

Before Paramjeet Singh, J.

SANJEEV KUMAR—Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION—Respondent

CRR No. 151 of 2012

April 01, 2013

Code of Criminal Procedure, 1908 - S.401 - Indian Penal Code, S.471 and 120-B - Prevention of Corruption Act, 1988 - S.1(2) read with S.13(1)(d), 19(3) - Petitioner accused of offence under S.471 read with 120-B IPC and under S.1(2) read with S.13(1)(d) of the Prevention of Corruption Act, 1988 - Charge framed - Revision Petition filed against framing of charge - Contention that framing of charge has to be understood in the context of Cr.P.C. and therefore order revisable - Held, that the order framing charge was an interlocutory order, and revision against such an order barred under S.19(3)(c) of the Prevention of Corruption Act - Petition dismissed.

Held, that in Dharambir Khattar's case (supra), the learned Single Judge after discussing various judgments of the High Courts and the Hon'ble Supreme Court specially State vs. Navjot Sandhu and others, (2003) 6 SCC, 641, and Satya Narayan Sharma's case (supra) has come to a conclusion that order framing charge is an interlocutory order and revision against the order framing charge is barred under Section 19(3)(c) of PC Act. The Division Bench of the Delhi High Court in Anur Kumar Jain's case (supra) has also considered elaborately various judgments and has come to a conclusion that charge framed under the PC Act is an interlocutory order, revision against such an order is barred under Section 19(3)(c) of the PC Act.

(Para 10)

Vikas Sharma, Advocate, for Mr. S.S. Narula, Advocate, *for the petitioner.*

S.S. Sandhu, Standing counsel for CBI.

PARAMJEET SINGH, J.

CRM No.6140 of 2012

(1) CrI. Misc. application is allowed. Annexures P/10 to P/19 are taken on record.

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(2) The instant criminal revision has been filed under Section 401 of the Code of Criminal Procedure for quashing of order to frame charge dated 04.11.2011 (Annexure P/1), Charge-sheet framed vide order dated 26.11.2011 (Annexure P/2) and Order regarding non-supply of documents dated 05.12.2011 (Annexure P/3) in case FIR No. 2(A) 2005 dated 16.02.2005, under Sections 120-B, 471 of the Indian Penal Code and Sections 1(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, (hereinafter referred to as the PC Act) registered at Police Station CBI, ACU-IX, New Delhi.

(3) Brief facts of the case are that for implementation of District Primary Education Programme (DPEP) in the State of Haryana, a society known as "Haryana Prathmik Shiksha Pariyojna Parishad" (HPSPP) was formed. Accused-Sanjeev Kumar, an IAS Officer, remained SPD of HPSPP, in the years 1998-99 and 1999-2000. He, as SPD, was responsible for various activities, being undertaken under DPEP and approved all the purchases made by District Project Coordinator (DPC). It is alleged that Sanjeev Kumar, Smt. Kiran Mishra, Deputy Director Media and Raj Kumar Sharma (Approver) and other unknown persons, in conspiracy with each other, committed irregularities, in purchase of various items. It is further alleged that accused-Sanjeev Kumar accorded sanction of Rs.3,51,900/- for purchase of LCD Projector, under the DPEP Programme. It is also alleged that Sanjeev Kumar, in league with Kiran Mishra, his subordinates and private persons like Raj Kumar Sharma etc. as a part of conspiracy, in fraudulent manner, procured the LCD Project by forging the bids and used them as genuine and did not follow the due procedure with sole intention to cause undue favour to private persons and also to derive personal benefit out of such exercise.

(4) Finding a prima facie case of the commission of offences by the accused under Section 120-B read with Section 471 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988

charge was framed against the accused vide order dated 04.11.2011 (Annexure P/1) Hence, this criminal revision.

(5) At the very outset, learned counsel for the CBI raised a preliminary objection that revision petition is not maintainable. It is contended that in terms of Section 19(3)(c) of PC Act, no court can exercise power of revision in relation to interlocutory order passed in any inquiry, trial, appeal or other proceedings by the Trial Court. It was also contended that order to frame charge and framing of charge are interlocutory orders against which no revision lies to the High Court.

(6) Before I consider the other contentions raised by the learned counsel for the parties on merits, I deem it appropriate to decide the preliminary objection regarding maintainability of revision petition.

(7) Learned counsel for the CBI vehemently contended that opening words of Section 19(3) of the PC Act indicate that it is a nonobstante clause and therefore provisions of Cr.P.C. or Section 22 and 27 of the PC Act cannot be invoked to show that revision is maintainable. Reliance has been placed upon *Satya Narayan Sharma versus State of Rajasthan (1)*, where in the context of stay order granted by the Special Court under the PC Act the scope of Section 19(3)(c) has been considered by the Hon'ble Supreme Court and it has been held that not stay of proceedings before the Special Court could be granted even by the High Court in view of the said provision. Learned counsel for the CBI further relied upon the judgments of the Delhi High Court in *Criminal Revision Petition No. 340 of 2008 titled as Dharambir Khattar versus C.B.I., decided on 05.05.2009 (2) Om Parkash versus C.B.I. (3)*, and *Anur Kumar Jain versus CBI (4)*, to substantiate his contention.

(8) Learned counsel for the petitioner contended that in any event an order on charge under the PC Act and the order to frame charge has to be understood in the context of Cr.P.C. and relied upon *Madhu Limaye versus State of Maharashtra (5)* that such order is revisable.

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- (1) (2001) 8 SCC 607
 - (2) 2009 IV AD (Delhi) 657
 - (3) 2010(7) R.C.R. (Cr.) 1077
 - (4) 2011 (178) DLT 501
 - (5) (1977) 4 SCC 551

(9) I have considered the rival contentions of the learned counsel for the parties and perused the judgments cited at bar.

(10) In *Dharambir Khattar's case (supra)*, the learned Single Judge after discussing various judgments of the High Courts and the Hon'ble Supreme Court specially *State versus Navjot Sandhu and others (6) and Satya Narayan Sharma's case (supra)* has come to a conclusion that order framing charge is an interlocutory order and revision against the order framing charge is barred under Section 19(3)(c) of PC Act. The Division Bench of the Delhi High Court in *Anur Kumar Jain's case (supra)* has also considered elaborately various judgments and has come to a conclusion that charge framed under the PC Act is an interlocutory order, revision against such an order is barred under Section 19(3)(c) of the PC Act.

(11) In *Bharat Parikh versus CBI and another (7)*, CRR No. 151 of 2012 5 the Hon'ble Supreme Court has considered the issue of maintainability of revision against charge and observed as under:-

"16. With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under Section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in State of Haryana vs. Bhajan Lal, 1992 Cri. L.J 527, that a criminal proceeding may be quashed to secure the ends of justice, but such a state will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed. As observed in Debendra Nath Padhi's case (supra) at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submission on behalf of the accused has to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the

(6) (2003) 6 SCC, 641

(7) (2008) 10 SCC 109,

documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to re-open the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure.”

(12) In view of settled position of law, I hold that the instant revision petition is not maintainable.

(13) Since arguments on merit were also addressed, I have also perused the order to frame charge dated 04.11.2011 (Annexure P/1), Charge-sheet framed vide order dated 26.11.2011 (Annexure P/2) and order regarding non-supply of documents dated 05.12.2011 (Annexure P/3). In view of this, I would like to observe that perusal of these orders reveals that Special Court has judiciously applied its mind to the evidence available on record and has come to a clear conclusion that prima facie case has been made out against the petitioner. At the stage of framing of charge, the Court is to look into the material collected by the Investigating Agency only. The impugned orders of the Special Judge are based on material available on the record and are reasoned and have not been passed in a mechanical/casual manners so as to vitiate the trial.

(14) I, therefore, consider that the present revision filed by the petitioner against charge framed by the Special Judge, CBI is not maintainable and is liable to be dismissed as such, as also being devoid of merit. Ordered accordingly.

P.S. Bajwa