

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 8th August, 2022**

+ CRL.M.C. 2942/2016, CRL.M.A. 12639/2016 (for ad interim stay)
VINOD KUMAR KILA Petitioner

Through: Mr. R.K. Handoo, Mr. Aditya
Chaudhary & Mr. Garvit Solanki,
Advocates.

versus

C B I Respondent

Through: Mr. Mridul Jain, SPP

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed under Section 482 Cr.P.C. challenging the order on charge dated 6th May, 2016 and framing of charge dated 14th May, 2016 by the learned Special Judge-03 (PC Act), CBI, Patiala House Courts against the petitioner under Section 109 Indian Penal Code (for short IPC) read with Section 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988 (for short PC Act).

2. It may be noted at the outset that the CBI registered an FIR no. 4/2008 against Arvind Kumar, Chief Engineer, Bangalore Metro Rail Corporation, under Section 13(2) read with 13(1)(e) of the PC Act read with Section 109 IPC, being a public servant, found to be in possession of assets beyond the disclosed source of income. The FIR was also filed

against his wife and several others, of whom the petitioner is one.

3. According to Mr. R.K. Handoo, learned counsel for the petitioner, the petitioner was not named in the FIR. However, when the chargesheet was filed against Arvind Kumar and his wife Smt. Indu Kumar and others, the petitioner was also arraigned as an accused namely accused No.8. Learned counsel submitted that the Special Judge took cognizance and summoned all the accused including the petitioner. Learned counsel for the petitioner submitted that the learned Trial Court had erred in framing charge against the petitioner, in the absence of any evidence against him raising grave suspicion of his having conspired in the commission of the offence by the public servant.

4. The case alleged against the petitioner was that he being a Chartered Accountant had furnished names of his clients to the accused No.2 to aid her in converting black money into white, by receiving cash from her and issuing cheques in return. These allegations were based on three statements recorded under Section 164 Cr.P.C. given by Pramod Kumar Basotia, Ashok Kumar Sharma and Govind Saini. However, these persons have been named as accused in the chargesheet being A-3, A-4 and A-10 respectively and cognizance has been taken against them. Thus, relying on the judgment in *Suresh Budharmal Kalani v. State of Maharashtra*, (1998) 7 SCC 337, it was submitted that the confessional statement of an accused could not be used against the petitioner, who was a co-accused.

5. Learned counsel for the petitioner further submitted that 44 witnesses out of a total of 120 have been examined so far, yet nothing inculpatory has come against the petitioner. It was also submitted that at no point of time had the petitioner held any money on behalf of the public

servant. The money belonged to A-2, Smt. Indu Kumar and he was only the Chartered Accountant of her company, M/s A.I. Developers and thus had nothing to do with the public servant.

6. Furthermore, the three accused persons had retracted their so-called confessions recorded under Section 164 Cr.P.C. which rendered these statements to be nothing more than statements of co-accused upon which no reliance could be placed qua the petitioner. It is submitted that apart from these retracted statements of the co-accused, there was not a shred of evidence against the petitioner to establish that he had abetted the commission of the offence by the public servant.

7. Learned counsel for the petitioner further submitted that the impugned order would show that the charge was framed by the learned Trial Court believing that in the course of the trial, any one of the accused may prefer to testify under Section 315 Cr.P.C. read with Section 21 of the PC Act or better still, the confessional statement under Section 164 Cr.P.C. may be proved and, therefore, available to be used by the prosecution under Section 30 of the Indian Evidence Act, 1872. Learned counsel submitted that this was a convoluted reasoning. Thus, it was prayed that the petition be allowed and the order on charge as well as the charge framed be quashed.

8. Mr. Mridul Jain, learned SPP for the respondent, on the other hand, submitted that the scope of this petition was limited and narrow and the court cannot enter into re-assessment of the material on the record. Relying on the judgment of the Supreme Court in *Asian Resurfacing of Road Agency (P) Ltd. v. CBI*, (2018) 16 SCC 299, it was submitted that the court ought to exercise its revisional or inherent powers only to correct

jurisdictional errors and that too in the rarest of rare cases.

9. It was submitted that no such case was made out in the instant petition. It was submitted that in the three statements recorded before the learned MM under Section 164 Cr.P.C, the petitioner had been named and there were corroborating documents on the record such as account opening form etc. which connected the petitioner to the commission of the offence. Moreover, the question whether the statements have been retracted or were correctly recorded by the learned MM when they were voluntarily made are such that can be determined only during trial. Further, what the witnesses have testified so far in court was irrelevant to the petition as it is only the charge and the order on charge which are under challenge in this petition.

10. It was submitted that the cases relied upon by the learned counsel for the petitioner being *Baburao Bajirao Patil v. State of Maharashtra*, (1971) 3 SCC 432, *Shivappa v. State of Karnataka*, (1995) 2 SCC 76, *Tulsi Singh v. State of Punjab*, (1996) 6 SCC 63 and *Surinder Kumar Khanna v. Directorate of Revenue Intelligence*, (2018) 8 SCC 271 were final judgments passed after appreciation of evidence recorded during trial, whereas here the challenge lay only to the framing of charge. Hence the standard of evaluation of the material on record in those cases would not be attracted here, as the Trial Court was not required to assess the material presented by the prosecution in that depth and detail while framing charge. The learned Trial Court had considered in detail the materials available against the petitioner and had rightly framed charge against him. What was required to be seen was whether there was a reasonable connection of the petitioner with the commission of the offence and not whether the material

was sufficient to return a finding of actual guilt. Hence, the petition be dismissed.

11. In rejoinder, the learned counsel for the petitioner reiterated that in fact there was no reasonable connection disclosed on the record since none actually existed.

12. I have heard the learned counsel for the petitioner and learned SPP for the CBI and have perused the record including the cited judgments.

13. The Supreme Court in *Asian Resurfacing of Road Agency (P) Ltd* (supra) declared that an order framing charge is not purely an interlocutory order nor was it a final order and therefore, the jurisdiction of the High Court was not barred irrespective of the label of the petition, be it under Section 397(2) or 482 Cr.P.C. or even Article 227 of the Constitution. The only note of caution was that this jurisdiction had to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial and a challenge to the order on charge should only be entertained in the rarest of the rare cases and where there was a jurisdiction error and not otherwise.

14. The appropriateness of the impugned order on charge and the charge framed is to be seen on the basis of the chargesheet that has named the petitioner as accused No.8. His role as noticed by the learned Special Judge in the impugned order is that he was a Chartered Accountant of the company of Smt Indu and played a pivotal role in routing illegal money of Arvind Kumar, the main accused, as he arranged companies and persons whose bank accounts were used for channelizing illegal money of the main accused. He is supposed to have furnished the name of accused No.3 Pramod Kumar Basotia and accused No.4 Shri Ashok Sharma among

others and facilitated the routing of illegal gains. The learned Trial Court observed that at the stage of framing of charge, the question of intent in committing the act could not be considered and no conclusion could be drawn that he unintentionally acted so during the normal course of his business as a Chartered Accountant. With regard to the statements under Section 164 Cr.P.C., the learned Trial Court observed that there was other material namely document No.253 and document No.92 to support the case against the petitioner. It further relied on Section 30 of the Indian Evidence Act to consider these confessions. Thus, it concluded that it was not a case where there was no material against petitioner being Accused No.8. Accordingly, it framed the charge under Section 13(2) read with 13(1)(e) of the PC Act read with Section 109 IPC against him.

15. No doubt, it further went on to observe that the possibility could not be ruled out that one of the accused persons could become an approver and disclose to the court the entire conspiracy. The learned Trial Court also held that the possibility of one of the accused coming into the witness box under Section 315 Cr.P.C. read with Section 21 IPC could not also be ruled out and, therefore, when such a situation arose, the court would be justified to consider the aforesaid confession(s) of that/those accused to reach a decision after the trial. It concluded that grave doubt was enough to frame charge.

16. There is no gainsaying that such a reasoning is indeed convoluted. Charge can be framed only on the material before the court and cannot be based on speculation. The court had to consider whether on the chargesheet and documents relied upon by the CBI, including the retracted confessional statements recorded under Section 164 Cr.P.C, there were

sufficient grounds to frame charge against the petitioner. The learned Trial Court itself records in the impugned order that in both the letters i.e., D-92 and D-253 relied upon by the prosecution, the petitioner has not been mentioned and that the confessional statements have been retracted. Clearly, therefore, the prosecution necessarily had to point what other material existed that would connect the petitioner with the offence so that if and when the confession is proved, it can assist the court to come to a just decision.

17. The law laid down by the Supreme Court in ***Surinder Kumar Khanna*** (supra) is to this effect that the prosecution would have to first consider the evidence against the accused excluding the confession altogether from the consideration and if some evidence could lead to a conviction, the confession would not be even called in aid. It is also only in those cases where the other evidence could be believed but the court is of the view that it would not be sufficient to sustain a conviction, the confession may be used to lend assurance to the other evidence.

18. The application of Section 30 in the Indian Evidence Act has been sought to be repelled by the learned counsel for the petitioner by relying on the decision of ***Suresh Budharmal Kalani*** (supra). However the facts of that case were much different, since the person whose confession was sought to be used against the accused person had himself been discharged from the case and in that case the accused making the confession was not facing trial jointly with the accused against whom the confession was sought to be used. At the same time, to apply Section 30 of the Evidence Act, and for the court to take into consideration a confession by one accused against the co-accused being tried jointly for the same offence, the

court is to also see if there is other convincing evidence against him.

19. It would be improper to sustain a conviction only on a confession assuming that it was proved to have been voluntarily made and had all the features which makes a statement a confession. An accused is a competent witness under Section 315 of the Cr.P.C. but it is a peculiar reasoning that the Court ought to wait till the conclusion of the trial for any of the accused to become a witness in favour of the prosecution, to then use that against a co-accused viz the petitioner herein. It is strange that the learned Trial Court thought it appropriate to refer to Section 315 Cr.P.C. rather than to Section 319 of the Cr.P.C. which empowers the court to proceed against any person appearing to be guilty of an offence during the course of trial, after the submission of the chargesheet. The discharge of an accused will not limit the powers of the Trial Court under Section 319 Cr.P.C. (see ***Hardeep Singh Vs. State of Punjab*** (2014) 3 SCC 92 [5-Judge Bench] and ***Deepu alias Deepak vs State of Madhya Pradesh*** (2019) 2 SCC 393).

20. The record discloses no independent material against the petitioner. Even the learned Trial Court in the impugned order refers to no such material. Retracted statements of a co-accused will be utterly inadequate to establish, *prima-facie*, the participation of the petitioner in a conspiracy with the co-accused to facilitate the commission of the offences under Section 109 IPC read with Sections 13(2), 13(1)(e) of the PC Act in respect of which the charge has been framed against the petitioner which was why the learned Trial Court wanted to wait and watch, for a probability that did not exist in the immediate present, and which decision of the learned Trial Court cannot be upheld.

21. In the light of the foregoing discussion, the impugned order on

charge as also the charge cannot be sustained and are liable to be and are quashed.

22. The petition is allowed and the order on charge dated 6th May, 2016 and the charge dated 14th May, 2016 framed by the learned Special Judge-03 (PC Act), CBI, Patiala House Courts, against the petitioner, stand quashed. Resultantly, the petitioner stands discharged from the Sessions Case CC No.9/2013 RC No.4A/2008/CBI ACU-IX/ND relating to FIR No.4/2008 under Section 109 IPC read with Sections 13(2), 13(1)(e) of the PC Act, PS ACU-IX CBI. Copy of this order be transmitted to the learned Trial Court electronically.

23. The pending application also stands disposed of.

24. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 08, 2022
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