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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Cr1.M.C. No.4662/2006

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Date of Decision : 30<sup>th</sup> of November, 2007

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R.B. ARORA

.....Petitioner

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Through : Mr. C.N. Sreekumar, Adv.

versus

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STATE THROUGH CBI

.....Respondent

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Through : Mr. Harish Gulati, Adv.

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CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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**B.N.CHATURVEDI, J.**

1. Instant petition under Section 482 Cr.P.C. made by the petitioner an accused in case FIR No.2/1987 -CBI (SIU-X) dated 26<sup>th</sup> May, 1987, seeks quashing of (a) proceedings against him based on a charge sheet, filed on 18<sup>th</sup> November, 1993 and (b)

order dated 25<sup>th</sup> November, 1993 whereby cognizance of alleged offences was taken against him.

2. The facts in brief are that an amount of Rs.3.75 crore was advanced to M/s Keming Tools Co. Ltd. by C.V. Madan, erstwhile Branch Manager of State Bank of Patiala, Janakpuri, Delhi without any appraisal and sanction of competent authority. Later, the assistance of the petitioner was allegedly sought by M/s Keming Tools Co. Ltd. for regularization of the said loan and with that end in view an amount of Rs.10,002/- was paid to the petitioner by co-accused Satish Kumar Chopra. On an inquiry being held into the transaction, based on the report of such inquiry, a FIR No.2/1987 -CBI (SIU-X) under Sections 120B/420/468/471 IPC was registered against C.V. Madan and others. The petitioner was however, not named in such FIR. In the course of investigation, co-accused S.K. Chopra was arrested and a disclosure made by him led to the arrest of the petitioner on 12<sup>th</sup> May, 1988. A charge sheet was eventually filed by CBI on 23<sup>rd</sup> December, 1989 in FIR

No.2/1987 -CBI (SIU-X) under Sections 120B/420/468/471 IPC read with Section 5(2) and 5(1) (d) against C.V. Madan and others. The petitioner was not named as accused in that charge sheet. Subsequently, on 27<sup>th</sup> November, 1992 a sanction from the Manager, Reserve Bank of India, Kanpur was obtained to prosecute the petitioner under relevant provisions of the Prevention of Corruption Act, 1988 and another charge sheet came to be filed on 18<sup>th</sup> November, 1993 naming the petitioner as one of the accused therein. On filing of such charge sheet, the court concerned took cognizance of the offences on 25<sup>th</sup> November, 1993 and summoned all the accused including the petitioner to appear and face trial.

3. Pursuant to summons, the petitioner made his appearance before the court concerned. On 11<sup>th</sup> April, 1994 he filed an application pleading that he could not be proceeded against for commission of alleged offences in view of bar of limitation. This application remained pending for quite sometime

and the same was ultimately dismissed by the learned Trial Court on 29<sup>th</sup> November, 2004. On petitioner raising the plea of limitation, an application for condonation of delay was filed on behalf of CBI on 25<sup>th</sup> July, 1996 but that application was later not pressed and the same was accordingly dismissed by the learned Trial Court on 29<sup>th</sup> November, 2004.

4. Learned counsel appearing for the petitioner argued that the petitioner and his co-accused Niranjan Nagia were charge sheeted for offences under Sections 163/164 IPC only and as these offences were punishable with imprisonment extending to one year and three years respectively the petitioner could not have been proceeded against beyond a period of three years and the learned Trial Court could not have taken cognizance of the said offences in view of bar of limitation as contained in Section 468(1)(c) Cr.P.C. It was accordingly contended that taking of cognizance by the learned Trial Court beyond the period of limitation was bad in law and therefore the order in that regard is liable to

be quashed.

5. From the order dated 29<sup>th</sup> November, 2004 of the learned Special Judge, it appears that the petitioner's challenge to his prosecution on the ground of limitation was turned down in view of Sections 163 and 164 of IPC being repealed by Section 31 of the Prevention of Corruption Act, 1988 (49 of 1988)(for short 'the PC Act') and corresponding provisions (Sections 9 and 10) thereof coming into force, in respect of which no bar of limitation applied. The learned Special Judge held the view that as at the time of filing of the charge sheet and taking of cognizance, the PC Act had come into force and as in view of sentence provided under Sections 9 and 10 of that Act bar of limitation as prescribed under Section 368 (1) Cr.P.C. did not apply, the cognizance of alleged offences could be taken at any time even beyond a period of three years.

6. The short question thus raised for consideration in the present petition is : whether Sections 163 and 164 of the Indian Penal Code,

which were in force at the time of commission of alleged offences as also when commission of such offences came to the knowledge, would continue to apply even after repeal thereof by Section 31 of the PC Act or the petitioner could be prosecuted under corresponding provisions contained in Sections 9 and 10 of the PC Act?

7. It is beyond dispute that if the petitioner was to be tried for offences punishable under Sections 163 and 164 of the IPC, prosecution would stand barred by limitation as no cognizance could be taken after expiry of period of three years in terms of Section 368 (1) (c) of Cr.P.C. It is admitted position that at the relevant time when the alleged offences were committed or even upto the time when the commission of such offences came to the knowledge, Sections 163 and 164 IPC held the field and the PC Act was yet to be enacted. A greater punishment was prescribed under Sections 9 and 10 of the PC Act for the offences which were earlier punishable under Sections 163 and 164 IPC. Second limb of Clause (1)

of Article 20 of the Constitution provides that “no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offences”. In a series of decisions including **State of Maharashtra Vs. Kaliar Koil Subramaniam Ramaswamy**; AIR 1977 SC 2091, **G.P. Nayyar Vs. State (Delhi Administration)**; AIR 1979 SC 602 and **State Through CBI, Delhi Vs. Gian Singh**; AIR 1999 SC 3450, the Supreme Court has consistently ruled that being a part of fundamental right of every person, nobody can be subjected to greater penalty than what the law prescribed and no *ex-post facto* legislation is permissible providing for a more severe punishment. To apply Sections 9 and 10 of PC Act prescribing greater punishment as compared to the ones provided under Sections 163 and 164 of the Indian Penal Code, in the facts of the given case, would clearly run counter to the mandate of the second limb of Clause (1) of Article 20 of the Constitution. Thus, notwithstanding repeal of

Sections 163 and 164 of the Indian Penal Code, the offences allegedly committed by the petitioner would continue to be triable and punishable thereunder only and Sections 9 and 10 of the PC Act would not get attracted. Legal position in this regard would not change simply because by the time the charge sheet against the petitioner is filed, the PC Act had come into operation. The learned Special Judge was thus clearly in error in finding that the offences allegedly committed by the petitioner under Sections 163 and 164 IPC, would become punishable under Sections 9 and 10 of the PC Act by virtue of that Act coming into force on the day of filing of the charge sheet. Sh. Harish Gulati, learned counsel appearing for the CBI fairly conceded and rightly so, that inspite of sanction for prosecution of the petitioner accorded under Sections 9 and 10 of the PC Act and that Act coming into operation on the date of filing of the charge sheet, he is liable to be tried for offences punishable under Sections 163 and 164 IPC only. The impugned order, the charge



sheet as well as the proceedings qua the petitioner are, in the circumstances, liable to be quashed.

8. Admittedly, the charge sheet against the petitioner was, in the present case, filed beyond a period of three years from the date of commission of alleged offences as also from the date of knowledge. Though, an application for condonation of delay in filing the charge sheet had been filed but the same was later not pressed and therefore, it was disposed of as such. The delay in filing the charge sheet beyond the prescribed period of limitation was thus not condoned by the learned Special Judge. Under the circumstances, no cognizance of the offences punishable under Sections 163 and 164 IPC could have been taken against the petitioner by the learned Special Judge in view of bar of limitation under Section 368 (1) (c) Cr.P.C.

9. In the ultimate analysis, the order dated 25<sup>th</sup> November, 1993 whereby cognizance of alleged offences was taken against the petitioner as also the charge sheet and all proceedings pursuant thereto

qua the petitioner are quashed. The petition is disposed of accordingly.

November 30, 2007  
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(B.N.CHATURVEDI)  
JUDGE