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Special Case No.43/2017

CNR No. MHPU01-012364-2017

CBI Vs. Jatinder Singh and others

ORDER BELOW EXH.166

1] This is an application filed by accused no.3 R.K.Gupta, auditor, 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 various objections were taken to the tender of Mr. Kapoor in respect of the cost etc. by this accused R.K.Gupta. 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. The accused being an auditor who has taken the objection to the tender process himself suggested certain corrections in the draft of reply to remove the objections and thereafter enjoyed the services with Mr.Kapoor. Therefore, according to the CBI the very conduct of accused auditor indicates he is part of conspiracy to cheat the candidates and abused the powers. Therefore, charge-sheet is filed.

3] Accused has filed this application and contended that there is no satisfactory ground or evidence to frame the charge against him. He being an auditor has raised the various objections and accordingly concerns to comply with the objections. Accused has not committed any offence. He has no concern with the alleged services taken by other officers from Mr.Kapoor and Company. Accused is not the person who settled audit objections. The settlement memo was issued by one Deepak Kumar and not by the accused. The audit reply has to be scrutinized through proper

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channel. Accordingly, audit reply has been verified. This accused has neither cheated anybody nor abused his position to favour the other accused. Hence, he requested to discharge him.

4] The CBI has filed say at exh.170 and submitted that there is evidence on record which shows that accused being a auditor himself raised various objection for tender process. He is person who carried out the corrections in the draft to remove the objections in the audit itself. He has availed the services from Kapoor and Company. The very conduct of accused being a public servant leads he is part of the conspiracy and therefore application deserves to be rejected.

5] Heard learned advocate Mr.Shah for accused and Sr.Special Prosecutor Mr.Manoj for prosecution. Mr.Shah submitted that the accused being a auditor himself raised objections in the tender process. If he met Mr.Kapoor while discharging the duty it does not mean that he is part of the conspiracy. There is nothing on record to show accused abused his position as a public servant.

6] Mr.Manoj urged that the accused being a auditor is not supposed to guide Mr.Kapoor how to resolve the objections raised by him. He himself suggested some corrections in the draft of the reply to the audit. This indicates he is part of the conspiracy.

7] The substantive offence against accused is u/sec. 120 of Indian Penal Code and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act. It is admitted fact accused being auditor is public servant. It is admitted fact that during tender process accused conducted the audit and raised objections that M/s Kapoor and Company was not the part of recommended manufacturer for the

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branded item. He has also taken the objection that there are various complaints against M/s Kapoor and Company of the candidates. No wide publicity was given to the processing etc..

8] D-17 and D-18 are audit objections. D-19 and D-20 are the first reply to the objections.

9] I would like to say that, auditor has legal right to raise the objection. He is not supposed to suggest the solutions for the objections taken by him. It is for the Department to comply with the objection and sent the reply to the audit branch and then it is for the Audit branch to settle the objection or may not be.

10] It appears from the statement of PW 15 Mr.Birendra Arya that he has prepared the reply for the objection at the instructions of Lt.Col.Subramaniam. At that time Mr. Karan Kapoor and his father were present with Mr.Subramaniam. It appears from his statement that witness went to R.K.Gupta along with the said draft along with Shri.Karan Kapoor and his father Ramesh in their vehicle. They met accused. The witness shown the draft to the accused. He gone through the draft and called Mr.Joshi from his office and asked him to go through and suggest required rectification so that the reply could be accepted and settlement memo be issued. Accordingly, Mr.Joshi suggested some corrections in the reply. This much evidence of Mr.Arya indicates what was the conduct of the accused. The conduct of the accused indicates he has intended to favour M/s Kapoor and Company. He has exceeded his duties being a auditor and it is nothing but abuse of the authority by the accused which is nothing but misconduct.

11] It appears from the statement of Mr.Yashwant Joshi that accused being auditor suggested the corrections in the draft

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reply to the objections. In his presence Birendra Arya had written the same in the draft. Besides that the draft reply also contain minor corrections which made by him with his own handwriting. Said action was taken by him at the instance of Mr.R.K.Gupta.

12] Apart from this it appears from the statement of Birendra Arya that accused met Mr.Kapoor in the Arora Tower in the Camp in the Coffee House. This is also not expected from the public servant to meet the litigant outside the office premises like in Coffee House or etc..

13] Thus, sum and substance is that auditor is not supposed to give the suggestions to anybody how to remove the objections taken by him. Thus, the act done by accused is nothing but misconduct committed by him while discharging the duty as auditor. Therefore, in the interest of justice I pass following order -

ORDER

Application exh.166 is rejected.

sd/-

(Pralhad C. Bhagure)

Special Judge (CBI-ACB), Pune.

Date – 01/04/2019

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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 : 01/04/2019
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