



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 31.10.2023
Judgment pronounced on: 30.11.2023

+ W.P.(CRL) 1607/2019 & CRL.M.A. 11731/2019

PREM BHUTANI & ANR Petitioners

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. N. Hariharan, Sr. Advocate with
Dr. Sakshit Bhardwaj, Ms. Sunita
Gupta, Ms. Punya Rekha Angara,
Mr. Siddharth S. Yadav and Mr. Prateek
Bhalla, Advocates.

For the Respondent : Mr. Nikhil Goel, SPP with
Mr. Kartik Kaushal and Ms. Siddhi
Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") challenging the impugned orders on charge dated 31.10.2018 and framing of charges dated 04.12.2018 by the



learned Special Judge (PC Act), North-West District, Rohini in CBI Case No. 53/2016 titled "***CBI vs. Sri Chand & Ors***".

2. The brief facts as per the case of prosecution culled out from the Status Report of the respondent is extracted hereunder:-

"2.1 That the instant case was registered by the Respondent-CBI on 25.10.2006 upon directions issued by this Hon'ble Court passed in Writ Petition (Civil) No. 10066 of 2004. This case was registered in SCR-II branch, CBI against Srichand (A-1) Anna Wankhede (A-2), Mohan Lal (A-3) Prahald Kumar Thirwani (A-4) and other unknown persons for the commission of offences u/s 120-B r/w 419, 420, 468, 471 IPC and Section 13(2) read with 13(1)(d) of the PC Act.

2.2 That Arvind Cooperative Group Housing Society Limited was registered on 31.03.1973 with 53 promoter members vide registration No. 158-(GH) having registered address at 38, Ram Nagar, New Delhi. As the Society was not striving towards the purpose for which it was formed and it was not functioning in accordance with the provisions of Delhi Cooperative Societies Act, the Rules framed thereunder and the bye-laws of the Society, an order dated 16.09.1979 was issued under the signature of Sh. Ashok Bakshi, the then Dy. Registrar of Cooperative Societies, New Delhi for winding up the Society and the said Society was accordingly wound up and subsequently the Society was put under liquidation. Thereafter, Srichand, Anna Wankhede, President of Arvind CGHS Limited, Mohan Lal, Section Officer, Ministry of Defence, New Delhi and Prahald Kumar Thirwani, Senior Auditor, Registrar Cooperative Societies (RCS), New Delhi and other unknown persons entered into a criminal conspiracy and in pursuance thereof cheated Govt. of NCT Delhi by committing the offences of impersonation, forgery, cheating, use of forged documents as genuine and by abuse of official position fraudulently got allotted the land in the name of the Society from DDA on 24.05.2004 at Dwarka, New Delhi, at a cheaper rate.

2.3 That the investigation revealed that Sh. Anna Wankhede (A-2), had forged a signature as M.L. Sharma (non existing person) Secretary of the Arvind CGHS Limited, made an



application on 16.12.2002 to the Registrar of Cooperative Societies, New Delhi after getting hold of the documents of the Society for audit of Arvind CGHS Ltd. and forged the documents in the form of proceedings register, election of General Body Meeting, resignation and enrolment applications for new members, affidavits etc. On the basis of the letter of M.L. Sharma Secretary of the Society, Sh. J.S. Sharma (A-6), Assistant Registrar (Audit) wrote a letter to the Assistant Registrar (South Zone), Office of the Registrar of Cooperative Societies, New Delhi mentioning therein that the Secretary of the Society had applied for the Audit of the said Society for the period from 01.07.1973 to 31.03.2002 which was pending since long. Sh. J.S. Sharma requested the Assistant Registrar (South) to confirm the present status of the Society from office records.

2.4 That the investigation revealed that based on office records, Sh. Prasad Kumar P. (A-5), Dealing Assistant, office of RCS, Delhi wrote a note sheet in which he mentioned the present status of the Arvind Society, but he did not mention in the note sheet regarding the liquidation of the said Society vide order No. 47/158/78/H/CO/1993-99 dated 16.09.1979. As such, after winding up of any Cooperative Society, the same could be revived u/s 63(3) of Delhi Cooperative Society Act, 1972 for which there was a set procedure as per Delhi Cooperative Society Act, 1972 and the Rules (1973) thereunder.

2.5 That the investigation further revealed that on the basis of information provided by Sh. Prasad Kumar P, dealing assistant, the audit branch was conveyed of the above position for further action, but no mention was made in the reply regarding the liquidation of the said Society. This material information was concealed with a mala fide intention and in conspiracy between Sh. J.S. Sharma (A-6), Prasad Kumar P (A-5), Anna Wankhede (A-2), Srichand (A-1) and Mohan Lal (A-3).

2.6 That the investigation further revealed that Anna Wankhede (A-2) by impersonating himself as M.L. Sharma Secretary of the Society, wrote a letter dated 20.12.2002, to the Assistant Registrar (South), that the Society submitted documents for perusal and approval of the list of members of



the Society to forward the same to DDA for allotment of land but no request was made for the revival of the Society as it was a liquidated Society and its revival was essential before the approval of the list of the members of the Society. All the documents produced by the Society were forged and fabricated and were prepared by Anna Wankhede (A-2), Mohan Lal (A-3) and Srichand (A-1).

2.7 That after completion of investigation, a report u/s 173 Cr. PC was filed by Respondent-CBI against Sh. Srichand (A-1), Anna Wankhede (A-2), Mohan Lai (A-3), Prahlad Kumar Thirwani (A-4), Prasad Kumar P. (A5), Jeetender Singh Sharma (A-6), Rakesh Bhatnagar(Petitioner) (A-7), Narayan Diwakar (A-8), Bhupinder Singh Kalkoti (A-9), Ashok Kumar Singh (A-10), Jeet Pal Singh (A-11), Hardeep Singh (A-12), Prem Bhutani (A-13), Anil Bhutani (A-14), Yoginder Mohan Duggal (A-15), Rajeev Khanna (A-16) and Ashwani Sharma (A-17) for commission of offences u/s 120-B r/w 419,420,468, 471 IPC and Section 13(2) r/w 13(l)(d) of PC Act, 1988.

2.8 That at present the trial of the case is pending in the Court of Special Judge, CBI, Rohini Court, Delhi and is at the stage of Prosecution Evidence.

2.9 That the investigation revealed that Yoginder Mohan Duggal (A-15) and Rajeev Khanna (A-16) were working with M/s Parmesh Construction Co. Ltd., owned by accused/petitioner Prem Bhutani (A-13) and his younger brother Anil Bhutani (A-14). Yoginder Mohan Duggal (A-15) and Rajeev Khanna (A-16) were made the President and Secretary of the Arvind Cooperative Group Housing Society respectively at the instance of Prem Bhutani (A-13) and Anil Bhutani (A-14) to keep control of the said Society. Accused Prem Bhutani (A-13) and Anil Bhutani (A-14) wanted to grab two, flats through their aforesaid employees and hence, they joined in the conspiracy with other co-accused persons.

2.10 That the investigation disclosed that the accused Prem Bhutani (A-13) and Anil Bhutani (A-14) in criminal conspiracy with Srichand (A-1), Anna Wankhede (A-2), Mohan Lal (A-3), Rajeev Khanna (A-16), Yoginder Mohan Duggal (A-15), Bhupender Singh Kalakoti (A- 9), Jeetpal Singh (A-11), Hardeep Singh (A-12) and Ashok Kumar Singh (A-10) arranged Rs. 1 Crore through their friends/relatives for



making the payment of the premium amount to the DDA for deposit of 35% of land amount. The funds collected from the relatives/friends were returned to them through cheques and all such cheques are written in the handwriting of Prem Bhutani (A-13) and signed by Rajeev Khanna (A-16) and Yoginder Mohan Duggal (A-15) in capacity of Secretary and President of the Society respectively.

2.11 That an account in the name of Arvind CGHS was opened with Corporation Bank, Preet Vihar, Delhi, on introduction by accused Prem Bhutani (A-13). Accused Rajeev Khanna (A-16) and Yoginder Mohan Duggal (A-15) were authorised to operate the said account.

2.12 That all accused persons have full knowledge that Arvind CGHS was a liquidated Society and the bogus list of the members of the Society was also got approved fraudulently on the strength of forged and fabricated documents and that the Society was never got revived.”

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

3. Mr. N. Hariharan, learned Senior Counsel appearing for the petitioners submits that the petitioners are two individuals and they have given loan to their employees who were members of Arvind Co-operative Group Housing Society (hereinafter referred to as “the Society”). According to learned Senior Counsel, there is no bar in the Delhi Co-operative Societies Act or the rules and regulations made thereunder prohibiting the members from obtaining loans from any member or non-member. He further submits that in the present case the said loan amount was in fact, returned to the petitioners.

4. Learned Senior Counsel submits that the Society was ordered to be wound up on 16.05.1979 and a list of 114 members got approval from the Registrar of Cooperative Society (hereinafter referred to as “RCS”) by concealing the fact that the Society was liquidated as per the case of



prosecution. The report of RCS was forwarded to the Delhi Development Authority (hereinafter referred to as “DDA”) for the allotment of land. He further submits that the DDA issued an Offer cum allotment *vide* the letter dated 03.02.2003 to the Society for allotment of land on receipt of Freeze List of members of the Society from RCS office. On 25.03.2003, the Society submitted with the bank challan dated 17.03.2003 a sum of Rs.1,15,00,000/- (35% of the cost of the land) and the balance amount has been taken as a loan from the petitioners. On 03.12.2003, Plot No. 9 in Dwarka was allotted to the Society.

5. Mr. N. Hariharan, learned Senior Counsel submits that the role ascribed by the respondent to the petitioners commences only after the so called conspiracy was concluded. Learned Senior Counsel also submits that the action taken is without jurisdiction since the offences alleged against the petitioners in this case do not fall within the ambit of Sections 3 and 4 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”). The same are extracted hereunder:-

“3. Power to appoint Special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

- (a) any offence punishable under this Act; and**
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).**

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).



4. Cases triable by Special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.]”

6. Learned Senior Counsel draws attention of this Court to the order on charge dated 31.10.2018, particularly to para 20 and 21 at page 82 of the present petition. The same is extracted hereunder:-

“20. On the other hand, as per Ld. Sr. PP, the persons posing themselves as office bearers of Arvind CGHS were not able to arrange money, to deposit with the DDA, for allotment of land. They conspired with accused Prem Bhutani (A-13) and Anil Bhutani (A-14). The latters provided them money, but for



illegal consideration. They compelled co-accused to make two of their employees i.e. Sh. Rajeev Khanna (A-16) and Sh. Yoginder Mohan Duggal (A-15), as members of Society, to keep control of said Society, with them. Both of these accused i.e. Prem Bhutani (A-13) and Anil Bhutani (A-14) wanted to grab two flats through their aforesaid employees and hence joined in the conspiracy.

21. If case of prosecution is taken as true, at this stage, both the said accused arranged Rs. 1 Crore to facilitate the persons posing as office bearer of Society to make payment to DDA i.e. cost of land. Allotment of land to Society by DDA was subject to payment of land costs. Issuance of letter by DDA in this regard, had no meaning unless price of land is paid. In this way, payment of land cost was part of object of land allotment. I am not in consonance with Ld. Counsel alleging that the object of conspiracy came to an end, when letter for the allotment of land, was issued by DDA in given facts of case, object of conspiracy appears to be to get allotted completely and further to sell the flats constructed on it, on premium, after the same are allotted in the name of proxies Sh. Rajeev Khanna (A-16) and Sh. Yoginder Mohan Duggal (A-15). Trite it to say that DDA used to allot land on discounted rates, which was much less than market rate. Keeping in view the evidence collected by the prosecution appears grave suspicion about involvement of said accused i.e. Prem Bhutani (A-13) and Anil Bhutani (A-14) as well as Sh. Rajeev Khanna (A-16) and Sh. Yoginder Mohan Duggal (A-15) in conspiracy with co-accused, mentioned above.”

7. Mr. N. Hariharan, learned Senior Counsel appearing for the petitioners concludes his contentions by submitting that there are two ways in which the conspiracy can be looked at - i) an object may be legal, attained by illegal means; ii) the object may be illegal, the means may be legal. On this he submits that the petitioners do not form part of any of these theories. Learned Senior Counsel submits that the learned Trial Court had framed charges against the petitioners and proceeded without jurisdiction.



ARGUMENTS ON BEHALF OF THE RESPONDENT/CBI

8. *Per Contra*, Mr. Nikhil Goel, learned SPP for CBI submits that there are 4 principles of law which would govern the present petition:-

- i) At the stage of framing of charge, a Special Judge is required to be satisfied on the existence of '*grave suspicion*' regarding the allegations made in the chargesheet. He submits that without exception, this principle has been followed for over 4 decades for framing charges against an accused. He relies on the judgement of the Supreme Court in ***UOI vs Prafulla Kumar Samal & Others*** reported in (1979) 3 SCC 4.
- ii) The above requirement of testing the existence of grave suspicion has to be solely based on the material produced by the prosecution and not by the defence. He relies on the judgement of the Supreme Court in ***State of Orissa vs Debendra Nath Padhi*** reported in (2005) 1 SCC 568. However, there is an exception to it, which has come subsequently that if there is some material of sterling quality then the Investigating Officer must look into it.
- iii) Conspiracies are hatched in secrecy. The intent of unlawful act can be inferred and the burden of proof is not to show that each of the conspirators had knowledge of what others would



do, so long as it is known that the cumulative act will result in an unlawful act.

iv) Whether the act is negligent or culpably negligent cannot be looked into at the stage of framing of charges. Whether a particular act would amount to negligence or culpable negligence is only differentiated by the intention of the person committing the act, which can only be established after the entire evidence is led. In the case of *Sushil Ansal vs State* reported in (2014) 6 SCC 173 the Supreme Court provided 3 principles on negligence - 1) there should be a duty; 2) there should be a breach of the duty; 3) that breach of the duty must result in some consequence.

9. Learned SPP submits that the petitioner's role is more than of a mere financer. To substantiate this, Mr. Goel referred to Para 15 of the chargesheet and submits that the investigation has disclosed that Rajeev Khanna and Yogender Mohan Duggal are working in M/s. Parmesh Construction Co. Ltd owned by the petitioners for the last 20 years. He further submits that Sh. Yogender Mohan Duggal and Sh. Rajeev Khanna were made the President and Secretary of the society at the instance of the petitioners. He further submits that the petitioners with other members arranged Rs. 1 Crore through their friends/relatives for making the payment of the premium amount to the DDA with their full knowledge that the subject Society was a liquidated Society.

10. Further, learned SPP refers to para 16 of the chargesheet and submits that the funds arranged by the petitioners were deposited in



Saving Bank A/c No. 35143 standing in the name of Arvind CGHS Ltd with Corporation Bank. This account was introduced by the petitioner no. 1 himself and the persons authorised to operate the said account were Rajeev Khanna and Yogender Mohan Duggal who were employees of the petitioners. On this, he submits that the petitioner's case is not just a case of lending of money.

11. Mr. Nikhil Goel, learned SPP further refers to para 18 of the chargesheet and submits that one Hardeep Singh became the member of the Society on 12.03.2003 on the basis of an application for enrollment submitted by him on 06.03.2003 which was addressed to the President/Secretary of the Society. He further submits that such persons were inducted as members by the President/Secretary i.e Rajeev Khanna/Yogender Mohan Duggal, who themselves in turn are the employees of the petitioners. These petitioners run a construction company; set up two employees and made them two office bearers of the Society; introduced office bearers to the bank and made them operate its account. According to learned SPP this was not possible as the Society was not in existence and no account would be opened by a Bank unless appropriate documents are furnished to it.

12. Learned SPP for CBI refers to the judgement of the learned Coordinate Bench of this Court in **CRL. REV. P. 406/2019** titled "*Central Bureau of Investigation vs. Prem Bhutani & Anr*" to submit that though it is on a different point, the *modus operandi* employed by the petitioners in that case is identical to the present case. He refers to para 10 of the judgement to submit that the petitioners have already been



involved in conspiracy of similar nature. The same is extracted hereunder:-

"10. It is submitted that there is sufficient oral as well as documentary evidence to establish the charge against the respondents under the aforesaid provisions. The respondents played a critical role in the criminal conspiracy to cheat DDA for the objective of obtaining the allotment of land at a predetermined subsidized price. It is submitted that the bank account opened for making the payment to the DDA was infact, opened by the respondent no. 1 without any authorization in the name of the Society. He made the co-accused, Mr. Yashpal Sachdeva and Mr. Sushil Chhabra authorized signatories, who were at the time not even the members of the Society."

On the basis of the above, he submits that the only distinction between the aforesaid judgement and the present case is that after getting the land from DDA, it was sold immediately without construction to somebody else whereas in the present case the Society after getting the land from DDA, has constructed 114 flats.

13. Mr. Goel refers to the judgement of the Supreme Court in ***Essar Teleholdings Limited vs. Registrar General, High Court & Ors*** reported in **(2013) 8 SCC 1** to submit that the learned Special Court has power to take up the IPC cases.

14. Mr. Nikhil Goel, learned SPP for CBI concludes his arguments by submitting that the petitioners were not involved after the conspiracy is ended as they were also a major part of the conspiracy from the aforesaid allegations made out in the chargesheet.

REBUTTAL OF THE PARTIES



15. Mr. Hariharan, learned Senior Counsel appearing for the petitioners submits that the judgement of the Supreme Court in *Essar Teleholdings (supra)* relied upon by CBI cannot be applied to the petitioner's case as the judgement says persons accused of different offences committed in the course of the same transaction may be charged jointly. On this, he submits that the petitioners herein are not the part of the same transaction as they only lent money to the other accused. He further submits that the allotment took place prior to the petitioners having entered for providing a loan to his employees which was also returned.

16. Learned Senior Counsel submits that the judgement relied upon by CBI in **CRL. REV. P. 406/2019** titled "*Central Bureau of Investigation vs. Prem Bhutani & Anr*", where the petitioners were parties in a similar case cannot have any influence to the present case. On this, the learned Senior Counsel draws the attention of this Court to section 43 of Indian Evidence Act, 1872 (hereinafter referred to as "Evidence Act") to submit that the aforesaid judgement cannot be relied upon as it is neither relevant to bar a second suit or trial nor has relevancy to probate cases or jurisdiction etc.,

17. *Per Contra*, learned SPP submits that at the time of framing of charges, the chargesheet has to be considered as a whole and as per the allegations made out in the chargesheet, the petitioners had a major part in the conspiracy.

ANALYSIS AND CONCLUSION:-



18. This Court has heard the arguments of Mr. Hariharan, learned Senior Counsel for the petitioners, Mr. Nikhil Goel, learned SPP for the respondent. This Court has also perused the chargesheet, order on charge and other relevant documents placed on record. This Court had also summoned the TCR which was also examined.

19. Since in the present matter, the petitioner has challenged framing of charges under section 420 read with section 120B Indian Penal Code, 1860, it would be apposite to consider the power, scope and jurisdiction of the High Court under Article 226 of the Constitution of India read with Section 482 Cr.P.C. as laid down by the Supreme Court in ***Kanchan Kumar vs. State of Bihar*** reported as **(2022) 9 SCC 577**. The relevant paragraphs of the said judgment are as under :-

“13. The threshold of scrutiny required to adjudicate an application under Section 227 CrPC, is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal⁴ it was noted that: (SCC p.9, para 10)

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

*(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the 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.*

(2) 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.

*(3) 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.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely 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."

(emphasis supplied)

14. In *Sajjan Kumar vs. CBI*⁶, the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that : (SCC pp. 376-77, para 21)

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

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(v) At the time of framing of charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."



(emphasis supplied)

15. *Summarising the principles on discharge under Section 227 CrPC, in Dipakbhai Jagdishchandra Patel v. State of Gujarat, this Court recapitulated : (SCC p.561, para 23)*

*“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the *prima facie* view that the accused has committed the offence.”*

(emphasis supplied) ”

It is clear from the aforesaid that a strong suspicion would be sufficient to maintain an order on charge, however, the said strong suspicion must be founded on some material, which must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the judge that here is the case, where it is possible that the accused has committed the offence. Rather, the said suspicion should be premised on some material which



commends itself to the Court as sufficient to entertain the *prima facie* view that the accused has committed the offence.

20. This Court has to now apply the aforesaid principles on the facts obtaining in the present case.

21. Mr. Hariharan, on facts, had submitted that the petitioners were only two individuals who had extended loan to their employees who happened to be members of the aforesaid Society and which loan was duly returned by the employees through proper banking transactions back to the petitioners. According to learned Senior Counsel this is a simple case of extension of loan and return of the same, which has been converted into a false case of conspiracy and cheating.

22. According to learned Senior Counsel, the conspiracy alleged to have been hatched by the other co-accused persons, which included government officials of RCS, was in respect of illegal revival of defunct societies, creation of new membership lists and allotment of land by the DDA on the basis of such alleged forged and fabricated documents. It is the case of learned Senior Counsel that the larger conspiracy had commenced with the alleged documents pertaining to revival of the Society which ended with the allotment of the land to the Society by the DDA. He submitted that the role of the petitioners having commenced after the closure of the alleged conspiracy, the petitioners are innocent and have been falsely implicated in the aforesaid case.

23. After having examined the aforesaid records it is revealed that the alleged forged list of the members of the Society included the names of



Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) as President and Secretary respectively of the Society. It is relevant to note that Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) had submitted their names for consideration as members of the said Society on 02.02.2003. At this juncture it is also relevant to note that the record reveals that the land allotment was sanctioned by the DDA on 03.02.2003. It is also not disputed by the learned Senior Counsel that the aforesaid two persons were the employees of the petitioners during the relevant period. Records also reveal that the bank account in the name of the said Society was introduced by the petitioner No. 1 himself and aforesaid employees were authorized by the petitioner No. 1 to operate the said account. The prosecution also alleges that the aforesaid employees were nominated as President and Secretary of the Society at the instance of the petitioners. Investigation further seems to have revealed that the cheques which were signed by Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) for the purposes of returning the fund/ loan were infact in the handwriting of the petitioner No. 1. To understand and appreciate the case against the petitioners, it would be appropriate to extract paragraphs (xv) & (xvi) of the chargesheet:-

"xv) Investigation has also disclosed that Rajeev Khanna and Yoginder Mohan Duggal are working in M/s Parmesh Constructions Co. Ltd. Owned by Sh. Prem Bhutani and his younger brother Anil Bhutani in criminal conspiracy with Srichand, Anna Wankhede, Mohan Lal, Rajiv Khanna, M. Duggal, Bhupender Singh Kalakoti, Jeetpal Singh, Hardeep Singh and Ashok Kumar Singh arranged Rs. 1 Crore through their friends/relatives for making the payment of the premium amount to the DDA with their full knowledge that Arvind CGHS Ltd. was a liquidated Society and the bogus list of the members



of the Society was also got approved fraudulently on the strength of forged and fabricated documents and that the Society was never got revived.

xvi) Investigation has disclosed that the funds arranged by Prem Bhutani and Anil Bhutani through their friends and relatives were received through cheques issued in the name of Arvind CGHS Ltd. were deposited in SB A/c No. 35143 standing in the name of Arvind CGHS Ltd. with Corporation Bank, Preet Vihar Branch, Delhi. The account was introduced by Prem Bhutani himself and the persons authorized to operate the said account were Rajeev Khanna and Yogender Mohan Duggal, both employees of Anil Bhutani and Prem Bhutani. Sh. Rajeev Khanna and Yogender Mohan Duggal were made the Secretary and President of the Society respectively at the instance of Prem Bhutani and Anil Bhutani. Investigation has also disclosed that the fund collected from the relatives/friends were returned to them through cheques and all such cheques are written in the handwriting of Prem Bhutani and signed by Rajeev Khanna and Yogender Mohan Duggal in the capacity of Secretary and the President of the Society respectively.”

It would also be relevant to consider the allegations in para (xii) of the chargesheet. The same is extracted hereunder:-

“xii) Investigation has further revealed that after the list of the members of this Society was forwarded to the DDA for allotment of land, the Society was issued a letter for the offer cum allotment of land to the Arvind Co-operative Group Housing Society on 03.02.2003. In compliance to the letter of DDA, Arvind CGHS Ltd. vide letter dt. 25.03.2003 submitted the required documents along with bank challan no. 1126768 dated 17.03.2003 for Rs. 1,15,02,400/- towards 35% of the cost of the land. Further the Society intimated the DDA vide letter dated 08.08.2003 about the change of registered office of the Society at 212, West Azad Nagar, Delhi which was the residence of Y. M. Duggal and Rajiv Khanna. The Plot No. 9 in Sector 19B, Dwarka, New Delhi was allotted to the Arvind CGHS Ltd. Accordingly, the Society was asked vide letter dated 31.12.2003 to deposit the balance land amount. The Society in response to demand letter dated 31.12.2003 deposited the balance amount to the tune of Rs. 2,21,09,100/- vide bank challan no. 19780 dated 27.02.2004 and intimated the DDA vide their letter dated 27.02.2004. The bridge loan of Rs. 2,21,09,100/- was financed by DCHFC Ltd. in favour of Arvind CGHS Ltd. on 05.04.2004 and the Society has since refunded the total loan amount during the period 08.03.2004 to 07.05.2005 and there is no outstanding against the Society. For obtaining bridge loan from the



DCHFC Ltd., bogus proceedings were written by Ashwani Sharma in the proceeding register of the Society in his own hand writing in criminal conspiracy with Jeet Pal Singh, Hardeep Singh, Ashok Kumar Singh and Bhupender Singh Kalkoti. Such proceedings were shown to have been written at 171, Andrews Ganj, New Delhi where the Society never existed. A false resolution was also shown to have been passed in a meeting of the managing committee of the Society for arranging bridge loan. Further Society vide letter dated 01.04.2004 requested DDA to issue the possession letter in respect of plot no. 9, Sector-19, Dwarka. Accordingly the possession letter dated 05.05.2004 under the signature of Director (RL) was issued to the Society with a copy to the Deputy Director (Survey), Dwarka to hand over the possession of the allotted plot at site to the Society. The possession of the allotted plot was handed over by Sh. S. K. Aulakh, Asstt. Director (Survey), DDA, Dwarka to Shri Ashok Kumar Singh, Treasurer of the Society on 24.05.2004. Shri Ashok Kumar Singh, Treasurer of the Society resigned from membership of the Society on 15.11.2005 after the possession of the plot was taken by him. As per record. Perpetual Lease Deed was executed between the Society and DDA on 20.09.2005 by Sh. Bhupender Singh, Secretary of the Society and Sh. Uma Shankar Bhardwaj, Lease Administration Officer (GH), DDA, New Delhi.”

24. The fact that Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) had submitted their application for being considered as members of the Society on 02.02.2003 and approval of allotment of land was granted on 03.02.2003 by the DDA seems to be too much of a coincidence. That apart, it is not denied by the petitioners that post allotment, the fund for initial deposit with the DDA *qua* the allotted land was garnered by the petitioners.

25. That apart, as per the records, the date of application seeking membership is 02.02.2003, the date of the Managing Committee Resolution is stated to be 11.02.2003 and the date of payment of share money on behalf of Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) is stated to be 12.02.2003.



26. The theory of conspiracy having come to an end on 03.02.2003 by virtue of the DDA having approved the allotment of land in favour of the Society as argued by learned Senior Counsel also seems to be untenable in view of the observations of the learned Trial Court made in the order on charge dated 31.10.2018. The relevant paragraph is extracted hereunder:-

“21. If case of prosecution is taken as true, at this stage, both the said accused arranged Rs. 1 Crore to facilitate the persons posing as office bearer of Society to make payment to DDA i.e. cost of land. Allotment of land to Society by DDA was subject to payment of land costs. Issuance of letter by DDA in this regard had no meaning unless price of land is paid. In this way, payment of land cost was part of object of land allotment. I am not in consonance with Ld. Counsel alleging that the object of conspiracy came to an end, when letter for the allotment of land, was issued by DDA in given facts of case, object of conspiracy appears to be to get land allotted completely and further to sell the flats constructed on it, on premium, after the same are allotted in the names of proxies of Sh. Rajeev Khanna (A-16) and Sh. Yoginder Mohan Duggal (A-15). Trite it to say that DDA used to allot land on discountd rates, which was much less than market rate. Keeping in view the evidence collected by the prosecution, there appears grave suspicison about involvement of said accused i.e. Prem Bhutani (A-13) and Anil Bhutani (A-14) as well as Sh. Rajeev Khanna (A-16) and Sh. Yoginder Mohan Duggal (A-15) in conspiracy with co-accused, mentioned above.”

The acts of omission and commission alleged against the petitioners commencing from the opening of the bank account in the name of the Society; the act of petitioner No. 1 being the introducer for opening the account of the Society; the act of petitioners in making Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16), their own employees, as authorized signatories of the said bank account; the allegation that at the



instance of the petitioners, Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) being nominated as President and Secretary of the Society respectively; the receipt of funds and deposit with the DDA coupled with the return of the said amount by Sh. Yoginder Mohan Duggal (A-15) and Sh. Rajeev Khanna (A-16) to the lenders by cheque issued in the handwriting of petitioner No. 1 etc., appear to be a part of a larger conspiracy going beyond the mere act of fraudulently getting the land allotted in the Society's name by the petitioners and at this stage, cannot be wished away. As such the argument of the conspiracy having come to an end on 03.02.2003 appears to be contrary to record.

27. All the aforesaid facts including the acts of omission and commission alleged against the petitioners appear to be intrinsically intertwined and at this stage it is very difficult for this Court to segregate the facts and allegations arising in the present case. Suffice it to note that the suspicion *qua* the petitioners of their complicity, at this stage appears to be grave. Moreover it is trite that at the stage of framing of charges the courts are to consider in general the allegations and the documents/evidence on record and not delve into the details of evidence or conduct a mini trial. Having regard thereto, there does not appear to be any infirmity or inconsistency in the view taken by the learned Trial Court and as such no merit in the present petition.

28. That so far as the argument of learned Senior Counsel in respect of the objections to the jurisdiction of the learned Special Court under sections 3 and 4 of the PC Act *qua* the offences alleged against the



petitioners are concerned, the law in respect thereto has been succinctly settled by the Supreme Court in *Essar Teleholdings (supra)*. The relevant paragraphs are extracted hereunder:-

17. A mere perusal of Section 3 read with Section 4 of the PC Act clearly mandates that apart from an offence punishable under the PC Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the PC Act can also be tried by a Special Judge. Sub-section (3) of Section 4 specifies that when trying any case, a Special Judge can also try any offence, other than an offence specified in Section 3, with which the accused may, under CrPC, be charged at the same trial.

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21. Persons accused of different offences committed in the course of the same transaction may be charged jointly as per Section 223 CrPC, which reads as under:

“223. What persons may be charged jointly.—The following persons may be charged and tried together, namely—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

*(c) ****

(d) persons accused of different offences committed in the course of the same transaction;

*(e)-(g) ****

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

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25. Admittedly, the co-accused of 2G Scam case charged under the provisions of the Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 CrPC will apply and the petitioners though accused of different offences i.e. under Sections 420/120-B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 CrPC they may be charged and can be tried together with the other co-accused of 2G Scam cases.

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28. A similar question came up for consideration before this Court in *Vivek Gupta v. CBI* [(2003) 8 SCC 628 : 2004 SCC (Cri) 51]. In the said case the co-accused were charged by a Special Judge under the provisions of the PC Act whereas the appellant before this Court had been charged only under Section 420 IPC and under Section 120-B IPC, as in the present case. Having noticed the provisions of the PC Act and CrPC as referred to above, this Court held: (SCC p. 635, paras 15 & 17)

“15. This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge under Section 120-B read with Section 420 IPC. All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 IPC. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 IPC, the provisions of Section 223 are attracted.

Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another court, because they are not charged of any offence specified in Section 3 of the Act.

17. We are, therefore, of the view that in the facts and circumstances of this case, the Special Judge while trying the co-accused of an offence punishable under the provisions of the Act



as also an offence punishable under Section 120-B read with Section 420 IPC has the jurisdiction to try the appellant also for the offence punishable under Section 120-B read with Section 420 IPC applying the principles incorporated in Section 223 of the Code. We, therefore, affirm the finding of the High Court and dismiss this appeal.”

29. Admittedly, 2G Scam case is triable by the Special Judge against the persons accused of offences punishable under the PC Act in view of sub-section (1) of Section 4. The Special Judge alone can take the cognizance of the offence specified in sub-section (1) of Section 3 and conspiracy in relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-section (1) of Section 3, in view of sub-section (3) of Section 4. A Magistrate cannot take cognizance of offence as specified in Section 3(1) of the PC Act. In this background, as the petitioners have been shown as co-accused in second supplementary charge-sheet filed in 2G Scam case, it is open to the Special Judge to take cognizance of the offence under Section 120-B and Section 420 IPC.”

It is clear from the aforesaid judgement that the learned Special Judge under the PC Act is empowered to try and adjudicate offences under Indian Penal Code which are alleged against persons other than government servants on the premise of provisions of section 220 of Cr.P.C. Since some of the co-accused persons in the aforesaid case, admittedly are government servants and offences under the provisions of PC Act have infact been alleged against the said government servants, the learned Special Court constituted under the PC Act would have the necessary jurisdiction to try the offences alleged against the petitioners too.

29. So far as the argument of the learned Senior Counsel in respect of section 43 of the Evidence Act *qua* the judgement of the learned Co-ordinate Bench in **CRL.REV.P. 406/2019** titled “***Central Bureau of Investigation vs. Prem Bhutani & Anr***” relied upon by the learned SPP



is concerned, suffice it to say that this Court having found sufficient grounds against the petitioners as indicated above qua the merits of the matter, no separate observation or reasoning in respect thereto need be passed by this Court. As such, the objection under section 43 of Evidence Act is unsustainable.

30. In view of the above, the present petition lacks merits and is accordingly dismissed.

31. Pending applications, if any, are disposed of.

32. Nothing in this judgement shall be construed as an expression of opinion on the merits of the pending matter.

TUSHAR RAO GEDELA, J.

NOVEMBER 30, 2023/rl