

**Special Case No.43/2017**

**CNR No. MHPU01-012364-2017**

CBI Vs. Jatinder Singh and others

**ORDER BELOW EXH.137**

1] This is an application filed by accused no.2 Col.Kulbir Singh under section 227 of Cr.P.C. and requested to discharge him from the offences punishable under section 120-B r.w. section 420 of Indian Penal Code and section 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act.

2] It is the accusation of the CBI against accused Col. Kulbir Singh that he joined NDA in March 2011 as Staff Officer to Commandant. During his tenure there was a process to purchase the readymade garments at the funds of candidates' parents have been initiated in NDA in the year 2011. Accordingly, Board of Officers (BOO) have been appointed to conduct the market survey to purchase the garments. It was headed by Ravindra Reddy and others. The BOO has conducted the market survey and accordingly referred the name of five vendors namely Raymonds, M/s. Bombay Dyeing, K.K. Apparels, Siyaram, Athelate (Vision Sports) for purchasing the garments. The note-sheet came to the accused Subramanian for further process. At that time accused Subramanian being a conspirator to commit the offence he added the name of M/s Rituraj and General Industries, M/s. Kaprilla Enterprises, S.Kumar and M/s. Kapoor and Companies. Thereafter, the note-sheet has been forwarded to the approval through proper channel. Accordingly, his superiors given the approval for selecting the samples through another BOO. The BOO has selected the samples

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and sent to accused Subramanian. Then accused Subramanian made the note and sent to his superior for approval through proper channel. Then samples were approved by the Commandant accused no.1 and tendering process was completed. In the audit report objections were taken to the tender of Mr. Kapoor in respect of the cost. The accused no.2 Col. Kulbir Singh attended the meeting with Mr. Kapoor in Hotel Trikaya along with PW 14 and PW 22 whereas he being a conspirator stated them to settle the audit report. Thereafter, being a part of the conspiracy accused availed the Hotel services at Mahabaleshwar at the cost of Mr. Kapoor in lieu of favouring them in the tender processing. Therefore, the CBI has conducted the investigation and filed the charge-sheet.

3] Accused has filed this application and contended that there is no sufficient material to say that he is part of conspiracy to commit the offence of cheating and criminal misconduct by the public servant. According to him, he is not the part of the tendering process at all. Mere visit in the Trikaya Hotel does not leads he was there as a part of conspiracy. The duties of his post is to attend the Lt. General accused no.1 as a officer and as a staff officer to the Commandant and arrange his official tours. Therefore, he was accompanied with accused no.1 at Mahabaleshwar. He has not directed Mr. Kapoor to pay the cost of stay at Mahabaleshwar in the Hotel. According to him, there is no material to say he has committed the offence of criminal misconduct or conspiracy. Hence, he requested for discharge.

4] The CBI has filed the say and submitted that the accused being a staff officer of Commandant NDA entered into

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conspiracy with accused no.1 and taken active participation to settle the objection taken by the audit for the tendering process. Accused being a part of the conspiracy availed the services from Mr. Kapoor for staying in Hotel at Mahabaleshwar along with accused no.1. There is statement of PW 14 and PW 22 indicates accused was the part of the conspiracy. Therefore, CBI requested to reject the application.

5] Heard learned advocate for accused Mr. Sawant. He submitted that no work of Mr. Kapoor was pending in the office of accused no.2. He has nothing to do with the tendering process of NDA. He being a subordinate of accused no.1 has to arrange his official tour under his instructions. He has joined the NDA in March 2011 and prior to that long back tendering process was started. There is no material to say that he has committed any criminal misconduct or he was part of the conspiracy.

6] Learned Senior Special prosecutor urged that the accused was staff officer to Commandant accused no.1. He has taken active participation being a conspirator to favour Mr. Kapoor by settling the audit report and awarding the tender. He has taken the services from Mr. Kapoor to stay in Hotel Mahabaleshwar. It indicates he has taken the gratification as public servant. It amounts criminal misconduct. According to him, the statement of PW 14 and PW 22 and D-34 indicates there is sufficient material to frame the charge.

7] It is settled principle of law that while entertaining the application under section 227 of Cr.P.C. it is for the Court to hear the

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prosecution and accused. It is for the Court to go through the material available on record against the accused. If there is no sufficient ground for proceeding against the accused, he shall be discharged.

8] The substantive allegations against this accused is that he entered into criminal conspiracy along with the rest of accused in order to favour M/s. Kapoor and Company and thereby he directed PW 14 to settle the audit report and also availed services in the Hotel by allowing him to pay staying cost at Mahabaleshwar.

9] The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Offence of criminal conspiracy consists not merely in the intention or more but in the agreement of two or more to do unlawful act by unlawful means.

10] It is settled position of law that if the available material considered as it is genuine and true then no conviction is warranted then it is desirable to discharge the accused.

11] It is admitted fact accused Col. Kulbir Singh has no concern with the Administration branch which was headed by Col. Solunke who signed the argument in June 2011 in favour of M/s. Kapoor & Company for purchasing readymade garments. It is admitted fact from the argument of both sides that accused was working as Staff officer to commandant and he was directly under Commandant, NDA i.e. accused no.1. It seems that accused has nothing to do with the process of tendering the clothes and purchasing it or passing the tender.

12] PW 14 is Mr.Mohan Singh, then Sergent working in Budget Monitory Section, NDA, Khadakwasla since 2007. He stated the contract of clothe purchasing was signed by Col. Solanke as Colonel in-charge administration in favour M/s. Kapoor and Company on 29/6/2011. It means the accused Col. Kulbir Singh has no concern with the said tendering process.

13] Mr.Rajbir Singh stated that in Hotel Trikaya Colonel directed to PW 14 to settle the audit objection which have been taken by audit Department.However, statement of PW 14 discloses that he has not listen the directions of the accused and he straightway told him the audit objections are so severe. Meanwhile Mr. Kapoor interrupted and stated to accused that he will manage the audit report. It indicates that the accused was not the part of the conspiracy but he stated to PW 14 just to oblige Mr. Kapoor and nothing else.

14] It appears from the statement of PW 14 that in August 2011 he went to Trikaya Restaurant at Aditya Shagun Mall in Bavdhan, Pune where he saw Col. Kulbir was sitting with Ramesh Kapoor and Karan Kapoor of M/s. Kapoor & Company. They were having liquor drink. Accused stated him to prepare the suitable reply for audit objection. Where PW 14 replied him the objections are serious in tendering process granted in favour of M/s. Kapoor & Company. Then Kapoor interrupted him. There is no material on record to say that accused no.2 was in Trikaya Hotel at the instance of accused no.1 or at the instance of Mr.Solanki who has awarded the tender to work as a mediator.

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15] Accused did not call PW 14 but he was called there by Col. Mr. Rajbir Singh. The accused is not the part of the tendering process in any manner but he was present in the Hotel and he simply told to prepare the audit reply to PW 14. Such a fact does not leads that the accused was part of the conspiracy. At the most it would be a misconduct by the public servant to attend the drink party in the Hotel along with the contractor of Defence. When he was taking the drink with Mr. Kapoor he must have told something in favour of Kapoor. It does not mean that he was part to award the tender in favour of M/s Kapoor and Company under conspiracy. Therefore, the aforesaid evidence of PW 14 does not help to frame the charge against accused under section 120-B r.w. section 420 of Indian Penal Code and section 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act.

16] According to CBI, accused availed the services from Mrs. Divya Kapoor for staying in Hotel at Mahabaleshwar. It appears from the statement of Shaikh Nisar a Manager of Evershine - A Keys Resorts, Mahabaleshwar that, accused and his family have stayed in the resort during the period of 16/6/2012 to 18/6/2012. Col. Kulbir Singh has occupied the room no.220. It appears from his statement Karan Kapoor has reserved the said room. Thus, from his statement it appears that accused has stayed at Mahabaleshwar on the particular day.

17] It appears from the statement of Major Sunny Juneja that he has accompany the Commandant and Col. Kulbir Singh on a visit to Mahabaleshwar. Lt. General Jatinder Singh went to Mahabaleshwar. He himself submitted his driving license in the

Resort as a proof of identity on behalf of group. He shared the room with accused. He has paid amount of Rs.2818/- at the Resort. He further stated that accused Col. Kulbir Singh has given him Rs.10,000/- before proceeding towards Mahabaleshwar for meeting expenses during the visit. Thus, such a material indicates the accused was not part of the conspiracy to commit the criminal misconduct by awarding tender in favour of M/s Kapoor and Company and avail the services at Hotel Mahabaleshwar. If he was there he would not have handed over cash amount of Rs.10,000/- towards Major Sunny for the expenses. If he was aware Mrs. Divya had to bear the expenses of Hotel stay, he would not have handed over the amount of Rs.10,000/- to Mr. Sunny for expenses at Mahabaleshwar. He would have directed Mrs. Divya Kapoor to bear the expenses for his stay and bear rest of expenses. The conduct of accused Col. Kulbir Singh indicates he is not part of the conspiracy.

18] It appears from the record that Mrs Divya Kapoor has paid Rs.40,000/- as a cost of living at Hotel Mahabaleshwar of accused persons. Accused no.1 was the authority to grant the tender. The tour was arranged at his desire to visit the site. He must be aware Mr. Kapoor is going to arrange expenses for the tour. There is no material available on record to say that accused Col. Kulbir Singh directed Mrs. Divya Kapoor to pay the charges of Hotel. The accused was staff officer to the Commandant and as a protocol he has to remain with the Lt. General whenever he goes for outstation visit. In these circumstances, his presence at Mahabaleshwar is but natural. Mere his stay along with his senior does not amount he is a part of the conspiracy. Considering the

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aforesaid material, I do not think, it is sufficient material to frame the charge against accused under section 120-B r.w. section 420 of Indian Penal Code and section 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act.

19] Thus, in my view aforesaid material taken as it is true, despite this, no conviction is warranted against the accused under section 120-B r.w. section 420 of Indian Penal Code and section 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act. If such a fact is there I cannot forced the accused for trial. Thus, I hold the accused is entitled for discharge. Hence, I pass following order -

**ORDER**

- 1] Application is allowed.
- 2] Accused Col. Kulbir Singh is hereby discharged from the offences punishable under section 120-B r.w. section 420 of Indian Penal Code and Section 11 and 13(2) r.w. 13(1)(d) of Prevention of Corruption Act vide CBI case RC PUNE/2014/A0004.

sd/-  
(Pralhad C. Bhagure)  
Special Judge (CBI-ACB), Pune.

Date – 05/12/2018

I affirm that the contents of this PDF file order are same word for word as per original order

Name of Steno : Smt. B.R.Jakka  
Court Name: : Shri. Pralhad C. Bhagure  
Special Judge (CBI-ACB), Pune.  
Order signed by PO : 05/12/2018  
Date of PDF : 06/12/2018  
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