

**IN THE COURT OF SHRI ANIL ANTIL
SPECIAL JUDGE, P.C.ACT, CBI-15 :ROUSE AVENUE DISTRICT
COURT COMPLEX, NEW DELHI**

CBI Case No. 50/2022
CNR No. DLCT11-000591-2022
RC No. DAI-2022-A-0003
PS ACB/CBI/New Delhi
u/s 120-B IPC r/w Section 7 of P.C. Act, 1988.
CBI Vs. INSP. Bhushan Kumar Azad.
H.CT Rakesh Prashad
CT. Dinesh Kumar Saini

29.01.2024

Present : Sh. Neetu Singh, learned PP for CBI.

Accused Bhushan Kumar Azad (A-1) on bail with Sh. Sandeep Sharma and Sh. Dharam Singh, learned advocates.

Accused Rakesh Prasad (A-2) on bail with Sh. Sanjeev Bhardwaj learned advocate.

Accused Dinesh Kumar Saini (A-3) on bail with Sh. Naveen Kumar and Sh. Abhishek Mahal, learned advocates.

Arguments on charge have already been concluded by learned counsel for the accused persons as well as by the learned PP for the CBI alongwith IO and today matter is listed for pronouncement of order on the point of Charge.

ORDER ON CHARGE

1. This order shall dispose off the issue, in terms of the applications moved by the accused persons, regarding the framing of charges against all the three accused persons charge sheeted by the prosecution (CBI).

2. I have heard the arguments in detail of both the parties and meticulously gone through the relevant record/documents available on record.

3. Brief facts of the case of the prosecution which can be culled out from the charge sheet filed by the CBI are as under : -

3.1 That in the present case FIR bearing RC-03(A)/2022 was registered on 22.01.2022 at ACB, CBI, Delhi, after verification of the written complaint made by complainant Sh. Mohommad Morris Ansari dated 21.01.2022 to the concerned SP, ACB,CBI, against Head Constable Sh. Rakesh Prasad and Inspector/SHO Sh. Bhushan Kumar Azad and other unknown persons, during their posting at Police Station Kalindi Kunj, Delhi, under Section 120-B IPC and Section 7 of the P.C. Act, 2018 (as amended in 2018).

3.2 That on 22.01.2022 a trap team comprising of CBI Officers, Complainant and independent witnesses was constituted ; purpose of raid was explained to the team members ; complainant produced 78 government currency (GC) notes in the denomination of Rs. 500/- each totaling Rs. 39,000/- to be used for bribe money in the trap proceedings ; the description of GC i.e. denomination and serial number was recorded in the pre-trap memo ; currency was treated with Phenolphthalein powder ; its chemical reaction with

the colour-less solution of sodium carbonate in fresh water was prepared ; it was put in the right side front jeans pocket of the complainant after taking personal search of complainant and the pre-trap memo was prepared & all the proceedings in this regard was mentioned in the Handing Over memo in CBI Office.

3.3 That trap team alongwith complainant and the independent witnesses reached near the plot of complainant i e. Plot no. G-19, G Block, Madanpur Khadar Extension, Part-3, falls under the jurisdiction of PS Kalindi Kunj, Delhi ; the DVR in switch on mode for recording and holding purpose was kept in the left side upper front pocket of the blazer worn by complainant and he alongwith shadow witnesses was sent at the spot ; Const. Sh. Dinesh Kumar Saini (A-3) reached at the spot on bike and started conversation with the complainant ; after some time Const. left the spot ; conversations were recorded in the DVR and then it was taken out and kept out of recording mode.

3.4 That a call was made to H.C Sh. Rakesh Prashad (A-2) by the complainant to meet him and the said call was recorded in the memory card through DVR. At about 03:30 p.m. two police persons H.C. Sh. Rakesh Prashad (A-2) and Const. Sh. Dinesh Kumar Saini (A-3) reached at the plot. After some time pursuant to the conversations with them the complainant informed Sh. Nitesh Sijoriya, independent witness, "*Bhai Sahab ho gaya kaam bulao unko jaldi bulao*". The pre-decided signal was given to the team members by complainant as well as by Sh. Nitesh Sijoriya and all the team members reached there.

3.5 The TLO Sh. Bhawar Lal Jat challenged the accused persons (police officials) for demanding and accepting the bribe amount of Rs. 39,000/- from the complainant ; they accepted that they had taken the bribe money on behalf of Sh. Bhushan Kumar Azad, SHO P.S. Kalindi Kunj (A-1).

3.6 That H.C. Sh. Rakesh Prashad (A-2) admitted that he had taken the bribe money from the complainant and handed over it to Const. Sh. Dinesh Kumar Saini (A-3), who accepted the same and put it inside the lower front pocket of the jacket worn by him. All this conversation was recorded in the DVR.

3.7 That the bribe money was recovered from lower front pocket of the jacket worn by Const. Dinesh Kumar Saini (A-3) by Sh. Amit Kumar in the presence of Sh. Nitesh Sirojiya, both independent witnesses.

3.8 The recovered GC notes were counted and found to be Rs. 39000/-, in the denomination of Rs.500/- each. Same were tallied, the distinctive numbers and denominations mentioned in the Annexure A enclosed with the Pre-trap Memorandum was found to be correct.

3.9 The requisite conditions regarding hand wash of accused persons ; seizure of trap money ; sealing of the solution bottles was undertaken by the raiding team in the presence of independent witnesses.

3.10 That the team alongwith accused A-2 and A-3, thereafter reached at PS Kalindi Kunj to apprehend Insp/SHO Sh. Bhushan Kumar Azad for further trap proceedings ; concerned SHO (A-1) was not found available in his office and thereafter at around 06:45 p.m. was apprehended when he

alongwith the independent witnesses came to the Police Station from DCP Office.

3.11. Further trap proceedings were carried out by the team and incriminating material including the Jacket worn by A-3 were thereafter sealed and signed separately.

3.12 That the conversations had taken place during the trap proceedings were heard, a rough transcript of the same was prepared ; the voice samples of accused Bhushan Kumar Azad (A-1), Rakesh Prashad (A-2), Dinesh Kumar Saini (A-3) and complainant Sh. Mohommad Morris Ansari were taken in separate new memory cards in presence of independent witnesses.

3.13 The mobile phone of the complainant in which he had independently recorded the conversations with him and accused persons was also seized and sealed accordingly.

3.14 The specimen impression of the CBI seal used in the investigation was handed over to the independent witness Sh. Amit Kumar ; the recovery memo dated 23.01.2022 incorporating trap proceedings was prepared and signed by the team members including complainant and independent witnesses ; the washes alongwith electronic evidence were sent to CFSL for expert opinion and after completion of the investigation, the charge sheet under Section 120-B IPC r/w Section 7 of the P.C. Act, 2018 (as amended in 2018) and its substantive offence thereto was filed in the court for trial.

4. That cognizance of the offences was taken and all the three accused persons were ordered to be summoned. Compliance of Section 207

CrP.C was made. Pursuant thereto the application seeking discharge on merits as well as for want of proper / legal sanction (except accused A-3) was moved on behalf of accused persons.

Arguments on behalf of accused Bhushan Kumar Azad, A-1

5. Learned counsel for A-1 argued that no prima facie case is made out against the accused ; he has been chargesheeted in a mechanical manner without any application of mind ; there is not an iota of evidence against him and no proper sanction to prosecute the accused has been taken from the competent authority in terms of Section 19 of POC Act, therefore no substantive offence under P.C. Act and/or under Section 120-B read with Section 7 of the P.C. Act is made out against him to frame charge for the said respective offences.

5.1 It is submitted that there is not a single allegation against him in the entire FIR for demand of any money from the complainant, nor was he named by the complainant, nor his name surfaced anywhere during the verification proceedings conducted on behalf of the agency.

5.2 That the allegations against A-1 of conspiracy and substantive offences under P.C. Act are absolutely false and frivolous based on concocted facts and circumstances and wrong appreciation of factual matrix of the case.

5.3 It is submitted that complainant himself approached the accused(A-1) in his office for redressal of his grievance and each time A-1 being the SHO concerned had assured him that no bar would come in his work and he can do his work with free mind ; no demand for the construction work

was ever made or received by him and even at the time of handing over and recovery of the bribe amount A-1 was not present at the spot. Hence, the allegations against A-1 are hearsay in nature to implicate him in the present case.

5.4 It is argued that the relevant recordings qua conversations between A-1, H.C Rakesh Prasad and complainant recorded in Q-1 (between A-2 and complainant), Q-2 (between complainant and A-1 Sh. Bhushan Kumar Azad) Q-4 (between A-1 and A-2), Q-8 (between complainant and A-1) even if admitted to be true, then also no offence of demand or attempt to obtain the bribe as mentioned in Section 7 of the POC Act, 1988 is made out against accused A-1.

5.5 It is stated that A-1 had no knowledge about the demands of bribe by H. C. Rakesh Prasad and/or any other Police Official till the time the complainant had apprised him about it. And that in fact A-1 had specifically assured the complainant that no money is required to be paid by him to any person to carry out the necessary construction work at his plot when some grievances were raised by the complainant against A-2 before him, and this fact is evident from the recorded conversation relied upon by the prosecution itself.

5.6 That the documents and other material relied upon by the prosecution itself shows that A-1 Sh. Bhushan Kumar Azad neither part of the conspiracy to demand any bribe nor of its acceptance allegedly by the co-accused persons.

5.7 Learned counsel has also played the relevant audio recording of the conversations during the hearing of the matter.

5.8 Further, on the point of illegal / irregular sanction under Section 19, it is submitted that the sanction must be granted by a competent person to remove the public servant from his office, which is lacking in this matter.

5.9 That in the present matter accused A-1 Sh. Bhushan Kumar Azad was promoted and appointed to the post of '*Inspector*' by the orders of the then '*Commissioner of Police, Delhi Police*' whereas the sanction to prosecute him in the present case has been accorded by the '*Joint Commissioner of Police, Delhi Police*', who is subordinate in rank, and as per Article 311 of the Constitution no government servant can be dismissed or removed by any authority subordinate to that by which he was appointed. Hence, for want of proper valid sanction u/s 19 POC Act, 1988, also A-1 is liable to be discharged from the offences alleged.

Arguments on behalf of accused Rakesh Prasad A-2 were primarily confined to the illegality/validity of the Sanction under Section 19 of P.C. Act, 1988 :-

6. It was submitted that the sanction under Section 19 of the P.C. Act taken by the agency against accused A-2 is invalid and illegal Sanction and contrary to the provisions of the Statute as the accused was promoted and appointed as ad-hoc '*Head Constable*' by the orders of '*Commissioner of Police, Delhi Police*' in terms of Notification /Orders Bi, XIII/12(2)/18/41173-270P. Br.PHQ (AC-III), Delhi dated 10.12.2018 and confirmed vide order

dated 14.12.2021 (as per Annexure A-2).

6.1 It was stated that Sanction 19 of the PC Act can not be read in isolation, *de-hors* the constitutional provisions under Article 311 of the Constitution, and the competent authority to accord prosecution sanction in PC Act is the authority who has appointed the public servant and the sanction by an authority subordinate to the appointing authority is bad in law.

6.2 That whereas the Sanction to prosecute qua A-2 under P.C. Act has been taken from the 'Joint Commissioner of Police, Armed Force', an authority subordinate to the Appointing Authority i.e. 'Commissioner of Police', and not competent to remove him from the office, and thereby the Sanction so accorded and relied upon by the prosecution is invalid and cognizance of the offence taken by the Court is void-ab-initio.

6.3 In support on this count learned counsel has relied upon : Yashwant Sinha & Others Vs. CBI (2020) 2 SCC 338 ; P.R. Roy Vs. CBI Writ Petition No. Crl. 1383 of 2020 and Kailash Chander Aggarwal & Another Vs. State of Rajasthan 2020 SCC online RAJ 2869.

6.4 Thus, concluded that the competent authority to remove/dismiss him from the services was/is the 'Commissioner of Police, Delhi Police' and not the 'Joint Commissioner, Police', in terms of the orders/Notification issued for his promotion and appointment read alongwith Article 311 of the Constitution, and the Sanction accorded by the Joint Commissioner qua accused is bad in law and A-2 is entitled to be discharged accordingly.

Oral Arguments addressed on behalf of accused Dinesh Kumar Saini (A-

3)

7. Learned counsel for the accused Dinesh Kumar Saini (A-3) submitted that neither he is named in the complaint nor in the FIR, nor in the verification proceedings conducted thereto.

7.1 That even prior to the day of incident i.e. 22.01.2022, there is no instance of his meeting or conversation with the complainant or any other Police Official as alleged by the prosecution and that he has been named in the present case only to harass.

7.2 Learned counsel for the accused further submitted that he was not aware of the conversation going on between the A-1, A-2 and the complainant. That A-3 had simply accompanied the accused A-2 on the day of incident in a friendly manner and was not aware of the purpose and consequences of the visit of A-2 at the plot of complainant.

7.3 Learned counsel further submitted that neither the demand was ever made by A-3 nor any such bribe money was accepted by him from the complainant.

7.4 Learned counsel for the accused further submitted that the accused is innocent, not part of the case crime and falsely implicated in the present case without there being any incriminating material against him.

7.5 It was argued by the learned counsels for the accused persons that no case of grave suspicion is made out against A-1, A-2 and A-3 for the offences u/s 7 P.C. Act, or Section 120-B read with Section 7 P.C. Act, and they all be discharged in the present case.

Arguments of prosecution:-

8. Learned PP for the CBI submits that prima facie there are sufficient grounds to frame charges against all the accused persons for the offences punishable under section 120-B IPC r/w Section 7 of P.C. Act, 1988 (as amended in 2018) as well as substantive offences thereto.

8.1 He argued that the accused persons were actively involved in the commission of the offences alleged and the specific role of each of the accused has been explained by the IO in the charge sheet presented before this court.

8.2 Learned PP for the CBI further submitted that from the conversation recorded in the DVR, it is established that all the accused persons had hatched a conspiracy and to give colour to it, the demand of bribe money was made and accepted by the accused persons from the complainant for allowing him to carry out illegal construction and boring of submersible at his plot falls in the jurisdiction of P.S. Kalindi Kunj, Sarita Vihar, Delhi.

8.3 Learned PP further submitted that the washes alongwith electronic devices were sent to the CFSL for analysis and as per the report of the analyst a positive opinion has been expressed which indicates their involvement into the crime case at hand

8.4 Emphasizing on the facts revealed from the Charge-sheet, it is submitted by the learned PP that the role of each of the accused persons in the present case crime has been defined wherein it has been clearly established that they all had entered into criminal conspiracy by demanding & accepting the bribe money of sum of Rs. 39,000/- from the complainant.

8.5 That verification proceedings were duly carried out on **21.01.2022** wherein the demand made by the accused persons is clearly established. Thereafter the trap proceedings were undertaken by the CBI officials and the accused persons especially A-2 and A-3 were caught red handed from the spot while accepting the bribe money. the said money was also recovered from A-3 from the spot itself during the trap proceedings.

8.6 Learned PP further traversed through the transcript of the conversation recorded independently by the complainant and other conversations recorded during verification/trap proceedings to highlight the role of the SHO concerned (A-1) that he was the part of the conspiracy and A-2 and A-3 were also acting in connivance with him under his instructions to demand, negotiate and thereafter accept the bribe money.

8.7 Thus, it is stated that in the light of these facts and circumstances and the documents produced on record there is ample evidence on record to show the involvement of each of the accused into the commission of the offences under section 120-B IPC r/w Section 7 P.C. Act and the substantive offence thereof.

8.8 On the Sanction, it is submitted that the arguments of the defence counsel on the said count are false and misleading. That proper and valid Sanction has been accorded by the Competent Authority to prosecute the accused persons (A-1 and A-2) and that the Sanctioning Authority was competent to remove A-1 and A-2 from the services in terms of Rule 3 & 4 read with Rule 21 of Delhi Police (Appointment and Recruitment) 1980, and

the Sanction accorded in the present case does not suffer from any legal infirmity.

9 Heard and record perused.

Analysis & Findings :-

I. Issue of validity / illegality and irregularity of Sanction :-

Qua A-1 Sh. Bhushan Kumar Azad :-

10. It is evident from the Notification dated 06.06.2016 bearing No. 31925/CB-I/PHQ/ under the heading **Promotion** that all the six officials in the rank of 'Sub-Inspector', including accused Sh. Bhushan Kumar Azad at Serial No.1, were promoted to officiate as Inspector (Executive) by the Joint Commissioner of Police Headquarters : Delhi.

10.1 The signatures appended thereto are also by the 'Joint Commissioner' in his own independent official capacity and powers conferred upon him, and not for - and - on behalf of the Commissioner of Police, Delhi.

10.2 Thereby, to say that accused A-1 was promoted to the rank of Inspector by the Commissioner of Police and the Sanction accorded by the Joint Commissioner under Section 19 of the P.C. Act to prosecute him for the offences herein is illegal can not be sustained at all.

10.3 The Joint Commissioner is the Appointing/Promoting Authority of A-1 Sh. Bhushan Kumar Azad in terms of the aforesaid Notification and accordingly competent to remove him from the Services.

Qua accused Rakesh Prasad (A-2) :-

10.4 I also do not agree with the submissions advanced by the learned

counsel for A-2 that the sanction in the present case is given by an Authority subordinate to the Appointing Authority and therefore the Sanction is bad in law.

10.5 Even though, in terms of Notification dated 10.12.2018 No. 41172/P.Br(AC-III)/PHQ, the ***AD-HOC PROMOTION*** to A-2 is granted by the Commissioner of Police, Delhi, the Notification in that regard is also issued in the name of Commissioner of Police under the Signatures of the then DCP concerned /Establishment for & on behalf of Commissioner of Police, Delhi, but equally important and relevant to note is the fact that the ***adhoc promotion*** of A-2 was thereafter regularized in the permanent category by the orders of the concerned Dy. Commissioner of Police, Delhi under his signatures and as per his official competence/authority, and not for or on behalf of any other Authority in terms of Notification dated 20.12.2021 (Batch no. 75) 23204/CB-II(Desk-IV).PHQ : PROMOTION.

10.6 And whereas, the Sanction to prosecute A-2 under Section 19 of the P.C Act is given by 'Joint Commissioner of Police, Delhi' an authority higher in rank than the DCP concerned, and equally competent to remove him from the services.

10.7 Thus, it is evident that the services of accused Rakesh Prasad A-2 are regularized and promoted to the rank of Head Constable (Exe) by the orders of the 'Dy. Commissioner of Police, Delhi' who is lower in hierarchy than the 'Joint Commissioner of Police'.

10.8 So, the arguments to say that the Sanction in the given case is

granted by an Authority subordinate to the Appointing Authority and thereby is invalid can not be sustained. A 'Joint Commissioner' rank officer is well competent to remove or dismiss him from the services in the above noted facts of the case.

10.9 There is no qualms to the authorities relied upon by the learned counsel for the accused persons (A-1 & A-2) but they all are not applicable to the case at hand and are clearly distinguishable on the factual aspects as noted above.

II. ON MERITS:-

11. The specific allegations in the statement of the Complaint itself establishes that a conspiracy was hatched between the alleged police officers of concerned Police Station (A-1 to A-3) and in furtherance thereof, the bribe money was demanded by accused persons, negotiated with complainant by accused H.C Rakesh Prasad (A-2) & Ct. Dinesh Kumar Saini (A-3), on the instructions of SHO Sh. Bhushan Kumar Azad (A-1), and then accepted by the A-2 & A-3 during the trap proceedings.

11.1 Conspiracy is also established from the acts and conducts of the accused wherein complainant specifically states that on 13.01.2022 at about 06:00 p.m. he met SHO Bhushan Kumar Azad (A-1), introduced himself, and explained his grievances to him, and SHO (A-1) thereafter told him that he would give necessary instructions to Beat Officer H.C. Rakesh Prasad (A-2) and who would make him (complainant) understand each and every thing for allowing the construction work at his plot.

11.2 The complainant also visited the Police Station Kalindi Kunj on 15.01.2022 and recorded the conversation with the SHO wherein it can be seen that the complainant had again raised the grievances of demand of bribe money persistently by A-2 and in turn the SHO (A-1) asked the complainant to pay the amount whatever they are demanding and also assured him that he would get the demand of amount settled accordingly.

11.3 It is also alleged that on 16.01.2022 Ct. Dinesh Kumar Saini (A-3) also came to the plot of complainant and they demanded money from him and the complainant had assured them that the bribe money shall be paid to them on 18.01.2022.

11.4 All these conversations between the complainant and the accused persons were duly recorded by the complainant secretly in his mobile phone. The transcripts of the same have been filed on record alongwith the CFSL analysis of audio recording, which duly substantiate the allegations made by the complainant.

11.5 It also appears from the transcripts Q-2, Q-4 and Q-8 and the audio recordings, which were played by the learned counsel for the defence pursuant to no objection by the other co-accused persons and the prosecution, that Sh. Bhushan Kumar Azad (A-1) was not only having the knowledge of demand of bribe put by A-2, but his active role and connivance with co-accused persons regarding the demand of bribe money from the complainant is also reflected therefrom.

11.6 The conversation recorded on 21.01.2022 between the

complainant and the SHO (A-1) wherein complainant specifically mentions to him about the demand of bribe @ of Rs. 600/- per sq yards by A-2 and further requests SHO Sh. Bhushan Kumar Azad (A-1) to reduce the said amount, and accused Bhushan Kumar Azad (A-1) can be seen assuring the complainant about him talking to Head Const. Sh. Rakesh Prasad (A-2) to get the bribe amount reduced.

11.7 It can also be seen that (A-1) himself specifically instructed the complainant to meet (A-2) to get his matter resolved, despite being brought to his knowledge about the demand of gratification by the Police official (A-2 & A-3) under his subordination, further indicates his involvement into the case at hand.

11.8 Excerpts from the transcripts of the conversation recorded between the complainant and the accused persons not only shows their demand of bribe money in the present case but there are references of such demand from other persons also including one of the relatives of ADM Dwarka for permitting them to carry out illegal construction.

12. Further, verification proceedings qua the demand of bribe money by the accused persons was conducted and verified by SI Dharambeer SI, CBI/ACB, Delhi in the presence of independent witness Sh. Nitesh Sijoriya and the conversations between the accused persons were also recorded in the DVR's provided by the CBI, which further establishes the factum of demand by the accused persons and their involvements in the case.

13. And, the trap laid by the CBI and the complainant, pursuant to the

verification proceedings and demand of bribe money by the accused persons, was successful and accused A-2 and A-3 were caught red handed on the spot itself at the time of accepting the trap/bribe money of Rs. 39,000/- from the complainant.

14. Further, role of accused Const. Sh. Dinesh Kumar Saini (A-3) that he was part of the conspiracy and working in pursuance thereto is also quite evident from the transcript contained in Q-3 recorded on 22.01.2022.

15. Ct. Dinesh Kumar Saini (A-3) was also present alongwith H.C. Rakesh Prasad (A-2) at the spot when the trap money of Rs.39,000/- was handed over to them by the complainant at the Site after some conversations, and the trap/bribe money was thereafter recovered from the possession of Ct. Dinesh Kumar Saini (A-3) by the raiding team from the lower front inside pocket of the jacket worn by him from the spot itself.

16 All the Verification proceedings, Trap proceedings and the transcripts of the audio recordings are duly supported by the independent witnesses who were also part of the raiding team.

17 There is no gain saying that conspiracy is hatched in a secrecy and direct evidence is seldom available. Similarly, agreement of conspiracy can also be proved either by direct evidence or by circumstantial evidence or by both.

18 In a conspiracy there are number of actors, each plays its individual part in one way or the other whilst acting under their common design. It is not necessary that the prosecution has to bring on record express

proof of the agreement so entered, the acts and the conduct of the parties appreciated in correct prospective go a long way to infer and establish the existence of conspiracy, and the arguments of the learned defence counsels A-1 & A-3 to say that there is no direct evidence to link them to the demand and acceptance thereby has no force and is liable to be rejected accordingly.

19 In the light of my above discussions and the facts noted above, and appreciating the statement of the witnesses and the documents placed on record, a grave suspicion arises against all the three accused persons Sh. Bhushan Kumar Azad, SHO (A-1), Sh. Rakesh Prasad, H.C (A-2) and Sh. Dinesh Kumar Saini Const. (A-3) that they all are involved into commission of offences punishable under Section 120-B read with Section 7 P.C Act and its substantive offences.

20. Accordingly, the charges be framed against the accused persons for the respective offences in terms thereof.

21. Order accordingly.

Announced in the open Court
Delhi dated 29.01.2024.

(Anil Antil)
Special Judge,P.C.Act,(CBI-15),
Rouse Avenue District,
New Delhi/ 29.01.2024.