

Central Bureau of Investigation Vs. Dilip Mulani & Anr.

Criminal Appeal No. 3863 of 2024 arising out of SLP (Crl.) No.1273 of 2021 · Supreme Court of India · 2024-09-20 · Abhay S. Oka · Ujjal Bhuyan · F2J-C-1588

Full judgment text

Central Bureau of Investigation Vs. Dilip Mulani & Anr.

[Criminal Appeal No. 3863 of 2024 arising out of SLP (Crl.) No.1273 of 2021]

Abhay S. Oka, J.

FACTUAL ASPECT

1. The respondent no.1-accused no.5 (referred hereinafter as "the respondent"), along with five other accused, was sought to be prosecuted for the offences punishable under Section 120 B of the Indian Penal Code (for short, 'the IPC') and Sections 7,12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). By the impugned judgment, the High Court proceeded to discharge the respondent by setting aside the order of the learned Special Judge.

2. It is alleged in the chargesheet that one Mehul Jhaveri accused no.1 was the authorised signatory of M/s Khimji Poonja Freight Forwarders Pvt. Ltd. (for short, 'the company'). The company was functioning as a Customs House Agent in Mumbai. Acting in criminal conspiracy with one Chandubhai Kalal-accused no.2, the then Superintendent of Customs at Ahmedabad, along with one Tushar Vaghela-accused no.3, who was the export executive of the said company, Mehul Jhaveri, paid a sum of Rs.58,000/- to accused Chandubhai Kalal for clearing refund claim of Rs.46,87,000/- of the Company's clients. Money was paid to Chandubhai Kalal by Mehul Jhaveri through Tushar Vaghela on 19th July 2010 in consideration of clearing three pending refund cases of the company's clients.

3. The allegation is that the respondent was the Managing Director of the company since 1998-99, and accused no.6- Dushyant Mulani was one of the Directors of the company. The allegation is that accused no.1-Mehul Jhaveri was the company's regional head looking after CFIA work. Accused no.3-Tushar Vaghela, was working under the said Mehul Jhaveri. It is alleged that the amount of Rs.58,000/- represents 1.25% of the total refund cleared by accused Chandubhai Kalal. The allegation regarding the payment/acceptance of a bribe of Rs.58,000/- is confined to Mehul Jhaveri, Chandubhai Kalal and Tushar Vaghela.

4. Another allegation in the charge sheet pertains to the payment of illegal gratification to one Anand Singh Mall, posted as an Assistant Commissioner, Air Cargo at Ahmedabad from 8th December 2009 till 1st March 2011. The said Anand Singh Mall was looking after the export, import and refund work. It was his duty to sanction Special Additional Duty (SAD) refund claims and to make payment thereof.

The allegation in the charge sheet is regarding the payment of Rs.3,50,000/- to Anand Singh Mall. The allegation is that Anand Singh Mall required a sum of Rs.3,50,000/- to be paid in Delhi. The case is that one R.C. Pagaria, in charge of the company in Delhi, received the sum of Rs.5,00,000/- through M/s Poornima Angadiya from the company's head office in Mumbai. As per the instructions of Mehul Jhaveri, R.C. Pagaria paid a sum of Rs.3,50,000/- to one Kishan Rajwar who received it on behalf of Anand Singh Mall.

5. Another allegation is that on 21st October 2010, the said Mehul Jhaveri informed accused no.6-Dushyant Mulani that he had sent a sum of Rs.1,50,000/- to the respondent, which has been handed over to Anand Singh Mall. The allegation in the charge sheet is that Mehul Jhaveri instructed Dushyant Mulani to inform one D.B. Jhadav as Anand Singh Mall was likely to contact the said Jadhav.

Accordingly, there was a telephone conversation between Anand Singh Mall and Jadhav. It is alleged that the sum of Rs.1,50,000/- was paid as illegal gratification to Anand Singh Mall by Jhadav. According to the case of the prosecution, in the expenditure notebook maintained by Mehul Jhaveri, entries were made showing a sum of Rs.3,50,000/- against Anand Singh Mall. In the same notebook, there is an entry of payment of Rs.1,50,000/- to the respondent.

6. The charge sheet was filed on 28th September 2012. On 8th July 2016, the learned Special Judge under the PC Act rejected the application for discharge made by the respondent. On 29th November 2017, the High Court allowed the Revision Application filed by the respondent and passed an order of discharge. On 20th August 2019, this Court passed an order of remand to the High Court on the ground that the High Court did not analyse factual aspects. After the order of remand, by the impugned order dated 14th February 2020, the High Court has again passed an order of discharge.

SUBMISSIONS

7. The Learned Additional Solicitor General has taken us through the relevant parts of the charge sheet and the impugned judgment. Her submission is that, at the time of framing of charge, the Court is not expected to examine and assess the material placed before it in detail. It must examine the material only to ascertain whether a prima facie case of commission of offences alleged has been made out against the accused.

She submitted that the main allegation in the charge sheet against the respondent was of involvement in the conspiracy. When the amounts of Rs.3,50,000/- and Rs.1,50,000/-, respectively, were paid to Anand Singh Mall, the respondent was the company's Managing Director. The amount was paid on behalf of the company. She submitted that the High Court should not have discarded the intercepted conversation at this stage. She submits that a prima facie case was made out to proceed against the respondent.

8. Learned senior counsel appearing for the respondent supported the impugned order. He submitted that the respondent is not a party to any telephonic conversation with Mehul Jhaveri or any other accused. He pointed out that in the reply filed to the discharge application, the appellant stated that the letters DM in the notebook maintained by Mehul Jhaveri refer to Dushyant Mulani, who is a co-accused and not to the respondent.

The reference to DM appears in the same notebook against the entry of a sum of Rs.1,50,000/-. He submitted that the notebook does not contain entries made or maintained by the respondent. He would submit that there is no reason to disturb a very well-reasoned decision of the High Court, which considers all the relevant material on the record of the charge sheet. He submitted that the High Court had examined the charge sheet only to ascertain whether there was any prima facie case against the respondent and that the High Court had not crossed the limit.

CONSIDERATION OF SUBMISSIONS

9. We have perused the charge sheet and other material on record. A perusal of the charge sheet shows that the allegation is about payment of illegal gratification of Rs.58,000/-, Rs.3,50,000/- and Rs.1,50,000/- respectively, on behalf of the said company to officials of the customs department to procure benefits to its customers. As regards the allegation regarding the payment of Rs.58,000/-, the case is that accused no.1- Mehul Jhaveri paid the said amount to another accused, Chandubhai Kalal. The charge sheet contains no allegation against the respondent to connect him with the payment. The allegations of being part of a criminal conspiracy are made against the respondent.

As regards payment of illegal gratification of Rs.3,50,000/- and Rs.1,50,000/- respectively paid to Anand Singh Mall, in the charge sheet, the allegation against the respondent is that the respondent in conspiracy with Mehul Jhaveri abetted the offence of bribery and arranged for payment of illegal gratification of Rs.3,50,000/- to Anand Singh Mall at Delhi through one Kishan Rajwar, who happens to be the respondent's nephew. Further allegation is that Mehul Jhaveri, in conspiracy with the respondent and one Dushyant Mulani, arranged to deliver illegal gratification of Rs.1,50,000/- to Anand Singh Mall in Mumbai.

10. The prosecution is not relying upon any telephonic conversation between the respondent and any of the coaccused or the person to whom illegal gratification was allegedly paid. In the charge sheet, as regards payment of the sum of Rs.3,50,000/- it is stated thus:

"From the above facts it can be safely inferred that on 29.07.10. Shri Jhaveri had sent Rs.3,50,000/- to his Mumbai office for effecting payment to Anand Mall at Mumbai. But as Shri Anand Mall wanted the delivery of the amount at Delhi while discussing with Shri Jhaveri on 31.08.10, Shri Jhaveri made the arrangement for delivery of Rs.3.5 lakh through Shri R.C.Pagaria.

On 31.08.10, as per the conspiracy hatched between Mehool Jhaveri and Shri Anand Singh Mall, as per the direction of Shri mall, Shri R.C.Pagaria paid Rs.3.5 lakhs to Shri Kishan Rajawar, nephew of Shri

Anand Singh Mall. Further, on the same day evening ie., on 31.08.10, Shri R.C.Pagaria during conversation with Shri mehool Jhaveri confirmed about delivery to Shri Kishan @ Chota Kishan. The above facts put together shows that the word 'Parking' in the conversations pertains to delivery of money."

11. Regarding payment of Rs.1,50,000/-, the allegation is that Mehul Jhaveri informed Dushyant Mulani that he had sent a sum of Rs.1,50,000/- to the respondent to be handed over to the said Anand Singh Mall. The prosecution is relying upon entries made by Mehul Jhaveri in his diary. The entry dated 29th July 2010 shows that the respondent's name is at the top of the page. It is recorded that "A Mall - ad-hoc as per the list attached show to DM - Rs.3,50,000/-". It must be noted here that in the reply submitted by the appellant to the application for discharge, it is stated that the letters 'DM' stand for Dushant Bhai Mulani and not Dilip Mulani (respondent)

12. Regarding payment of Rs.1,50,000/- to Anand Singh Mall, the diary maintained by the accused no.1 shows that there is an entry "Anand Mangal - trans to DM @ APO - Rs.1,50,000/-". Thus, in this entry, the reference is also to Dushyant Mulani.

13. The High Court has elaborately dealt with this material. The High Court has examined the statements of the witnesses and documents which were a part of the charge sheet. The High Court has observed that in the diary entries made by accused no.1, the word "Dilipbhai" has been mentioned at the top. Against the entries of the amounts of Rs.3,50,000/- and Rs.1,50,000/-, the letters DM have been mentioned. However, no witness stated that the letters DM meant the respondent, not Dushyant Mulani. As pointed out earlier, in reply to the discharge application, the appellant admitted that letters DM refer to Dushyant Mulani and not the respondent.

14. We have perused the entries in the diary allegedly made by accused no.1. Though, on the top of the page, the name Shri Dilip Bhai appears, both the entries regarding the sum of Rs.3,50,000/- and Rs.1,50,000/- refer to DM.

15. Therefore, except for the bald allegation of participation in the alleged conspiracy without giving any details of the conspiracy, the respondent has been roped in the charge sheet. His name did not appear in the First Information Report.

Taking the material forming part of the charge sheet as true, it cannot be said that a prima facie case of involvement of the respondent was made out. In the circumstances, we find no error in the view taken by the High Court when it discharged the respondent.

16. Accordingly, we dismiss the appeal. We make it clear that the observations made by the High Court and this Court remain confined only to the role ascribed to the respondent.

.....J. (Abhay S. Oka)

.....J. (Ujjal Bhuyan)

New Delhi;

September 20, 2024.

Back

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