigation has further revealed that Shri Rakesh Bhatnagar was then Joint Registrar at the relevant point of time and he was duty bound to

check the genuineness of records before forwarding the proposal to RCS, but he overlooked the facts pertaining to 20 promoter members who

were shown to have resigned in a General Body Meeting held on 20.5.90 and 20 new fictitious members inducted. Out of 20 resigned members, 9

had actually attended the meeting of the said society held on 5.8.1990 and the minutes of the said meeting were very much available in the RCS

file. It is pertinent to mention here that the names of all the 20 members who were shown to have resigned from the society on 5.8.1990 had earlier

been approved and recommended to DDA in the approved list forwarded on 7.1.1992. Rakesh Bhatnagar, the then Joint Registrar, intentionally

suppressed the facts available on record in connivance with the other accused persons with a view to favour them. There is strong circumstantial

evidence against him that he was party to a criminal conspiracy as he overlooked the facts available on record. Had he verified the actual status of

the society from the DDA, true picture regarding approval of list of members of the society would have emerged. Moreover, there is no such

provision in the DCS Act, 1972 that a list of members of the society already approved by the RCS can be approved again.

3. The learned senior counsel argues that the Petitioner himself had written a note (D-7) that the list of the members cannot be sent to the DDA for

approval unless a due enquiry is conducted by the office in respect of election, audit as well as on resignations. The learned senior counsel urges

that the Petitioner's proposal was approved by the Registrar of Co-operative Societies and the Dealing Assistant Gopal Singh Bisht (A-5)

prepared a note at Page 25/N and reported about the verification on this aspect. When the file was put up to the Assistant Registrar (Policy) he

wrote a note raising certain objections as under:-

... From the record of policy it is revealed that a list of two hundred society was sent to DDA for allotment of land on 16.12.93 (Page 102-116)

the name of Mansarover G/H Society is shown at Sl. No. 24 which shows that the list of members was not approved from this department,

therefore, this Society was not considered for allotment of land by the DDA. Letter dated 07.01.92 becomes irrelevant. Moreover, letters were

issued to society for verification of record on 22.12.93, 07.09.94 and 18.04.95 but Society failed to get the record verified from this office. May

kindly see the noting on page 25/n and proposal of the AR (South) that list of members have already verified and approved by the department and

no further verification is required. This proposal does not seem to be in conformity with the facts available in the record of Policy Branch. Further, it

will not be proper to send list submitted by Society in 1984 in the year 2003 after lapse of 19 years.

If approved AR (South) may submit the list after verification of record for onward transmission to DDA.

Submitted please.

4. The objection of Assistant Registrar (Policy) was approved by the Petitioner who in addition to the charge of Joint Registrar (South) was also

holding charge of Joint Registrar (Policy). The learned senior counsel submits that if there would have been any guilty intent on the part of the

Petitioner, he would not have stood in the way and would not have agreed with the AR (Policy). The learned senior counsel contends that

subsequently, Assistant Registrar (South) approved the note made by Dealing Assistant Gopal Singh Bisht (A-5) after all the verification had been

done by the Dealing Assistant and him. The Petitioner wrote a note at Page 39(D-7) stating that the original records have been verified at the zonal

level and the proposal was put up for approval by the Registrar. The learned senior counsel strenuously argued that it was not the job of the

Petitioner as Joint Registrar to have personally verified whether all the verifications etc. had been carried out by the Dealing Assistant and the

Assistant Registrar. Rather, it was clarified by him that the verification had been done at the zonal level. It is urged that thus neither any criminal

intent can be attributed to Petitioner nor it can be said that he was part of the conspiracy.

5. Relying on John Pandian Vs. State Rep. by Inspector of Police, T. Nadu, and Esher Singh Vs. State of Andhra Pradesh, the learned senior

counsel argues that in order to prove the offence of criminal conspiracy the prosecution must either by direct or circumstantial evidence must

indicate the meeting of minds between the conspirators for intended object of committing an illegal act or an act which is not illegal, by illegal

means.

6. Relying on State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., that a charge can be framed against an accused u/s 227 of the Code

of Criminal Procedure only when commission of the offence by the accused is a probable consequence. The learned senior counsel argues that the

framing of charges substantially affects a person's liberty and a Court cannot frame a charge automatically and must apply its judicial mind to find

out if a prima facie case is made out against the accused or not.

7. There is no doubt about the proposition of law which is well settled that a charge cannot be framed merely on suspicion against an accused. In

the latest report of the Supreme Court in Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another, the Supreme Court relied on its

various earlier decisions in Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, , State of Karnataka Vs. L. Muniswamy and

Others, , State of Madhya Pradesh Vs. Mohanlal Soni, and Union of India (UOI) Vs. Prafulla Kumar Samal and Another, and observed as

under:-

11. ...In Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, This Court explained the legal position and the approach to be

adopted by the Court at the stage of framing of charges or directing discharge in the following words:-

11. It is trite that at the stage of framing of charge 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, disclosed the existence of all the ingredients constituting the alleged offence. At that stage,

the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground

for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong

suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the

offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

(Emphasis supplied)

12. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka Vs. L. Muniswamy and Others, ,

State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., and State of Madhya Pradesh Vs. Mohanlal Soni, In Som Nath's case (supra)

the legal position was summed up as under:-

if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for

framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge,

though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a

charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as

true at that stage.

(Emphasis supplied)

13. So also in Mohanlal's case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to

be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding

against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the

accused. The following passage from the decision in Mohanlal's case (supra) is in this regard apposite:

8. The crystallized 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.

xxx xxx xxx

16. To the same effect is the decision of this Court in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , where this Court was

examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code 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:

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal

application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving

rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act

merely as a Post Office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge

should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

8. According to the prosecution, a list of 116 members of the Mansarovar CGHS Ltd. approved by the RCS on 30.12.1991 was sent to DDA on

07.01.1992 by Shri J.N. Gupta, Assistant Registrar for allotment of land. By a letter dated 27.12.1993, the RCS asked the earlier said society to

submit a list of members duly verified within a period of ten days. The society, however, did not respond. By a letter dated 18.04.1993 and by

another letter dated 07.09.1994 the society was asked to produce original documents for verification. What is important to note is that 20

members were stated to have resigned on 25.05.1990. As per the record available with the RCS, nine members out of earlier said 20 resigned

members had attended a special General Body Meeting of the society held on 05.08.1990. It is also borne out from the record that the names of

these 20 members who had allegedly resigned on 25.05.1990 were included in the list of 116 members forwarded to the DDA on 07.01.1992.

9. The learned senior counsel has taken pains to argue that it was not the Petitioner's job to verify all these facts as this was to be done at the level

of the Inspector, Dealing Assistant or at the most Assistant Registrar. The learned senior counsel also relies upon the information obtained by the

Petitioner under the Right to Information Act in respect of a letter dated 08.11.2006 written by the IO seeking information from the RCS regarding

the specific duties and responsibilities of the various officers including Joint Registrar which post was held by the Petitioner. In response to the said

letter, the department had allegedly informed the IO that Assistant Registrar is responsible for any note in the file and he is expected to see factual

correctness of the note. In my view, it would be too much to say that a Joint Registrar in the office of RCS is only a post office and is simply to

forward the proposal to the Registrar. Any officer including the Joint Registrar who deals with the file is expected to verify the correctness from the

record. It may not be possible for a senior officer to carry out full inspection etc. which job may be left at the level of the Inspector or the Dealing

Assistant. Every officer including the Joint Registrar is expected to verify the correctness of the facts stated in the note from the records. In the

instant case, the Petitioner did not verify the facts as have been narrated above and from the circumstances which have been stated an inference of

conspiracy can definitely be drawn as meticulous examination of the evidence is not required to be done at the stage of framing of the charge. The

cases cited by the learned Senior Counsel do not help the case of the Petitioner.

10. It is urged that no sanction for prosecution u/s 197 Cr.P.C. has been obtained in respect of the offences under the IPC. The Petitioner is being

prosecuted for the offences under the IPC as well as of offences under Prevention of Corruption Act, 1988.

11. It is true that in addition to the offence u/s 13(2) read with Section 13(1)(d) of the P.C. Act, the Petitioner has been charged for offence u/s

120B read with Sections 419/420/467/468/471 IPC. In Parkash Singh Badal and Another Vs. State of Punjab and Others, the Supreme Court

held that the offence u/s 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination be their

very nature be regarded as offences committed by a public servant while acting or purporting to act in discharge of his official duty. A similar view

was taken by the Supreme Court in Harihar Prasad, etc. Vs. State of Bihar, which was followed by a learned Single Judge of this Court in Kushal

Kumar. Thus, once a sanction u/s 19 of the P.C. Act was obtained, no separate sanction u/s 197 Cr.P.C. was required. In view of the above

discussion, I do not find any ground to interfere in the impugned order. The Petition is without any merit; the same is accordingly dismissed.