

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: SECTION 482

CRL.M.C. 810/2005 and CrI MA 2757/2005

Date of decision : January 17, 2008

RITA SINGH

Through

Petitioner

Mr. D.C. Mathur, Senior Advocate
with Mr. Pavan Narang and Mr.
Anish Dhingra, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION

Through

Respondent

Mr. R.M. Tewari, APP
Shri Ram Singh, IO.

Dr. S. Muralidhar, J. (open court)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) filed by the Petitioner challenging an order dated 7th February, 2005 passed by the learned Metropolitan Magistrate, New Delhi (MM) summoning the Petitioner to face the trial for the offences under Sections 120B read with Section 420 IPC along with other accused in case RC AC(A)/2002 (ACU 1) (CBI v. J.K. Singh).

2. The charge sheet dated 30th December, 2004 filed in the aforementioned case has been placed on record as Annexure P-3. It indicates that the case was registered on 20th May, 2002 on the basis of information that one Shri Vijay Sharda, the then Deputy General Manager, I.M.C., BHEL, Jhansi and Shri N.K. Garg, the then Senior Manager, Transport Business Department, TRD, BHEL, New Delhi in conspiracy with Shri J.K. Singh, Chairman of M/s. Mideast Integrated Steel Limited (MISL) abused their official position with the object of cheating the BHEL and to show undue favour to a private firm, in the matter of supply of five diesel electric locomotives to M/s. MISL. It is stated that as a result of the criminal conspiracy, a pecuniary loss to the tune of Rs.3 crores was caused to BHEL, a Government of India undertaking and a corresponding pecuniary gain, was caused to M/s. MISL. The charge sheet then narrates the details of investigation carried out. In paras 20 to 22, the following conclusions have been reached:

20. That the above facts disclose that Shri J.K. Singh Chairman-cum-Managing Director of M/s. MISL in conspiracy with Shri I.B. Singh Deputy General Manager of M/s. MISL, cheated BHEL to the tune of Rs.2,04,66,375/- by intentionally and deliberately changing the mode of payment which was to be routed through a nationalized bank as per terms of contract. Further,

even after changing the mode of payment, they defaulted on pending payment in spite of having a huge bank balance of Rs.40 crores in ANZ Grindlays Bank Connaught Circus Branch. In this regard Shri A.K. Mathur, the then Deputy General Manager, Shri N.K. Garg, Deputy General Manager, TBD, New Delhi, Shri Vijay Sharda, Additional General Manager, BHEL, Bhopal and Shri A.K. Pandey, Senior Engineer, LMC, BHEL Jhansi also committed acts of commission and omission which resulted in wrongful pecuniary loss to BHEL. The aforesaid public servants were negligent in not ensuring proper performance of contract by M/s. MISL as per laid down terms and conditions.

21. That the aforesaid public servants are not being prosecuted since sanction for prosecution against them under Section 19 of IPC Act, 1988 has been declined by the competent authority inter alia on the grounds that their conduct warrants Regular Department Action.

22. That from the fact mentioned above, it has been established that Shri J.K. Singh and Shri I.B. Singh have committed offences punishable under Section 120B read with Section 420 IPC and substance offences thereof.

3. In column No. 1 of the charge sheet, the name of the accused i.e. Shri J.K. Singh and Shri I.B. Singh have been mentioned and in column No.2 names of the officials of BHEL, who have not been sent up for trial, have been indicated.

4. When the charge sheet was filed in the court of learned MM for taking cognizance, the following order was passed on 7th February, 2005: 7.2.2005 Present: IO/Inspector Ram Singh with T.P. Singh for DLA and B.K. Singh, P.P. Heard. Charge sheet, statement of witnesses and material on record perused. Accused J.K. Singh is the Chairperson of M/s. MISL and Rita Singh is the Managing Director of the said company. Record shows that all the cheques were issued on the instructions of J.K. Singh and also of Rita Singh. And on priority of payment were deiced by both J.K. Singh and Rita. The cheque dated 23.9.1996 for Rs.15 lacs in favour of BHEL was issued by Rita Singh from the account of MISL to ANZ Grindlays Bank. On considering the material on record I am satisfied that there are sufficient grounds to proceed further under Section 120 B read with 420 IPC against M/s. MISL, J.K. Singh, Chairman of MISL, Mrs. Rita Singh, MD and I.P. Singh, DGM. However the company cannot be prosecuted if the offence is punishable for mandatory imprisonment in view of the order of the Hon ble High Court. Issue process to J.K. Singh, Rita Singh and I.B. Singh for 16.3.05 through SP/IO concerned.

5. Against the above order, the present petition has been filed under Section 482 Cr.PC by the Petitioner.

6. On 15th March, 2005 this Court had directed to issue notice to the Respondent and an interim order was passed exempting the Petitioner from personal appearance before the trial court provided she is represented by a counsel and subject to the condition that she will appear in person whenever required by the trial court for a specific purpose. That interim order has been continued till date.

7. The submission of Mr. D.C. Mathur, learned Senior counsel appearing for the Petitioner is that there is no mention anywhere in the charge sheet of the involvement of the Petitioner. He further submits that even the cheque dated 23rd September, 1996 for Rs.15 lakhs issued by the Petitioner was honoured and there is, therefore, no question of any offence of cheating under Section 420 IPC having been made out against the Petitioner. He points out that the release of locomotives on 17th July, 1995 and 24th July, 1995 to M/s. MISL by BHEL was admittedly

done without any decision being taken on the non-payment by MISL of the full amount on the earlier three locomotives already despatched. Nowhere does the charge sheet, which has been prepared after a detailed investigation, indicate the role of the Petitioner (Ms. Rita Singh) in any of these transactions. He accordingly submits that there is no occasion for the learned MM to observe that the record shows that all the cheques were issued not only on the instructions of Shri J.K. Singh but also of Rita Singh. Since there is no material to proceed against the Petitioner, the impugned order is erroneous as far as the Petitioner is concerned.

8. Mr. Tewari, learned APP appearing for the CBI has, on instructions from Shri Ram Singh, IO, confirmed that as far as the CBI is concerned, the conclusions of the investigation are set out clearly in the charge sheet. In response to a query by the Court whether the CBI has any material to support the taking of cognizance and issuance of summons to the Petitioner by the learned MM, he submits on instructions that the charge sheet itself does not indicate the existence of any material which can prove the commission by the Petitioner of the offences under Section 120 B read with 420 IPC.

9. There being no material available with the prosecution to sustain the order of the learned MM taking cognizance of the offence and issuing summons to the Petitioner, it is not known on what basis the learned MM observed that the records shows that all cheques were issued on the instruction of the Petitioner here, or that the priority of payment were decided by both J.K. Singh and Rita.

10. It is apparent that there is no material on the basis of which the learned MM could have issued summons against the Petitioner. The impugned order dated 7th February, 2005 is, therefore, unsustainable in law and is hereby quashed.

11. Accordingly, this petition is allowed in the above circumstances with no orders as to costs. The pending application also stands disposed of.

Sd./-
S.MURALIDHAR, J

JANUARY 17, 2008