

(2010) 08 DEL CK 0332

Delhi High Court

Case No: Writ Petition (Criminal) 367 and 371 of 2010

S.K. Lakhina

APPELLANT

Vs

C.B.I. thru. State
 S.K.

RESPONDENT

Pathrella Vs C.B.I.

Date of Decision: Aug. 27, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 420, 468, 471
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 19(3)

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: S.P. Kalra, Kirti K. Mehta, in WP Criminal 367 of 2010, R.K. Dhawan, in WP Criminal 371 of 2010, Ruchi Kapoor, in WP Criminal 377 of 2010, S.L. Gupta and Ram Gupta, in WP Criminal 378 and 379 of 2010, for the Appellant; Vikas Pahwa for CBI, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.

These Revision Petitions have been preferred by the petitioners against the order dated 3rd December, 2005 passed by the learned Special Judge (CBI), directing framing of charges u/s 120B IPC read with Section 420, 468, 471 IPC and Section 13(1)(d) of Prevention of Corruption Act, read with Section 13(2) of Prevention of Corruption Act.

2. After the order directing framing of charge, charges were framed against the accused persons. The Petitioners/accused persons during the pendency of these Revision Petitions, prayed for conversion of these Revision Petitions into Writ Petitions under Article 227 of Constitution of India, in view of decision of this Court

in Dharamvir Khattar v. CBI. At the request, the Registry was directed to register and re-number these Revision Petitions as Writ Petitions (Crl.) under Article 227 of Constitution of India and the matters continued.

3. After amendment in Prevention of Corruption Act, 1988, Revision Petition against framing of charge by Special Judge in Corruption Cases, was barred u/s 19(3)(c) of Prevention of Corruption Act. This Court in Dharamvir Khattar v. CBI 2009 IV AD, Delhi, after discussing numerous judgments of this Court and Apex Court had come to decision that order on framing of charge could not be reviewed u/s 19(3)(c) of P.C. Act. This Court re-affirmed this view in R.C. Sabharwal v. CBI and Ors., in Crl. Revision No. 293 of 2006, decided on 6th January, 2010. However, in view of the fact that a revision was not maintainable, petitioners got these Revision Petitions converted into Writ Petitions under Article 227 of Constitution of India and contended that if revision was not maintainable, there was no bar on challenge being made to order of charge, under Article 227. In Dharamvir Khattar, this Court had observed that since no request has been made to the Court for converting the petition to under Article 227, challenge to the order on charge was not being considered under Article 227. It is argued by counsel for the petitioner that a petition under Article 227 of Constitution of India thus was maintainable and these petitions should be entertained and the order passed on charge by learned trial court should be set aside.

4. I consider that entire purpose and intent of legislatures stands defeated if the purpose for which an amendment is made is made infructuous by circumventing the law made by legislature. Looking into the fact that Prevention of Corruption cases were taking very long time and quite often the revisions against the order on charge pending in High Court were taking very very long time, the legislature specifically by an amendment in P.C. Act barred entertaining revisions against order on charge. However, if the Courts start entertaining the challenge to the charge u/s 482 Cr. P.C. or under Article 227, the very purpose for which the amendment in the P.C. Act was made shall stand defeated. The courts are there to uphold the intent of Legislatures and not to defeat the statutory provisions made by the Legislatures. What cannot be done directly cannot be done indirectly. If the Revision against an order on charge is not maintainable because the Legislature intended that at the stage of framing of charge no party should be permitted to assail the order, a petition u/s 482 Cr. P.C. or under Article 227 would not be maintainable. In Bharat Parikh Vs. C.B.I. and Another, Supreme Court had considered the issue of maintainability of revision or a petition u/s 482 Cr.P.C against charge and observed as under:

16 With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers u/s 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has

to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in State of Haryana and others Vs. Ch. Bhajan Lal and others, that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed. As observed in Debendra Nath Padhi's case (supra) at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused has to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to re-open the proceedings once charge has been framed or for invocation of the High Court's powers u/s 482 of the Code of Criminal Procedure.

In view of the judgment of Supreme Court in the above case also, I do not find it a fit case where a court should interfere at this stage.

5. The facts giving rise to the case against the petitioners are that Shri S.K. Pathrella, the then Chief Manager, Oriental Bank of Commerce, New Friends Colony, New Delhi, Pradeep Anand, Director of M/s True Fab (P) Ltd., and Prop. Of M/s Steel Samrat (India) and M/s Moonlight Engineers, Faridabad, Swaraj Chauhan, Prop. Of M/s Permanent Tools and Machines, Faridabad and C.K. Singh, Prop. M/s Suraksha Engineers and Steel Traders, Faridabad had entered into a criminal conspiracy to cheat the OBC, New Friends Colony Branch, New Delhi to the tune of about two crore rupees. Under this conspiracy Shri S.K. Pathrella, discounted various bills of Pradeep Anand which were vague, bogus and did not represent genuine business transactions resulting into heavy loss to the bank and corresponding gain to private parties. Investigations further revealed that Pradeep Anand had floated bogus firms in the names of M/s permanent Tools and Machines and M/s Suraksha Engineers and Steel Traders by showing his employees namely Sh. Swaraj Chauhan and Sh. C.K. Singh as the proprietors of these firms and got current account No. 2815 and 2764 opened in the name of these two firms in the same branch of OBC with the connivance of Shri S.K. Pathrella. During the period from 28.6.1994 to 07.10.1995, Shri Pradeep Anand got as many as 110 bills presented for discount at the said branch of the bank in the names of these firms and these bills were discounted by Shri S.K. Pathrella in connivance with Shri S.K. Lakhina despite being there no sanctioned limit in favour of the firms. Out of the 110 bills discounted, 76 of the amount Rs. 1,99,72,468.25 were received back unpaid which resulted in a loss of around Rs. 2.00 crore to the bank. Investigations further disclosed that these bills did not represent genuine business transactions and were accompanied by bogus invoices and forged transport receipts of M/s Ashok Transport of India, Faridabad, prepared by Shri Rajiv Anand and other employees of Shri Pradeep Anand. Some of the firms on whom bills were drawn were found to be nonexistent. Some of the

discounted bills were handed over by S.K. Pathrella to co accused Rajiv Anand for dispatch through courier service and Rajiv Anand, without despatching the said discounted bills, dishonestly obtained a courier receipt from courier service and handed over these receipts to Shri S.K. Pathrella as proof of despatch. Investigations also revealed that Shri S.K. Pathrella in conspiracy with Shri S.K. Lakhina and Pradeep Anand discounted a cheque bearing No. 760725 dated 16th April, 1995 for Rs. 20.00 lakhs issued by Shanti Lal Santosh Kumar, Karta Shanti Lal Jain drawn on PSB, Silchar branch. This cheque was issued by Shanti Lal Jain even when the credit balance in his account was only Rs. 329.05. It was found that Shri Pradeep Anand had obtained the said blank cheque from Shri K.K. Sahni for playing fraud upon the bank and filled the said cheque with amount of Rs. 20.00 lakhs, in favour of his company M/s TFPL and presented the same to OBC, New Friends Colony, New Delhi. The cheque was discounted without any authority. The cheque came back unpaid due to lack of sufficient funds in the account. Investigations revealed that Shri S.K. Pathrella, as a consideration for showing official favours to Shri Pradeep Anand on 24.5.1995, had obtained a Demand Draft bearing No. 494289 for Rs. 11,500 from Pradeep Anand for making payment to Miss Sosama Thomas, with whom he had developed intimate relationship. Shri Pathrella had also sent her from time to time drafts/cash to the extent of Rs. 2.70 lakhs by opening a joint account with her at Corporation Bank, Trivandrum. He received Rs. 6.00 lakhs in cash from Pradeep Anand vide cheque No. 772754 dated 18th March, 1995, a pay order for Rs. 4.00 lakhs from Pradeep Anand for repaying his old debts to Shri G.C. Luthra. Shri S.K. Pathrella also obtained Rs. 5.75 lakhs from Pradeep Anand, who had transferred the said amount from the account of M/s Moon Light Engineers to the current account of M/s Shiv Industrial Engineers. Shri S.K. Lakhina had remitted a total amount of Rs. 13.35 lakhs in cash in the current account of M/s. Future Positive belonging to his sons Shri Pradeep Lakhina, Akash Lakhina and Amber Lakhina. These amounts were part of the ill gotten money received by him. It is in view of these investigations and findings that charges were framed against these persons. I do not find it is a case of exceptional nature where this Court should analyse the role of each accused and then come to a conclusion whether charges would stand against the accused persons or not.

6. It is well settled law that at the time of framing of charge, the Court need not scrutinize whether the evidence cited by CBI was credible or not. The charges are to be framed on the basis of material collected. These petitions are not maintainable. The petitions are hereby dismissed.