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HIGH COURT OF MADHYA PRADESH : JABALPUR

M.Cr.C. No. 8643/2015

Ashish Agrawal

Vs.

Central Bureau of Investigation

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

Present :

Shri Pranay Gupta, learned counsel for the applicant.

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

Heard on : 27.07.2015

Order passed on : 18.8.2015

ORDER

Per : G.S. Solanki, J.

- 1) The applicant should have filed criminal revision against the impugned order but instead he has filed this petition under Section 482 of the Cr.P.C. However, since we have heard the matter at length, instead of dismissing it on this ground we are deciding it on merits treating it as a criminal revision.
- 2) This revision has been filed by the applicant being aggrieved by order dated 20.5.2015 passed by Special Judge, CBI, Bhopal in Case No. SC-CBI/2/15 by which the application filed by the applicant under Section 207 read with Section 173(5) of the Cr.P.C. has been rejected.
- 3) The facts, in short, giving rise to this revision are that a written complaint was made by Pawan Jindal, Director, R.B. Commodities Pvt. Ltd. on 21.3.2014 against the applicant, who was General Manager, Food Corporation of India, Regional Office, Bhopal, alleging that his company M/s R.B. Commodities

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Pvt. Ltd. and his associate companies had purchased wheat against tenders of FCI, Head (Regional) Office, Bhopal during 9.12.2012 to 15.3.2013. As per the tender conditions, loading charges for the purchased wheat were to be borne by FCI; however, the same were borne by the complainant and "firms related to him". The complainant deposited the refund claims/bills related to loading charges of wheat, in the FCI Head (Regional) Office and District Office. The total amount of such bills was approximately to the tune of Rs.85 Lakhs. The applicant demanded bribe of Rs. 10 Lakh for making payment of such bills. The complainant did not want to pay the bribe amount, therefore, he lodged the complaint with SP, CBI, Bhopal to take appropriate legal action.

4) During verification of the complaint, it was revealed that the applicant demanded a bribe of Rs. 10 Lakh from the complainant as a motive for making payment of the said refund claims/bills of loading charges and agreed to receive the part payment of Rs. 5 Lakh from the complainant on 22.3.2014. In furtherance of the said demand of bribe from the complainant, the applicant was caught at his residence while demanding and accepting Rs. 5 Lakhs as part payment of the demanded bribe amount from the complainant, therefore, a Regular Case bearing No. RC-0082014A0004 was registered by CBI, Bhopal.

5) It was alleged that the applicant while posted as General Manager, FCI, Bhopal demanded and accepted bribe from the complainant by misusing/abusing his official positions for making payment/passing orders for making payment of the refund

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claims/bills of loading charges of the complainant and other "firms related to him. It was further alleged that the complaint dated 21.3.2014 was verified in the presence of an independent witness as per the description mentioned in the Verification Memo of the complaint. During verification proceedings on 21.3.2014, the complainant took appointment to meet the applicant by exchanging SMS's from his mobile number 09899580902 to mobile number 9425632832 of the applicant and met the applicant in his office on 21.3.2014 at about 7 PM and held negotiation with the accused. The accused demanded a bribe of Rs. 10 Lakh from the complainant whereupon the complainant requested the accused to take only Rs. 5 Lakh and settle the matter of payment of refund claims of the loading charges. But the accused again asked the complainant to pay Rs. 10 Lakh, therefore, the complainant replied that he would be able to pay only Rs. 5 Lakh next day i.e. 22.3.2014 and the balance amount would be paid later on. Thereafter, the accused agreed to take Rs. 5 Lakh as part payment of total bribe amount of Rs. 10 Lakh. During conversation, the time and place for delivery of said bribe amount was decided by the applicant at his house and was to be delivered on 22.3.2014 at about 8:30 am, before his leaving to office. The recorded conversations between complainant and accused revealed that the applicant demanded Rs. 10 Lakh as illegal gratification from the complainant for passing of pending refund claims/bills of refund of loading charges of wheat purchased by the complainant and "firms

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related to him” which was purchased against tenders of the FCI, Bhopal during the last financial year i.e. 2012-13.

- 6) During investigation, as per the recorded conversation of the Verification proceedings and as per the statement of the complainant, it was found that besides the demand of bribe of Rs. 10 Lakh for refund of the loading charges for wheat purchased in the year 2012-13, the applicant had also demanded Rs. 10 Lakh for four tenders. In this regard the complainant stated that during the year 2013-14, four tenders of dedicated movements were floated by the FCI, RO, Bhopal. The complainant and his associated firms purchased wheat against these four tenders. For this purpose also the applicant demanded a bribe of Rs. 10 Lakh from him but the work related to the tenders of the dedicated movement was over, hence he did not held further conversation in this regard rather held conversation with the accused only regarding the pending matter of refund claims of the wheat purchased during 2012-13. During investigation information regarding dedicated movement was collected through a letter No. Vig. 4(24)/RO BPL/CBI Case/2014 dated 11.7.2014 (*Document No. 65 & 66 of this charge sheet*) which established that the complainant and “firms related to him” purchased wheat against the four tenders of dedicated movement during 2013-14. The tender was floated by Regional Office, Bhopal. Therefore, it is established that the accused not only demanded the bribe for payment of pending refund claims of loading and weighment charges but also for the four tenders of dedicated movement in the year 2013-14.

- 7) On confirmation of demand of bribe by the accused, the pre-Trap proceedings were carried out on 22.3.2014 in the presence of two independent witnesses as per the description mentioned in the Pre-Trap Memo dated 22..3.2014. An amount of Rs. 5,00,000/- to be used as bribe amount was produced by the complainant.
- 8) The complainant having an envelop containing bribe amount of Rs. 2,50,000/- went inside the house of the applicant. In the drawing room, the applicant had held discussions with the complainant about his business matter as well as his pending refund claims of the loading charges with FCI office, Bhopal. The accused even promised to do the work of the complainant i.e. passing of refund claims. After discussions for sometime, on demand of the bribe by gesture by the accused, the complainant informed the accused of bringing Rs. 2,50,000/- by saying "*theek hai sir, ye abhi, isme dhai (i.e. two and half) hai sir*" and asked him as to where to keep the same by saying "*kahan rakhun sir*". The accused accepted the bribe amount by saying "Hun" and directed the complainant to keep the amount there only by giving gesture and saying "*yahin niche*". The complainant tried to hand over the envelope having Rs. 2,50,000/- to the applicant but he directed the complainant to keep the envelop on a chair by gesture. Accordingly, the complainant kept the envelope containing Rs. 2,50,000/- on a chair kept there. The complainant had also informed the accused about the contents of envelope kept by him on the chair there i.e. Rs. 2,50,000/- and also informed him that another Rs. 2,50,000/- was with his person

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who was waiting outside his house. The complainant even explained the accused that he had brought the bribe amount of Rs. 5 Lakh in two envelopes as there was checking due to elections. Then in the presence of the accused Ashish Agrawal the complainant called Shri Mukesh Malviya (witness) from his mobile No. 9899580902 on his mobile No. 9826311647 saying to bring a yellow colour envelope containing Rs. 2.50 Lakh in the house of Shri Ashish Agrawal. As evident from the relevant recorded conversations, the accused was even skeptical about the person with whom the remaining Rs. 2.5 Lakh was kept by the complainant. The accused even told the complainant to give the bribe amount later on i.e. in the evening but the complainant said that he had to return back, so the accused agreed to accept the remaining amount. The complainant even told the accused that he would send the remaining Rs. 5 Lakh by the next Saturday/Sunday, whereupon the accused also held talk with the complainant regarding the pending refund claims of the complainant so that the complainant can get the claims. In the meantime, Shri Mukesh Malviya (witness) came and handed over another envelope having Rs. 2,50,000/- to Shri Pawan Jindal which Shri Jindal tried to hand over to the accused Ashish Agrawal but he again, by gesture, asked the complainant to keep the amount on the chair itself. Accordingly, the complainant kept this envelope also on the same chair. All these conversations held between the complainant and the accused was recorded in the new and fresh Micro SD Card (Memory Card) through the digital voice recorder kept in the upper left pocket of Shirt of

Shri Pawan Jindal (Complainant). Thus, the recorded conversation clearly established the acceptance of bribe amount by the accused Shri Ashish Agrawal from the complainant for the pending matter of refund claims of loading charges.

9) 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 above para. 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.

10) 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.

- 11) On the basis of the aforesaid proceedings, the applicant has been charge sheeted before Special Judge. Case No. SC-CBI/2/15 has been registered against the applicant. During the pendency of the aforesaid case, the applicant filed an application under Section 207 read with Section 173(5) of the Cr.P.C. on two grounds; firstly that copies of some documents which were supplied to him in compliance of Section 207 of the Cr.P.C. were not legible and secondly the copies of such documents which were collected by the prosecution agency during investigation but they were not the part of charge sheet, have not been supplied. The aforesaid application has been dismissed by the trial Court, hence this petition.
- 12) During the course of arguments, learned counsel appearing for the respondent has conceded that the respondent is ready to supply the typed copies of such documents which are not legible. In these circumstances, now there is no dispute in regard to the documents, which are not legible.
- 13) Now the only question for consideration is whether the applicant is entitled to get the copies of such documents, which are alleged to have been collected by the prosecution agency

during investigation and they were not the part of the charge sheet.

- 14) Learned counsel for the applicant has submitted that the applicant is entitled to get the copies of such documents which are collected by the prosecution during investigation but they were not the part of the charge sheet, under Section 173(5) of the Cr.P.C. It is further submitted that all such documents are part of his defence and these documents can be considered at the time of framing of charge and the Court can reach to the conclusion that the defence of the applicant is based on sound, reasonable and indubitable facts and it rules out and displaces assertion contained in charges leveled against the applicant without necessity of recording any evidence. The documents like bills/claims are bogus and as per prosecution the applicant has demanded bribe to pass bills regarding labour and loading charges of such bills and claims. It is further submitted that after the incident the applicant had made complaint to Chief Vigilance Officer, FCI regarding these claims 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. It is further submitted that if the applicant is deprived of the copies of such documents, his defence will be materially affected, therefore, the impugned order be set aside and the entire proceedings be quashed under Section 482 of the Cr.P.C. Counsel has placed reliance on a decision of Apex Court in **Sidhartha Vashisht @ Manu Sharma Vs. State (N.C.T. of**

Delhi) - AIR 2010 SC 2352 and Rajiv Thapar and others Vs. Madan Lal Kapoor - (2013) 3 SCC 330.

- 15) Learned counsel for the respondent has submitted that the prosecution has already supplied the copy of the charge sheet along with the copies of the documents on which the prosecution has placed reliance including the FIR, statements recorded under Section 161 (3) of the Cr.P.C. and the documents on which prosecution proposes to rely. It is further submitted that so far as bills and claims which were found to be bogus during enquiry conducted by Mr. Vijay Kumar, ED (Vig.) and he recommended the matter to be handed over to CBI is concerned, the same may be the defence of the applicant and such documents and witnesses can be produced by him at the time of recording his defence, therefore, the prosecution is not under obligation to supply the copies of such documents on which the prosecution is not placing the reliance during trial.
- 16) We have heard the learned counsel for the parties at length and gone through the impugned order passed by the trial Court. As mentioned hereinabove, the order passed by the trial Court can be challenged under the revisional jurisdiction but the applicant has preferred this petition under Section 482 of the Cr.P.C. for setting aside the impugned order and during arguments insisted that the whole proceedings be quashed. However, considering the nature of the impugned order passed by the trial Court, as already observed we are treating and deciding this petition as criminal revision.

17) In *Sidhartha Vashisht @ Manu Sharma Vs. State (N.C.T. of Delhi)* (supra) the prosecution had not relied upon the ballistic expert report and the applicant/accused of the said case had applied for supplying the copies of the aforesaid document. The Apex Court was of the view that there was no violation of right of accused to disclosure. The facts of *Rajiv Thapar and others Vs. Madan Lal Kapoor* (supra) are totally different than the instant case. Said case had arisen out of a private complaint filed by the father of the deceased and the accused had filed the post mortem report, report of chemical analyst, inquest report and letters and telephonic conversation in regard to cordial relationship between the husband and wife and their family members. On the basis of such circumstances, it was found that defence is based on sound, reasonable and indubitable facts and it rules out assertion contained in the charges leveled against the applicant, therefore, the prosecution was quashed. In the instant case, as narrated in the prosecution story, it is a trap case wherein the conversation between the applicant and the complainant has been recorded in the memory card and prima facie demand of bribe has been shown by the prosecution, thereafter, a trap was arranged and at the time of giving the bribe to the applicant, he had not taken the same in his hand but he directed to keep the money on the chair. The conversation made between the applicant and the complainant has also been recorded by the complainant and the voice in the aforesaid conversation has also been tested by Central Forensic Science Laboratory. On the contrary, the applicant/accused has taken the

defence that he has been falsely implicated by the complainant because the complainant wanted to pass the bogus bills regarding the payment of labour and loading charges, for which he made a complaint to Chief Vigilance Officer, FCI, who investigated the matter and recommended to refer the matter to the CBI.

18) It is true that it may be a good defence of the applicant but on the basis of the aforesaid documents like bills/claims, which are allegedly bogus and enquiry made by the Vigilance Officer of FCI, cannot be said to be a defence based on sound, reasonable and indubitable facts. Further it does not rule out and displaces the charges of demand of bribe and accepting the bribe made against the applicant without necessity of recording any evidence. On the contrary the allegation of the prosecution is prima facie very strong. It is well established principle of law that even on the basis of strong suspicion arising out of material placed before the trial Court, the charges can be framed. In these circumstances, the principles laid down in the case of *Rajiv Thapar and others Vs. Madan Lal Kapoor* (supra) are not applicable to the instant case.

19) Considering the aforesaid aspect of the case, in our considered opinion, there is no need to supply the copies of bills/claims, which are not the part of charge sheet as well as they are not of such nature which rule out or displace the alleged charge of demand and acceptance of bribe. At the same time, since the CBI is not placing the reliance on such documents, they be remitted back to the Department concerned so that the

applicant can get the copies of such documents from the Department concerned.

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

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

(Shantanu Kemkar)
Judge

(G.S.Solanki)
Judge