

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

CRL.M.C. 1724/2020

Date of Decision: 11.08.2021

IN THE MATTER OF:

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Anupam S. Sharma, SPP with
Mr. Prakarsh Airan and Ms. Harpreet Kalsi,
Advocates

versus

M/S BHUSHAN POWER AND STEEL LIMITED (BPSL) AND
ORS. Respondents

Through: Mr. Manmeet Singh and Ms. Nishtha
Chaturvedi, Advocates

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of the order dated 07.02.2020 passed by learned Special Judge (PC Act), CBI-20, Rouse Avenue Courts, New Delhi whereby the petitioner's application seeking permission for *Sub Inspector Amit Kumar* to assist the main Investigating Officer in conducting investigation, was declined.
2. Learned SPP for CBI has submitted that the present case bearing RCBD12019E0002 was registered under Section 120-B read with Sections 420/468/471/477A IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, 1988 on 05.04.2019 against the respondent company and others. It

is submitted that the officials of the respondent company entered into a criminal conspiracy in order to cheat banks/financial institutions/Govt. exchequer, dishonestly and fraudulently diverted huge amount of bank funds.

3. It is further submitted that the main Investigating Officer *Insp. Kapil Dhanked* has been investigating other cases and also looking proceedings pending before different Courts including this Court as well as the Supreme Court of India. The present case is a high-ticket fraud requiring investigation all over the country. Further, the application in question was moved before the Trial Court seeking permission for *SI Amit Kumar* to assist *Insp. Kapil Dhanked* in conducting investigation as the bank documents are stated to be voluminous and the investigation is to be conducted speedily.

4. Ms. Nishtha Chaturvedi, learned counsel for the respondents, submits that without prejudice to their rights and contentions to challenge the entire investigation in appropriate proceedings for being contrary to mandate of Section 32A of the Insolvency and Bankruptcy Code, 2016 (“IBC”), the respondents have no objection to the prayer made in the present application. She has informed that on an application filed by the Punjab National Bank under Section 7 of the IBC, the NCLT had initiated Corporate Insolvency Resolution Process (CIRP). Subsequently, the NCLAT has also approved the Resolution Plan, which now has been implemented on 26.03.2021, when the new management has taken over.

5. I have heard learned counsels for the parties.

6. In the present case, so far, the investigation has been conducted by *Insp. Kapil Dhanked*. It has been stated that the documents are voluminous and the investigation is to be carried out all over India for which reason,

Insp. Kapil Dhanked would need the assistance of SI Amit Kumar.

7. The short issue involved in the present case is whether a person below the rank of Inspector can assist the main Investigating Officer in conducting investigation. The issue in question arises out of interpretation of Section 17 of the Prevention of Corruption Act, 1988 which is contained in Chapter IV of the Act dealing with investigation into cases under the Act as well as for the persons who are authorised to investigate and it reads as under:

“17. Persons authorised to investigate- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank, -

(a) in the case of the Delhi Special Police establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest

therefore without a warrant:

Provided further that an offence referred to in Clause (b) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.”

8. The above provision corresponds to Section 5A of the Prevention of Corruption Act, 1947, which came up for consideration in H.N. Rishbud and Inder Singh v. State of Delhi reported as **AIR 1955 SC 196**. The Supreme Court after considering the Scheme of Cr.P.C. observed that it was permissible for an officer in charge of a Police Station to get the investigation conducted from a subordinate officer provided that the responsibility of all such steps remains with the officer in charge of Police Station and that the subordinate officer reports all the steps taken by him to the officer in charge. It was held as under:

“6. It is in the light of this scheme of the Code that the scope of a provision like Section 5(4) of the Act has to be judged. When such a statutory provision enjoins that the investigation shall be made by a police officer of not less than a certain rank, unless specifically empowered by a Magistrate in that behalf, notwithstanding anything to the contrary in the Criminal Procedure Code, it is clearly implicit therein that the investigation (in the absence of such permission) should be conducted by the officer of the appropriate rank. This is not to say that every one of the steps in the investigation has to be done by him in person or that he cannot take the assistance of deputies to the extent permitted by the Code to an officer in charge of a police station

conducting an investigation or that he is bound to go through each of these steps in every case. When the Legislature has enacted in emphatic terms such a provision it is clear that it had a definite policy behind it....”

9. A similar issue again arose before the Supreme Court in Muni Lal v. Delhi Administration reported as **AIR 1971 SC 1525**.

“16. The High Court found irregularity in the investigation on the basis, as pointed out earlier, that some of the statements are in the hand writing of Ved Prakash. We are of the view that this was a wrong approach made by the High Court. It is clear from the evidence that PW 6 was in complete charge and control of the investigation and he has never withdrawn from the same at any stage. He was the officer who was controlling and giving necessary directions in the course of investigation. Though it is clearly implicit in Section 5-A that the investigation should be conducted by the officer of the appropriate rank, we do not think it is absolutely necessary that every one of the steps in the investigation has to be done by him in person or that he cannot take the assistance of his deputies or that he is bound to go through each and everyone of the steps in the investigation in every case. The above proposition also has been laid down by this Court in H.N. Rishbud and Inder Singh v. The State of Bihar 1955CriLJ526. We are referring to the above aspect to emphasise that the mere fact that some of the statements have been written by Ved Prakash to the dictation of PW 6 will not make the investigation as one not conducted by PW 6. Therefore, under the

circumstances, we are not inclined to agree with the view of the High Court that there has been any irregularity or illegality in the conduct of the investigation.”

10. Recently, in Union of India and Others represented through Superintendent of Police v. T. Nathamuni reported as **(2014) 16 SCC 285**, where while relying on its earlier decision in H.N. Rishbud and Inder Singh (Supra), the Supreme Court held as under:

“10. In the instant case, the only question that needs to be considered is as to whether the order passed by the Magistrate permitting the Sub-Inspector, CBI, Chennai to investigate the matter can be sustained in law. The only ground taken by the respondent in the quashing petition before the High Court is that as per the provisions of Section 17 of the Prevention of Corruption Act, 1988, no officer below the rank of Inspector of Police is authorized by the Government to investigate the case without permission of the court. Further, Section 17 does not confer any power to the court to grant permission to the Sub-Inspector of Police to investigate the case. Hence, the order passed by the Magistrate permitting the Sub-Inspector of Police to investigate the case is without jurisdiction and against the mandatory provisions of Section 17 of the Act as well as Article 21 of the Constitution of India.

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12. It is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent

Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24-9-2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction and hence, in the facts of the case, the High Court erred in law in interfering with such investigation more so when it was already completed.

13. The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorized by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by Sub-Inspector, CBI who, after completion of investigation, submitted the charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.”

11 The Trial Court by passing the impugned order not only failed to appreciate the mandate of Section 17 of the PC Act, 1988 but also failed in its duty to follow the import of above referred exposition of law. The Special Judge is empowered under Section 17 of the PC Act, 1988 to permit

an officer below the requisite rank to assist the Investigating Officer in conducting investigation provided the steps taken by him are under direct supervision of the Investigation Officer who remains in control of the investigation and shall be responsible for all the steps that are taken by the subordinate officer.

12. Consequently, in view of the above referred position of law and the no objection given by the respondent, the present petition is allowed.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 11, 2021

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Click here to check corrigendum, if any