IN THE COURT OF MS. NIRJA BHATIA , SPECIAL JUDGE IN (PC ACT) CBI-03, ROUSE AVENUE DISTRICT COURTS, NEW DELHI

CBI Vs. Guru Narayan Mishara
CC No. 11/2019
RC No. 55(A)/2019
u/s 7 & 13(2) r/w 13(1)(d) of PC Act, 1988

Central Bureau of Investigation (CBI)

Versus

Guru Narayan Mishra (G.N. Mishra)
s/o Sh. Lalta Prasad Mishra
23/7, Sector-1, Pushp Vihar,
New Delhi

ORDER ON CHARGE

1. The claim of prosecution has emerged from the facts that one RC-55(A)89 DLI (FIR) was registered on 20.11.89 on the basis of a written complaint made by complainant Sh. Satish Chand Gupta a CPWD contractor working under trade name of M/s. Bharti Insulations, Engineers and Govt. Contractor, having its residence office at C-58/588, Ganesh Nagar-II, Delhi wherein it was alleged that complainant being a Civil Contractor was awarded work order bearing no. 54(2)/P Div/A3/89-90/1716

dated 21.07.89 of CPWD 'P' Division situated at Sadiq Nagar, New Delhi for providing Novapan Partition & Cabin in Hall 'C' of Technology Bhawan, New Delhi for total amount of Rs. 1,58,003/- against an estimated cost of Rs. 1,47,311/-. The work was completed by him on 15.10.89 and after repeated persuasion to the accused Sh. G.N.Mishra, the then JE (Civil) (accused) and his superior Sh. Kulwant Singh Warriach, AE (Civil) the measurements of the work were taken by Sh. G.N.Mishra, JE (Civil) only on 17.11.1989. which act was being done in order to put pressure on complainant to pay bribe which was demanded @ 3% and 2% for both the above mentioned AE and JE respectively.

2. He complained that first payment of Rs. 41,844/- was released against his bills, however, the second and final bill of approx. Rs. 82,000/- was withheld as both the accused after taking the measurements demanded bribe as a pre-condition for settling this bill.

3. He stated that the bribe amount at this rate worked out to around Rs.3000/- and Rs. 2,000/-. Since he was against giving the bribe, he made a written complaint with CBI for taking legal action in this matter.

4. On receiving the complaint, a verification team was formed on 20.11.1989 which was led by Insp. S.K.Peshin including two independent witnesses namely Sh. Pramod Kumar (LDC) and Sh.

M. Vekatesan (Steno) both from the Ministry of Water Resources. The pre trap proceedings were carried out in presence of witness on 20.11.1989 whereafter the complainant Sh. S.C. Gupta was asked to talk to Sh. Kulwant Singh Warriach, AE. The complainant contacted and talked to Sh. Kulwant Singh Warriach and the conversation held between them was recorded. The cassette was played to the above named witnesses and the conversation revealed that the complainant told Sh. Kulwant Singh Warriach that he did possess the exact amount @ of 2% and 3% (Which came out to be Rs/-5000) and was having only Rs. 4500/- with him, on which he was told by Sh. Kulwant Singh Warriach to come to his office with the amount and sort out the matter with him and 'JE'. The recorded cassette was sealed with CBI seal and a memo was also prepared which was duly signed by all the concerned including the witnesses.

5. The complainant produced the bribe amount of Rs. 4,500/- comprising of 25 G.C. notes of Rs. 100/- denomination and 40 G.C. notes of Rs. 50/- denomination. A Handing Over memo was prepared and the details of the G.C. notes were recorded in this memo. The said notes were then treated with phenolphthalein powder and a practical demonstration of the reaction of phenolphthalein powder with sodium carbonate with water was shown and explained to all the members of the trap party.The treated G.C. notes were placed in the inner right pocket of coat

worn by Sh. S.C. Gupta, the complainant. He was directed to pass the G.C. notes to Sh. Kulwant Singh Warriach and Sh. G.N.Mishra only on their specific demand of bribe.

6. Sh. Pramod Kumar, the independent witness was directed to act as shadow witness and remain close to the complainant and hear whatever conversation was made between the complainant and the accused persons at the time of "demand" and "acceptance" of bribe. Sh. S.C.Gupta was directed to "scratch his head" as a signal to trap team after transaction of bribe to the accused persons.

7. The trap proceedings were then carried out by the team which caught hold of Kulwant Singh Warriach and G.N. Mishra. Both of whom were challenged about their acceptance and demanding of bribe of Rs.4500/- from the complainant. Initially they both kept mum and became perplexed, however, the acceptance and demand of bribe for himself and on behalf of Kulwant Singh Warriach was accepted by accused G.N. Mishra, JE. The hand washes of both hands of G.N.Mishra was taken separately in two glass tumblers containing freshly prepared colourless solution of sodium carbonate with water, which turned pink in colour and they were transferred into two clean empty bottles which were marked as "R" and "L" to denote Right and Left Hand Washes respectively of accused G.N.Mishra and the said bottles were duly signed and sealed.

8. Accused G.N.Mishra was interrogated and he disclosed that ***"jo paise/rupaiy aaj maine tekedhar Sh. S.C.Gupta se liye the, ko maine apne site office mein rakhe apne office table ki beech vali drawer mein rakhe hain, jinhe main nishandhehi karke barmaad karvaa sakta hun."*** With this disclosure statement accused G.N.Mishra, JE led the CBI team to his site office room adjacent to Sh. Kulwant Singh Warriach, AE(Civil) and pointed out the G.C. notes kept on a condolence card in the middle/second drawer of his table after opening the same. The independent witness Sh. M. Venkatesan was directed to take out the condolence card along with G.C. notes kept thereon and was also directed to count G.C. notes and compare it with numbers in the Handing Over Memo whereafter both the independent witnesses confirmed that numbers and amount of G.C. notes tallied with the details mentioned in the Handing Over memo.

9. The micro cassette tape recorder was taken back from the complainant and was played before the independent witnesses which conversation confirmed the demand and acceptance of bribe by both accused persons. A Recovery Memo was prepared and signed by all concerned. The site plan was also prepared.

10. In the back ground of above facts, it is argued by prosecution that sufficient material is available for framing of charge.

11. On the other hand ld Sh Puneet Gauba has made his counter submissions and has argued that the prosecution of accused is

bad and he cannot be charged for having committed an offence u/s 13(1)(d) and section 7 read with section 13(2) as the element of demand is not established against accused G.N. Mishra. It is averred that element of demand is *sin qua non* and since there is no material to suggest that accused G.N. Mishra made any demand, there is no material available even *prima facie* against him for being subjected to the charge.

12. It is averred that as per prosecution claim, it is alleged that the transcript was recorded on the verification date i.e. 20.11.1989 however, the transcript only came in 2015 and is hence fabricated. It is argued that the original source of transcript is not available as the prosecution admits the loss of cassette and even otherwise no reliance can be placed on this piece of electronic evidence as its tampering cannot be ruled out.

13. It is argued that even the voice sample of the accused G.N. Mishra was not taken which has flawed the investigation which is carried out as per the whims and fancies of investigation agency and no case is made out against accused G.N. Mishra.

14. that even the prosecution and the investigating agency had reached on the opinion that no case against the accused G. N. Mishra is made out due to which they had tendered the earlier closure(s), however, it is only at the second closure report that too, on court's insistence that the matter is proceeded against the accused which also reflects that not even a *prima facie* case is

made out.

15. It is stated that the prosecution is made only upon the orders of the court at the stage of second closure report as investigation agency had already concluded about absence of material for prosecution of accused G. N. Mishra. That since accused G.N. Mishra has already been exonerated in Departmental Inquiry proceedings vide order dated 22.11.1995, no charge is to be framed in criminal trial against him. Ld. Defence counsel suggested that the court may peruse the judment of ***Ashoo's*** case wherein it is held that exoneration of accused in Departmental Inquiry must be conclusive and no criminal trial on the same grounds be held against him.

16. Ld. Defence counsel on the element of absence of demand on behalf of accused has relied upon the following judgement ***(i) Krishan Chander Vs. State of Delhi, Criminal Appeal No. 14 of 2016, (ii) A. Subair Vs. State of Kerala in Crl. Appeal. No. 639 of 2004 (date of decision May 26th, 2009), (iii) Mukhtiar Singh Vs. State of Punjab in Crl. Appeal. No. 618 of 2012 (date of decision July 5th, 2016), (iv) N. Sunkanna Vs. State of Andhra Pradesh in Crl. Appeal No. 1355 of 2015 (date of decision October 14th, 2015 and (v) Lokesh Kumar Jain Vs. State of Rajasthan (2013) 7 SCR 519.***

17. Whereas on behalf of the prosecution, ld. Sr.PP Sh. Praneet

Sharma has relied upon the judgment of ***Pritvi Chand vs. State of Himachal AIR 1989 SC 702*** and averred that even the carbon copies are sufficient to lay the ground for court to form an opinion and since all the aforesaid averments of accused have already been dealt with by the Hon'ble High Court and Hon'ble Supreme Court and have met with rejection, and as the accused in his disclosure statement admitted the factum of accepting the bribe and got the same recovered also, sufficient material is available against him to frame the charge.

18. I have heard the submissions as observed above and I have gone through the record. The relevant law qua framing of charge is concised recently by Hon'ble Delhi High Court in ***Amit Vs. The State (Govt. of NCT of Delhi) in Crl. Rev.P. 513/2019 (date of decision 13th May, 2019)*** as under:

> "14. It would be now appropriate to refer to the judgments of the Apex Court and the different High Courts, wherein the principles of framing of charge and discharge has been laid down."

19. Further in ***State of Bihar v. Ramesh Singh, AIR 1977 SC 2018*** it is observed as under:

> "Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the Accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with

the innocence of the Accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the Accused is not exactly to be applied at the stage of deciding the matter Under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the Accused or whether the trial is sure to end in his conviction. Strong suspicion against the Accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. <u>But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the Accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused.</u>

At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the Accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the Accused to stand trial."

20. In the matter of ***Union of India vs. Prafulla Kumar Samal and Ors., AIR 1979 SC 366*** has held that the Court has the power to sift and weigh the evidence for the limited purpose of finding out whether a prima-facie case against the accused is made out or not. It has been further held that where the materials placed before the Court disclosed a 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.

21. Further, the Supreme Court in the case titled Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), AIR 2010 SC 1446 has held as under:

> "18..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, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

22. Discussing the law on consideration of charge, the Hon'ble Delhi High Court in ***C.P. Malik and Ors. vs. State, (1999) 81 DLT 92*** has held as under:

> "5. At the stage of framing charge the allegations made in the complaint/FIR and other material relied by the police in report under Section 173 Cr.P.C. only has to be taken into consideration taking the evidence collected on its face value. At this stage the Court is not expected to screen evidence or to apply the standard as to whether the prosecution will be able to prove the case against the accused on trial."

23. While the Hon'ble High Court even went further and stated that were a charge is *prima facie* made out, the trial court may dispense giving detailed reasoning.

24. In ***Ram Kishore vs. State and Ors. RLW 2008 (3) Raj 2440***, it has been held that at the stage of framing of charge, the Court is merely required to evaluate the materials and documents on

record with a view to finding out if the facts emerging there-from taken at their face value, disclose the existence of all the ingredients constituting the alleged offence.

25. Further, in the case titled ***Prashant Bhaskar v. State (Govt. of NCT of Delhi) in Crl. Rev. P. No. 385/2009 (decided on 22.09.2009)*** this Court held as under*:*

> "17. It needs no elaboration that at the stage of framing of charge, the court is required to evaluate the materials and documents which have been placed on record by the prosecution and taken at the face value, whether existence of the ingredients constituting the alleged offence or offences are disclosed. It is for this limited purpose alone that the court is permitted to sift the evidence..."
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> (v) In other words, at the beginning and the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged, and nor is any weight to be attached to the probable defence of the accused. Thus, a mini trial is not to be conducted.
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> (vi) It is not obligatory for the Trial Court at the time of framing of charges, to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the CrPC.
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> (vii) Thus, it is axiomatic that at the initial stage if there is a strong/grave suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.
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> (viii) The Trial Court may sift the evidence to determine whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence or not.

(ix) Detailed orders are not necessary whilst framing charges and contentious issues are not required to be answered by the Trial Court at the stage of framing of charges.

(x) Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused.

(xi) Further, if the scales of pan as to the guilt or innocence of the accused are something like even at the initial stage of making an order under Section 227 or Section 228, then, in such a situation, ordinarily and generally, the order which will have to be made will be one under Section 228 and not under Section 227 of the CrPC."

26. It be observed that the perusal of record by way of the charge sheet dated 22.03.2016 as well as the complaint dated 20.11.89 on which the FIR came into being and the statements recorded during investigation under section 161 Cr.P.C. made by Sh. S.C.Gupta are requisite to be partially reproduced for the purposes of meeting with the objection of ld. Defence counsel that the present facts of case do not reveal any element of demand against accused G.N. Mishra. In the statement of complainant dated 23.11.1989 he stated:

"When I started talking about the bill, Sh. Kulwant Singh said me to come to JE's room. After that both Kulwant Singh and myself went to JE's room....

All three of us, i.e. Sh. Kulwant Singh, myself and Sh. Mishra who was already in his room talked about the bill. Some calculations were also made on the calculator and I was informed by Asst. Ass.t Engineer that approx amount of the bill comes to Rs. 1.25 lacs and I had already received the payment of Rs. 41,344/- and outstanding amount was Rs. 83,000/-. I also informed both of them that they

should deduct my security on estimated cost which comes to Rs. 14,731/- and 2% of the income tax comest to Rs. 1453/- and net payment due was Rs. 70,000/- and total payments comes to Rs. 1,33,344/- and commission @ of 3% for JE and 2% for AE comes to Rs. 5,000/- approx and I had only Rs. 4500/-. I told both of them that I am not running away and will pay the rest of amount as well and I had my security abolying. On this Sh. Kulwant Singh told me not to worry and directed JE, Sh. G.N. Mishra to prepare the bill."

27. It is worthwhile to observe that not only the above statement of complainant but also the computation of amounts which are calculated to around Rs. 5,000/- would show *prima facie* that the calculation was made in furtherance of cumulative and total (joint) demand for both i.e. for Sh. Kulwant Singh Warriach and G.N. Mishra for whom specific demand @ 2% was stated, which is pointed out through the statement of complainant on which FIR is registered and is further stated in supplementary statement that an amount of 2% of the pending bill amount was demanded by (J.E.) the accused. It is difficult to agree with the submission of ld. Defence counsel that the FIR or the facts presented for prosecution are devoid of showing an element of demand as the same is stated by complainant very clearly, and repeated in no vague terms he also has detailed that the amount was demanded as a condition precedent for clearing the remaining bill amount of Rs. 82,000/-.

28. That since the transcript between K.S.Warriach and the complainant does not detail any conversation between complainant and accused G.N. Mishra, it can not lead to

conclusion that he made no demand. Complainant specifically stated that despite completion of work by him on 15.10.1989 the JE delayed measurement in furtherance of his demand.

29. The record of trap proceedings as is noted by IO also shows that the negotiations qua bribe amount were made in the chamber / office of accused G.N. Mishra where Sh. Kulwant Singh Warriach, AE took the complainant and after taking of money of Rs. 4500/- he asked G.N. Mishra in his presence to make final bill.

30. The trap proceedings, the disclosure statement and the recovery of tainted money from the office drawer at the instance of accused G.N.Mishra during trap proceedings on 20.11.89 are neither in question nor have been argued otherwise. In the back drop of disclosure statement of accused and recovery of tainted money from his possession and the fact of his both hand samples, the sample of condolence card etc turning pink and the positive report of FSL showing results against him make it difficult at this stage to agree with the averment of ld. counsel countering his involvement, qua demand.

31. Now coming to the citations relied upon by ld. Counsel, I am in humble agreement with law cited by ld. Sh. Puneet Gauba. However, in my humble view the case law is distinguishable to the present facts. The judgements relied upon are based upon the final outcome after due assessment of evidence on record,

whereas in the present case evidence is yet to be led.

32. In case titled as ***Krishan Chander Vs. State of Delhi in Criminal Appeal No. 14 of 2016,*** as the facts are distinguished as the judgement is reached due to the complainant himself not supporting the prosecution and having turned hostile. In ***A. Subir Vs. Sate of Kerala (supra), Mukhtiyar Singh Vs. State of Punjab (supra) and N. Sukanna Vs. State of A.P.*** the Honble Court have premised the judgements upon the discussion of testimonies of witnesses recorded whereas at the cost of repetition it is noted that present is distinguishable stage.

33. Further arguments raised qua non availability of original source of transcript as well as possibility of its tampering etc it is observed that at this stage what needs to be considered is the availability of material placed. The probative value of such material is not a question which can be subject matter of an order of charge which needs to be arrived at *'prima facie'* in reaching this observation. I draw strength from order of Hon'ble Delhi High Court in ***Prashant Bhaskar v. State (Govt. of NCT of Delhi) in Crl. Rev. P. No. 385/2009*** wherein it is held as below:

> "27. In yet another pronouncement of this court reported at 2002 (1) JCC 127, Bhagwanti Devi Vs. State, no allegations regarding demand of dowry or cruelty against the petitioner were made by the parents and brother of the deceased wife in the statements before the SDM conducting the inquest proceedings which was in quite detail. In subsequent statements recorded by the police under Section 167 of the Cr.P.C., vague allegations regarding demand of dowry from the deceased by the petitioner's mother-in-law were made. The court

held that the subsequent statement may give rise to suspicion but not to grave suspicion and consequently, no charge should be framed against the petitioner based on these statements. It was observed that appreciation of the evidence which is required to be done at the final stage is not permissible at the time of framing of charge and that at this stage, only the broad probability of the case and total effect of the evidence and documents produced before the court and any basic infirmity appear in the case can be considered."

34. However, the proceedings reveal that after the preparation of trap proceedings were made the complainant was made to call Sh. Kulwant Singh Warriach at the instance of IO and the transcript was made of the same, as is shown in documents D-10 and D-14. The second copy of transcript was made on 24.07.2015 while the second investigation report/closure was being filed. The mere fact that the transcript was made again in 2015 would not dislodge the veracity of the original transcript in presence of witness and fact of their presence through their initials is recorded.

35. The other connected arguments qua possibility of its tampering of transcript are mere arguments and have not been made with any material to impart support. It is not pointed out from record as how making a copy of transcript at a later stage would render the initial record unreadable, or unreliable or would lead to assumption of its tempering. The assertion that voice sample of accused was not taken is again unfounded as the recording did not contain the conversation of the accused and contains talks made between complainant and K.S. Warriach. How his voice

sample would have been of any consequence or support to investigation is not stated at this stage. Admittedly the complainant Sh. S.C. Gupta is one of the speaker in the conversation, which record is examined by IO and transcript was sealed immediately in presence of independent witness which fact is not in dispute. Further, how the veracity and the probative value of this evidence at present stage can be assessed is also unexplained.

36. Now coming to the arguments regarding closer report, it needs to be observed that the IO tendered its first closure report before Ms. Justice Indermeet Kaur Kochhar, (the then ld. Spl. Judge, CBI) on 07.02.2006. The closure report filed by CBI was rejected vide order dated 09.03.2006 with the following observations:

> *"I am not in agreement with the submission of ld. Spl. PP for CBI. Admittedly the statement of the complainant is on record. There were two independent witnesses who had joined the trap party and apart from Parmod Kumar, there is statement of second independent witness M. Venkateshan. The number of GC notes mentioned in the Handing Over mamo tallied with the number of notes recovered from the table drawer of accused G.N.Mishra which the accused had got recovered himself; his hand wash had also tested positive and this was further supported by the report of the CFSL.*
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> *Accused Kulwant Singh Wariach is AE in the CPWD and accused G.N. Mishra is JE in the CPWD. They are both public servants as on date. Prima facie there appears to be sufficient material gathered by the prosecution. However, further investigation be carried out by the CBI."*

37. In furtherance of the aforesaid order the CBI tendered another

closure report on 31.03.2015, at which stage only it was for the first time revealed that some material which was part of investigation was missing and the efforts were being made to locate the same. Though as the original documents were not traceable despite efforts, the carbon copies of the statements and documents could be located which were appended along with the file and placed before the ld. Predecessor.

38. After making due consideration of the material so placed the ld. Predecessor vide order dated 07.08.2015 declined to accept the closure report by making the following observations:

> " This case diary does not reveal as to why and under what circumstances, the CBI had preferred to file the closure report. On the contrary, the case diary as seen by me, seems to reveal that the CBI was convinced that it is a very strong case and it is because of this reason that the CBI had even moved an application for cancellation of bail of the accused on the ground that the accused were threatening the complainant and stated the case was at final stage of investigation. This application appears to have been moved on 15.03.1990. What happened thereafter in this case and how the CBI decided to file the closure report and with whose approval is not available on record.
>
> It appears to the court that since the very beginning, a conscious effort had been made to save the accused from prosecution. A bare reading of the closure report would reveal that it is not a report of the prosecution but is a report prepared for or by the defence. The relevant part of this report is as under:
>
> Investigation revealed that shadow witness has not heard the conversation between the accused and complainant. There is abnormal delay of four days in lodging the complaint as the initial demand of bribe was made by the accused persons on 17.11.1989 whereas the complaint was filed on 20.11.1989 and no reasons has been assigned by the complainant for his inordinate delay.

No date, time and place of payment of the bribe money is mentioned in the FIR although from the facts it appears that it was to be paid in their office. There is nothing in the complaint to contact the accused on telephone just after the registration of the case. This appears to have been done so only to justify the initial demand.

The bribe amount mentioned in FIR is Rs. 5,000/- @ 3% and 2% for accused K.S.Warriach and G.N.mishra respectively, but in the tape conversation, the complainant says the amount of bribe is Rs. 5,500/-.

Just after receipt of the appointed signal the raiding party rushed there and apprehended both the accused persons. The proceedings were being watched closely by Sh. Peshin and Sh. Joshi, both Insp. CBI, ACB, New Delhi and therefore, the events happened in such a quick succession that the accused could not have got the opportunity to keep the bribe money and lock the room after coming there from. The version of the complainant that after travelling about 60 yards, he gave the preappointed signal also does not seem to be possibly specially when he was directed to give such signal just after the receipt of the bribe. Also the recording of micro cassette at the time of transaction of tainted money in inaudible.

The first reason which has been taken to file a report of closure is, that the complaint was lodged by the complainant after an unexplained abnormal delay of four days. However, this delay existed even on the day when this case was being registered. When the case was being registered, it was well within the knowledge of the CBI that the demand had been made on 17.11.1989 and the complainant had come forward with the complaint on 20.11.1989. If this delay was abnormal then at that time itself, action should not have been initiated on his complaint. The CBI seems to be taking a plea of unexplained delay in lodging the complaint, which is usually taken by the defence to assail the case of the prosecution. At the most, this was a point that should have been left by the CBI to be adjudicated by the court.

The next two grounds which have been taken are again the grounds which the accused could have taken during trial. The first one is that no date, time and place of payment of bribe has been mentioned in the FIR. However, it has been admitted in the closure report that from the conversation, it is apparent that this

transaction had to take place in the office of the accused and on a particular day. If this contention is to be accepted, then this case after verification of the complaint should not have been registered Similarly, there is a ground of discrepancy of the bribe amount as mentioned in the FIR and the bribe amount discussed in the tape recording. Here again, at the time when FIR was being registered, the fact, that in the telephonic conversation the bribe amount had been discussed to be Rs. 5,500/- was available with the CBI. Still the CBI not only proceeded to register the FIR but conducted a successful raid and arrested the accused. Even otherwise, it is a well settled law that FIR need not be exhaustive to contain the minutest of the details.

A further ground taken in filing of closure report is, that the post trap conversation was inaudible.

Here again, I find that this cannot be a ground for filing closure report especially when in pre-trap proceedings, the demand has been established and the complainant, in his statement, had stated that on demand being made, he had offered the bribe amount to both Sh. G.N.Mishra, JE and Sh. Kulwant Singh Warriach AE and upon being asked by Sh. K. S. Warriach, he had handed over the entire amount to Sh. G.N.Mishra, who had kept that amount in a condolence card. The independent witnes might not have heard this conversation but had seen the exchange of money. Thereafter, the bribe amount was recovered at the instance of accused G.N.Mishra from a table lying in his room. The hand wash of Sh. G.N. Mishra turned positive. Therefore, even if the corroborative evidence in the form of audio recording of trap proceedings was inaudible, there still was sufficient evidence with the CBI to proceed against accused G.N. Mishra.

The last ground that has been taken for filing the closure report is most surprising. It has been stated in the closure report that the events had happened in such quick succession that the accused could not have got an opportunity to keep the bribe money in his room and lock the same. By saying so, CBI is outrightly discrediting its own proceedings in which not only his hand wash was positive, but the currency notes were also recovered at the instance of the accused and their numbers tallied with the trap money, the accused were arrested.

In view of the above discussion, I find that the closure report has

been filed on flimsy grounds in order to discredit the entire evidence available before the investigating agency. In fact, the CBI has not only played the role of an investigating agency and prosecution but has also abrogated itself to the authority of a court and thereby decided to discredit the entire evidence available before it on the grounds which could only have been taken by the accused during trial."

39. The ld. Predecessor vide orders dated 09.03.2006 and 07.08.2015 deprecated and disregarded the attempt of investigation agency to save the accused on "filmsy grounds" while submitting the closure reports. For the omission of IO to file the charge sheet, where the facts showed sufficient material was deprecated. It is repeatedly observed that CBI has played for defence, while specifically dealing with the grounds of closure, in view of which how at this stage it is to be concluded that the material is insufficient and the orders dated dated 09.03.2006 and 07.08.2015 of ld. Predecessor was erroneous is not specifically stated. This Court is not the forum to review its own order and this is acknowledge by ld. Dfence counsel. The above order has been challenged and has met with rejection then how the fact of filing of closure can be read to benefit to accused is an unexplained argument. It is to be noted that the order on the point of cognizance is not put to challenge, in the absence of which the present arguments soliciting advantage of closure report is apparently a half hearted attempt.

40. Another averment that finds place in the submission is qua sanction. However, the law on this point is made clear in Sate of

Maharashtra v. Mahesh G. Jain the relevant paras are reproduced below to answer this submission:

> "9. In Superintendent of Police (C.B.I.) v. Deepak Chowdhary and others[5] it has been ruled that :
>
> > "the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction."

10. In C.S. Krishnamurthy v. State of Karnataka[6] it has been held as follows: -

"...sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order."

11. In R. Sundararajan v. State by DSP, SPE, CBI, Chennai[7], while dealing with the validity of the order of sanction, the two learned Judges have expressed thus: -

"it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated."

12. In State of Karnata v. Ameerjan[8] it has been opined that an

order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

13. In Kootha Perumal v. State through Inspector of Police, Vigilance and Anti-Corruption[9], it has been opined that the sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority has duly recorded its satisfaction and, therefore, the sanction order is valid.

14. From the aforesaid authorities the following principles can be culled out: -

a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should

not be a hyper-technical approach to test its validity."

41. Now coming to deal with the last averment of ld. Defence counsel wherein it is pleaded that accused cannot be made to stand trial for the reason that he is exonerated from departmental proceedings. It is observed that accused moved an application for dropping the proceedings on this ground of his exoneration. However, the said application met with rejection vide order dated 23.07.2018, the relevant portion of which is reproduced:

> "At this stage, the departmental proceedings have not been placed before the court. It has also not been placed before the court whether the charges framed against the accused / applicant herein in those proceedings were of identical nature or not an whether the evidence which was brought before the disciplinary authority was similar or not. It has also not been brought before the court whether the exoneration was on technical grounds or on merits.....
>
> It is also noteworthy that as per the application of the applicant, in the departmental proceedings, the applicant was exonerated in the year 1995. However, thereafter, the matter had been sent back for reinvestigation and it is after the reinvestigation that the closure report filed by the CBI was rejected and the cognizance had been taken. Therefore, it is not certain whether the entire material, which is before the court, was available before the inquiry officer or not. ."

42. The subsequent revision of the accused against the above order met with rejection vide the order dated 23.07.2018 by the Hon'ble High Court the following observations are made:

> "8. the considered opinion of this court, the view taken by the Special Judge at this stage of the process is correct. As was pointed out by the learned counsel representing CBI, as is also taken note of by the sanctioning authority in the order granting sanction,that the exoneration in the departmental proceedings

vide order dated 22.11.1995 by the Director General, CPWD was essentially based on the then decision of the CBI (investigating agency) not to file charge-sheet against the petitioner in the criminal court. It was a decision influenced by the opinion indicated by the investigating agency. There is nothing brought before this court in these proceedings to show that the evidence led during the disciplinary inquiry was same as the one presented before the criminal court on which dis-satisfaction with the closure reports was recorded twice. In these circumstances, mere dropping of the disciplinary action cannot automatically result in dropping of the criminal action in the court of the Special Judge.

9.The opinion of the Special Judge that sufficient grounds exist to proceed against the petitioner will have to prevail. It will, however, be open to the petitioner to raise all defences as are available to him in law at the time of consideration of the charge and further, if charge is framed,during the trial."

43. Against the said order the accused preferred SLP however the said SLP was rejected on 05.10.2018 with the following observations:

"We are not inclined to interfere with the impugned order. The special leave petitions are, accordingly, dismissed. However, the petitioner is at liberty to raise all the legal issues at the stage of framing charges, including the sanction of the prosecution."

44. As made apparent the aforesaid objection qua continuation of present proceedings have met with rejection and the said finding has been affirmed by Hon'ble Supreme Court. The fact that the exoneration of accused was a result of dropping of proceedings by CBI and that no clear finding was reached by the authority is admitted fact. The question that now is raised and needs an answer is that whenever accused can be allowed to take

advantage of inconclusive proceedings at the instance of CBI. The conduct of CBI in filing closure report is already discussed in detail above. It is hence clear that accused cannot be put to claim clear exoneration after the merits and material is discussed and he has been discharged.

45. The preposition in such regard has been considered by the Hon'ble Courts above and in ***State of NCT of Delhi v. Ajay Kumar Tyagi in Crl. Appeal No. 1334 of 2012 (date of decision 31st Aug, 2012)***.

46. Besides the aforesaid aspect of impact of exoneration from criminal proceedings to Departmental Inquiry proceedings and from Departmental Inquiry proceedings to criminal proceedings have been discussed by Hon'ble Supreme Court in ***Sashi Bhushan Prasad Vs. Inspector General, CISF in Civil Appeal No. 7130 of 2009 (date of decision 1st Aug, 2019)*** and the relevant portion is reproduced herein below:

> "17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal Court has been examined by a three Judge Bench of this Court in Depot Manager A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and Others 3. The relevant para is as under:"... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.

It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry.

The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course.

The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case.

19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose

of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules.

The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'.

Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court."

47. In ***Ashoo Surendranath Tewari (supra)***, the preposition is based out of the departmental proceedings having culminated on merits and the relevant observation in view of observations of ***Radhey Shyam Kejriwal Vs. Sate of West Bengal and Another (2011) 3 SCC 581*** are specifically pointed, which is observed as under:

"38 (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

The law relied upon hence support the prosecution and does not state in favour of accused as is stated by ld. Counsel.

48. It is observed that factum of accused being a public servant and

sanction order dated 02.02.2016 of having been made against him based on which the order of congnizance was passed on 11.04.2016 is not under challenge.

49. Having regard to the aforesaid discussion, I find that *prima facie* material available on record, at this stage, is sufficient for framing of charge against the accused person for which charge under Section 7 and 13(1)(d) of the PC Act is required to be framed.

Announced in open court
on 21.11.2020

(NIRJA BHATIA)
Special Judge (PC Act) CBI-03,
Rouse Avenue District Court,
New Delhi/21.11.2020