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Special Case No.43/2017

CNR No. MHPU01-012364-2017

CBI Vs. Jatinder Singh and others

ORDER BELOW EXH.167

1] This is an application filed by accused no.5 & 6 under section 227 of Cr.P.C. and requested to discharge them from the offences punishable under section 120-B, 420 of Indian Penal Code r.w. 11 and 13(2) r.w. 13(1)(d) of Prevention of Corruption Act.

2] It is the accusation of the CBI that accused Col. Kulbir Singh 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 and sent to accused Subramanian. Then accused Subramanian made the note

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and sent to his superior for approval through proper channel. Then tender was 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 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 no.3 being a 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.

3] It is the accusation that the accused no.5 being an employee of M/s Kapoor and Company and accused no.6 being a partner of M/s Kapoor and Company entered into conspiracy with the rest of accused and under the conspiracy they allowed their company as a part of the tender process though they were not entitled and got tender in their favour for providing readymade clothes. According to prosecution accused are the persons who has offered and given the bribe indirectly by providing the services of Hoteling to the accused no.1 and 2. The accused are the persons who unauthorizedly made attempts to settle the audit objections with the help of accused auditor Mr.Gupta. Therefore, investigation is conducted and charge-sheet is filed.

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4] Accused has filed this application and contended that there is no satisfactory ground or evidence to frame the charge against them. They have booked the Hotel in the name of accused no.2 under good faith because of the relations with him. The booking amount has been returned to him by the concerned officer. They being a contractor are supposed to meet the officers in the offices. No ingredients of cheating attracts against them under section 420 of Indian Penal Code. They requested to discharge from the all offences.

5] The CBI has filed say at exh.171 and submitted that the very conduct of the accused to book the Hotel and provide the services to the persons who are relevant to the tender process itself indicates they are the part of the conspiracy. CBI further submitted that the wife of accused no.5 has spent amount of R.40,000/- for giving the services to accused no.1 and 2 who are the officers to consider the tender process in favour of accused persons. According to CBI there is prima facie evidence which indicates accused are the part of the conspiracy. Hence, application deserves to be rejected.

6] First accusation against accused no.5 and 6 is that they have committed the offence under section 420 of Indian Penal Code. The material allegations against these accused are that they have booked Hotel to the officers who are the part of tender process. It is not disputed fact that the accused are concern with the M/s Kapoor and Company. It is not in dispute that they have filled the tender for providing readymade garments to NDA cadets. It is not in dispute they have met Mr.Subramaniam and Mr.Gupta in reference to the post tender process when objection was raised by

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the auditor.

7] In order to frame charge under section 420 of Indian Penal Code it is necessary to see whether there is material to say that the accused persons deceived NDA fraudulently or dishonestly induced the NDA to deliver any property. Further it is necessary to introduce something by which they can deceive NDA by any means.

8] I have gone through the statement of witnesses very carefully and cautiously. The material allegations against the accused are that they have booked Hotel at Mahabaleshwar and provided the services to the accused no.1 and 2 for their stay though they are aware they are the authority in the tendering process. The second allegations against accused are that they have called Mr.R.K.Gupta at Coffee House at Arora Towers. It is evident that accused auditor R.K.Gupta favoured M/s Kapoor and Company for removing the objections by exceeding his authority.

9] It is the accusation that accused entered in the conspiracy to get sanction the tender for providing the garments to the candidates of NDA unauthorizedly. The very fact appears from the statement of witness Ms.Diya Karan Kapoor who is wife of accused no.5 and witness Nisar Mahmood Sayyad, the accused no.5 and 6 paid the amount of Rs.40,000/- for the public servant for their stay at the guest house. The pay-in-slip is on record which supported prima facie to the statement of witnesses that the accused no.1 and 2 have availed the services from the clients.

10] Statement of Nisar Mohammad Sayyad, guest service Manager at Mahabaleshwar discloses that the wife of accused no.5 Diya has paid the amount of Rs.40,000/- for the stay of accused no.1 and 2 at Mahabaleshwar. This much conduct of the accused

persons indicates they are the persons who entered in to conspiracy to avail the services from accused no.1 and 3.

11] It appears from the statement of Mr.Arya that accused no.5 and 6 are the persons who managed the auditor to resolve the objections taken by him in the tender process. The very conduct of the accused no.5 and 6 prima facie indicates they are involved under section 120-B of Indian Penal Code r.w. 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act.

12] At the same time I would like to say that, the accused persons given the services to accused no.1, 2 and 3 with intention to avail the favour for completing the process of tender removed the audit objection etc.. The accused no.1 and 3 have availed the services. It indicates they are the part of conspiracy and therefore they have allowed the services given by accused no.5 and 6.

13] Nothing on record to show that the accused are involved in the offence of cheating under section 420 of Indian Penal Code. There is no accusation and details how accused have committed the offence of cheating. Mere mentioning the section 420 of Indian Penal Code in the charge-sheet itself is not sufficient to frame the charge against these accused under section 420 of Indian Penal Code. No ingredients of section 420 of Indian Penal Code attracts from the entire report.

14] Thus, there is material to frame the charge against these accused under section 120-B of Indian Penal Code r.w. 11 and 13(1)(d) r.w. 13(2) of Prevention of Corruption Act. Hence, in the interest of justice I pass following order -

ORDER

i] Application exh.167 is partly allowed.

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- ii] Accused no.5 and 6 are hereby discharged from the offence under section 420 of Indian Penal Code.
- iii] Charge be framed against accused no.5 and 6 for the offence under section 120-B of Indian Penal Code r.w. section 11 and 13(2) r.w. 13(1)(d) of Prevention of Corruption Act.

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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