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Special Case No.43/2017

CNR No. MHPU01-012364-2017

CBI Vs. Jatinder Singh and others

ORDER BELOW EXH.177

1] This is an application filed by accused no.1 Lt. General Jatinder Singh then Commandant of NDA Khadakwasla 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 no.1 that he was Commandant NDA Khadakwasla, Pune during the period of 2011 to 2014. He entered in to conspiracy with the rest of accused for considering the contract for the supply of various branded clothe items to the cadet of NDA for a period of three years from 2011 to 2014 and therefore he formed committee of Board of Officers (BOO). The committee of BOO abused their official position and as a part of conspiracy under dishonest intention made a proposal to accept the contract of M/s Kapoor and Company. The accused no.1 being a Commandant has approved the said contract though M/s Kapoor and Company were not entitled for the same. Though there were various complaints against the product of M/s Kapoor and Company, the accused no.1 awarded the contract to them. Thereafter, during a period of 17/6/2012 to 18/6/2012 the accused no.1 along with his family enjoyed the hotel services provided by M/s Kapoor and Company to stay at Mahabaleshwar and thereby committed offence of misconduct under the Prevention of Corruption

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Act. Therefore, accused is charge-sheeted for the offences 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.

3] Accused has filed this application and contended that he was the Head of NDA Khadakwasla. The BOO has carried out all process for tendering to purchase the clothes for cadet. Accordingly, tender of Mr.Kapoor and Company was recommended and therefore being a Head he approved the same. Accused is not the part of conspiracy with anybody. Accused Kulbir Singh and Subramaniam who were subordinate officers of accused no.1 are discharged. Therefore, no charge can be framed against accused no.1. The trip was arranged by Kulbir Singh. The amount was reimbursed by accused no.1 for the said trip. He was not in touch with M/s Kapoor and Company. No material available to frame the charge against him. He requested for discharge.

4] CBI has filed the say at exh.180 and reiterated the facts referred in the charge-sheet. According to it, the accused had entered into conspiracy with his subordinate officers and thereby approved the tender in favour of M/s Kapoor and Company. There were various complaints against the product of M/s Kapoor and Company. Accused has availed and enjoyed the services provided by M/s Kapoor and Company. It is enough proof to prove the involvement of accused no.1 in commission of offence. Hence, he requested to reject the application .

5] Heard learned advocate Mr.Harshad Nimbalkar for accused. He submitted that Col. Kulbir Singh who arranged the trip

is discharged by this Court. Col. Subramaniam who was processing the tender and added the name of M/s Kapoor and Company also discharged. Therefore, there is no ground to frame the charge against this accused. He further submitted that accused is the Head of NDA. Why he would allow M/s Kapoor and Company to pay the charges of Hotel stay as the petty amount is involved in question.

6] Learned PP Mr.Arikar submitted that at this stage the court is not supposed to go into the merit of matter. If there is sufficient material to frame the charge then court can frame the charge. The statement of witnesses and documents on record showing that accused no.1 being a public servant availed the services from its contractor M/s Kapoor and Company. This is enough to prosecute the accused under Prevention of Corruption Act.

7] What is the role of accused no.1. He was then Commandant of NDA Khadakwasla. He had authority to form the committee to purchase the clothes of candidates at the cost of their parents, BOO has processed and accordingly recommended the name of M/s Kapoor and Company. Accused being a commandant approved award of contract of M/s Kapoor and Company. I have gone through the statement of witnesses very carefully and cautiously. There is no such a statement or evidence on record showing accused no.1 has used his influence against Board of Officers to add the name of M/s Kapoor and Company in the process. He did not meet proprietor of M/s Kapoor and Company. However, he has approved the award in favour of M/s Kapoor and Company as a Commandant of NDA. Thus, there is no evidence

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showing that accused no.1 was part of conspiracy to add the name of M/s Kapoor and Company in the process and award the contract. Further, there is no evidence on record to show that the accused no.1 under dishonest intention allowed the contract in favour of M/s Kapoor and Company. The proposal was made by BOO and accordingly he has approved the contract. Thus, there is no material to say that, either accused no.1 is part of conspiracy or he has committed any act which covers under section 420 of Indian Penal Code.

8] It is the accusations that accused being a public servant availed the services from the contractor M/s Kapoor and Company. In view of section 11, 13(1)(d) of Prevention of Corruption Act the public servant is prohibited from taking any undue advantage from its litigant.

9] It is not in dispute accused no.1 along with his family members enjoyed the trip during the period of 17/6/2012 to 18/6/2012 along with Col.Kulbir Singh at Mahabaleshwar. The said fact is appeared from the statement of Nisar Maheob, Guest Service Manager of the Ever Shine Resort Mahabaleshwar. It appears from his statement that five rooms were booked in the name of Col. Kulbir Singh. It appears the cash deposit of Rs.40,000/- was made in the account of Resort on 15/6/2012 in the Bank at Pune.

10] It appears from the statement of Sunny Juneja that the accused no.1 has enjoyed the trip at private Hotel at Mabaleshwar during the period from 17/6/2012 to 18/6/2012.

11] It is not the case of accused no.1 that the aforesaid trip is official tour. According to him, amount was spent by Col.Kulbir

Singh and later on it was reimbursed by him. To that effect I would like to refer the statement of Divya Kapoor which discloses that she is family member of M/s Kapoor and Company. She has paid the charges of stay of accused no.1 at Hotel Mahabaleshwar through her account. It is admitted fact that accused no.1 is the person who approved the contract of M/s Kapoor and Company being a public servant. He was not supposed to avail the services from family of M/s Kapoor and Company. He availed it. The trip was arranged by Kulbir Singh at the say of accused no.1. The accused no.1 is the person to explain the source of money to arrange trip. Accused Kulbir Singh was not part of process of committee of BOO. When accused no.1 has availed the services at Mahabaleshwar, stayed there, it presumes he was aware the trip was arranged at the cost of M/s Kapoor and Company. The pay-in-slip (D-38) on record indicates the trip was enjoyed by accused no.1 at the cost of litigant. It is prohibited under section 13(1)(d) of Prevention of Corruption Act. There is evidence of aforesaid witnesses on record which leads accused being a public servant by corrupt or illegal means enjoyed a trip at Mahabaleshwar by obtaining pecuniary advantage by litigants. Therefore, there is material available on record to frame the charge against accused no.1 under section 11 and section 13(1)(d) of Prevention of Corruption Act. According to accused, after one year of the tender process the incident was happened. It may be after one year or five years that is not material. The material thing is that the accused no.1 being a public servant availed the services for himself and his family at the cost of contractor which is prohibited though after one year of the contract he enjoyed those services.

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12] Considering the aforesaid material there is prima facie case to frame the charge against accused no.1 under Prevention of Corruption Act. Hence, in the interest of justice, I pass following order -

ORDER

- a] Application exh.177 is partly allowed.
- b] Accused no.1 Jatinder Singh is hereby discharged from the offences punishable under section 120-B r.w. 420 of Indian Penal Code.
- c] The charge under section 11 and section 13(1)(d) of Prevention of Corruption Act be framed against accused no.1 Jatinder Singh.

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

Date – 11/7/2019

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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 : 11/7/2019
Date of PDF : 12/7/2019
Order uploaded on : 12/7/2019