

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**Criminal Revision No. 1312/2015**

Ashish Agrawal

Vs.

Central Bureau of Investigation

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**Division Bench : Hon'ble Shri Justice Shantanu Kemkar &  
Hon'ble Shri Justice G.S. Solanki**

**Present :**

Shri Surendra Singh, learned Senior Counsel with Shri Manish Mishra, learned counsel for the applicant.

Shri J.K. Jain, learned Assistant Solicitor General for the respondent/CBI.

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**Heard on : 27.07.2015**

**Order passed on :**

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**ORDER**

**Per : G.S. Solanki, J.**

1. Applicant has preferred this revision petition u/s 397/401 of Cr.P.C. being aggrieved by the order dated 26/05/2015 passed by Special Judge, CBI, Bhopal in Case No. SC/CBI/2/2015 whereby the application filed by him u/s 173 (8) of Cr.P.C for passing the order of further investigation has been rejected.

2. Facts, in short, giving rise to this petition are that applicant was working as General

Manager, Food Corporation of India, Regional Office, Bhopal. During 26/12/2011 to 22/03/2014 on deputation from Department of Telecommunication under Ministry of Communication & I.T while posted and functioning as General Manager, Food Corporation of India, Regional Officer, Bhopal he was the overall In-charge of Food Corporation of India, Regional Office, Bhopal. On 24/08/2012 Food Corporation of India, Regional Office, Bhopal floated a tender notice for sale of wheat to bulk consumers/traders under OMSS (D). Subsequently, many other similar tenders were also floated. Clause -K of the tender reads as follows:-

“K- Buyer will make his own arrangement for transport and will not be entitled to claim any facility or assistance for transport from the Food Corporation of India. Delivery of the stocks will be made duly loaded in the trucks of the tenderers at the cost of Food Corporation of India.”

3. Complainant Pawan Jindal, Director, R.B. Commodities Pvt. Ltd. participated in these tenders. This company and 16 associate companies purchased wheat against tenders of Food Corporation of India during 09/12/2012 to 15/03/2013. As per the tender conditions,

loading charges for the purchased wheat were to be done by Food Corporation of India, however, the same were borne by the complainant and 'firms related to him'. The complainant deposited the refund claims/bills of wheat, in the Food Corporation of India, Head (Regional) Office. The total amount of such bills was approximately Rs. 85 lacs.

4. It is further alleged that applicant demanded Rs. 10 lacs from Pawan Jindal for clearing payment of the refund claims as made by him. Subsequently, the applicant agreed to receive part payment of Rs. 5 lacs from the complainant on 22/03/2014. On that date, a trap was arranged. The complainant went to the residence of the applicant and placed two packets containing Rs. 5 lacs in a chair in the house of applicant. He thereafter signaled the raid party, who seized Rs. 5 lacs in two packets from a chair in the house of the applicant.

5. The conversations recorded during the transactions of the bribe between the complainant and the accused, statement of shadow eye witness, statement of complainant, the sequence of events and recovery of bribe amount found lying on the chair kept in the drawing hall of residence of accused, proved

that the accused had knowingly received the bribe amount of Rs. 5 Lakh in two envelopes from the complainant. As explained in the above para, the witness Shri Mukesh Malviya had physically delivered bribe amount of Rs. 2.5 Lakh to the complainant in the presence of the accused. Further, the tainted bribe amount of Rs. 5 Lakh was recovered while the same was found kept in two open envelopes on a chair in the drawing room of the accused in the immediate presence of the accused and the complainant. Moreover, there is nothing in the live recording of conversation, to contradict, the statement of complainant. Therefore, even though the tainted bribe amount was not touched by the accused, the acceptance of bribe amount on the part of accused is well established.

6. The voice samples of complainant and questioned recorded voices, i.e. the recorded conversations held between the complainant and the accused during verification proceedings and post trap proceedings as available in the memory cards, were sent to the CFSL, New Delhi for expert opinion. The Forensic Voice Examination Report No. CFSL-2014/P-0723 dated 3.9.2014 of the VFSL, New Delhi

confirmed that the audio recordings are continuous and no form of tampering detected. This report also confirms that said questioned recordings contain voices of the complainant. The complainant has also identified his voices as well as that of the accused in the recorded conversations.

7. It reveals from the impugned order that applicant has filed an application u/s 173 (8) of Cr.P.C for making the direction for further investigation to Investigation Agency/CBI on the ground that complainant has falsely implicated the applicant (accused). It is further pleaded that complainant has filed a written claim on the basis of bogus bills regarding labour and loading charges. It is pleaded that after the incident (trap) this applicant has made complaint to Chief Vigilance Officer, FCI regarding this claim and one Mr. Vijay Kumar, ED (Vig.) prepared a report and submitted to FCI and recommended for lodging the case with the CBI but still no action has been taken therefore, Court should direct CBI to make further investigation in the matter. Trial court after hearing the applicant and CBI has rejected the aforesaid application on the ground that if any investigation is made by Chief Vigilance Officer, FCI same has no

concerned with this case. Hence, this petition.

8. Learned senior counsel appearing on behalf of the applicant submits that trial Court has committed illegality in passing the order of dismissal of aforesaid application. It is further submitted that investigation into the genuineness of the refund claim bills related to loading charges is essential for the just decision of the case. It is submitted that there are sufficient material collected by prosecution agency to show that complainant never performed the act of loading. Still he submitted forged and fabricated claim. Further as per prosecution this applicant said to have demanded bribe for passing such claim which prima facie appears to be false therefore, trial Court ought to have pass the order of further investigation into the matter. Learned counsel placed reliance on **(2009) 7 SCC 685 Kishan Lal Vs. Dharmendra Bafna and another, (2009) 6 SCC 346 Ram Chaudhary Vs. State of Bihar.**

9. On the contrary, learned counsel appearing on behalf of the respondent/CBI has supported the order passed by the trial Court. He submitted that neither complainant nor accused can claim further investigation as a

right after the charge sheet is filed. It is further submitted that if any discrepancy found in the case of prosecution, it is open for applicant/accused to bring evidence in his defence. On the basis of aforesaid arguments, he pray for dismissal of the petition.

10. We have perused the impugned order alongwith the other material available on record. It is true that after completion of the investigation, the police has a right to 'further' investigation under sub-section (8) of Section 173 of Cr.P.C but not 'fresh investigation' or 'reinvestigation' as observed by Apex Court in the case of ***Rama Choudhary (supra)***. But such further investigation is when permissible, this aspect is elaborately considered by the Apex Court in the case of ***Kishan Lal (supra)*** thereafter, Apex Court held that further investigation is only permissible (1) when new facts come to light or (2) when superior courts find that the investigation is tainted and/or unfair or (3) when superior courts find that it is required in the ends of justice. When we considered the facts of this case in the light of aforesaid principles, we find that facts of this case are totally different because it is a trap case wherein prosecution agency shown strong

prima facie case in regard to demand and acceptance of bribe on which this applicant has taken the defence that he has been falsely implicated by the complainant and the complainant wanted to get the claim of bogus bills regarding payment of labour and loading charges.

11. He further took the defence that some work of loading has not been performed by complainant and for which after the incident (trap) he made complaint to Vigilance Officer, FCI who investigated the matter and recommended to refer the matter to CBI. Prima facie this defence does not rule out and displaces the charges of demand of bribe and accepting the bribe without necessity of recording any evidence. This fact not comes under the purview of new evidence. Further from perusal of material collected during investigation in regard to demand and acceptance of bribe, it cannot be said that investigation is tainted or unfair. If applicant has made a report to Chief Vigilance Officer, FCI after the incident (trap) and Chief Vigilance Officer, FCI found that some bills were bogus, the same cannot be made the basis of further investigation. It is well settled that if



complainant having impression that Public Officer (applicant) can play an important role in passing the claims and such Public Officer made a demand and ultimately accepted the bribe then he may be prosecuted for the offence of demand and acceptance of bribe as held by the Kerala High Court in the case of **Cherian Lukose Vs. State of Kerala, AIR 1968 (Ker) 60**. In such circumstances, concerning bills were genuine or forged, is immaterial. Under such circumstances, if trial Court has refused to direct the further investigation, it cannot be said to be illegal.

12. In view of the aforesaid discussion, we are of considered view that the trial Court has not committed any illegality in passing the impugned order.

13. Consequently, we do not find any ground to make interference in the impugned order under the revisional jurisdiction of this Court. The criminal revision is hereby dismissed.

**(Shantanu Kemkar)**  
**Judge**

**(G.S.Solanki)**  
**Judge**