



§~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 20th April, 2023
Pronounced on: 04th July, 2023

+

CRL.M.C. 456/2020, CRL.M.A.1913/2020

+

CRL.M.C. 2083/2021, CRL.M.A.14023/2021

+

CRL.M.C. 2092/2021, CRL.M.A.14067/2021

AMBUJ HOTELS & REAL ESTATE PVT. LTD.
SHARAN BIHARI AGRAWAL
M/S BRANDAVAN FOOD PRODUCTS

..... Petitioners

Through: Mr.Mahesh Jethmalani and
 Mr.Vikas Pahwa, Sr Advocates
 with Mr.S.S.Sisodia, Mr.Sarava
 Kumar, Advocates in Crl.M.C.
 No.456/2020.

Mr.Mahesh Jethmalani, Sr
 Advocate with Mr.Jasmeet Singh,
 Mr.Divjot Singh Bhatia, Mr.Saif
 Ali, Mr.Gautam Khazanchi,
 Mr.Kumar Vaibhav, Mr.Anurag
 Sarda, Ms.Mugdha Pandey,
 Mr.Ajay Awasthi, and Mr.Hedo
 Khalo, Advocates in Crl.M.C.
 No.2083/2021.

Mr.Vikas Pahwa, Sr Advocate
 with Mr.Gautam Khazanchi,
 Mr.Kumar Vaibhav, Mr.Vaibhav
 Dueby, Ms.Sukanya Joshi,
 Mr.Anurag Sarda, Ms.Namisha
 and Mr.Rohan Wadha, Advocates
 with AR in person in Crl.M.C.
 No.2092/2021.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr.Nikhil Goel, SPP and
 Mr.Kartik Kaushal, Advocate.



CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
YOGESH KHANNA, J.

1. These petitions are filed seeking quashing of FIR No.RC-DAI-2015-A-0032 dated 14.10.2015 registered at CBI, New Delhi for offences under Section(s) 120-B r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and setting aside all consequential orders/ proceedings arising and emanating therefrom.

2. The dispute is if it was mandatory for licensee (Caterers) engaged in Rajdhani/Shatabdi trains to provide only Rail Neer Packaged Drinking Water (PDW), or they could provide PDW of another company. It is alleged during the period 2013-14, these licensee (Caterers) deliberately supplied PDW other than Rail Neer despite *huge availability* of the same. It is further alleged by not picking up Rail Neer, the licensees (Caterers) had caused loss of Rs.19.55 crores approx to the government exchequer and corresponding undue pecuniary gain to themselves as they claimed reimbursement for Rail Neer PDW which they allegedly did not supply in Rajdhani / Shatabdi trains. Upon conclusion of investigation, CBI filed chargesheet for offences punishable under Sections 120-B r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of the PC Act against two public servants and various licensees (Caterers).

3. While the petitioner was not arraigned as an accused in the abovementioned FIR, but was arrested on 17.10.2015. Upon completion of investigation, the respondent filed chargesheet against the petitioner. The petitioner was in custody for *sixty-five* days.

4. It is alleged despite a categorical opinion expressed *twice* by the CVC and Railway Board advising against grant of sanction for



prosecution under the PC Act and as well as opining the case is not even fit for regular departmental action, sanction for prosecution was granted *vide* sanction order dated 14.03.2017.

5. It is submitted the petitioner is severely prejudiced by the continuation of the impugned criminal case since:

- a)* no formal complaint of any loss was lodged by the Ministry of Railways;
- b)* the CVC had opined no case for grant of prosecution sanction is made out and it was in agreement with the Railway Board the case is not even fit for RDA;
- c)* the Railway Board categorically stated Indian Railways has not *suffered any loss* on account of licensees/ caterers by supplying PDW brands other than Rail Neer;
- d)* in fact, the Railway Board said there was no question of unlawful gain to the licensees who have been suffering losses irrespective of the brands of *PDW* they supplied;
- e)* in any event, IRCTC was able to sell its own brand of *PDW* i.e. Rail Neer *fully* since it was in short supply as the production capacity of Nangloi plant during the material period was inadequate to meet the cumulative demands as Rail Neer was to be supplied not only on Rajdhani/ Shatabdi Train but also to other mandatory trains and stations;
- f)* as soon as the supply of Rail Neer was enforced for the premium trains, the IRCTC *expressed its inability* to supply the same to other mandatory trains and stations.



6. In spite of the aforementioned findings and rejection of prosecution sanction, as on date, it has been six years since the sword of prosecution has been hanging over the petitioners and an amount of Rs.2,64,00,330/- belonging to the R.K. Associates & Hoteliers Pvt. Ltd. (arraigned as Accused No.5) in which the petitioner is a Director stands seized by the respondent despite there being no basis for the same. The impugned FIR has caused immense financial and reputational loss to the petitioner. Due to the pendency of the impugned FIR, proceedings under Prevention of Money Laundering Act has also been initiated against the petitioner as well as against M/s.R.K. Associates & Hoteliers Private Limited, hence, the present petition.

7. The learned senior counsel for the petitioner has referred to the charge sheet, which notes:-

.....xxxxxxx ***In case of non-availability/ inadequate supply of Rail Neer by Railway/IRCTC, the Licensee shall be permitted to sell packaged drinking water of brands approved by Railway, for which the Licensee is bound to take prior approval of Railway, in writing.***"

xxxxxxx

*Investigation has revealed that as per the Agreement between Railway and Caterers, other branded Packaged Drinking Water duly approved by Railway could be supplied to the passengers in the said premium trains only when Rail Neer Water was not available from IRCTC. In this regard, caterers were required to take **prior permission** from the Railway for supply of such other branded POW. In the instant case, investigation has established that licensees had **never taken any approval** from Railways/CCM (Catering) for supply of other branded Packaged Drinking Water.*

xxxx

*Therefore, total Loss to Railway during 2013-2014 =
Rs.346927117 (total claimed from Railway) -
Rs.151388100 (actual claim for Rail Neer) =
Rs.195539017 (Rs. Nineteen Crore Fifty Five Lacs Thirty*



Nine Thousand Seventeen Only) Investigation has revealed that during the period from 1.1.2013 to 31.12.2014, the licensee caterers had claimed a total amount of Rs.34,69,27,117/- from Northern Railway for supply of POW/ mineral water to the passengers, in respect of 23 trains controlled by Northern Railway. Train wise details of the amount claimed by each licensee has been obtained from the Northern Railway. The loss has been calculated on the basis of the difference of the price between the reimbursement claimed by the caterers from Northern Railway for supply of PDW/ mineral water and the payment made by them to IRCTC for procurement of Rail Neer PDW during 2013-14. Except Rail Neer, no other brand of PDW was approved by the Railway for supply in Rajdhani and Shatabdi trains originating from Delhi, thus, the entire amount claimed in excess of Rail Neer PDW has been taken as undue gain to the contractor/ licensee and corresponding loss to the government exchequer. The total loss of approximately Rs.19,55,39,017/- has been caused to the Govt. Exchequer.

8. Now Annexure P3 viz. Report of Central Vigilance Commission dated 02.05.2016 *inter alia* read as under:

1. *The Commission has perused the investigation report/comments of CBI and also the comments of administrative authorities of M/o Railway and observed that **no case is made out to sanction** prosecution of Shri Sandeep Silas, CPM (FOIS)/CRIS and Shri M.S.Chalia, CCO/NR. Accordingly, Commission would advise **against sanction** for prosecution under PC Act, in agreement with Railway Board. Further in agreement with Railway Board, Commission also observes that the cases of both Shri M.S.Chalia and Shri Sandeep Silas are **not fit for RDA**.*
2. *Further, Commission would also endorse the recommendation of Railway Board (Vigilance) indicated in the last para of the note dated 28.03.2016 of DVT/RB (page 46/n of RB's note refers) which reads as "...however, it is apparent that there were **some irregularities in allowing the supply of PDW other than Rail Neer and in passing of such bills**. Northern Railway Vigilance may be asked to investigate the case further on these aspects including the roles and responsibilities of concerned functionaries....." and would advise Railway Board (Vigilance) to submit the investigation report expeditiously.*
3. *Action taken in pursuance of Commission's advise may please be intimated.*



4. *The Railway Board ID Note No.2015/V2/NR/Traffic/26/CBI dated 01.04.20016 refers and its file is sent herewith.*

9. However, this decline to accord sanction was never accepted by the respondent and it wrote a letter dated 16.06.2016 to Railway Board, New Delhi requiring to convey reasons for coming to conclusion no case is made out for grant of sanction.

10. Letter dated 18.10.2016 was written by the Ministry of Railways, Railway Board, New Delhi to the Secretary, Chief Vigilance Commission, New Delhi to seek reasons so as to take final view in the matter. The said letter was replied by the CVC vide letter dated 02.11.2016, which *inter alia* notes:-

“Sub: CBI Case No. RC-DAI-2015-A-0032 registered against S/Shri M.S. Chalia & Sandeep Silas, both the then CCM/Catering Northern Railway, Baroda House New Delhi.

Railway Board may please refer to their OM No.2015/V2/NR/Traffic/26/CBI dated 18.10.2016 on the above subject.

*2. The Commission has already tendered its written advice vide ID Note dated 02.05.2016, which is **self explanatory.**”*

11. Yet another letter dated 02.12.2016 was then sent by the CBI to the Director Vigilance, Railway Board asking for the reasons / grounds for finding of the Railway Board not to grant sanction in the matter. Thereafter, a letter dated 13.12.2016 was sent by the Ministry of Railways, Railway Board to Superintendent of Police, CBI stating *inter alia*:-

*It has to be appreciated that at such a senior level as CCM/catering, the officers were responsible for overall supervision of catering provisions at hundreds of trains and stations in the Zonal railway and in that process assisted by number of officers and staff. **They were no way directly associated in passing the bills. Bills were passed at lower levels in Commercial department in association with officials of Finance department. There has been***



remarkable increase of 57% in off take of Rail Neer by the 9 licensees in year 2014 compared to 2013 and penalties have been levied during their tenure on the erring licensees. At the same time, they have also been engaged in policy formulation and modification and conflict resolution with regard to pricing of PDW, which they were supposed to do.

Policy changes have been made very recently by Railway Board under which IRCTC will directly supply Rail Neer to the licensees of premier trains and get payments from railways directly. This will address the issue of loss being incurred by the private caterers in earlier system. Incidentally, Sh. Silas had made this suggestion while he was CCM/Catering.

Therefore, in the opinion of the Railway Board Vigilance, as concurred by the CVC, the case does not qualify for 'Sanction of Prosecution' of Sh. M.S.Chalia & Sh.Sandeep Silas under section 120 B (Criminal conspiracy), read with section 420 of Indian Penal Code & Section 13 (2)R/W 13 (1)(D) of Prevention of Corruption Act 1988.

12. However, vide letter dated 03.01.2017 the CBI yet again insisted the Director Vigilance/Traffic, Railway Board, for the sanction to be granted as it was of the opinion a case is made out against two government officers and others. Thus, at the instance of the CBI, sanction was ultimately granted *vide* sanction order dated 14.03.2017 to prosecute the Government officers. The said sanction order is annexure P-10 to this petition (Crl.M.C.No.2083/2021).

13. The grant of such sanction was challenged before the Coordinate Bench of this Court along with the order taking cognizance by the learned Trial Court by way of Crl.MC.No.3137/2017, 3141/2017, 5094/2017, and 5095/2017. These petitions were allowed vide order dated 15.03.2019 while noting:-

“42. In the light of my aforesaid conclusion, I may now examine the impugned sanction order. I find that the said order merely recites a gist of the allegations against the petitioners and read by



itself, it does not disclose whether the Sanctioning Authority had considered the advice tendered by the CVC on two separate occasions to not grant sanction for prosecution, which advice was also concurred by the Railway Board vide its letter dated 13.12.2016. While it is true that a sanction order should not be read pedantically, it should, so as to inspire confidence, at least demonstrate that the Sanctioning Authority had applied its mind to all the relevant material. In the present case, keeping in view the fact that there is no reference at all to the opinion of the CVC in the impugned sanction order, the subsequent recommendation of the Chairman, Railway Board to recall the sanction order, assumes importance and I deem it appropriate to refer to the same in in extenso:-

—13. Summing up it may be stated that:-

i. Railway Administration was of the view that there is no evidence of any criminality and no adequate grounds to prosecute the officers (S.No.12 – page 33 to 71)

ii. CVC agreed with Railway Administration that no case is made out to sanction prosecution of the officers and the cases against the officers is not fit even for regular departmental action (S No.12 – page 48).

iii. A Committee comprising of Member(Staff), Member (Traffic) and Member (Mechanical) met on 08.04.16 to review the suspension of Shri Sandeep Silas. Based on the findings of Railway Board Vigilance, the Committee unanimously opined that there is no case for further extension of suspension beyond 11.04.16 and this was approved by the then Hon'ble MR (S.No.15).

iv. After receipt of CVC's advice that no case is made out to sanction prosecution, the competent authority sought for CBI written opinion on the advice tendered by CVC. The administration did not point out the procedural deviation in such action of the sanctioning authority. On the other hand CBI requested for comments of Railway Administration and thereafter reiterated their findings. The sanctioning authority took his decision after this procedural deviation (Page 50 of S.No.12).

v. Sanctioning authority after consideration of the entire material place before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of coming to a conclusion as to whether such a sanction is to be granted or not. In the



instant case without specifying any particular fact or doubt for clarification, the opinion of CBI on the advice tendered by CVC sought and thereafter the competent authority decided on the issue.

vi. The sanctioning authority was not in the knowledge of the fact that his disagreement with CVC had to be sent to DOP&T for resolution and once DOP&T gives its views, the Disciplinary Authority may have to take a considered final decision, keeping in view the advice given by DOP&T.

vii. CVC in its annual report has brought out that the Commission found that these were Acts of omission, procedural lapses and short-cuts, but the case did not exhibit any criminality on the part of CCMs and hence it did not advice sanction for prosecution. The Commission has observed that the instruction of the DOP&T is that where there is a disagreement between CVC and the DA, the matter has to be referred to the DOP&T for a final view. This is a case of deviation from the Commission's advice and of not following the laid down procedure of consultation with DoP&T (S.No.19).

viii. The matter was not submitted to DOP&T for resolution after the competent authority disagreed with the advice of CVC.

ix. As per decision of Hon'ble Supreme Court in the case of PS Rajya Vs. State of Bihar (1196) 9 SCC 1; the Hon'ble Apex Court observed that the standard of Proof required to establish the guilt in a criminal case is far higher than the standard of proof required in a departmental case. In the instant case as per the advice of CVC the case of both Shri MS Chalia and Shri Sandeep Silas are not even fit for Regular Departmental Action (S.No.12 – page 50).

x. DOP&T vide OM dated 23.10.09 have stated that since sanction for prosecution by the competent authority is after satisfying itself regarding the misconduct of a person under PC Act, the natural conclusion would be that in case any prosecution is to be withdrawn in respect of such person the same competent authority may have to satisfy himself regarding the feasibility for withdrawing the prosecution against that person. The instructions also state that the matter was considered in consultation with the Ministry of Law and Justice, Department of Legal Affairs who have advised that the withdrawal of prosecution under Section 321 of Cr.P.C. may be approved by such authority which has accorded the sanction for prosecution in respect of the person (S.No.17).



13. Based on facts as brought out in preceding paras, Ministry of Railways do not have a case to defend in the matter of sanction for prosecution issued to the petitioners. Perhaps the same was not adequately considered at the time of processing the sanction. In this context the best course of action would be to seek permission of the Hon'ble Court for withdrawing the sanction.”

49. For the aforementioned reasons, the sanction order dated 14.03.2017 being wholly unsustainable is hereby quashed. Consequently, the order dated 08.05.2017 rejecting the petitioners' application for referring the matter to the DoPT for a final decision as also the subsequent order dated 01.07.2017 passed by the learned Trial Court taking cognizance against the petitioners, are also set aside. The matter is remanded back to the Sanctioning Authority to reconsider the same after making an appropriate reference to the DoPT in accordance with the OMs dated 15/17.10.1986, 06.11.2006 and 20.12.2006. It is made clear that this Court has not expressed any opinion on the merits of the pleas taken by the petitioners that there is no case warranted for taking any criminal action against them and it will be open for the competent authority to take a fresh decision in this regard in accordance with the observations made hereinabove.”

14. This order was challenged in SLP.(CRL.)28717/2020 which was dismissed on account of *delay*, hence the order of the Co-ordinate Bench stands till date.

15. After the above decision, yet again sanction was applied, but the competent authority vide its letter dated 22.09.2020 refused to accord the sanction and the letter *inter alia* notes:-

Ref:- CBI's letter No. RC-DAI-2015-A-0032/14956 dated 16.12.2015 and number 1861/RC-DAI-2015-A-0032 dated 25.02.2020.

Pursuant to the aforesaid judgment the case was submitted before the Competent Authority, who after considering the matter in terms of the observations and directions of Hon'ble High Court, Delhi, as contained in the aforesaid Judgment dated 15.08.2019 and other relevant material placed before him has accepted the CVC's advice dated 02.05.2016 and 02.11.2016 which stated that no case is made out to sanction prosecution and accordingly Commission would advise against sanction for



prosecution under PC Act in agreement with Railway Board” that cases of both Shri M.S.Chalia and Shri Sandeep Silas are not fit for RDA (Regular) Department Action).

Accordingly, the competent Authority has declined to grant fresh prosecution sanction against both Shri Sandeep Silas and Shri M.S.Chalia in the subject case, and has ordered closure of these cases.

16. Thus it is argued despite all the authorities above having declined to accord sanction/prosecution, yet the CBI is instating to prosecute private licensees/caterers. It is argued CBI is hanging on to its complaint filed by one Insp.Raman Kumar of CBI on the basis of a raid conducted where it was allegedly found instead of using Rail Neer, the Licencees were using different water bottles, thus causing huge loss to Railways. It is argued the pleadings are otherwise and rather show *no loss was ever caused* to Railways and in fact Rail Neer caters only to the 35% of the demand of water in rails and also there being a provision in the agreement with the Licensee to provide packed water bottle from other sources *in the case of non-availability or scarcity*, no offence is made out. It is argued above pleadings do show 100% water produced by Railways was all consumed.

17. It was argued once sanction *qua* the Government officials is declined, the CBI cannot pursue its case against private person since the case was *initially* based upon *conspiracy* of private licencees with the Government officials and once it is held the Government officials were not in conspiracy and the fact *no loss was ever caused* to the Railways, the CBI cannot espouse cause of complainant, an Inspector and a Superintendent of CBI, who despite the decline to accord sanction by



various senior authorities of the Government are yet adamant to continue with prosecution against the petitioners.

18. The learned senior counsel for the petitioner also referred to Director's Report for the year 2013-14 viz. the year of alleged offence which gives the reports of Director along with Statement of Accounts, Auditors report and review of accounts by the Comptroller and Auditor General of India for the financial year ended on 31.03.2014 as under:

“Future Potential

As per one study, daily requirement of Packaged Drinking Water over Indian Railway network is approx 25 lac bottles/day, against which, at present IRCTC capacity is 4.14 lac bottles/day, which shall become 6.14 lac bottles/day by the year 2014-15 when plant at Ambernath (Mumbai) will become operational. This will meet about 25% of total requirement over Indian Railways.

xxxxxx

Further in an attempt to address unsatisfied demand of drinking water in Delhi area, another PDW plant is being planned in NCR region.

xxxxxx

Rail Neer business:

During the year 2013-14, the Rail Neer business registered an income of Rs.72.11 crores as against Rs.56.33 crores achieved during year 2012-13. This does not include sale of Rail Neer through departmental catering, amounting to Rs.16.06 crores as against t 15.49 crores in the previous year.

The Segment result (profit) during the year was Rs.5.35 crores as against profit of Rs.0.46 crore during the previous year. The increase in revenue is mainly attributed to increase in selling price of Railneer by Railways and increase in quantity sold from 10.11 crore bottles in 2012-13 to 10.80 crore bottles in 2013-14.”

19. Lastly reference was made to *Himachal Pradesh Cricket Association and Another vs. State of Himachal Pradesh and Others* (2020) 18 SCC 465, it was held:

“50.4 As per the prosecution, there is no criminal act on the part of the officers and they performed their appropriate administrative duties due to which sanction stands declined by the Central Government and the CVC. That itself is sufficient to absolve others from any criminal prosecution;



*We are conscious of the scope of powers of the High Court under Section 482 of Cr.P.C. The inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by the tests specifically laid down in the Section itself. Further, inherent power under this provision is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily. **If the trial is allowed to linger when prima facie it appears to the Court that the trial could likely to be ended in acquittal.** It is, for this reason, principle which is laid down by catena of judgments is that the power is to be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. However, whenever it is found that the case is coming within the four corners of the aforesaid parameters, the powers possessed by the High Court under this provision are very wide. It means that the Court has to undertake the exercise with great caution. However, the High Court is not to be inhibited when the circumstances warrant exercise of such a power to do substantial justice to the parties. This provision has been eloquently discussed in Bhajan Lal's case which has become locus classicus. Principle Nos. (i) and (ii) of Indian Oil Corporation are, therefore, become applicable. The entire subject matter has been revisited in a recent judgment in Vineet Kumar and some of the discussion therein which takes note of earlier judgments is reproduced below:*

*"26. A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that **authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse.** It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6: (SCC p. 94)"*

20. Further it was argued it is not a case of dual conspiracy as pointed out by the learned SPP and in fact in the FIR as also in the chargesheet the conspiracy was alleged with Government Officials but now since case against officials had gone, the prosecution against petitioners should also



be dropped as the CBI cannot *argue beyond what is stated in its chargesheet*.

21. The learned counsel for the Department on the other hand argued the FIR in the present case was registered on 14.10.2015; the chargesheet was filed in December, 2015; two letters were given by the CVC in May, 2016; the Railway Board gave clean chit in December, 2016, yet the cognizance was taken in the year 2017. The sanction was also granted on 14.03.2017 *though* quashed by this Court in the year 2019.

22. The learned counsel for the Department referred to the following part of the chargesheet, as under:

“(16)2. Result of Investigation & Charges:

xxx xxx xxx

*Investigation has revealed that CBI had conducted a surprise check on 22.08.2014 in the Rajdhani and Sahatabdi trains. During such checking, the caterers **were found not supplying Rail Neer** and rather the other brand Packaged Drinking Water was being supplied. However, on 22.08.2014, i.e., the date of surprise check, Rail Neer POW was **available in plenty with IRCTC** and the caterers could easily pick/lift the Rail Neer from the respective railway platforms/ stations but they dishonestly and deliberately did not pick up/took the desired Rail Neer quota and instead of Rail Neer other branded cheap PDW like Mount Kailash, Bailley etc. were being supplied to the passengers.*

*Investigation has revealed that during the year 2013-14, the approved price of Mount Kailash and Bailley brand of POW was varying from **Rs.4.66 to Rs.8.16 per bottle** and at the said rate the caterers were purchasing from the manufacturer / distributors. In this regard, during investigation rates of POW in writing were obtained for "Mount Kailash" from Sh. Sharad Chand Bhardwaj, Sales Manager of M/s M.K. Peacock Mineral Waters Pvt. Ltd., Faridabad, for "Bailley" from Sh. Sanjeev Kiyawat, Sr. Manager (Accounts) and Sh. Jaleesh Akmal of M/s Parle Agro Pvt. Ltd., Ghaziabad.*

*Investigation has also revealed that the caterers were supplying the water bottles other than Rail Neer and for such other branded POW, they were claiming the **reimbursement at the rate of Rs.15/- per bottle** from the Railway and in the process they were earning huge profit by putting the IRCTC/Railway at great loss.*



Investigation has revealed that the licensees / caterers were not picking up their required / allotted quota of Rail Neer despite GGM/Rail Neer had written several letters to CCM, Catering, Northern Railway whereby GGM, Rail Neer informed that the licensee caterers are not picking up Rail Neer, POW as per demand and they are taking limited quantity of Rail Neer. The licensees have curtailed their demand drastically and using local brands of PWD. Vide letter dt. 06.03.2003 Sh. A.K. Jain, GGM/Rail Neer requested the CCM (Catering) that he should impress upon the licensees to pick up Rail Neer as everyday approximately 3000 cartons were not being lifted I picked up by the licensees of Rajdhani and Shatabdi Trains, therefore, more than one lac cartons of Rail Neer have accumulated in Rail Neer Plant, Nangloi causing huge inventory lock up and revenue loss. The perusal of the letter dt. 06.03.2013 reveals that Sh. M.S. Chalia, the then CCM (Catering) has received the said letter and made the initials on it. Thus, it is very clear that the issue of not picking up of Rail Neer by these licensees was well within the knowledge of Sh. M.S. Chalia.

xxx xxx xxx

Investigation has revealed that during the period 1.1.2013 to 31.12.2014 the licensee caterers has claimed total amount of Rs.34,69,27,117 from Northern Railway for 23 trains controlled by the Northern Railway. The details of licensees and trains are mentioned below in a chart:- xxx xxx xxx

Therefore, total Loss to Railway during 2013-2014 = Rs.346927117 (total claimed from Railway) - Rs. 151388100 (actual claim for Rail Neer) = Rs. 195539017 (Rs. Nineteen Crore Fifty Five Lacs Thirty Nine Thousand Seventeen Only).

Investigation has revealed that during the period from 1.1.2013 to 31.12.2014, the licensee caterers had claimed a total amount of Rs. 34,69,27,117/- from Northern Railway for supply of POW/ mineral water to the passengers, in respect of 23 trains controlled by Northern Railway.

Train wise details of the amount claimed by each licensee has been obtained from the Northern Railway. The loss has been calculated on the basis of the difference of the price between the reimbursement claimed by the caterers from Northern Railway for supply of POW/ mineral water and the payment made by them to IRCTC for procurement of Rail Neer POW during 2013-14. Except Rail Neer, no other brand of POW was approved by the Railway for supply in Rajdhani and Shatabdi trains originating from Delhi, thus, the entire amount claimed in excess of Rail Neer POW has been taken as undue gain to the contractor/ licensee and corresponding loss to the government exchequer. The total



loss of approximately Rs.19,55,39,017/- has been caused to the Govt. Exchequer.”

23. Further reference was made to a letter dated 02.05.2016 of the CVC, as under:

*“2. xxxxxx“... however it is apparent **that there were some irregularities in allowing the supply of PDW other than Rail Neer and in passing of such bills.** xxxxx.”*

24. A letter dated 13.12.2016 of Ministry of Railways, Government of India, noted:

“Broadly, CBI has alleged that the two officers have not taken adequate/punitive action against the private caterers who were supplying other packaged drinking water (PDW) in the premium trains viz. Rajdhani/Shatabdi in Northern Railway whereas they should supply Rail Neer produced by IRCTC, a Railway PSU. As the other PDWs were much cheaper than Rail Neer supplied by IRCTC, the private caterers had pecuniary advantage on account of deliberate and dishonest inaction on the part of the two officers which caused a loss of Rs. 19.5 Cr. to Railways.”

25. This letter was replied by the CBI as under:

“2. That IRCTC is able to satisfy only 25-30% of the total demand of POW in the trains and at the stations and therefore, there is a provision in the policy guidelines for supplying of POW other than Rail Neer in case of non supply by IRCTC. Each Railway, including the Northern Railway, has approved a number of POWs including the ones mentioned in the CBI chargesheet which can: be supplied in lieu of Rail Neer.

*CBI's view: - While Northern Railway has approved other brands of PDW to be supplied in other trains, in case there is limited, or no supply of Rail Neer, **no such approval was given in respect of the premium trains.** In this regard, attention is invited to Commercial Circular No. 15 of 2003 of the Railway Board (0-32), file no. 2011/TG-111/631/4 (O-19), Letter No.13-AC/SBD-Raj-STB/15 dated 20.11.2015 (0-25) (which clearly states that no brand of PDW is approved for supply in premium trains in Northern Railway) and statements of Sh. Pascal Bilung, ACM, Catering, Northern Railway (PW-9), Sh. K.P .Yadav, Director, Railway Board (PW-10), Sh. Manish Haswani (PW-13), Sh. Satya Prakash, Member, Railway Board (PW-31), Sh. Samir Kumar, Director (PW-30) and Smt. Mani Anand, ED, Railway Board (PW-27). Thus, it is clear that **no brand of PDW other than Rail Neer***



was approved by the Northern Railways for supply in premium trains.”

26. He also referred to order on cognizance of learned Special Judge, dated 01.07.2017, as under:

“18. Investigation has also revealed that IRCTC, since 19.12.2012 was regularly sending written letters to the CCM/Catering, Northern Railway informing about non-picking of Rail Neer by the Caterers but the CCM/Ctg. Northern Railway has taken no action against the erring caterers. During 2013, Sh. M.S. Chalia was CCM (Catering) and he was having the knowledge that the caterers were not picking up the allotted quota of Rail Neer. Sh.M.S. Chalia has also attended the Railway Board Meeting dt. 23.10.2013 where the issue of non picking of Rail Neer by the caterers was deliberated and discussed. He was directed in the said meeting that he will comply with the Board's guidelines in the matter and the payment of bill of defaulting caterers should only be cleared when they restore and supply 100% Rail Neer in the premium trains. Some important features / decisions taken. in the Railway Board meeting dated 23.10.2013 and minutes of meeting which were signed on 25.1-0.2013 stipulates in Para-12 that "An analysis has been done about the inspections conducted by the Railways and it has been found that in most of the cases only verbal warning has been given and fines and other punitive action taken by the railways is not adequate. xxxxx.”

27. Thus it is argued Railways have been trying to save its own employees and thus failed to answer if total capacity of water/neer was available at stations then why it was not picked up by the contractors. Thus, the question is not this, the Railways may have supplied such water/neer to some other station(s) or trains but the question is if these caterers/contractors have deliberately failed to lift supply of Railneer made available to them and why they did not seek prior approval of the Railways to sell other PDW.

28. No such approval *admittedly* was ever taken or is available on record, hence petitioners, cannot seek benefit of non grant of sanction to public servants. The learned counsel referred to *Central Bureau of*



Investigation vs. Arvind Khanna (2019) 10 SCC 686, wherein it was held:

“17. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C., the High Court **has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial.** The very fact that the High Court, in this case, **went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth** by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

29. Further in *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others* 2021 SCC OnLine SC 315, it was held:

“80. xxxxx

i) to iii) xxxx

iv) **The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’.** (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

xxxxx

x) **Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;”**

30. The learned SPP for the CBI submits there existed a dual conspiracy viz, **a)** amongst private person and **b)** private persons with the Government Officials and hence even if the Government Officials could not be prosecuted for want of sanction, the private contractors cannot take benefit. It is submitted 120B IPC is a stand-alone offence. In *State vs. Jitender Kumar Singh* (2014) 11 SCC 724, the Court held:



“46. We may now examine Criminal Appeal No. 161 of 2011, where the FIR was registered on 2.7.1996 and the charge-sheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420, IPC read with Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the PC Act could also not be framed since he died on 18.2.2005. The Special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the special Judge could try non-PC offences only when “trying any case” relating to PC offences. In the instant case, no PC offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the PC Act. Consequently, there was no occasion for the special Judge to try any case relating to offences under the PC Act against the Appellant. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a sine-qua-non for exercising powers under sub-section (3) of Section 4 of PC Act. In the instant case, since no PC offence has been committed by any of the non- public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

47. Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No. 88 of 2001 in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent Court to which the Special Case No. 88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly.”

31. It is submitted the case against the private persons would survive and hence the learned Special Court has rightly sent the case to learned CMM to be tried by an ordinary Court and not by a Special Court.

32. Heard.

33. The facts reveal the petitioners were duty bound to supply packaged drinking water-PDW of IRCTC’s brand called *Rail Neer* but



instead have been supplying other PDW, a brand *cheaper* than Rail Neer, but simultaneously have been claiming reimbursement at the rate of Rail Neer *though* allegedly in conspiracy with public servants *viz.* Chief Claims Officer/CCM.

34. The chargesheet reveals *per* clause 1.3.4 of the agreement, the petitioners were mandated to supply *only* Rail Neer in specified Trains and other PDW could be supplied only when *a)* Rail Neer was not available with IRCTC and *b)* only after taking prior permission from Railways. *Admittedly*, no evidence is produced to show *Rail Neer* was in less supply for special trains and further no prior permission for supply of other branded PDW was ever sought. As per agreement the Rail Neer was to be picked up directly from the platform and was to be supplied in specified trains. As *per* surprise check held on 22.08.2014, it was found petitioners were supplying other branded PDW despite Rail Neer was *available in plenty at the store*. Information was given to Railways Authorities but to no avail. The petitioners were though not supplying Rail Neer but *admittedly* were claiming *reimbursement* at the rate of Rs.15/- per bottle *viz.* at the price of Rail Neer, from Railways whereas the PDW supplied in train was of a cheaper brand and thus loss calculated to the Government Exchequer was about Rs.19,55,39,017/-. *Admittedly*, sanction was not given by the Competent Authority for reasons best suited to them but there is *no denial of the fact the loss was caused* to Public Exchequer.

35. Statements of witnesses were recorded under Section 161 Cr.P.C. *viz.* PW-1 Senior Executive, Nangloi Plant who stated the licensees failed to pick up the allotted quota of Rail Neer. PW-3 and PW-4 *viz*



Transporters, had stated they picked up PDW from the plant and had unloaded at railway station but the licensees did not lift PDW as per quotas allotted to them. Even *PW-6* GGM Rail Neer had stated the petitioners picked up Rail Neer *far less* than the quota allotted to them and thereafter the remaining stock was diverted to other stations causing more expenditure on transportation. *PW-7* Chief Plant Manager had also stated due to non pickup, stocks at plant were piling up causing further losses to IRCTC. Such bills for reimbursement were cleared without making any enquiry and *admittedly* some *penalties were imposed* upon the petitioners for non obtaining total quota allotted to them. *PW-24* an employee of the petitioner also stated while working for the petitioners he never complained to IRCTC about shortage of Rail Neer and instead of Rail Neer he rather used to procure other branded water from his office and used to supply it in trains.

36. Thus, the above facts do *prima facie* show there was never any complaint by petitioners *qua* less quantity of Rail Neer being supplied to them and secondly *prior permission* as was required to be obtained to use other PDW was never obtained. As per statement of witnesses Rail Neer was *available in plenty at the railway station* itself but deliberately was not picked up by the petitioners, thus causing monetary loss. In view of the contradictory stands taken by both sides, it is to be seen if at this stage this Court can exercise its extraordinary power under Section 482 Cr.P.C.; to conduct a mini trial; determine the evidentiary value of findings in the chargesheet; directly or indirectly permit the accused to impress upon his evidence. The answer is *no*. The petitioners wish this Court to believe no criminal cause worth going trial is made out despite



the scope of interference under Section 482 Cr.P.C. is well known *viz.* the High Court cannot record findings on disputed facts or consider the defence of the accused and it cannot embark upon an enquiry whether the evidence in question is reliable or appreciation of evidence would lead to accusation being sustained or not. The Court has to only see whether the allegations made, disclose a cognizable offence or not. The Court cannot appreciate the evidence at this stage to say the accused is not likely to be convicted or no useful purpose would be served by prolonging the proceedings. See *CBI vs. Arvind Khanna* (2019) 10 SCC 686; *State of AP vs. Gourishetty Mahesh* (2010) 11 SCC 226; *Saranya vs. Bharathi* (2021) 8 SCC 583 and *Satish Kumar Jatav vs. State of Uttar Pradesh* in CRL.A.770/2020.

37. The allegations of conspiracy in the chargesheet have two facets *viz.* the conspiracy of contractors to dupe/cheat the railway by charging them for Rail Neer on supplying cheaper PDW. The second facet of conspiracy involves public servants against whom sanction has not been received. Now the conspiracy of the petitioners can be proved/disproved only after a trial. The matter of sanction *qua* public servant would have no effect upon allegations of conspiracy and alleged cheating by private accused and the only effect would be Section 120B IPC would now not be used to prosecute private individuals for the offences under the Prevention of Corruption Act. Merely because the sanction is not granted does not mean the findings *qua* conspiracy/cheating cannot stand trial. Rather in *State vs. Jitender Kumar Singh* (2014) 11 SCC 724, the Hon'ble Supreme Court held, upon death of the sole public servant before framing of charge in a PC Act case, the pending trial against the



private persons under IPC be transferred to the Court of Magistrate. In the present case the discharge of public servant on account of invalid sanction will not absolve the petitioners from the offence allegedly committed under the IPC. *Himachal Pradesh Cricket Association (supra)*, relied by the petitioners is the decision on facts of that case. The submission no loss is caused to the Railways as noted down in the letters of Ministry of Railways saying IRCTC has been able to sell its Rail Neer fully, if not to the petitioners/licensees but on other mandatory trains and stations, is of no use at this stage as the case is *alleged allotted quota given to the petitioners was not lifted deliberately and instead the petitioners used their own bottles, half the price of Rail Neer and claimed reimbursement at the rate of Rs.15/- per bottle (of Rail Neer)*, thus causing loss to the Public Exchequer. The Director's Report even if it says no loss was caused to the Railways as the Rail Neer if not picked up by the petitioners, was anyway sold somewhere else also cannot be considered at this stage as the question is of loss incurred to the Railways upon claiming reimbursements of excess amount despite supplying cheaper bottles. The letter dated 13.12.2016 of the Ministry of Railways and the balance sheet(s) of the Railways still have to pass the triple test of admissibility, reliability and relevance and the authors of the documents have to be cross examined in view of the contrary findings in the chargesheet. The averments made in chargesheet that they could not have utilized the *PDWs* other than the Rail Neer without prior permission of the Railway authorities; the petitioner company(ies) have been using bottles priced at Rs.4.66 to Rs.8.16 per bottle and have been claiming reimbursement at the rate of Rs.15.00 per bottle *viz* the price of Rail



Neer; the letter dated 02.05.2016 of Central Vigilance Commission (CVC) noting there were some irregularities in allowing the supplying of PDWs other than Rail Neer and in passing of such bills by the officials; a letter dated 13.12.2016 of Ministry of Railways, Government of India noting a loss of Rs.19.50 Crores approx has been caused to the Railways; and no notice was ever given to Railways for short supply of bottles; and lastly considering the order of cognizance of learned Special Judge dated 01.07.2017 wherein he has noted the punitive action by the Railways was never taken *for reasons best known to them*, cannot be ignored at this stage.

38. In view of overall submissions and case laws stated above, no case is made out for quashing of FIR at this stage. Accordingly, the petitions stand dismissed. Pending applications also stand disposed of.

JULY 04, 2023

DU

YOGESH KHANNA, J.

नित्यमेव जयते