

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 04-04-2008
% Date of decision : 30-05-2008

+ **CRL. REVISION PETITION NO.584/2007**

BHUPINDER SINGH PATEL ... PETITIONER
Through: Mr. Rahul Tyagi & Mr.
Pawan Rai, Advs.

- V E R S U S -

CBI ... RESPONDENT
Through: Mr. R.M. Tiwari & Mr.
Ashiesh Kumar, Advs.

CRL. REVISION PETITION NO.506/2007

ARVIND VIJAY MOHAN ... PETITIONER
Through: Mr. Rohit Rao, Adv.

- V E R S U S -

CBI ... RESPONDENT
Through: Mr. R.M. Tiwari & Mr.
Ashiesh Kumar, Advs.

CRL. REVISION PETITION NO.546/2007

AMIT JOGI ... PETITIONER
Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Rahul Sharma, Adv.

- V E R S U S -

CBI ... RESPONDENT
Through: Mr. R.M. Tiwari & Mr.
Ashiesh Kumar, Advs.

CRL. REVISION PETITION NO.472/2007

RAJAT PRASAD

... PETITIONER

Through: Mr. Arvind Nigam, Adv.

- V E R S U S -

CBI

... RESPONDENT

Through: Mr. R.M. Tiwari & Mr.
Ashiesh Kumar, Advs.

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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

SANJAY KISHAN KAUL, J.

1. The common thread that weaves through the present petitions is the aspect of criminal culpability of persons undertaking "sting" operations under the Indian Penal Code ('IPC' for short) and the Prevention of Corruption Act (hereinafter referred to as the said Act). The said revision petitions are filed against the order on framing charges.
2. On 05-11-2003, M/s. Dilip Singh Judeo (accused No. 1), the then Union Minister of State for Environment & Forests allegedly received illegal gratification in the sum of Rs. Nine lacs in the presence of his Additional Private Secretary (APS), Shri Natwar Rateria (accused no. 2) from one Shri Bhupinder Singh Patel @ Rahul (accused no. 3) as consideration for

future 'favours' with regard to certain mining projects in the states of Chattisgarh, Jharkhand and Orissa. The said incident had been secretly video recorded by accused no. 3 and one Shri Arvind Vijaymohan (accused no. 4) acquainted with accused no. 3 who arranged for the video recording equipment. This incident came to be widely reported and publicized in print and visual media.

3. After conducting a preliminary enquiry, the respondent registered a case against the said accused no. 1, accused no. 2, accused no. 3 and accused no. 4 on 19-12-2003. Further investigations conducted and statements of various witnesses recorded revealed that Shri Amit Jogi (accused no. 5) s/o Shri Ajit Jogi the then Chief Minister of Chattisgarh had allegedly hatched a plan with the said accused no. 3, accused no. 4 and one Shri Rajat Prasad (accused no. 6) to video record accused no. 1 in the act of receiving bribe with an intention to disgrace accused no. 1 and tarnish his image and derive political mileage just before the assembly polls of Chattisgarh which were scheduled to be held in the end of November, 2003. The respondent thereafter filed the charge sheet where the names of accused no. 5 and accused no. 6 were added.
4. In the meantime, accused no 3, along with one Shri Praveen Jain filed a petition u/s 482 of the Code of Criminal Procedure (the said Code for short) in this court for quashing of the FIR against them which was dismissed vide order dated 10-11-2004. In December 2004, a Special Leave Petition was filed

assailing the aforesaid order which met the same fate and the Apex Court while disposing of the said SLP vide order dated 23-11-2007 observed that the petitions had become infructuous in view of the charges being already framed against the petitioners in the trial proceedings.

5. In the charge sheet, the respondent named two sets of accused. One comprising of accused no. 1 and accused no. 2 who were booked under section 7 of the said Act r/w section 120B of IPC for receiving the bribe amount from accused no. 3 which was secretly video recorded and the other set comprising of accused no. 3-6 charge sheeted under section 12 of the said Act r/w section 120B of IPC for having conspired with one another with the motive to humiliate accused no. 1 and taint his image.
6. During the trial before the Ld. Special Judge, accused no. 1 and 2 conceded to the framing of charges and did not advance any defense on their behalf. In so far as accused nos. 3-6 are concerned, after the hearing of the arguments of the parties on charge, the court found against the said accused and framed charges against them u/s 12 of the said Act r/w section 120B of IPC vide orders dated 24-04-2007 and 25-04-2007. The present revision petitions are directed against the aforesaid orders passed by the Ld. Special judge, CBI on framing of charges against the petitioners/accused nos. 3-6.
7. The plea raised by the learned counsel for accused no. 3 is that accused no. 3 being employed as a journalist in Akash

Channel had access to the Chief Minister and thought of exposing corruption at highest level in order to make a name for himself in the field of investigation. Accused no. 3 was justified to use subterfuge, to obtain material, which could not have been possible by other means and that the petitioner could not even report the matter to the police or any investigating agency like the CBI for the reason that such agencies also work under the State/Central Government and there was a chance of the entire effort being rendered futile. It was thus submitted that the real motive of giving bribe to accused no. 1 was to expose the corruptness of accused no. 1 and instead of honouring such an act of accused no. 1, the respondent CBI registered a case of abetment against him.

8. It was argued that where section 12 of the said Act provides for the punishment for abetment of offences defined in section 7 or 11 of the said Act, it becomes important that the ingredients of the said section be met which it is pleaded was not so in the present case. The allegations made in the FIR and the charge sheet do not disclose commission of any of these offences referred to and thus there can be no abetment u/s 12 of the said Act. It was submitted that there can be no mens rea attributed to accused no. 3. In this respect, the learned counsel for the accused no. 3 pointed out the decision of the Apex Court in Shri Ram v. The State of U.P. AIR 1975 SC 175 where it was held that an offence of abetment cannot be made out against an accused unless it is shown that the

abettor had "intentionally" aided the commission of the crime. The judgment of Mahadeo Daunappa Gunaki & Anr. v. State AIR 1952 Bom 435 dealt with the aspect of the mens rea of the bribe giver where it was observed as under:

"...In the case of a person, who offers a bribe, the mens rea consists in his intention to give a bribe in order that it may induce the public servant to do or not to do something which he would otherwise not do or do. This state of mind of the person, who offers a gratification, has obviously nothing to do with the question whether the public servant, to whom the gratification is offered, is or is not in a position to do or not to do the act, for doing or for not doing which the amount is offered to him. If, therefore, the intention or object with which money is offered to a public servant is to induce him to perform an official act or show favour in the exercise of his official functions or render any service with any public servant, the offence punishable under section 161 read with section 116 IPC would be complete, and it is immaterial whether the public servant is or is not actually in a position to do the act or show favour or render service, for doing, showing or rendering which the bribe is offered to him."

9. The learned counsel for accused no. 3 further submitted that the prosecution failed to show any material to establish the involvement of accused no. 3 in the alleged conspiracy and in this regard referred to the judgment of the Apex Court in R. Balakrishna Pillai v. State of Kerala (2003) 9 SCC 700 to point out the general principle of criminal jurisprudence that the element of mens rea and intention must accompany the culpable act or conduct of the accused. The accused must have the mental state or degree of fault at the relevant time.

It may differ from crime to crime according to the definition thereof. The matter of degrees may also differ. In other words, the mental state and the criminal act must coincide. Mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused.

10. It was averred that a tape recorded conversation could be used as a piece of evidence only by way of corroborating the statement of a person who deposes that the other speaker and he carried on the conversation or even of the statement of a person who deposes that he overheard the conversation between the two persons and what they actually stated had been tape recorded. Thus, the tape recorded conversation can be used as a corroborative evidence of such conversation deposed to by any of the parties to the conversation which law has been well enunciated in the case of The State v. Ravi alias Munna 2000 Cri.L.J. 1125.
11. On the other hand, the case of the prosecution in respect of accused no. 3 is that accused no. 3 assuming a fictitious name of Rahul Saroagi and representing a fictitious and unknown Australian mining company, paid the aforesaid amount to accused no. 1 & 2 for the purposes of rendering illegal assistance which was secretly video recorded by him and later released to media with a motive to aid and abet accused no. 5 and derive political mileage for the father of accused no. 5. Apart from the testimony of Shri Praveen Jain (PW32), the

documentary evidence produced in support of the aforesaid allegation is the APFSL, Hyderabad report which proves the genuineness of the recordings of the incident of 05-11-2003 wherein accused no. 1 and 2 were seen to be receiving the alleged bribe from accused no. 3. In the affidavit filed by accused no. 3, he has admitted to have paid the said bribe. The CFSL report has also proved the presence of accused no. 3 in the video recording of the alleged incident. The transcription/content of the recording of the incident proves that the bribe was given with regard to future favours to be extended by accused no. 1 and 2 with regard to the mining projects.

12. It was alleged that accused no. 3 had been introduced to accused no. 1 as "Rahul" by one Shri Shekhar Singh (PW22) of Bhopal in connection with certain purported work relating to an Australian Mining Company which is evident from the testimony of Shri Shekhar Singh (PW22) and affidavit of accused no. 3 where after accused no. 3 established friendly relationship with accused no. 1 and 2.
13. The learned counsel for the respondent further argued that the claim of accused no. 3 that the act of payment of illegal gratification to accused no. 1 and the secret video recording of this act was prompted by a journalistic desire to expose corruption in public life is wrong and that his actual motive was to derive political mileage in favour of the father of accused no. 5. The aforesaid allegation is evident from the

fact that after recording of the incident, accused no. 3 took time for masking/hiding his identity and then released the video recording to media. Even while releasing the tape to the media he had not disclosed his identity to the media persons and in fact had disappeared without informing the incident to any lawful agency. It was pleaded that accused no. 3 did not come forward even after the case was registered by the respondent and did not co-operate with the investigating agency until a specific direction was passed by this court in this behalf.

14. It was averred that the testimony of Shri Manish Rachhoya (PW 23) itself brings to light the fact that accused no. 5 and other co-conspirators had originally roped him in who happens to be a close friend of accused no. 5 and accused no. 3 took charge only after he (PW 23) decided to back out from the plan hatched by accused no. 5.
15. It was pleaded that if a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the said Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter and to support the said proposition reliance was placed on the decision of P. Nallammal & Anr. v. State 1999 SCC (Cri.) 1133.

16. The submission made on behalf of accused no. 4 is that the respondent made no specific allegations in the charge sheet against accused no. 4 in so far as the alleged abetment and conspiracy is concerned as also that the prosecution placed no material on record to prove accused no. 4's connection in the act of giving bribe to accused no. 1 by accused no. 3. It was pointed out that even if there is evidence collected against him, the only role that can be assigned to him in the said conspiracy is that of procuring the camera equipment and installing the same therefore the charge which could at best be framed against him is of defamation at the behest of accused no. 1 who has chosen not to do the same.
17. Learned counsel submitted that section 24 of the said Act provides for protection from prosecution under section 12 to the bribe giver who makes a statement in any "proceedings" against the public servant for an offence under section 7 to 11 or section 13 or section 15 that he offered or agreed to offer any illegal gratification to the public servant. It is stated that accused no. 4 is entitled to seek such protection and for the said purpose it was not necessary to approach the police as projected by the learned counsel for the respondent.
18. It is the case of the prosecution that accused no. 4 was also deeply involved in hatching of the alleged conspiracy and to prove the same have placed on record various documentary evidence in the form of recoveries being made which include recovery of the key of room where the incident was video

recorded; air tickets (PD 28) of accused no. 3, 5, one Shri Praveen Jain from his residence; receipt no. 6622 dated 25-08-2002 (PD-27) of the said room issued in the name of "Rahul Saraogi". The call records of the petitioners, Shri Manish Rachoya (PW 23) and Manoj Hora (PW 40) also goes to show the same apart from the statement of PW 23.

19. To further substantiate his plea, the learned counsel for the respondent contended that accused no. 4 being a college mate of accused no. 5, is a close friend of accused no. 5 and both of them were staying/meeting at A-4, 6, Aurengzeb Road, New Delhi around the time when this conspiracy was hatched. It is stated that accused no. 4 was in-charge of election campaigning for Congress Party in Chattisgarh. In this respect reliance was placed on both oral and documentary evidence. The call analysis shows that accused no. 4 was also in close contact with accused no. 3, 6 and PW 23 for the purposes of execution of the plan.
20. Apart from the above, it is pleaded that it is an admitted fact that accused no. 4 was the one who arranged the person and the equipment to record the alleged incident.
21. In so far as accused no. 5 is concerned, the learned counsel contended that the allegation of the respondent that the mastermind behind the alleged conspiracy was accused no. 5 is wholly baseless. Accused no. 5 has not been charged of the substantive offence under section 7 of the said Act but only for abetment of the same r/w section 120B IPC. A reading of the

aforesaid provisions would show that an accused person must have an agreement with the person charged of conspiracy to do an illegal act or an act which is not illegal by illegal means. It is thus pleaded that accused no. 5 had no agreement with accused no. 1 and hence no case can be made out against him.

22. The learned counsel relied upon the decision of Saju v. State of Kerala 2000 VII AD (SC) 437 to elucidate further on the aspect of conspiracy where it was observed as under:

“9. In Suresh Chandra Bahri v. State of Bihar AIR 1994 SC 2420 this Court reiterated that the essential ingredient of criminal conspiracy is the agreement to commit an offence. After referring to the judgments in NMMY Momin v. State of Maharashtra AIR 1971 SC 885 and State (Delhi Admn) v. V.C. Shukla AIR 1980 SC1382 it was held in S.C. Bahri's case (Supra) as under:

A cursory look to the provisions contained in Section 120-A reveal that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to Sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section

120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may frustrate and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.

10. It has thus to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement the necessary mens rea of the crime is also required to be established."

(Emphasis Supplied)

23. In Sharad Yadav and Ors. v. Union of India (UOI) and Anr 82(1999) DLT 13, the broad principles governing the law of conspiracy were discussed which are as under:

"20. Section 120-A, IPC defines conspiracy as an agreement to do an unlawful act or a lawful act by unlawful means. An agreement will amount to a statutory conspiracy only if carrying it out will necessarily amount to or involve the commission of an offence by one or more of the parties to the conspiracy. For

purpose of analysis it is perhaps convenient to isolate the three clauses each of which must be taken as indicating an essential ingredient of the offence as follows :

(i) If a person agrees with any other person or persons that a course of conduct shall be pursued,

(ii) which will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement,

(iii) if the agreement is carried out in accordance with their intentions.

21. Thus, the essential ingredient in the crime of conspiring to commit a specific offence or offences is that the accused should agree that a course of conduct be pursued which he knows must involve the commission by one or more of the parties to the agreement of that offence or offences. But, beyond the mere fact of agreement, the necessary mens rea of the crime is established if it is shown that the accused, when he entered into the agreement, intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course of conduct was intended to achieve. (See R. v. Anderson, (1985) 2 All. E.R. 961).

22. In State through S.P. (CBI/STT v. Nalini and Ors.) JT1999 (4) SC 106, some of the broad principles governing the law of conspiracy have been summarised as under:

"1. Under Section 120A, IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means over act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object

of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common propose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within

the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders.

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. 'The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

24. The motive alleged by the prosecution of deriving political mileage for his father by conspiring with accused no. 3, 4 and 6 cannot be construed to mean seeking any favour or reward which is a necessary ingredient for prosecution under the said Act. The mens rea to give bribe to another person is thus missing in respect of accused no. 5. In Padam Sen & Anr. v. State AIR 1959 All. 707, a case which dealt with the offence of abetment in respect of public servants under 165A IPC (as it then was), the court held as under:

"...the mens rea to be considered in one case is that of the bribe taken and in the other of the bribe giver. The common factor in the two cases of course is that the person bribed, or attempted to be bribed, should be a public servant, but in a case under Section 165A since it is the mens rea of the bribe giver that has to be considered, it should be sufficient to render him liable if his object in bribing or attempting to bribe the public servant was to induce the public servant to do an official act or show or forbear to show, in the exercise of his official functions, favour or disfavour to him, it being quite immaterial whether the public servant was not in fact in a position to do or not to do the act or show or forbear to show the favour or disfavour in question.

25. It is averred that exposure of corruption on the part of a public servant is not an illegal act either under the said Act or the penal Code as also that accused no. 5 had the right to claim protection under section 24 of the said Act which protection can be claimed only during trial and not at the stage of registration of FIR as noticed in Sri Bharadwaaj Media Pvt. Ltd. v. State 2008 (1) JCC 167.
26. The learned counsel for the prosecution has argued to the contrary and stated that accused no. 5 was the mastermind behind the alleged conspiracy which was devised with the motive to disgrace accused no. 1 and derive political mileage for his father. For the said purpose, accused no. 5 was aided by accused no. 3, 4 and 6 who are stated to be close friends of accused no. 5. The learned counsel pleaded that there is enough material on record to substantiate accused no. 5's involvement. The statement of PW 23 and PW43 is relevant in this behalf where PW43 Rahul Pandey deposed that accused no. 5 had enquired about the likely impact of the Ju Dev's Episode on electoral prospects of Congress Party.
27. The charge sheet also discloses that accused no. 5 was having controlling interest in Akash Channel and was known to Shri Rohit Prasad (PW 20) and accused no. 6 as also that accused no 3 who was an employee of the said channel was chosen by accused no. 5 himself and brought into conspiracy through accused no. 6.

28. The submissions advanced by learned counsel for accused no. 6 is that the act of exposing the corruptness of a public servant cannot be termed as an illegal act and it is this act for which the accused persons entered into an agreement which by no stretch of imagination can be called as a conspiracy.
29. It is the case of the CBI that accused no. 6 had booked a room at the Hotel Taj Palace on 25-07-2003 under the name of Manish Sarogi which was later occupied by Manish Rachoya (PW 23). On 27-07-2003, accused no. 5 brought one Shekhar Singh (PW22) for meeting with PW 23. It is then that PW 23 decided to disassociate himself from the alleged conspiracy and thus checked out of the hotel on 28-07-2003. It is a settled law that conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. It was pleaded that it is the respondent's own case that PW 23 was made a prosecution witness because the conspiracy was abandoned on 28-07-2003 as also that accused no. 6 was attached/assigned no specific role subsequent to 25-07-2003 other than booking the hotel room that too in July 2003 whereas admittedly the alleged video recorded incident of receiving of bribe by accused no. 1 from

accused no. 3 had taken place on 05-11-2003 which is four months later. Thus, accused no. 6 claimed relief on the ground of parity where similarly placed persons like PW23 were granted benefit/relief of becoming prosecution witness.

30. The learned counsel for the parties fully conscious of the well settled principles on the law governing framing of charges brought to the notice of this court various precedents in Niranjan Singh Karam Singh Punjabi, Advocate v. Jitender Bhimraj Bijaya & Ors. (1990) 4 SCC 76; Union of India v. Prafulla Kumar Samal & Anr. AIR 1979 SC 366; Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135; Soma Chakravarty v. State through CBI (2007) 5 SCC 403; Om Wati (Smt) & Anr. v. State through Delhi Admin. And Ors. (2001) 4 SCC 333; State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568; Neeraj Gupta & Ors. v. CBI 2007 V Ad (Cri.) (DHC) 517 where the court has repeatedly held that the Court at the stage of framing charges has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are

equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 of the Code the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

31. It cannot be lost sight of that Section 401 CrPC conferring powers of an appellate court on the revisional court is with a limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate court. Thus, the High Court in revision while exercising supervisory jurisdiction of a restricted nature is justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the Ld. Trial Court is correct. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the

power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

32. The aforesaid aspects have been emphasized for the reason that this Court shall be adjudicating upon the matter within the realm of the power envisaged for a revision court as also being mindful of the fact that this Court would not go again into detailed scrutiny of evidence so as to derive a different conclusion.

33. I have given my thoughtful consideration to the present matter and I find no reason to differ from the findings arrived at by the Ld. Trial Court. A scrutiny of impugned order and the material placed on record shows that the learned Special Judge, CBI while rejecting the submissions made by the learned counsel for the petitioners has examined, discussed and assessed the evidence and the material placed on record in depth in respect of each of the accused in reaching to the aforesaid conclusion. In my considered view, at this stage of the trial where no conclusive inference can be drawn, the prosecution has been able to establish a prima facie case against the petitioners.

34. Section 120-A IPC defines conspiracy and section 120-B provides for its punishment. Section 120-A reads as under:

"120A. Definition of criminal conspiracy.

When two or more person agree to do, or cause to be done,

(1) An illegal act, or
(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.]"

35. The principles governing the law in relation to a conspiracy are clear where it is essential that the parties have an agreement to commit a specific offence with an intention to play some part in the agreed course of conduct in furtherance of the criminal act. Such an unlawful agreement need not be formal or express, but may be inherent in and inferred from the circumstances, acts and conduct of the conspirators. Since a conspiracy is hatched in private or in secrecy, it is rarely possible to establish a conspiracy by direct evidence, thus the same may be inferred from the circumstances and the conduct of the accused persons so involved.
36. The offences by or relating to public servants are detailed under Sections 7 to 13 of the said Act, which were enacted as a substitute for the offences under Section 161-165 of the IPC, which formed part of Chapter IX of IPC. These sections were omitted from the Penal Code when the said Act came into force. The offence of abetment as defined under Section 107

IPC applies to all Central Acts vide Section 3(i) and 4(ii) of General Clauses Act, 1897 which reads as under:

“Section 107. Abetment of a thing

A person abets the doing of a thing, who-
First: -Instigates any person to do that thing;
or

Secondly: -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;
or

Thirdly: -Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation1:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

Thus, a person may be charged of an offence of abetment if he instigates a person to commit an offence; or engages in a conspiracy to commit such an offence or intentionally aides a person to commit an offence. Section 109 IPC provides punishment for abetment, if the offence is committed in consequence to such abetment and where no express provision is made for its punishment. Such offence of abetment will be constituted, even when the person refuses to commit such an offence. Mens rea is an essential ingredient of a criminal offence unless the statutes expressly or by necessary implication exclude the same.

37. In the instant case, the real nature of the petitioners’ action and motive is evident from the material placed on record

wherein it may be noticed that the activities in relation to the said conspiracy of the petitioners relate to the period when assembly elections were to be held shortly in Chattisgarh. Accused no.5 had masterminded this criminal conspiracy in which he was actively assisted by the other co-accused, including accused no. 6, accused no. 4 and later, accused no. 3 in order to disgrace him just prior to Elections for Chattisgarh Assembly and to derive political mileage in favour of Sh. Ajit Jogi father of accused no. 5, who was the Chief Minister of Chattisgarh during the relevant time. In other words, accused no. 5 intentionally abetted accused no. 6, accused no. 4 and accused no. 3 to engage in a conspiracy to commit the offence of giving bribe to accused no. 1 who happened to be a public servant with an ulterior motive to gain vantage out of the same for his father in the forth coming elections.

38. A reading of the FIR and the charge sheet supported by oral and documentary evidence shows that PW 23 and accused no. 4 were close friends of accused no. 5 from college days. Accused no. 4 apart from being a friend of accused no. 5 was actively involved in the election campaigning of Congress Party. Accused no. 6 had substantial business interests in the State of Chattisgarh including M/s. Akash Channels Pvt. Ltd., with which accused no. 5 was also indirectly associated. It may also be pertinent to note that accused no. 3 was earlier working with M/s Akash Channels Pvt. Ltd, Raipur/Bhilai having

been recruited by accused no. 6 prompted by accused no. 5. The deposition of PW 43 discloses that accused no. 5 had enquired about the likely impact of the Ju Dev's episode on electoral prospects of Congress Party.

39. Accused no. 5 along with accused no. 6 and accused no. 4 originally roped in PW 23, for meeting accused no. 1 and to enact the role, which was subsequently assigned to accused no. 3. In 2002, accused no. 5 was accompanied by PW 23 for vacations where accused no. 5 introduced PW 23 to PW 22. In July 2003, accused no. 5 confided in PW 23 that he wanted to use him for meeting accused no. 1 and in consequence to the same, got PW 23 re-introduced to PW 22 who assured PW 23 that he will get his meeting fixed with accused no. 1. In the meantime, accused no. 6 booked a room in Taj Mahal Hotel and accused no. 4 assisted PW 23 in getting other miscellaneous work done. However, consequent to these developments, PW 23 developed a feeling that he was getting into some undesirable affair at the behest of accused no. 5 and therefore decided to dissociate himself from the said plan, though at the instance of accused no. 5 and accused no. 4, PW 23 informed PW 22 that due to some reason, it would be accused no. 3 alias 'Rahul' who would be meeting accused no. 1. It is at this stage that accused no. 3 who was an employee in Akash Channel was brought into the picture and was assigned the role of PW 23.

40. Accused no. 3 stayed in the Suite for a number of days, during different periods and met accused no. 1 and 2 on a number of occasions and gained their confidence. It is only then that on the D day i.e. 05.11.2003, accused no. 3 accompanied by one Shri Praveen Kumar Jain checked-into Room No. 822, Hotel Taj Mahal, Man Singh Road, New Delhi to meet accused no. 1 and 2 with the motive to secretly video record the act of payment of illegal gratification to accused no. 1. In the meanwhile, accused no. 4 had arranged for installation of hidden video recording equipments in the sitting room of the said Room. The video recording of this meeting, which was secretly done, was subsequently released to media after masking the faces of accused no. 3 and his associate Praveen Jain @ 'Manish' to cancel their identity.
41. Thus, the inference drawn from the prevailing circumstances and the conduct of the accused that the petitioners mutually agreed to conspire against accused no. 1 and 2 with an unlawful intention to taint the image of accused no. 1 and get benefited by the same cannot be doubted especially in view of the fact that the same was attempted at/around the time of elections. Each of the accused had a precise contribution to the conspiracy and there is cogent and convincing evidence against each one of them charged with the offence of conspiracy. The prosecution has been able to produce evidence by way of oral testimonies of the witnesses and documentary evidence in the form of recoveries made of room

keys, air tickets, receipt of the said room, call records etc. to show that each of the accused has knowledge of object of conspiracy and also of the agreement. Though this agreement was not entered into by all the accused at the same time, but their successive actions provide enough evidence to lay a grave suspicion in the mind of their joining of the said conspiracy.

42. Investigation has revealed that accused no. 3 was employed in Akash Channel as a journalist by accused no. 5 and he was included as a part of the conspiracy at the instance of both accused no. 5 and 6. It is an admitted fact that accused no. 1 accepted illegal gratification in the presence of his PS from accused no. 3 alias 'Rahul' as a consideration for some unlawful extraneous purpose. It is here that I find myself in agreement with the observations made the learned trial Court that the plea raised by the learned counsel for accused no. 3 that his real motive to execute such an act was to expose the corruption on the part of accused no. 1 in public cannot be accepted for the reason that if the accused no. 3's proclaimed intention of exposing corruption was to be correct, he would have disclosed the same to some investigating agency or the police who could have organized a legally admissible trap and apprehended the bribe takers and seized the bribe amount.
43. Accused no. 3 had an option to do same even after the execution of such operation was complete but he consciously concealed his identity and avoided appearance before the CBI.

As a matter of fact, he did not come forward even after the case was registered against him by CBI and did not co-operate with the investigating agency till he was specifically directed to. Even if the converse was to be true i.e accused no. 3 would have had a bona fide intention to expose corruption of accused no. 1, it was not justified on his part to espouse and act as an investigating agency himself and lay a trap for accused no. 1. He should have taken a proper channel and approached the police or some investigating agency and filed a complaint with the same. I do not find strength in the argument advanced by the learned counsel that accused no. 3 could not have reported the matter to the police or any investigating agency like the CBI for the reason that such agencies work under the State/Central Government and there was a chance of the entire effort being rendered futile. It must be understood that in order to change a system, one needs to work within the system. What makes our democracy a reality is the adherence to the Rule of law and the enforcement of accountability of the wielders of power. No institution is perfect and thus it is the duty of every citizen to strengthen these institutions and remove anomalies and shortcomings, if any, in their functioning rather than weaken them so as to restore the confidence in the institutions of democracy.

44. It cannot be lost sight of that no one is above the law, but the law is above everyone. The learned single judge of this court in Crl. M.C. No.59/2004 titled Bhupendra Singh Patel & Ors. v.

State (CBI) dated 10.11.2004 placing reliance on the decision of the Apex Court in Sewak Ram Sobhani v. R.K.Karanjivani, Chief Editor Blitz AIR 1981 SC 1514 rightly observed that journalists do not enjoy any special privilege and have no greater freedom or position than others. A vast gulf exists between 'snaring' or 'tempting' people into accepting 'gifts' or 'bribes', where a cause of action does not exist, and exposing corruption regarding specific deals and not to recognise the significance of this difference is a grievous mistake.

45. No doubt, the media plays an important role in a democratic society and acts as the fourth estate outside the Government but where freedom of press can be envisaged as a special right under Art. 19(1)(a) of the Constitution of India, the restrictions under Article 19 (2) cannot be neglected. It is true that accountability is the sine qua non of democracy and that the basic postulate of accountability is that people should have the information about the working of the Government, it is here that the role of media becomes significant. It is said that with great power comes great responsibility, therefore the freedom under Article 19(1) (a) is correlative with the duty not to violate any law. All sting operations involve making people commit crimes that they otherwise may not have committed. There can be no second thought about the fact that the media is well within its domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society but entrapment of any

person should not be resorted to and cannot be permitted unless a right approach is taken which is in accordance with law of the land.

46. The Prevention of Corruption Act, 1988 is a social legislation to curb illegal activities of Public Servants and should be liberally construed so as to advance its object as provided in State of M.P. v. Ram Singh 2000 SCC (Cri.) 886. The relevant observations are noted in para 8 of the aforesaid judgment which is reproduced as under:

“Corruption is termed as a plague which is not only contagious, but is not controlled, spreads like fire in the jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The Socio-Political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in bud at the earliest, it is likely to cause turbulence-shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.”

47. Section 24 of the said Act comes to the rescue of such persons/bribe givers who make a statement in any “proceedings” against a public servant for an offence under Sections 7 to 11 or under Section 13 or Section 15 of the Act to the effect that he had offered or agreed to offer gratification (other than legal remuneration) or any valuable thing to the public servant. In such a case, the statement cannot be made as the basis for prosecution of such a person

for the offence of abetment under Section 123 of the said Act.

Section 24 the said Act reads as under:

24. Statement by bribe-giver not to subject him to prosecution.

Notwithstanding anything contained in any law for the time being in force, a statement made by person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Sections 13 or Section 15, that he offender agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12.

It may be noted that whenever a person lodges a complaint with the police that he has been asked to give bribe which he is not willing to give, his statement is recorded. Upon the registration of FIR investigation is taken up and if so required, the trap is laid. It is during this investigation and the trial, the complainant is required to make such statement and on such statements, he cannot be prosecuted for the offence of abetment under the Act. Section 24 of the Act, does not envisage blanket protection to the bribe-giver, under all circumstances. The immunity for the bribe-giver is provided where he is unwilling to pay illegal gratification to a public servant and approaches the police agency, in order to get the public servant trapped while accepting the bribe.

48. The petitioners were neither police officers nor were authorized by anyone to carry out any investigation, therefore, it cannot be held that they were conducting any "proceedings" under the Code. The basic requisites for applicability of

Section 24 are not made out and therefore the plea raised by the accused including accused no. 4 & 5 that they are entitled to seek protection under the aforesaid section does not hold good. It cannot be lost sight of that the petitioners had made two previous attempts to bribe the public servant but on some pretext, could not succeed and it was purportedly their third attempt to do the same yet in none of the instances the matter was reported to any lawful authority. Instead they made every effort to conceal their identity and evade contact with investigating agency. I am further constrained to observe that the petitioners could not have assumed the role of a knight in the shining armour seeking to reform the society completely ignoring the legal methodology laid out for necessary corrective measures including of detection more so when the action of the petitioners/accused is not on account of any altruistic motives but is a self serving one.

49. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B IPC.
50. The records reveal that accused no. 4 was deeply involved in the said conspiracy from its inception itself when PW 23 was relegated with the role which was later played by accused no. 3. On 05-11-2003, he admittedly arranged and got the video recording equipment fixed but his linkage to the

plan/conspiracy can also be reflected from the fact that he was a close friend of accused no. 5 and was managing the election campaigning for Congress Party in Chattisgarh. During the time when this conspiracy was hatched both accused no. 4 & 5 were staying/meeting at A-4, 6, Aurengzeb Road, New Delhi. The call analysis shows that all this while accused no. 4 was in close contact with accused no. 3, 6 and PW 23 for the purposes of execution of the plan.

51. There is enough evidence collected by the prosecution to frame accused no. 5 for the offence of abetment and conspiracy which cannot be discarded at the threshold. It was at the instance of accused no. 5 that attempts to tarnish the image of accused no. 1 by way of a sting operation were made just before the elections for which purpose accused no. 5 abetted accused no. 3, 4 and 6 into the conspiracy. The mens rea attributable to accused no. 5 is evident from the testimonies of PW 43 and 23 which disclose that accused no. 5 wanted to use PW 23 in relation to the meeting with accused no. 1 and that accused no. 5 had enquired about the likely impact of the plan/ operation on electoral prospects of Congress Party. It is stated that the entire conspiracy was financed by accused no. 5. With such circumstances prevailing, it would not be difficult to accept the definitive involvement of accused no. 5 for the reason that the person who could have been most benefited from the said act was accused no. 5 who father was a rival of accused no. 1 and

was the Chief Minister of the State of Chattisgarh at that particular time.

52. The objective to give bribe and secretly record the same was accomplished. For this purpose, accused no. 5 abetted PW 23 and later accused no. 3. A plan/scheme was embodied in order to accomplish the aforesaid objective for which PW 22 was used who had direct link to accused no. 1 and was known to accused no. 5 and could get the meeting fixed with the minister. For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The evidence as to the transmission of thoughts sharing the unlawful act is sufficient. In the present case, accused no. 5 took the assistance of accused no. 4 and 6 to execute the plan hatched who then initially roped in PW 23 and later substituted him with accused no. 3. Hence, there was an agreement or understanding between the accused persons whereby, they became committed to co-operate for the accomplishment of the aforesaid objective by the means of secretly video recording accused no. 1 in the act of receiving illegal gratification.

53. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into

effect, is guilty though he intends to take no active part in the crime. The aforesaid principle is relevant in so far as accused no. 6 is concerned. Accused no. 6 is stated to be a businessman who had substantial business interests in the State of Chattisgarh including M/s. Akash Channels Pvt. Ltd. He was a higher functionary authority in the channel where the controlling interests laid in the hands of accused no. 5. The argument advanced by the learned counsel for accused no. 6 that accused no. 6 should be granted benefit/ relief as was granted to PW 23 lacks strength. It is true that accused no. 6 had booked a room at the Hotel Taj Palace on 25-07-2003 during which period it was PW 23 who had agreed to play the role of accused no. 3 of giving bribe to accused no. 1. But subsequently on the decision of PW 23, to detach himself from the said conspiracy, accused no. 3 was brought into said conspiracy by accused no. 6 at the behest of accused no. 5. It may also be significant to note that accused no. 3 was given employment in Akash Channel by accused no. 6 and 5 only. It is here that the part played by accused no. 6 differs from PW 23 and assumes greater significance where it may be noticed that accused no. 6 had his hands fully cloaked in the conspiracy. The conspiracy inter alia PW 23 was abandoned on 28-07-2003 but that by itself cannot work in favour of accused no. 6. It may be true that accused no. 6 did not play an active role in the plan hatched subsequent to 28-07-2003 and was just standing by along with other conspirators while the others

put the conspiracy into effect but that can be surfaced only during the trial proceedings, this is not the stage to assume that accused no. 6 withdrew himself from the same. Thus, in my considered view, the trial court has rightly framed charges against accused no. 6 for the offence of abetment and conspiracy.

54. In view of the aforesaid, the correctness, legality and propriety of the order framing charges against the accused/petitioners cannot be doubted.

55. Dismissed.

May 30, 2008
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SANJAY KISHAN KAUL, J.