
(2008) 09 DEL CK 0276

In the Delhi High Court

Case No : Criminal M.C. No. 1945 of 2007 and Criminal M.A. 11358/07

Pankaj Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Criminal Procedure Code, 1973 (CrPC) — Section 102, 104, 154, 154(3), 155(2)
Drugs and Cosmetics Act, 1940 — Section 2, 32
Passports Act, 1967 — Section 10(3)
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2009) CriLJ 1576

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : D.C. Mathur and Vikram Singh Panwar, for the Appellant; Shalinder Sharma, Rajneesh Chaudhary and Pawan Sharma, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—By this order I proceed to dispose of CrI M.C. No. 1945/07 which seeks the quashing of F.I.R. No. 78/2006 registered at Police Station Anti Corruption Branch, Delhi, under Sections 420 r/w 120-B of the Indian Penal Code (IPC) and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (P.C. Act), and also CrI M.A. No. 11358/07 which has been filed to seek the transfer of the investigation to CBI.

2. The petitioner claims to be the proprietor of M/s Medicare Textiles, a firm stated to be engaged in the business of manufacturing and supplying surgical dressings. The petitioner states that he has been supplying surgical dressings to a number of hospitals, including those falling under the Government of Delhi, for the past 10 years.

3. As per the case of the prosecution, one Sh. Mishri Lal, stated to be the

General Secretary of the Lok Nayak Hospital Employees Union, 717, Lok Nayak Hospital, New Delhi, made a complaint to the police on 06.11.2006 stating that the petitioner herein has been supplying sub-standard material i.e. the surgical gauze cloth to the government hospitals, viz Lok Nayak and Deen Dayal Upadhyay Hospitals in conspiracy with the staff of the said hospitals. He alleged large scale corruption in these hospitals. His allegation was that cotton gauze cloth of size 60 cm x 20 mtrs. is being supplied at the rate of Rs. 48.90 paise in Maulana Azad Medical College and Hospital from M/s Brij Textiles. Cotton Gauze size 60 cms. x 20 mtrs. is being supplied by Medicare Textiles at the rate of Rs. 48.90 paise in other Delhi Administration Hospitals, whereas the same is being purchased at Rs. 97.02 in LNJP Hospital from M/s Medicare Textile. It was further alleged in the said complaint that instead of the size 60 cms. x 20 mtrs. and 90 cms. x 20 mtrs., gauze cloth of size 45 cms. x 20 mtrs. is being supplied to the LNJP hospital for the last two years since the posting of Shri Vinod Ramteke as Medical Superintendent of the said hospital. Allegations were also made in the complaint with regard to supply/repair of some medical equipment by another entity, with which I am not presently concerned. On the basis of this complaint, the Anti Corruption Branch registered the aforesaid FIR bearing No. 78/2006 on 07.12.06.

4. The further case of the prosecution is that after registration of the FIR, Physical measurement of the Cotton Gauze thaans in the stores of LNJP Hospital and Shushruta Trauma Centre was conducted in the presence of punch witness and LNJP Hospital Vigilance staff wherein a large number of thaans were found to be 45 cms to 50 cm in width and 20 mtrs in length, whereas, according to the supply order the same should have been 60 cm in width. These supplies are alleged to have been made in respect of supply order No. F.1(7)/10/DHS/CPA/2002/1214-21 dated 31.01.2005 placed on M/s Medicare Textiles by CPA/DHS. The under sized cotton Gauze thaans were segregated and kept in the store in the custody of LNJP Hospital Vigilance staff after sealing. It is further alleged that 95 samples and big bags containing approx. 8710 thaans of the under sized gauze cloth were segregated and taken in possession and deposited in the maalkhana of the Police Station, Civil Lines, Delhi. Thereafter, samples were sent to the Shri Ram Institute of Industrial Research for analysis on 27.1.2007 and 09.02.2007 and for comparison with the specifications mentioned in the tender. They were tested and a report was received on 06.03.2007. It is alleged that the samples do not meet the measurement requirements and also do not conform to the specifications in most cases, thereby concluding that the supply did not meet the specifications.

5. The petitioner filed an anticipatory bail application u/s 438 Cr.P.C.(Code) on 22.03.2007 which was dismissed as withdrawn by the trial court. He again filed another anticipatory bail application on 7.4.2007 which was dismissed as being devoid of merits. Non-bailable warrants were issued against him on 26.03.2007. Thereafter the petitioner moved an application for cancellation of the non bailable warrants, which was dismissed on 13.04.2007 by the trial court. On 19.04.2007,

this Court granted interim bail to the petitioner till 23.05.2007 which was extended by one week with the direction to move an application for regular bail.

6. Thereafter the petitioner moved an application for regular bail in the trial court on 24.5.2007 which was fixed for 26.5.2007. On that day the an application for police remand of the accused/petitioner was moved. The matter was reserved for orders and was fixed for 29.05.2007. On the said date the learned Spl. Judge refused to take up the matter citing personal difficulties. Consequently the matter was directed to be listed before the learned District & Session Judge on 31.05.2007. In the meantime, the petitioner moved the present petition, and this Court on 31.05.2007 stayed the investigation upto the next date of hearing. The stay of investigation has continued ever since.

7. As aforesaid, this petition as initially filed sought the relief of quashing the FIR in question bearing No. 78/2006 registered at P.S. Anti Corruption Branch, Delhi u/s 13(1)(d), 13(2) of the Prevention of Corruption Act read with Section 420/120B IPC. However, during the pendency of this petition, it appears, that the petitioner has sought to modify the relief that he seeks. On 11.9.2007 after the arguments had been partly heard by the Court, the petitioner made a statement that he has no hesitation if the CBI investigates the case No. RC-DAI-2007-A-0009 dated 6.2.2007, the case filed against the complainant Shri Mishri Lal the General Secretary of the Lok Nayak Hospital Employees Union in respect of the FIR No. 78/2006. He sought time to move the application for the said purpose.

8. The petitioner thereafter moved Crl.M.A. No. 11358/2007 seeking a direction to transfer the investigation of case FIR No. 78/2006, i.e., the FIR in question, to the CBI which is already conducting investigation in case RC-DAI-2007-0009. This application was filed by the petitioner on the premise that investigations into the subject matter of RC-DAI-2007-0009 and the FIR in question bearing No. 78/2006 are inter linked and shall have definite bearing on each other. It was further stated that the CBI while investigating the said RC-DAI-2007-0009 is also investigating the subject matter of FIR No. 78/2006. The petitioner stated that since the matters were inter related "the petitioner did not have any objection with the CBI investigating the aforementioned FIR No. 78/2006." It was further stated that no prejudice shall be caused to the respondent if the investigation in FIR No. 78/2006 is transferred to the CBI. The petitioner alleged that the investigations in the present case had not been carried out fairly and bona fide by the Anti Corruption Branch. It was further stated that the Chief Secretary, Delhi and the Principal Secretary, Health and Family Welfare had also echoed the sentiments of the petitioner by alleging undue influence by the inspectors of Anti Corruption Branch in the day to day functioning of the Hospital. The petitioner further alleged that the dispute was of a civil nature and criminal proceedings had been instituted with a view to wreck vengeance on the petitioner.

9. The petitioner also termed the investigation conducted by the respondent as mala fide for the reason that the Anti Corruption Branch had raided the Hospital, giving a complete go by to the provisions of the Drugs and Cosmetics Act while

seizing and testing the samples. It was submitted that cotton gauze is a "drug" defined under the Drugs and Cosmetics Act. However none of the procedures prescribed under the said Act for seizing and testing of the samples were adhered to by the investigating agency. Even the test reports were sought from laboratory neither defined under the Drugs and Cosmetics Act nor approved by the Hospital authorities and the petitioner had not been given a chance even to challenge the said report. The samples allegedly seized by the Police were not kept in such climatic conditions as were required for the specific drug i.e. absorbent cotton gauze which, therefore, adversely affected the quality of the drug on testing. The petitioner contended that neither the offence could be made out under the I.P.C or the P.C. Act, nor the investigation be conducted under the Cr.P.C., since the Drugs and Cosmetics Act was a special law and the aforesaid were general laws. According to him, the special law would prevail over the general law. In support of this submission, the petitioner relied upon *Suresh Nanda v. C.B.I.* 2008 IV AD (SC) 351 wherein the passport of the petitioner was impounded without conforming to the provisions of the passport Act, 1967, and it was held that the provisions of Passport Act should have been adhered to for the purpose of impounding of a passport. In paragraph 10 of the application the petitioner stated:

10. That in view of the aforesaid, i.e. when the CBI is already investigating the case against the complainant of the present case, which has a definite bearing on the present case, coupled with the fact that the investigation has been conducted by the Anti Corruption Branch in the present case in an oblique manner, it shall be in the interest of justice, that the investigation of case FIR No. 78/06 shall be transferred to the CBI.

10. At the time of arguments, learned senior counsel Mr. D.C. Mathur appearing for the petitioner did not make any submissions in support of the prayer made in the petition viz. to seek quashing of the FIR No. 78/2006.

11. Mr. Pawan Sharma, the learned APP has opposed the petition and the aforesaid Misc. Application to seek transfer of investigation to the CBI. He submits that the investigation by the police cannot be challenged at this stage, as prima facie, there exists sufficient material on record to show that the petitioner may be involved in criminal acts, as alleged in the F.I.R. Further, while countering the arguments of the petitioner Mr. Sharma submits that the respondents have got the samples verified from a well renowned institute i.e., Shri Ram Institute of Industrial Research, which is known for its standards and accepted as a reliable institute. Thus, the petitioner cannot question the veracity of the results obtained from the said institute. He submits that Shri Ram Institute for Industrial Research is licensed by the Drug Controller for Drugs and Cosmetic.

12. Mr. Sharma further submits that the investigation is still at initial stages and the provisions of the Drugs and Cosmetics Act 1940 will be added at an appropriate stage. It is primarily because of the abuse of power by the hospital officials in connivance with the petitioner that the provisions of IPC and

prevention of Corruption Act have been invoked. Further, he submits that the material seized, i.e the "surgical gauze cloth" was found short in measurements and thus the climatic conditions would not adversely affect the case of the petitioner. Hence the argument that the materials seized were not kept in prescribed conditions is of no consequence.

13. Though the petitioner has not pressed for the relief of quashing of the FIR in question, even otherwise in my view the petitioner has failed to make out a case to justify the quashing of the FIR at this stage. The allegations qua the petitioner found in the uncertified translated copy of the FIR filed by the petitioner read as follows:

Sir we want to bring you face to face with the truth of those hospitals linked with the health department whereby, lacks of rupees are being swindled daily under the head of purchase and repair of articles of daily use of the patients and the technical life saving machinery and parts thereof. In this are involved the junior officers of the hospital their sidekicks and the Medical Superintendent. Sir, if we start with the misdeeds then the first place goes to that regarding articles of daily use such as cotton gauze/gauze cloth which is used in even the smallest of places and the news regarding this is nothing less than explosive. If we compare the purchase by Lok Nayak Hospital and that by other hospitals, mind boggling figures come to the fore.

1. M.A. Dental College Hospital Size 60 cm x 20 M price 48/90 Paise.
2. Delhi Govt.- various hospital Size 60 cm x 20m. Price 49/90 Paise.
3. Lok Nayak Hospital Size 90cm x 20 meter Price 97/02 Paise Medicare Textile.

At least No. 3, gauze cloth purchased by LNH and supplied by Medicare Textile only reaches the hospital in size 45 cm x 20m. The interesting part is that this has been going on for the last two years i.e from the time that respected Shri Ramtake ji has been Medical Superintendent. Whenever there is any kind of purchase of anything a person does so after finding out about it completely to his satisfaction. However, can it be that the Medical Superintendent did not use even 0% of his intelligence regarding this and can his intentions not be gauged from this? The regular standards have been completely flouted in relation to the stuff supplied by Medicare Textiles. The supplied goods according to law should have complete details with them viz., name of company, name of material, manufacturing batch, lot no, manufacturing date, expiry date, guarantee period etc. but why are these directions not followed with regard to the Stuff supplied to Lok Nayak Hospital? There is a vast difference in the orders placed with Medicare Textile and the orders supplied. You can see this on inspecting any ward, O.T., Store on Trauma center department as early as possible. We would like to state that Madaan, the owner of Medicare Textile, Claims he has relations with the CBI. This can be found out through investigation. However, it is true that through Madaan, an influential power is helping the Superintendent of Lok Nayak Hospital.

14. The substance of the allegations against the petitioner is that he has, in conspiracy with some of the officers of the LNJP Hospital supplied cotton gauze of specifications different from those specified under the contract, and at much higher rates than the rates at which the said items were supplied, inter alia, to other Delhi Administration hospitals. On the basis of the said allegations the FIR was registered under Sections 13(1)(d) of the Prevention of Corruption Act read with Section 420/120B IPC against the petitioner and a few others. On a reading of the FIR it is seen that the petitioner has failed to make out a case falling within any of the illustrations given by the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, , or even otherwise to justify the quashing of the FIR in question at this early stage of investigation. It cannot be said that the allegations made in the FIR/complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. It cannot be said that the allegations in the FIR do not disclose a cognizable offence justifying the investigation by police officers u/s 156(1) of the Code. It is not even the petitioner's case that there exist uncontroverted allegations in the FIR and the evidence collected in support of the same, which do not disclose the commission of any offence and make out a case against the accused, including the petitioner. The allegations in the FIR clearly constitute cognizable offence and, therefore investigation could be carried out by the respondents without an order of the Magistrate in terms of Section 155(2) of the Code. Neither is the case of the petitioner that the allegations in the FIR are absurd or inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused. The petitioner has also not pleaded any express bar engrafted in any provisions of the Code or any other law, including the Drugs and Cosmetics Act, to the institutions and continuance of the proceedings.

15. Consequently the relief sought by the petitioner in the petition to seek quashing of the FIR in question, in any event, could not have been granted to the petitioner.

16. Turning now to the relief sought by the petitioner in CrI.M.A. No. 11358/07, that the investigation of the aforesaid FIR be transferred to the Central Bureau of Investigation (CBI), which is also investigating RCDAI-2001-0009 against the complainant Shri Mishri Lal in respect of the FIR in question, once again I find no merit in the submissions of the petitioner. The said prayer made by the petitioner is founded upon, firstly, the argument that investigations in the FIR in question and in RCDAI-2001-0009 are interlinked and have definite bearing on each other. I cannot appreciate this submission of the petitioner. What is being investigated under the FIR in question by the Anti Corruption Branch, inter alia, is the allegation of corruption and conspiracy by and between various governmental officials and the petitioner for the alleged supply of cotton gauze, which was not as per the specifications laid down in the contract and at rates which were higher than the rates at which the same item was being supplied to other government

hospitals. On the other hand, the case being investigated against the complainant of the FIR in question, namely, Sh. Mishri Lal being investigated by the CBI in RCDAI-2001-0009 pertains to the allegation of corruption against Sh. Mishri Lal. The acts/omissions of the petitioner and the other accused in the FIR No. 78/2006 is in no way being investigated in the said RCDAI-2001-0009. These two are different set of acts/omissions committed at different point of time by different persons. In the first case under investigation i.e. FIR No. 78/2006 it is conduct of the petitioner and the other government officials who are named as accused which is being investigated, while in RCDAI-2001-0009 it is the conduct of Sh. Mishri Lal (the complainant in respect of FIR No. 78/2006) which is being investigated. I, therefore, cannot agree with the submission of learned senior counsel for the petitioner that the two investigations are inter-related.

17. The second submission in support of the aforesaid prayer for transfer of investigation to the CBI is equally meritless. The submission is that cotton gauze is a "drug" within the meaning of Drugs and Cosmetics Act, and that since the said Act is a special statute, whereas the IPC, Cr.P.C and P.C Act are general statutes, it is the Drugs and Cosmetics Act under which the prosecution should have been launched and not under IPC. The FIR in question has been registered under the Prevention of Corruption Act and the Indian Penal Code on the basis of the complaint made by the complainant Sh. Mishri Lal. The said complaint does not make any reference to the provisions of the Drugs and Cosmetics Act. In fact, the allegation contained therein is not with regard to any breach or violation of any provision of the said Act. The allegation is with regard to the supply of cotton gauze of specification, namely, physical dimensions different from that stipulated in the contract and at rates higher than those at which supplied and were effected to other government hospitals. Even if it were to be assumed that the cotton gauze is a "drug" within the meaning of Drugs and Cosmetics Act, and that the supply of cotton gauze of the dimensions as supplied by the petitioner is in breach of any provisions of the said Act, and constitutes an offence under the provisions of the said Act, it does not mean that if the ingredients of Section 13(1)(d) of the Preventions of Corruption Act read with Section 120B of the IPC and Section 420 of IPC read with Section 120B IPC is made out, the accused could not be prosecuted for the said offences. No provision has been brought to my notice by learned senior counsel for the petitioner to say that in respect of an offence under the Drugs and Cosmetics Act, no prosecution would be launched against the accused under any other law even though the same alleged conduct may tantamount to an offence under any other law. I may also note that in reply to the petitioner's application being Crl. M.A. No. 11358/2007, the stand taken by the respondents is that though the case has been registered under the Prevention of Corruption Act read with IPC, the provisions of Drugs and Cosmetics Act will be added at the appropriate time after completion of investigations. At this juncture it would be advantageous to notice Sections 2 and 32 (Section 32 falls in Chapter IV) of the Drugs and Cosmetic Act, 1940:

2. Application of other laws not barred.- The provisions of this Act shall be in

addition to, and not in derogation of, the Dangerous Drugs Act, 1930 (2 of 1930), and any other law for the time being in force.

32. Section 32 - Cognizance of offences

(1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not].

(2) No Court inferior to that of [a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

18. Thus, the aforesaid provisions make it amply clear that the provisions of Drugs and Cosmetics Act do not override any other Act, which would include the Cr.P.C. or the P.C. Act or I.P.C. The prosecution of the petitioner, as at present is not under the Drugs and Cosmetics Act. Chapter IV of the Drugs and Cosmetics Act deals with "Manufacture, Sale and Distribution of Drugs and Cosmetics". Therefore, even if the petitioner is to be prosecuted under the said Act, it is Chapter IV thereof which would be relevant for the purpose of his prosecution.

19. In *State of West Bengal v. Narayan K. Patodia* 2000 III AD (SC) 69, relied upon by Mr. Sharma, the Supreme Court, while relying upon its earlier decision in *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, , held that the Code is the parent statute which provides for investigation, inquiry into, and trial of cases and unless there is specific provision in other statute to indicate a different procedure to be followed, the provisions of the Code cannot be displaced. The Supreme Court observed:

That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If High Court was of the opinion that investigation has to be conducted by the Bureau then also there was no need to quash the FIR. Any way we take the view that as offences under the Indian Penal Code are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. Inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." It is quite unfortunate that learned single Judge overlooked the reality that by quashing the FIR in the case the High Court did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving ends of criminal justice, the impugned order would achieve the reverse of it.

20. The reliance placed by Mr. D.C. Mathur, Senior Advocate on the decision in Suresh Nanda (supra) is misplaced, as in that case the facts and issue before the court were different. The power to impound the passport vests in the Passport Authority by virtue of Section 10(3)(e) of the Passport Act, 1967. However, it was contended that the same has been seized and impounded by exercising the powers u/s 102 read with Sections 165 and 104 of the Code. The Supreme Court held that passport cannot be considered as any document or thing for the purpose of Section 104 of the Code. The principle that general provision should yield to the specific provision was invoked by the Supreme Court. However, the position is materially different in the present case, particularly in view of Sections 2 and 32 of the Drugs and Cosmetics Act. In view of the ratio of Patodia (supra), it becomes amply clear that to debar the application of the provisions of the Code, the IPC and the P.C Act, the special Act must specifically provide for different procedure to be followed. I have not come across any provision and none has been pointed out by Mr. D.C. Mathur, learned Senior Counsel for the petitioner in the Drugs and Cosmetics Act, 1940 which debars the proceedings under the Code. On the contrary, from Sections 2 and 32 it is evident that the provisions of the Code, P.C. Act and IPC shall have full application even if the case also involves the commission of an offence under the Drugs and Cosmetics Act. Thus, in view of the aforesaid, the contention of the petitioner that the provisions of the Drugs and Cosmetics Act override the provisions of the IPC, P.C. Act or Cr.P.C. is rejected. Consequently, I see no merit in the submission of learned senior counsel for the petitioner that the FIR in question could not have been registered under the Prevention of Corruption Act and the IPC, or that the Cr.P.C is not applicable thereto.

21. The argument of the petitioner that the entire dispute is civil in nature and that no criminal proceedings could be instituted against the petitioner is also without any merit. To counter this submission of Mr. Mathur, Mr. Pawan Sharma the learned APP submitted that the aforesaid case is not of a civil nature, in as much as it relates to supply of sub-standard supply of surgical material, which is adverse to public interest. Also the fact that the hospital authorities did not take any action for so many years despite the ongoing irregularities in the standards of materials being supplied, and that too at such inflated prices, indicates the strong rooted criminal conspiracy going on between the petitioner and the personnel's of the hospitals. Thus the intervention of the police became inevitable and hence, all the allegations in the F.I.R. are justified.

22. As aforesaid, on a plain reading of the FIR it cannot be said that no offence is made out even if the contents thereof are assumed to be true. It is well settled that the same set of facts may lead to civil as well as criminal liability. The supply of cotton gauze allegedly in breach of the contractual terms in connivance and conspiracy with governmental officials, if assumed to be correct, would give rise to both civil and criminal liability.

23. When the matter came up for hearing on 12.05.2008, the petitioner in

support of his arguments that the investigation should be transferred to the CBI and that Anti Corruption Branch should not be permitted to continue with the investigation as they are allegedly acting mala fide, handed over a bunch of documents in Court to show that despite the interim order dated 31.05.2007, directing stay of investigation in respect of FIR No. 78/2006, the Anti Corruption Branch is continuing with the investigation. The petitioner was required to file an affidavit in support of the said documents. Accordingly, the petitioner has filed an affidavit dated 20.05.2008. In the said affidavit, it is alleged that the investigation has been carried out by the Anti Corruption Branch with connivance with the complainant Sh. Mishri Lal and his accomplice Dr. Vikas Rampal, who is stated to be very influential. It is alleged that the investigation has been carried out with a definite agenda to drag the petitioner into a false and frivolous case. It is further alleged that there is violation of the order dated 31.05.2007 in as much as, despite the stay of investigation granted by this Court on 31.05.2007, the investigation has been continued by the respondents. In support of this submission the petitioner has produced a copy of the letter dated 19.06.2007 issued by Sh. Avinash Sharma, Inspector/Anti Corruption Branch to Sh. Sudarshan Dua, Chartered Accountant, wherein he had sought the supply of various documents from the said Chartered Accountant pertaining to the petitioner. The petitioner has also produced another communication dated 13.08.2007 stated to have been issued by Sh. Avinash Sharma, Inspector, Anti Corruption Branch to the Medical Superintendent of Guru Teg Bahadur Hospital thereby requesting the latter to provide the rates at which surgical dressings have been procured since 2004 by the Guru Teg Bahadur Hospital. It is argued that the continued investigation by the respondents in respect of the FIR in question despite the interim stay granted by this Court is only on account of malafides with which the respondent is proceeding with the investigation. The petitioner also relied upon the minutes of meeting held on 21st and 23rd August, 2007 under the chairmanship of Chief Secretary Sh. R. Narayan Swamy, wherein the Dean Maulana Azad Medical College raised the issue of unnecessary interference of the Inspectors of the Anti-Corruption Branch in the day to day functioning of the hospital. The Chief Secretary in the said meeting desired that the hospital staff should not be harassed unnecessarily by the Inspector and the Anti-Corruption Branch.

24. The petitioner further submits that he has no faith in the investigation conducted by the Anti-Corruption Branch and, therefore, seeks the transfer of the investigation to the CBI.

25. The respondent has filed a reply to the said affidavit of the petitioner which is duly supported by the affidavit of Sh. Kulwant Sharma, ACP, Anti-Corruption Branch. The stand of the respondents is that after the issuance of the interim stay order by this Court on 31.05.2007, no further investigation has been conducted into the FIR in question. The investigating officer in respect of the FIR in question was one Surjeet Singh, ACP. It is further stated that Avinash Kumar, ACP is not investigating the FIR in question. It is pointed out that Sh. Avinash

Kumar is posted in the Vigilance Branch, which is a different unit and functions independently. The communications dated 19.06.2007 and 13.08.2008 relied upon by the petitioner do not pertain to the investigation of the present case i.e. FIR in question. The stay of investigation of the FIR in question pertains to the supply of cotton gauze to LNJP Hospital by the petitioner. On the other hand, the communication dated 13.08.2007 relates to the supplies made to Guru Teg Bahadur Hospital, which is not in question in the present FIR.

26. Mr. Sharma, the learned APP submits that the aforesaid communications are a part of a separate investigation being conducted by the Directorate of Vigilance. There is another complaint dated 23.06.07 by Secretary, Gola Siksha Samiti. As regards the letters by the Chief secretary, Delhi and the Principal secretary, Health & Family Welfare, it is submitted that the said letters are written at the behest of the petitioner to save their skins.

27. Mr. Pawan Sharma, learned APP, produced before the Court the original records pertaining to the investigation conducted in FIR No. 78/2006 as also the investigation being conducted by Mr. Avinash Sharma in file No. F25(12)/2006-DOV. It appears from the latter file that the Central Vigilance Commission vide their letter dated 13.02.2007 had sought an action taken report in the matter of complaints regarding irregularities in purchase of medical equipment in LNJP Hospital. Apart from the complaint made by Sh. Mishri Lal, two other complaints of similar nature were also received. All these complaints were forwarded to Anti-Corruption Branch for enquiry and report. The investigation conducted by Sh. Avinash Sharma related to the procedural irregularities as well as apparent case of favoritism shown not only to M/s Medicare Textile, the firm of the petitioner, but also to one M/s Primex India. The enquiry conducted by Sh. Avinash Sharma, ACP, Anti Corruption branch has been conducted on the asking of the Central Vigilance Commission and the report has also been prepared for the purpose of Central Vigilance Commission. What is being investigated by Mr. Avinash Sharma, Inspector, Crime Branch is not the FIR in question, but a larger issue of irregularity and illegality in the procurement of medical equipment by various government hospitals.

28. On the other hand, a perusal of the case file pertaining to the FIR in question shows that the investigating officer Sh. Surjeet Singh, ACP, Anti-Corruption Branch, Delhi pursuant to the stay orders granted by this Court on 31.05.2007 has undertaken no further investigation being aware and conscious of the said orders. It is seen that during the pendency of the present petition the investigating officer received various references. However, he did not proceed with further investigation and remarked that the reference are to be verified and taken care of during investigation after the vacation of stay order of this Court. He further states that since he has been transferred to Vigilance Branch, Delhi Police, orders have been made by Additional CP/AC Branch to hand over file to Sh. Kulwant Sharma, ACP. Accordingly, the case file along with all the list of documents, relevant files, lab test reports etc. were handed over to Sh. Kulwant

Sharma, ACP/ACB on 17.01.2008. There is nothing on this file to suggest that even Shri Kulwant Sharma, ACP, Crime Branch, Delhi has conducted any further investigation ever since he has taken over the charge from Shri Surjeet Singh ACP, Crime Branch, Delhi. This itself shows that no investigation has been conducted after grant of stay orders on 31.05.2007 in relation to the FIR either by the erstwhile investigating officer Sh. Surjeet Singh and by his successor Sh. Kulwant Sharma. There is no substance in the submission of the petitioner that the respondent has breached the orders passed by this Court on 31.05.2007.

29. The submission of the petitioner that the investigation has been conducted into the FIR in question under the influence of Dr. Vikas Rampal has been denied by the respondents. The allegations of the petitioner are even otherwise vague in this respect. So far as the submission of the petitioner, that he had been called to the room of Dr. Alok Kumar in LNJP Hospital for investigation by Mr. Avinash Sharma, Inspector, Anti-Corruption Branch, Delhi in April 2008 is concerned, the respondents have stated that the said investigation conducted by Mr. Avinash Sharma was not in relation to the FIR in question. The scope of the interim stay granted by this Court was merely to stay the investigation in respect of the FIR in question by its investigating officer pertaining to the petitioner. The same obviously did not encompass, within its scope, any other investigation being conducted by another investigating officer at the instance of the CVC. If the petitioner was aggrieved by the conduct of the investigation by ACP Avinash Sharma, which was being conducted at the instance of the CVC to unearth the alleged irregularities and illegalities committed in the procurement of medical equipment, and was not restricted to the procurement of only cotton gauze cloth supplied by the petitioner, the petitioner could have approached this Court to either seek a clarification, and/or to seek a stay in respect of the investigation being done by Avinash Sharma, Inspector, Anti-Corruption Branch, Delhi.

30. There is absolutely no substance brought on record in support of the allegations of malafides against the respondents by the petitioner. It is well settled that allegations of malafides have to be specific and should contain sufficient detail. Allegations of malafides generally made against an organization per se can only be described as vague. It is not stated as to who, in particular, in the Anti-Corruption Branch, Delhi, is acting with malafides against the petitioner. It is also not stated as to what is the motive or reason for the alleged malice against the petitioner. The said allegation being devoid of merit is rejected.

31. Nobody can ask for transfer of investigation to another agency just by levelling vague allegations on the investigating agency. The petitioner has failed to satisfy the court, as to what is the basis of the petitioner's apprehension that the Anti Corruption Branch would act malafidely against the petitioner on a complaint by a third party. In any event it is a trite law that the roster of the CBI cannot be burdened, and only in rarest of cases shall the investigation be entrusted to CBI. See *Shakuntla Devi v. SHO and Ors.* 2007 (4) JCC 3010. In *Har Charan Singh Kohli Vs. The Commissioner of Police and Others*, , it was observed:

5. It is only in very rare cases where the party is able to satisfy the Court that investigation carried out by the police is partisan or has not been carried out in a proper manner or any material witness or document has not been investigated upon by the investigating agency that a case may be made out for transfer of investigation from one agency to the other. In this case, not only that, in my opinion, no case has been made out for transfer of investigation to any other agency but such a transfer would only hamper the trial which is now pending in the Court of Additional Sessions Judge against the accused persons. The Courts will not interfere in the police investigation subject of course to the right of the Court to intervene in an appropriate case when either the police is not investigating the matter properly or it is being investigated in a partisan manner.

32. In Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, , it was held that:

8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We fail to see any provision of law for recording reasons for such a decision....

33. In Sakiri Vasu v. State of U.P. 2007 (13) SCALE 693 it was held:

10. It has been held by this Court in CBI and Anr. v. Rajesh Gandhi and Anr. 1997 Cr. L.J. 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR u/s 154 Cr.P.C., then he can approach the Superintendent of Police u/s 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application u/s 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application u/s 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has

not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

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31. No doubt the Magistrate cannot order investigation by the CBI vide CBI v. State of Rajasthan and Anr. (Supra), but this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.

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33. In Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.

34. The petitioner has failed to make out a case to justify the transfer of the investigation of the FIR in question to the CBI. In light of the aforesaid, in my view, the petition is without any merit and is therefore dismissed. Interim order dated 31.5.2007 stands vacated. In view of the fact that on account of the stay order dated 31.5.2007 passed by this Court, staying further investigation of the FIR in question, the investigation has got unduly delayed, I direct the Anti Corruption Branch to take up the investigation in right earnest and complete the same at the earliest. The bail application of the petitioner and the application of the respondent seeking police remand of the petitioner be listed before the District & Sessions Judge, Delhi for further proceedings on 10.9.2008. Parties are left to bear their own cost.

Dasti under signature of Court Master to the parties.