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**(2008) 11 RAJ CK 0032**  
**In the Rajasthan High Court**

Kishore Bhagtani

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 12-11-2008

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B  
Prevention of Corruption Act, 1988 — Section 13(1)(d)

**Citation :** (2009) CriLJ 1172

**Hon'ble Judges :** Mahesh Chandra Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Mahesh Chandra Sharma, J.—These two revision petitions arise from the common order dated July 23, 2008 of the Special Judge (Printing and Stationary Embezzlement cases) and CB1 Cases, Jaipur framing charges against the petitioners Kishore Bhagtani and Dharmendra Kumar Singhal u/s 120B IPC read with Sections 7(13)(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, they are being disposed by this common order.

2. Brief facts of the case are that the petitioners Kishore Bhagtani and Dharmendra Kumar Singhal and other co-accused are employees of BSNL. A committee comprising of Santosh Kumar Meena, Deputy General Manager (Administration), Kishore Bhagtani Area Manager (Central), D.K. Singhal DGM (Finance) and O.P. Garg, JTO (General Administration Wing) was constituted vide order dated March 4, 2005 with the approval of the Principal General Manager Telecom District Jaipur. This Committee was to submit recommendations for private hospitals for their empanement in BSNL. The Committee was also supplied a list of private/ trust hospitals of Jaipur City and the task of the committee was to give recommendations for each of the hospitals from this list by visiting each of them and ascertaining their services/facilities. About 60-65 hospitals were to be visited by the Committee. The said Committee started its work on April 12, 2005 and till April 23, 2005 about 45 hospitals were inspected.

On April 22, 2005 Santosh Kumar Meena and O.P. Garg members of the committee went to Dr. Naresh Goyal Orthopaedic Hospital (whose Incharge Dr. Naresh Goyal is complainant herein). The complainant lodged FIR with CBI on April 23, 2005. It was alleged that O.P. Garg, one of the member of the Committee contacted him to pay bribe for the empanement of his hospital. The complainant was asked to confirm the demand of bribe from Santosh Kumar Meena in front of witness and the same was also recorded. It is alleged that a pre-trap memo was prepared at the office of SP, SPE, CBI Jaipur on April 23, 2005. On the evening of April 23, 2005 SP CBI caught O.P. Garg, one of the member of the Committee red-handed while accepting bribe from the complainant at the complainant's Hospital in Mansarovar. Mr. Garg on interrogation told that he was acting on behalf of the Committee and the bribe money collected was to be given to Santosh Meena. CBI then asked O.P. Garg to take the money to Santosh Meena, at his residence in C Scheme, and caught Santosh Kumar Meena red handed, while accepting money from O.P. Garg. CBI then asked O.P. Garg to contact other two Committee members Kishore Bhagtani and Dharmendra Kumar Singhal one by one over phone using the mobile of Santosh Kumar Meena. After investigation, the CBI Jaipur submitted charge sheet against the members of the Committee Santosh Kumar Meena, O.P. Garg, Kishore Bhagtani and O.K. Singhal on May 25, 2006 u/s 120B IPC, Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The trial court heard the arguments of both the parties on July 15, 2008 and ordered to frame charge against the Committee members on July 23, 2008. The trial court discharged the petitioners Kishore Bhagtani and D.K. Singhal from the substantial charges for the offence u/s 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and frame charge against them with the aid of Section 120B IPC read with Section 7, Section 13(2) and Section 13(1) (d) of the Prevention of Corruption Act only. Against the said order these revision petitions have been filed.

4. I have heard the learned Counsel for the parties.

5. Mr. Raghunandan Khandelwal appearing on behalf of the petitioner Kishore Bhagtani and Mr. Anurag Sharma, learned Counsel appearing on behalf of the petitioner Dharmendra Kumar Singhal contended that the Hospital of the complainant was visited on April 22, 2005 by Santosh Kumar Meena and O.P. Garg only. The learned Counsel stated that the trial court has not taken note of the facts in the pre trap memo prepared by CBI, which states that:

...The genuineness of the complaint was discretely ascertained/verified and it prima facie discloses commission of offence u/s 120B of IPC and Section 7 of the Prevention of Corruption Act, 1988 on the part of Shri O.P. Garg JTO and Shri S.K. Meena, DGM (Admn.) O/o PGMTD BSNL Jaipur. As such a case vide FIR No. RC Jai 2005 A 0008 was registered against Shri O.P. Garg DTO and Shri S.K. Meena, DGM (Admn.), O/o PGMTD, BSNL, Jaipur u/s 120B of IPC and Section 7 of the Prevention of Corruption act, 1988" "...They (independent witnesses )

were informed that S/shri O.P. Garg and Shri S.K. Meena have to be caught red handed while demanding and accepting bribe from the complainant Dr. Naresh Goyal.

The entire case as ascertained/verified by CBI prima facie disclosed the involvement of O.P. Garg & S.K. Meena only and not that of petitioners Kishore Bhagtani and Dharmendra Kumar Singhal.

6. The learned Counsel for the petitioners placed reliance on Madurai Coats Ltd. Vs. The Workmen of Madurai Coats Ltd. represented by the Secretary and Others, AIR 1940 176 (Privy Council) State of Gujarat Vs. Mohammed Atik and others, Nesar Ahmed and Another Vs. State of Bihar, Anjlus Dungdung v. State of Jharkhand AIR 2005 SC 1394 Sanjay v. State of Rajasthan 2006 (2) RLW 1521 People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, , Cr. Appeal 68 of 2002 decided on December 12, 2003 Rajesh Kumar v. State (at Delhi High court), Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, S. Gopal Reddy Vs. State of Andhra Pradesh, Alamgir Vs. State (NCT, Delhi), , Union of India (UOI) Vs. Prafulla Kumar Samal and Another, Dilawar Balu Kurane Vs. State of Maharashtra, and Yogesh v. State of Maharashtra 2008 (2) Crimes 263 (SC).

7. The learned Counsel submitted that the trial court committed serious error in considering the statements of co-accused O.P. Garg and S.K. Meena after they have been trapped and nabbed by the CBI. The Apex Court in Madurai Coats Ltd. Vs. The Workmen of Madurai Coats Ltd. represented by the Secretary and Others, , AIR 1940 176 (Privy Council) State of Gujarat Vs. Mohammed Atik and others, and State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, are clear and unambiguous and well settled that the statements made by the conspirators after they are arrested cannot be brought within the ambit of Section 10 of the Evidence Act, because by that time the conspiracy would have ended. The statements made by S.K. Meena and O.P. Garg after they have been trapped and nabbed by CBI are of no consequence as these statements are hit by above judgments of the Supreme Court in particular and Section 162 Criminal Procedure Code in general, as it was done under the compulsion and at the insistence and in the presence of CBI officials.

8. Argument has also been raised by the learned Counsel that the trial court committed error in considering the alleged taped conversation between the petitioner Kishore Bhagtani and O.P. Garg. On scrutiny of the mobile call records of S.K. Meena, collected by CBI, it emerges that it was an Incoming Call at the mobile number 9414001617 of S.K. Meena at 21:14 hrs, which lasted for 209 seconds i.e. The said call ended at somewhere 21:18/21:19 hrs and by that time the trap party has not entered the house of S.K. Meena, which corroborates the fact that the trap party would have started at 2120 hrs. from the hospital of complainant as mentioned in recovery memo and stated by one and all members of the trap party.

9. CBI stated that it started from the complainant's hospital situated in Mansarovar at 21:20 hrs. reached the house of Santosh Meena in C-scheme, briefed trap party, trapped Meena red handed, recovered the money from Meena, counted and tallied the money, did confiscation and sealing of the objects at Meena's residence and then interrogated Meena. All these events are stated to have occurred after the trap party started from the complainant's hospital at 21:20 hrs. If one considers the tentative duration of each of these activities based on common prudence, it becomes amply clear that all these activities should have taken more than 1 hour and 20 minutes to occur and that the CBI could have made a call to the petitioner as alleged before 22:40 hrs.

10. The call details of the mobile phone number 9414001617 (used for making the alleged call to the petitioner Kishore Bhagtani of Santosh Meena<sup>1</sup> collected by CBI. There is no call at or near 22:40 hrs. that has been made to the number of the petitioner. It is seen that the last two calls appearing in the call records of mobile No. 9414001617 of S.K. Meena and made to the mobile number 9414001515 of Kishore Bhagtani are at 21:32 hrs. for 51 seconds and other at 21:52 hrs. for 53 seconds. Both these calls are shown as Outgoing in call records of 9414001617, the mobile number of Santosh Meena. All these raise serious doubts and suspicions regarding motives of CBI for not mentioning any details about the alleged call timings in their report. Obviously they could not have made a call from Shri Meena's mobile phone before 22:40 hrs.

11. CBI alleged that the second call was made from the mobile number 9414001617 of Santosh Meena to the mobile number 9414001515 of Kishore Bhagtani. CBI alleged that this time Santosh Meena made a talk with Kishore Bhagtani. CBI stated that this time CBI did not record the said conversation but merely listened to it. All these raise a strong suspicion about motives of CBI for not recording the said alleged conversation, especially when the said call was originated at the behest of CBI, by the CBI and CBI was fully equipped with all these necessary recording two conversations (as they had allegedly recorded two conversations before the alleged conversation).

12. The learned Counsel further alleged that the trial court erred in allowing the alleged tape recording of phones by CBI, which is direct contravention to the Indian Telegraph Act and the judgments of Apex court on the subject. According to which no conversation on telephonic call can be taped without permission of the specified authority. As such the alleged act of taping call by CBI is itself illegal. The trial court erred in not appreciating the fact that the alleged voice test report produced by CBI is in itself inconclusive and not definitive. It merely states that the alleged voice in the taped call and the alleged specimen voice sample are probably the same. This meek evidence produced by CBI with regard to the voice test is hit by various decisions of Supreme Court from time to time cautioning heavily before relying on expert evidence and not basing the decisions merely on the expert opinions. The trial court while framing charge against the petitioner Kishore Bhagtani for criminal conspiracy has not considered the basic

fact that in the present case the prosecution has not presented a single direct or circumstantial evidence prior to the date of occurrence of the event or prior to the date/time of the registering the case by the CBI, wherein it has been alleged that the conspiracy was conceived or hatched at all. The legal position consistently taken by Hon''ble Court is very clear that statements made by the conspirators after they are arrested cannot be brought within the ambit of Section 10 of the Evidence Act, because by that time the conspiracy would have ended. The sole evidence for alleging such a conspiracy are the allegations by co-accused O.P. Garg and S.K. Meena and the alleged taped conversation. Both of these aspects constitute circumstances after they have been trapped and nabbed by the CBI i.e. after the conspiracy has ended. It has been clearly established that both the alleged circumstances are marred by several glaring infirmities and irregularities.

13. The learned Counsel for the petitioners relied on Section 10 of the Evidence Act, which reads as under:

10. Things said or done by conspirator in reference to common design--where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

13A. On the other hand Mr. Kamlakkar Sharma, learned Special Public Prosecutor contended that there is no doubt regarding evidence against the petitioners, which do not discharge the petitioners at the stage of charge. There is satisfactory evidence against the petitioners, and the trial court after appreciating the evidence framed charge against the petitioners. There are two types of charge against the accused in the present case. Since substantive charge is not likely to be proved against the petitioners the trial court framed the charge against the petitioners with the aid of Section 120 B IPC read with Sections 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, This shows that the trial court after scrutiny of evidence formed the Opinion. All these evidence can be considered in detail during trial and not at the stage of framing charge.

14. I have gone through the cases relied upon by the learned Counsel and the arguments raised by the learned Counsel for the petitioners as well as learned Special Public Prosecutor, But the Apex court in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, it was held as under:

...it would not be safe at this stage to deprive the prosecution in proving its case on the basis of direct evidence, the statement of the deceased claimed to be admissible u/s 32 of the Evidence Act and the other documents including the

inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post mortem report for the cause of death of deceased being hepatic failure following viral hepatitis cannot be accepted on its face value at this stage. Therefore the order of the High Court would be illegal and liable to be set aside.

The Supreme Court reminded the High courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons, unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

15. For these reasons the revision petitions being devoid of merit stand dismissed.

16. The trial court is directed to expedite the trial. Since main cases have been disposed, the stay applications also stand disposed of.