

**IN THE COURT OF SPECIAL JUDGE (PC ACT) (CBI)-17
ROUSE AVENUE COURTS,
NEW DELHI,**

Presided over by :- MS. VIJETA SINGH RAWAT (DHJS)

CNR No. DLCT11-000859-2023
State (CBI) v. Shiv Charan Meena
Criminal Case No. 04/2023
ID No. CBI/116/2023

18.12.2024. At 04.09 p.m.

ORDER ON CHARGE

1. By way of this order, this Court proposes to decide on charge. Also, the Court shall consider an application dated 20.09.2024, for discharge, moved by the accused stating that the sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988 (as amended in 2018) (herein after, referred to as The P.C. Act) is not valid as it has not been issued by a competent authority.

ALLEGATIONS

2. The accused, Inspector in Delhi Police then posted at P.S. G.T.B. Enclave was the Investigating Officer in FIR no. 275/2022, P.S. G.T.B. Enclave registered under Sections 302/120B/34 IPC read with Section 25/27/54/59 Arms Act and Sh. Ravinder Kumar @ Tittu (herein after, referred to as the

complainant) is an accused, therein. The complainant filed a complaint dated 29.03.2023 before the Worthy S.P., C.B.I. (ACB) informing that he was on Court bail in the aforementioned case however, the accused, herein, was demanding bribe of Rs.2.5 lacs failing which he would get the bail of the complainant, cancelled.

VERIFICATION PROCEEDINGS

3. Verification of the complaint was conducted by Inspector Dharamveer and on his report vide Verification Memo CO-9/2023 dated 29.03.2023 (part of D-1), as there was *prima facie* disclosure of commission of offence under Section 7 of The P.C. Act, the present FIR was registered. During verification, it was established that the accused demanded Rs. 1 lac from the complainant. The conversations recorded between the accused and the complainant are contained in memory card Q1.

TRAP PROCEEDINGS

4. Thereafter, C.B.I. constituted a trap team consisting of the complainant, independent witnesses namely Sh. Deepak Kumar and Sh. Somasundaram, officers Inspectors CMS Negi, Satish Kumar Bana, Amit Kumar Pandey, Dharam Bir, Ashutosh Tiwari, Vikrant Tomer, Rajender Kumar Chaudhary, Sub-ordinate staff members and Trap Laying Officer (hereinafter, referred to as TLO) Inspector Sunil Kumar Pandey on 30.03.2023. A Pre-Trap Memorandum (D-2) has been relied upon of the modalities

followed before the trap was to be laid. Record of currency notes used as bribe money is also annexed.

5. As per the Post Trap Memorandum dated 30/31.03.2023 (D-3), a trap was laid on 30.03.2023 at about 1125 hours at PS GTB Enclave and the accused was apprehended by the Trap Laying Team in the room of the accused at the first floor of the PS building. In a nutshell, the trap team reached Geeta Colony at about 1055 hours and a WhatsApp call was made to the accused on his mobile phone (xxxxxxx4879) from the mobile phone of the complainant (xxxxxxx0464) at about 1100 hours and he was requested to sent notice to the complainant to join investigation in the murder case. So, the accused through WhatsApp directed the complainant to appear before him at P.S. G.T.B. Enclave at 1200 hours. The conversation was recorded in a memory card by keeping the complainant's phone on speaker mode and in the presence of the independent witness Sh. Deepak Kumar. Thereafter, the team proceeded to P.S. G.T.B. Enclave at around 1125 hours. The DVR in switched on mode was kept inside the front left pocket of the trousers of the complainant who proceeded to meet the accused. However, the shadow witness Sh. Deepak Kumar accompanied the complainant only till the main gate of the police station to avoid any suspicion. The members of the raiding team took appropriate position outside the police station in a discreet fashion. At about 1205 hours, the complainant signaled the TLO and the raiding team, rushed inside the building of the police station. As the complainant met

at the entrance of the police station, DVR was taken from his possession and switched off. The accused was apprehended at the first floor of the building and was interrogated for having accepted the bribe which he denied and also did not disclose the whereabouts of the bribe money. At that time, it was noticed that the accused was holding a wet white handkerchief in his right hand.

6. The complainant narrated that when reached the room of the accused, the accused was not available there, therefore, the complainant called him on WhatsApp but the phone of the accused was ringing on the table of the accused. In the meantime, the accused came out of his washroom attached to his room and after some discussion demanded the bribe amount by gesture through hand. The complainant then took out the bribe amount of Rs. 1 lac from the right side pocket of his pant and on direction of the accused kept in the carton on the left side drawer of the table kept inside the resting area in the office of the accused. It was then informed by the complainant that the remaining bribe about of Rs.1.5 lacs would be paid on the next day which was agreed by the accused. Thereafter, since call to the TLO (as the pre-decided signal) could not be made due to poor connectivity, the complainant came down to make the call to the TLO.

7. At the spot, the memory card containing the recorded conversations between the complainant and the accused was sealed as 'Q2'. The right hand wash, handkerchief wash and

carton wash (wherein, the money had been kept by the complainant) as they tested positive for phenolphthalein (since the Sodium Carbonate solution turned pink) were sealed and seized vide seizure memos¹. The mobile phones of the accused were seized vide seizure memo². Rough site plan was also prepared. However, as the bribe money could not be recovered, the adjacent room belonging to ASI Adesh Tyagi and ASI Trilok Dabas was attempted to be searched. The door handle was examined for presence of phenolphthalein and the door handle wash suggested its presence and was therefore, sealed and seized. The door being locked was got opened by calling ASI Trilok Dabas from his emergency duty however, during the search of the said room, tainted bribe money could not be recovered and Rs.46,000/- was found in a box which ASI Trilok Dabas stated that he had taken the money from his brother. Since, ASI Trilok Dabas was also within the range of suspicion, his hand washes were also taken but they did not suggest the presence of phenolphthalein. ASI Trilok Dabas was also confirmed to be on duty around that time at a factory at Jhilmil Industrial Area. In search of the bribe money, Home-guard Rishipal, who had come to the room of the accused when the accused and the complainant were having the conversation, was also examined at the C.B.I. Office. At the C.B.I. office, the specimen voice of accused was recorded in a blank memory card and sealed as S1. The accused was arrested vide arrest cum personal search memo (D-5). The voice sample of the complainant was also taken on another

1 D-3 dated 31.03.2023

2 D-3 dated 31.03.2023

memory card and sealed as S2. The DVR was also sealed (D-3). The brass seal was handed over to the independent witness Somasundaram.

CHARGESHEET

8. Chargesheet was filed on 14.12.2023. Cognizance of offence was taken by the Ld. Predecessor of this Court vide order dated 09.01.2024. The documents under Section 207 Cr.P.C. (230 of BNSS, 2023) was supplied to the accused on 09.02.2024. Supplementary charge sheet to place on record FSL Report was filed on 22.04.2024 and copy was supplied to the accused. After scrutiny of documents, the arguments on charge and on the application for discharge were advanced before this Court.

ARGUMENTS

9. Arguments have been advanced by Sh. Neel Mani, Ld. Public Prosecutor and Sh. V.C. Mishra, Ld. Counsel for the accused.

10. Ld. P.P for the State (through C.B.I.) has led the Court through complaint (D-1), verification report (D-1), pre and post trap memos (D-2 and D-3 respectively), FSL reports on hand washes, handkerchief wash, carton wash (D-11), voice analysis report (D-24) and mobile phone analysis (D-22) and statements under Section 161 of Cr.P.C. of the independent witnesses and

submitted that there is sufficient material to *prima facie* opine that the accused has committed the alleged offence punishable under Section 7 of P.C. Act and therefore, charge should be framed against him. It has further been submitted that the validity of the sanction cannot be evaluated at this stage for it is not a case of absence of sanction but about the competence of the sanctioning authority which is a matter of trial. Reliance has been placed upon the following judgments :

***(i) Prakash Singh Badal Vs. State of Punjab & Ors.*³**

***(ii) Dinesh Kumar Vs. Chairman, Airport Authority of India and Anr.*⁴**

***(iii) Central Bureau of Investigation (C.B.I.) Vs. Mrs. Pramila Virendra Kumar Agarwal*⁵**

***(iv) State of Orissa Vs. Devendra Nath Padhy*⁶**

During the course of arguments reliance has also been placed upon ***State of Maharashtra Vs. Somnath Thapa***⁷ to urge that at this stage of order on charge, the Court is only required to peruse the documents of the prosecution and cannot refer to the documents filed by the accused like the order⁸ filed alongwith the application seeking discharge.

11. *Per contra*, Ld. Counsel for the accused has sought discharge on both the merits of the case and on a technical plea that the sanctioning authority was not competent to give the sanction under Section 19 of The P.C. Act.

³ (2007) 1 SCC 1

⁴ (2011) 13 (Addl.) S.C.r. 260 decided on 22.11.2011

⁵ CrI. Appeal no. 1489-1490/2019 (Arising out of SLP (Criminal) Nos. 8968-8969 of 2019 (Arising out of Diary o. 23350/2017) decided on 25.09.2019

⁶ Supreme Court Reports (2004) Supp. 6 S.C.R. decided on 20.11.2004

⁷ 1996 CrI. L.J. 2448

⁸ Promotion order bearing no. 80605/CB-I/PHQ dated 16.12.2021

12. On merits, it has been submitted that the complaint (D-1) lacks material particulars as it fails to mention the date and time of demand made by the accused. During the course of arguments, the recorded conversations both during verification proceedings and trap proceedings were played before the Court and compared with the transcript to submit that the transcript filed before the Court is not the correct version of what transpired and hence, it has been submitted that the prosecution has withheld material facts. It has been sought to be explained that in FIR no. 275/22 PS GTB Enclave, co-accused Bhanu had been evading arrest and the accused was seeking his surrender through the complainant, herein, being his brother. Further, it has been argued that the complainant had assured that Bhanu would be made to surrender and it is in that regard that the accused was making queries from the complainant about the dates. It has been adumbrated that there is no iota of evidence that the accused had made any demand of bribe from the complainant which is an essential ingredient of offence punishable under Section 7 of the Prevention of Corruption Act (hereinafter, referred to as The P.C. Act). It has also been submitted that “रख दिया” in the recorded conversation during the trap proceedings implies to the utensils having been properly kept by the complainant and does not refer to the bribe money. It has also been canvassed that when the complainant entered the room of the accused, there were instances when the accused was not present in the room for instance as either he was bathing or when he went down to look

for food / beverage. Therefore, there was opportunity for the plaintiff to plant the alleged bribe money upon the accused. Much emphasis has been laid on the bribe money not having been recovered stating that CCTV footage of the police station would reveal whether the accused had stepped out of his room to access the adjacent room belonging to ASI Trilok Dabas. It is stated that the room of ASI Trilok Dabas was locked and it was only opened with the key available with him. It has also been submitted that non recovery of the alleged bribe money is a material fact which cannot be ignored as even during his police remand of the accused person, no efforts were made for tracing the alleged bribe amount. It is submitted that the case of the prosecution is false.

13. On the technical ground seeking discharge, the Court has been led through the promotion order dated 16.12.2021 filed alongwith the application for discharge to emphasize that it has been issued by the Worthy Commissioner, Delhi Police and by virtue of application under Article 311 of The Constitution of India r/w Section 12 and 21 of The Delhi Police Act, even though the Additional Commissioner is empowered to appoint / remove the accused as an Inspector, factually, a superior authority namely the Commissioner had appointed the accused as Inspector, therefore, the sanction order is not valid as it has been issued by the Worthy Joint Commissioner. Reference has also been made to the biodata of the accused (D-16) filed by the prosecution wherein it is mentioned that the officer competent to remove the

accused from service is Special Commissioner of Police (Law and Order, Zone 1). Judgments of co-ordinate benches have been filed to show that on similar grounds for lack of competency of the sanctioning authority the accused persons have been discharged. Reliance has been placed upon the following judgments :

***(i) Nanjappa Vs. State of Karnataka*⁹**

***(ii) State Inspector of Police Visakhapatnam Vs. Surya Sankaram Karri*¹⁰**

***(iii) Krishna Kumar Vs. Divisional Assistant Electrical Engineer Central Railway*¹¹**

***(iv) Davinder Singh Vs. State*¹²**

***(v) Onkar Chand Prashar Vs. State*¹³**

***(vi) Gopalbhai Mohanbhai Nagoda Vs. State of Gujarat*¹⁴**

***(vii) Uttam Vs. The State of Maharashtra*¹⁵**

14. In rebuttal, yet again, Ld. P.P for the Court has placed reliance upon Section 21 of The Delhi Police Act, Rule 6 of Delhi Police (Punishment and Appeal) Rules, 1980 and Rule 4 and Rule 3(i) of The Delhi Police Appointment and Recruitment Rules. It has been submitted that DCP and above is competent to remove the accused from service. Reference has been made to ***Joint Commissioner and Ors. Vs. Sube Singh and Ors.*¹⁶** Wherein it has been held as under :

“27. In the afore-mentioned situation and having regard to the provisions of Delhi Police Act, in our opinion, the Officer Memorandum issued by the Central Government to the effect that upgradation of post would amount to a creation of post,

9 Criminal Appeal No. 1876/2012 decided on 24.07.2015

10 Appeal (Crl.) 1335/2004 decided on 24.08.2006

11 1979 AIR 1912 decided on 17.07.1979

12 ILR 1974 Delhi 400

13 1993 (4) AD 872

14 1993 – II L.L.N. 540

15 Criminal Appeal No. 333/ 2012 decided on 05.02.2021

16 2002 VII AD (Delhi) 539

cannot be accepted. By reason of mere upgradation, the statutory functions assigned to an officer is not taken away and in any event, if it be held that the Notification dated 3rd March 1998 issued by the Central Government is illegal and without jurisdiction, the Joint Commissioners would in law, still continue to hold the post of the Additional Commissioner.”

15. It has also been submitted that the executive order vide notification no. 80605CB-I/PHQ dated 16.12.2021, promotion cannot prevail over Section 12 of The Delhi Police Act and Rules thereunder.

REASONING AND ANALYSIS

16. The Court has considered the submissions and material on record.

17. At the stage of framing of charge, the Court is required to consider the sufficiency of material on record to *prima facie* opine whether the accused should be put on trial for the alleged offence. The Court is also conscious that at this stage, no roving and fishing inquiry is permissible and the opinion is to be premised upon evaluation of material and documents placed on record by the prosecution. The Court is also cognizant that at this initial stage, broad probabilities of the accused having committed the alleged offences is to be assessed by limited evaluation of materials and documents and sifting of evidence. Reliance is placed upon *State of Orissa Vs. Devendra Nath Padhy (Supra) and Bharat Parikh Vs. C.B.I. and Anr.*¹⁷ Further,

¹⁷ 2008 (3) SCC (CRI) 609

by plethora of judgments, it has also been clarified that at the stage of framing of charge, the evidentiary value of the evidence (implying their admissibility and reliability) cannot be decided. Reliance is placed upon ***The State Government of NCT of Delhi Vs. Babita and Ors.***¹⁸ wherein it has been held as under :

"7. Before averting to the submissions made by both the parties, this Court deem it appropriate to discuss the law of charge and discharge. As far as statutory law on framing of charge and discharge is concerned, the same is governed by Section 228 and 227 of Cr.P.C. respectively. These provisions read as under:

"227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of Sub-Section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

8. The Apex Court, in the case of Sajjan Kumar v. C.B.I. (2010) 9 SCC 368, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a prima facie case is made out or not, and the Court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. The relevant portion of the

18 CrI. Rev. P. 267/18 decided by The Delhi High Court on 04.09.2023

judgment is reproduced below:

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The Court cannot act merely as a Post Office or a mouthpiece 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

9. It was observed by the Hon'ble Supreme Court in Asim Shariff v. National Investigation Agency (2019) 7 SCC 148, that at the stage of framing of charge, the Trial Court is not

expected to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations are as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

(Emphasis Supplied)

10. The Hon'ble Supreme Court in Bhawna Bai v. Ghanshyam (2020) 2 SCC 217, has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen."

11. In a recent decision in Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057, the Hon'ble Apex Court has explained the well settled law on charge as under:

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court

is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding."

12. Thus, in view of the aforementioned judicial precedents on the law of charge and discharge, this Court notes that at the stage of framing charges, the Court's primary concern lies in determining a prima facie case against the accused. It is essential to emphasise that at the time of framing of charge, the Court need not delve into the realm of whether the case is proven beyond reasonable doubt. That determination comes at a later stage, i.e. after the conclusion of trial. The pivotal

“criterion for the Court, while framing charges, is to assess if there exist sufficient grounds to proceed against accused further by framing charges against them and began the trial. A strict standard of proof is not required while evaluating the material on record, simply a prima facie view of the matter is to be considered to reach a conclusion as to whether strong suspicion exists on the basis of material on record for the purpose of framing of charge against them.”

emphasis supplied

18. Thus, with the above guiding principles, this Court shall now proceed to examine whether there is sufficient material to *prima facie* opine that the ingredients of the alleged offence are made out and the accused should therefore, be put to trial for the same.

Application for discharge / sanction being invalid for lack of competency of the sanctioning authority

19. To press the application of Article 311 of The Constitution of India, as urged by the defence, it is first to be demonstrated that the sanctioning authority was inferior to the appointing authority in the present case.

20. Therefore, it would be material to refer to Section 12 and 21 of The Delhi Police Act, 1978 which stipulate as under :

“12. Appointment of subordinate ranks.—Subject to such general or special orders in writing as the Administrator may make in this behalf,—

(a) Inspectors of Police may be appointed by the Additional Commissioner of Police; and

(b) Sub-Inspectors of Police and other officers of subordinate rank may be appointed by the Deputy Commissioners of Police, Additional Deputy Commissioners of Police, Principal of the Police Training College or of the Police Training School,

or any other police officer of equivalent rank.

21. Powers of punishment.—(1) Subject to the provisions of article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:—

(a) dismissal;

(b) removal from service;

(c) reduction in rank;

(d) forfeiture of approved service;

(e) reduction in pay;

(f) withholding of increment; and (g) fine not exceeding one month's pay.

(2) Subject to the rules—

(a) any police officer specified in sub-section (1) may award the punishment of censure to any police officer of subordinate rank;

(b) the Assistant Commissioner of Police may award the punishment of censure to police officers of, or below, the rank of Sub-Inspectors of Police;

(c) any police officer of, and above, the rank of Inspector may award punishment not exceeding fifteen days or fatigue duty or any other punitive duty to constables.

(3) Nothing in sub-section (1) or sub-section (2) shall affect any police officer's liability for prosecution and punishment for any offence committed by him.

(4) The Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School, Assistant Commissioner of Police, or any other police officer of equivalent rank may suspend any police officer of subordinate rank who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.

(5) An Inspector of Police may suspend any police officer below the rank of Sub-Inspector of Police, who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.”

21. Further, Rules 3 and 4 of The Delhi Police (Appointment & Recruitment) Rules 1980 reads as under :

“3. Definitions.—(i) ‘Appointing Authority’ in relation to

Inspector of Police means the Additional Commissioner of Police and in relation to the subordinate police officers below the rank of Inspector means the Deputy Commissioner of Police including the Additional Deputy Commissioner of Police, Principal/P.T.S. or any other officer of equal rank.

(ii) ‘Competent Authority’ means the Commissioner of Police or any other police officer specially authorized by him under these rules to appoint a police officer of subordinate rank of these rules to appoint a police officer of subordinate rank of Delhi Police force. Added vide No. 5/18/82/H(P)/Estt. dt. 2.5.83.

(ii-a) “Employees” means non-gazetted employees of the Delhi Police force. Added vide N. No. 5/15/82-H(P)/Estt. dt. 2.5.83.

(iii) ‘Probation means a period of trial of a person appointed temporarily or in an officiating capacity against temporary or permanent post of a police officer of subordinate rank.

4. General.-(i) Appointing authorities- The following authorities shall be competent to make appointments to various subordinate ranks of Delhi Police:

<i>Class of Police officers</i>	<i>Authority to whom the power of appointment is delegated</i>	<i>The extent of delegation</i>
<i>(i) Inspector</i>	<i>Addl. CP.</i>	<i>Full powers subject to the rules framed hereunder</i>
<i>(ii) Sub-Inspector</i>	<i>(i) DCP (ii) Addl. DCP (iii) Principal / PTS (iv) Any other officer of equivalent rank</i>	<i>- Do -</i>
<i>(iii) ASI</i>	<i>- Do -</i>	<i>- Do -</i>
<i>(iv) H.C.</i>	<i>- Do -</i>	<i>- Do -</i>
<i>(v) Constables</i>	<i>- Do -</i>	<i>- Do -</i>

(ii) Substantive appointments.- The power to confirm the officers of subordinate rank appointed temporarily or on probation shall vest in the prescribed appointing authority.

(iii) All subordinate ranks i.e. constable to Inspector of Delhi Police shall be allotted permanent enrolment numbers. These

numbers shall not change with the posting of the individual from one Unit to another. A permanent record of such numbers serial-wise shall be kept in Police Headquarters in the subjoined proforma :

No.	Name	Parentage	Rank	Date / year of appointment

(iv) No number shall be allotted to a civilian employee.

(v) An alphabetical index of all subordinate ranks in Form “A” shall be maintained at P.H.Q. for Asst. Sub-Inspectors to Inspectors by Confidential Branch and for Head Constables, Constables and other categories by the Character Roll Branch.”

22. Also, Rule 6 of The Delhi Police (Punishment & Appeal)

Rules, 1980 reads as under :

“6. Classification of punishments and authorities competent to award them. – (i) Punishment mentioned at Sl. No. (i) to (vii) above shall be deemed “major punishment” and may be awarded by an officer not below the rank of the appointing authority after a regular departmental enquiry.

(Substituted in Rule 6(ii) vide Notification No. F. 5/4/85-Home (P)/Estt. dated 15.3.85).

(ii) Punishment mentioned at Sl. No. (viii) shall be called “Minor punishment” and may be awarded by the authorities specified in sub-section (i) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition, if any for which opportunity shall be afforded on request.

<i>Authority competent to award</i>	<i>Rank to whom it can be awarded</i>
<i>(i) Deputy Commissioner of Police and above</i>	<i>Inspector and below</i>
<i>(ii) Assistant Commissioner of Police</i>	<i>Constable to Sub-Inspector</i>

(iii) The punishment mentioned at Sl. No. (ix) above may be called “Orderly room punishment” and shall be awarded after the defaulter has been marched and heard in Orderly Room by the Officer of and above the rank of Inspector as

laid down in section 21(3)(c) of the Delhi Police Act, 1978.”

23. Additionally, as per Section 7 of The Delhi Police Act, the appointment of Additional Commissioner of Police has been provided for which is as under :

“7. Additional Commissioner of Police – (1) The Administrator may appoint one or more Additional Commissioners of Police for the purposes of this Act.

(2) The Additional Commissioner of Police shall -

(a) assist the Commissioner of Police in the exercise of his powers and the performance of his duties in such manner and to such extent, and

(b) exercise such powers and perform such duties of the Commissioner of Police and within such local limits, as the Administrator may, by general or special order, specify.”

Hence, the Additional Commissioner of Police assists the Commissioner of Police in exercise of his powers and performance of his duties. Also, as per Rule 4 read with 3(ii) of The Delhi Police (Appointment and Recruitment Rules), 1980, the competent authority for appointment of the Inspector, “full powers subject to rules framed hereunder” have been delegated to the Additional Commissioner of Police. In the present case, sanction has been granted by the Joint Commissioner of Police, Eastern Range. In ***Joint Commissioner of Police and Ors. Vs. Sube Singh and Ors.(Supra)***, it has been clarified that Joint Commissioner of Police continues to exercise the powers of Additional Commissioner of Police. Also, as per Section 114 illustration (e) of The Indian Evidence Act, 1872 (Section 119 illustration (e) of Bhartiya Sakshiya Adhiniyam, 2023), there is a presumption that the official act has been regularly performed. Hence, it is a matter of trial whether the sanctioning authority

was not competent to grant the sanction for prosecution under Section 19 of The P.C. Act and there has been an irregularity in the official act. Merely on the basis of order no. 80605/CB-I/PHQ dated 16.12.2021 to urge that the appointing authority was the Commissioner of Police, Delhi and not the delegated authority without affording parties the opportunities to prove what they urge, would be pre-mature. Also, for the same reason, the discrepancy in document D-16 that the competent authority to remove the accused from service was the Special Commissioner of Police, Law and Order (Zone-1) is also a matter which can be effectively decided after the trial affording the prosecution opportunity for explanation. Here the Court seeks to draw strength from the legal propositions laid down in ***Dinesh Kumar Vs. Chairman Airport Authority of India***¹⁹ and ***Central Bureau of Investigation (C.B.I.) Vs. Mrs. Pramila Virendra Kumar Agarwal (Supra)***. It has been held in ***Central Bureau of Investigation (C.B.I.) Vs. Mrs. Pramila Virendra Kumar Agarwal (Supra)*** as under :

“13. Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar Vs. Chairman, Airport Authority of India, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused

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seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial.”

Merits of the case

24. So far as to the objections on merits of the case are concerned, for want of ingredient of demand of bribe, possibility of accused being wrongly framed, the evidences being planted upon him and improbability of circumstances, in the considered view of this Court are triable issues on which parties are required to lead evidence and cannot be decided *prima facie*.

25. Thus, in view of the above discussions, there is *prima facie* material to frame charge against the accused for commission of offences punishable under Section 7 of The P.C. Act read with Section 201 Para III of I.P.C. (Section 238(c) of Bhartiya Nyay Sanhita, 2023). Consequently, application for discharge stands dismissed.

(Vijeta Singh Rawat)
Special Judge (PC Act) (CBI)-17
Rouse Avenue Courts, New Delhi
18.12.2024.