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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.02.2024

+ **CRL.M.C. 6503/2022**

VIVEK KESHAVAN

..... Petitioner

Through: Mr.Vishwendra Verma,
Ms.Shivali & Mr.Archit Verma,
Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr.Prasanta Varma, SPP/CBI
with Mr.Pankaj Kumar,
Ms.Pragya Verma &
Mr.Rakesh Kumar Palo, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 30.09.2022 (hereinafter referred to as the 'Impugned Order'), passed by the learned Special Judge (PC Act) (CBI-20), Rouse Avenue District Courts, New Delhi (hereinafter referred to as the 'Revision Court') in Crl. Revision Petition No. 23/2022, titled as *Sh.Vivek Keshavan v. Central Bureau of Investigation*, whereby the learned Revision Court has been pleased to dismiss the said Revision Petition filed by the petitioner herein.



2024 : DHC : 1418



2. The said Revision Petition was filed under Section 397 of the Cr.P.C. by the petitioner herein challenging the order dated 29.07.2022 passed by the learned Chief Metropolitan Magistrate, Rouse Avenue District Courts, New Delhi (hereinafter referred to as the 'Trial Court') in Case No. 11/2021, titled as ***CBI v. Pramod Kumar Singh***, directing framing of charge against the petitioner for offence punishable under Section 120-B read with Sections 419/420 of the Indian Penal Code, 1860 (in short, 'IPC') and substantive offences under Sections 419 and 420 of the IPC.

Factual Background

3. The above case has been registered on a complaint dated 27.11.2019 received from the Assistant Director, Prime Minister Office, Delhi alleging that Sh.Aman Sharma, Administrator, Mahe Region, Pondicherry had received a call from an unknown person having mobile number XXX588 claiming himself to be the Principal Secretary to the Hon'ble Prime Minister and asking for some favour saying that his daughter is studying in JIPMER, Pondicherry.

4. It was further alleged that on 30.09.2019, Sh.Aman Sharma received a call on his mobile from the above said number which belongs to Sh.Pramod Kumar Singh (accused no.1), who introduced himself as the Principal Secretary to the Hon'ble Prime Minister, stating that his daughter is studying in JIPMER, Pondicherry. The accused asked Sh.Aman Sharma if



he could provide the reference/contact details of some officials at Pondicherry as he had some work at Pondicherry. Sh.Aman Sharma gave him a reference of one Sh.Ratanaghosh Chaure, Under Secretary in Government of Puducherry, whose wife is working as a Gynaecologist at JIPMER. It is further alleged that Sh.Aman Sharma also informed Sh.Ratanaghosh Chaure about the aforesaid call and further shared the caller details, that is, the above said number, through Whatsapp message to him. Sh.Aman Sharma also shared the contact details of Sh.Ratanaghosh Chaure through a text message with the accused Sh.Pramod Kumar Singh at the above given number.

5. The prosecution alleges that on the very same day, Sh. Ratanaghosh Chaure received a phone call on his mobile from the above-mentioned number and on asking the accused/Sh.Pramod Kumar Singh about the kind of help required, he disconnected the call. Sh. Ratanaghosh Chaure received another call after a few minutes and the accused Sh.Pramod Kumar Singh told him that his Personal Secretary was there at Pondicherry and a vehicle is required for his movement. Sh. Ratanaghosh Chaure asked for the contact details of the concerned person in order to arrange the vehicle for him. The prosecution alleges that immediately thereafter, a Whatsapp message was received at 19:18 Hrs on the mobile number of Sh. Ratanaghosh Chaure from another mobile number XXX977, which also belongs to the accused Sh.Pramod Kumar Singh, containing the contact details of PA as



back at the above number and enquired if he was really calling from the Prime Minister Office, on which Sh.Pramod Kumar Singh disconnected the call. Another attempt was made by Sh.Aman Sharma to make the above enquiry from the accused Sh.Pramod Kumar Singh, on which the accused is said to have disconnected the call stating that he is busy. On seeing the conduct of the accused, Sh.Aman Sharma made a call to the Personal Secretary of the Principal Secretary on his landline number and enquired about the number from which he was receiving the calls, to which it was confirmed that the same does not belong to the Principal Secretary.

7. This is the first set of allegations made by the prosecution, which ends by stating that Sh.Aman Sharma as also Sh.Chaure did not provide any type of facility like vehicles, accommodation etc., to the accused Sh.Pramod Kumar Singh or to any of his relatives. However, the accusations do not rest at this.

8. It is further alleged that further investigation revealed that on 29.09.2019, Sh.Shiv Kumar, Telephone Operator at the office of the Hon'ble Lt. Governor, Raj Nivas, Pondicherry received a call from the same number as mentioned hereinabove on the landline with the caller introducing himself as relative of the Principal Secretary to the Hon'ble Prime Minister and asking for a vehicle and accommodation to be provided for his relative, namely, Sh.Vivek K, that is, the petitioner herein, on 30.09.2019 at Pondicherry. The mobile number of the petitioner



herein is also alleged to have been shared. The Telephone Operator forwarded this message to the Controller House Hold, who directed the Telephone Operator to ask Sh.Vivek K to send a request letter to the office of the Hon'ble Lt. Governor in this regard. It is alleged that the Telephone Operator called the accused, that is, the petitioner herein on his mobile number XXX628 to ask the time and date of his arrival at Pondicherry and also asked him to send a request letter for accommodation and vehicle to the office of the Hon'ble Lt. Governor.

9. The prosecution alleges that on 29.09.2019, a call was again received on the landline from the above-mentioned number of accused no.1, this time representing himself to be the Special Secretary and relative of the Principal Secretary of the Hon'ble Prime Minister, and requesting for providing a vehicle and accommodation for his relative, namely, Sh.Vivek K, who is alleged to be the petitioner herein, for local movement in Pondicherry on the morning of 30.09.2019. This message was again forwarded to the Controller House Hold, who directed the Operator to call the caller at the above-mentioned number to send a request letter to the office for accommodation and vehicle. The message was forwarded to the number which is mentioned hereinabove with a request for the same.

10. On 30.09.2019, in the early morning, the Controller House Hold received a message from the Telephone Operator stating that Sh.Vivek K, who is alleged to be the petitioner herein, has reached Pondicherry. The Controller House Hold



however, asked the caller to drop an email to the JEO, Tirumala Office for the necessary information.

13. A similar call was received by the Chairman of Tirumala Tirupati Devasthanam Board, Tirupati, Chittoor, Andhra Pradesh, again from the above number introducing himself again as the Principal Secretary to the Hon'ble Prime Minister and asking for arrangements for darshan and accommodation in Tirupati Temple.

14. It is alleged that in this manner the two accused, that is, Sh.Pramod Kumar Singh and the petitioner herein, represented themselves as Government Servants working at a high level in the Prime Minister's Office and cheated Government Offices/Officials by availing facilities/favours from different departments thereby committing offence under Sections 120B, 419 and 420 of the IPC.

Submissions of the learned counsel for the Petitioner

15. The learned counsel for the petitioner submits that the entire allegations in the charge-sheet are against the accused no.1 Sh.Pramod Kumar Singh, who has simply misused the number and the name of the petitioner for availing various facilities from the Government Departments.

16. He submits that, in any case, no material gain has been received by the petitioner from the alleged acts of impersonation by the accused no.1 Sh.Pramod Kumar Singh. There is no evidence of the petitioner having availed of any



such facility, in fact, it is the case of the prosecution itself that the petitioner had paid for his stay at Pondicherry.

17. He submits that the charge-sheet does not make out any case against the petitioner. He submits that the criminal proceedings, against the petitioner, therefore, are liable to be quashed. He places reliance on the judgment of the Supreme Court in *Ramesh Chandra Gupta v. State of U.P.*, 2022 SCC OnLine SC 1634.

Submissions of the learned SPP

18. On the other hand, the learned counsel for the respondent submits that charge under Section 120-B read with Sections 419/420 of the IPC has also been framed against the petitioner. He submits that this is a case based on circumstantial evidence. He submits that there is a clear allegation and also evidence on record of the Government Officials calling up the phone number of the petitioner to confirm if he is visiting Pondicherry, and also regarding the services to be availed by him. He was provided a vehicle at Pondicherry. Even his stay was arranged at the Government Hotel at Pondicherry. He submits that, therefore, in the present case, the charge against the petitioner is fully made out. He submits that the evidence in the form of CDRs and testimonies of various witnesses have been placed before the learned Trial Court.

Analysis and Conclusion



19. I have considered the submissions made by the learned counsels for the parties.

20. The law with respect to the exercise of powers under Section 482 of the Cr.P.C. to quash the FIR or the charge-sheet at the preliminary stage is rather well settled. In *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335, the Supreme Court has given an illustrative list of category of cases wherein such power can be exercised by the Court either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. I may quote from the judgment as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the 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.



accused and with a view to spite him due to private and personal grudge.”

21. Recently, the Supreme Court in *Enforcement Directorate v. Niraj Tyagi*, 2024 SCC OnLine SC 134, has emphasized that the inherent powers under Section 482 of the Cr.P.C. do not confer any arbitrary jurisdiction on the High Court to act according to whims and caprices. Such power has to be exercised sparingly with circumspection and in the rarest of rare cases. The Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made, and the quashing of an FIR or a charge-sheet should be an exception rather than an ordinary rule. I may quote from the judgement as under:

“20. In our opinion, it's a matter of serious concern that despite the legal position settled by this Court in catena of decisions, the High Court has passed the impugned orders staying the investigations of the FIRs and ECIR in question in utter disregard of the said settled legal position. Without undermining the powers of the High Court under Section 482 of Cr. P.C. to quash the proceedings if the allegations made in the FIR or complaint prima facie do not constitute any offence against the accused, or if the criminal proceedings are found to be manifestly malafide or malicious, instituted with ulterior motive etc., we are of the opinion that the High Court could not have stayed the investigations and restrained the investigating agencies from investigating into the cognizable offences as alleged in the FIRs and the ECIR, particularly when the investigations were at a very nascent stage. It hardly needs to be reiterated that the inherent powers under



Section 482 of Cr. P.C. do not confer any arbitrary jurisdiction on the High Court to act according to whims or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In a way, by passing such orders of staying the investigations and restraining the investigating agencies from taking any coercive measure against the accused pending the petitions under Section 482 Cr. P.C., the High Court has granted blanket orders restraining the arrest without the accused applying for the anticipatory bail under Section 438 of Cr. P.C.”

(Emphasis Supplied)

22. Applying the above test to the facts of the present case, as is mentioned hereinabove, the case of the prosecution is that the accused Sh.Pramod Kumar Singh had made calls to various Government Officers impersonating himself as a Principal Secretary to the Hon'ble Prime Minister. Through such misrepresentation, he is alleged to have sought favours for the petitioner herein. The submission of the learned counsel for the petitioner that merely because the co-accused has misused the name and the mobile phone number of the petitioner, the petitioner cannot be accused of the offence of impersonation, cannot be accepted, as in the present case, the prosecution also alleges that some of the Officers called back at the mobile number of the petitioner and the petitioner did not dispute that favour was being asked for him by the co-accused. In fact, he is alleged to have utilized the favour asked for by staying at Hotel Pudevai Ashok and also availing of a government vehicle for



local movement in Pondicherry. In fact, he has been identified as the person who availed of such facility.

23. As has rightly been observed by the learned Special Judge in its Impugned Order, in the instant case, offence under Section 120-B of the IPC has been alleged against the petitioner. It is not always possible to have direct evidence for such conspiracy and the same may have to be inferred from the circumstantial evidence. The prosecution, in my view, *prima facie* has met the test for framing of the charges against the petitioner.

24. The learned Metropolitan Magistrate, in his order dated 29.07.2022, has ably culled out various circumstances to show the complicity of the petitioner in the offence. I may quote the same hereinunder:-

“(9) There is prima facie evidence on record by way of copy of e-KYC Customer Application Form and accompanying statement u/s 161 Cr.P.C. of the witness Sh. Kamal Kumar, alternate Nodal Officer Reliance Info. Co. Ltd. to show that both the mobile phone numbers 630XXXX588 and 914XXXX977 are registered in the name of accused no. 1 Pramod Kumar Singh.

(10) The Customer Application Form for the number 776XXXX628 reflects the name of the registered customer as one Giasuddin Mazumder however the statement U/s 161 Cr.P.C. of the witness Sh. Giasuddin Mazumder is on record as per which this witness purchased the sim card of the aforesaid mobile number in June/July 2019 on the instructions of his employer who was none other than the accused no. 2 Vivek Keshavan and further he handed over the said sim card



to the accused no. 2 and never asked for return of the same even after leaving the employment.

(11) The prosecution witnesses Sh. Amit Kumar and Sh. Gagan Rana also prima facie connect the mobile number 776XXXX628 to the accused Vivek Keshavan saying that they knew the accused Vivek Keshavan for last some years and that accused Vivek Keshavan was using the said mobile number.

(12) The Call Detail Records (CDRs) allegedly of the accused persons are to be considered alongwith the statements u/s 161 Cr.P.C. of the witnesses.

(13) There are statements u/s 161 Cr.P.C. of the prosecution witnesses Sh. Aman Sharma, Regional Administrator, Mahe and Sh. Ratnaghosh Kishor Chaure u/s 161 Cr.P.C. to the effect inter-alia that calls were received by them on 30.09.2019 from the mobile phone no. 630XXXX588 i.e. the alleged phone number belongs to accused no. 1 (complete phone number as mentioned in the chargesheet) wherein the caller introduce himself as Dr. P.K. Mishra from Prime Minister's Office for seeking the facility of vehicle for movement of his personal security at Pondicherry and Karaikal.

(14) According to the statement U/s 161 Cr.P.C. of the prosecution's witness Sh. Ratnaghosh Kishor Chaure the caller whose mobile no. was 630XXXX588 Informed Sh. Ratnaghosh Kishore that his PA was very close to him and proper care be taken of his requirements. Thereafter whatsapp message was received by Mr. Ramaghosh Kishore Chaure from mobile no. 914XXXX977 i.e. the second phone number allegedly belonging to accused no. 1 (complete phone number as mentioned in the chargesheet) informing the name and mobile number of the PA as 'Mr. Vivek K' and number 776XXXX628 i.e. the



phone number which was allegedly being used by the accused no. 2 (complete phone number as mentioned in the chargesheet). When Mr. Ratnagosh Kishore Chaure called on the mobile number 776XXXX628, an inquired as to whether the person was Vivek and PA of Sh. P.K. Mishra Sir, the person confirmed it.

(15) The CDRs pertaining to the mobile number. 630XXXX588 for the period 30.07.2019 to 07.02.2020 reflect the calls/SMS exchanged between said number and the number 944XXXX720 (i.e. the official number pertaining to the prosecution witness Sh. Aman Sharma as per his statement U/s 161 Cr.P.C.) between the period inter-alia 30.09.2019 to 16.10.2019.

(16) The CDRs of the mobile phone number 776XXXX628 for the period 01.03.2019 to 07.02.2020 show, amongst others, the outgoing call to the mobile number 940XXXX011 (i.e. mobile number registered in the name of the prosecution witness Sh. Ratnaghosh Kishor Chaure, as per the certified copy of the Customer application form for said number which is on record).

(17) The statement Us 161 CrPC. of Sh. Siva Kumar, Telephone Operator in Lt. Governor Office, Raj Niwas Pondicherry also prima facie corroborates the prosecution's case regarding call being received on 29.09.2019 in the evening from mobile number 630XXXX588 on the office landline no. 4132XXXX50/51 with the caller introducing himself as relative of Principal Secretary to PMO, Delhi seeking vehicle and accommodation for his relative Vivek K having mobile number 776XXXX628.

(18) According to the statement of Sh. Siva Kumar, he made a call on the no. 776XXXX628 of Mr. Vivek K. asking for written request for providing vehicle and accommodation as per the direction of



prosecution witness Ms. Asha Gupta, and Mr. Vivek informed that he was coming from Bangalore and would reach early morning at about 6.30 am on 30.09.2019.

(19) The telephone call register for the year 2019 maintained at L.G. Office, Raj Niwas, Pondicherry was seized during the course of investigation and is a corroborative piece of evidence for the prosecution wherein the witness Sh. Siva Kumar in his statement U/s 161 Cr.P.C. identified his handwriting at page 62, para 223 reflecting the phone number 776XXXX628 and name 'Vivek'.

(20) The statement of the witness Sh. D. Mourougan Manager of Hotel Padoval Ashok U/s 161 Cr.P.C. is also on record. This witness produced the Guest Register Card no. 682 dated 30.09.2019 and no. 786 dated 15.10.2019 of the said Hotel reflecting his signature and the signature of Vivek K as guest and also produced tax invoice bills dated 01.10.2019 and 16.10.2019 and scanned copy of Aadhar Card of the accused no. 2.

(21) The statement of the witness Sh. D. Mourugan coupled with the aforesaid documents prima facie suggest that the accused no. 2 Vivek Keshavan was present in Pondicherry and stayed at Hotel Puduval Ashok under the name 'Vivek K' on 30.09.2019 and 16.10.2019 prima facie giving credence to the prosecution's allegations against him.

(22) As to the defence of the accused no. 2 that someone may have misused his name, the identity aspect can be ascertained from the witnesses including Sh. D Mourougan only during trial and the defence of misuse of name would have to be established by the accused no. 2 in evidence.

(23) The CDR of the mobile number 776XXXX628 for the period 01.03.2019 to



07.02.2020 reflects inter alia, numerous calls exchanged with the mobile number 630XXXX588 (number of accused no. 1) on 30.09.2019 showing prima facie that the accused persons were in constant touch with each other during the relevant time which indicate towards the purported conspiracy.

(24) The documents on record coupled with statements U/s 161 Cr.P.C. of the prosecution's witnesses prima facie show that the accused persons in criminal conspiracy with each other impersonated themselves as government officials in order to deceive the government officials and avail facilities/benefits from the government departments and accused no. 2 in furtherance of the criminal conspiracy was able to avail of the benefit of vehicle provided by L.G. Office, Raj Bhavan Pondicherry in pursuance to such conspiracy and deception, causing wrongful loss to the government department."

25. The submission of the learned counsel for the petitioner that as a result of the alleged acts the petitioner, he did not obtain any property or benefits, also cannot be accepted at this stage. There is an allegation in the charge-sheet, accompanied with evidence, that he had availed of the official vehicle during his stay at Pondicherry. The effect of non-production of the vehicle register or the name of the driver shall have to be considered by the learned Trial Court on appreciating the other evidence led before it. It would be too premature for this Court to, at the present stage, hold that in the absence thereof, the charge against the petitioner must fail. The charge against the



petitioner can always be proved through other evidence if found reliable.

26. The learned Special Judge, in his Impugned Order, has also highlighted the points which according to it show the existence of sufficient grounds to frame charges against the petitioner. They are reproduced hereinunder:-

“(i) The accused no. 1 Sh. Pramod Kumar Singh made various calls through his mobile no. 63079XX588 by claiming himself to be Sh. P.K. Mishra, Principal Secretary to Hon'ble Prime Minister and thus conveyed that his PA Sh. Vivek Keshavan (petitioner) will come Pondicherry for some work and, therefore, a request was made to provide him the facilities like residence/public vehicle. A charge has been framed against the said accused no. 1 which has not been challenged.

(ii) The accused no. 1 used his mobile number 63079XX588 against which ample material has been produced on record in the form of statements of witnesses under Section 161 Cr.P.C. who claimed to have received calls as well as Whats App messages from the said number.

(iii) The accused no. 1 also gave mobile number as 7760XXX628 by claiming it to be of his PA Sh. Vivek Keshavan. There are statements of witnesses who have claimed to have received calls from the said number also.

(iv) As per the statement of Sh. Rajiv Vashistha, Nodal Officer, Bharti Airtel, calls were made between the said two numbers i.e. 7760XXX628 and 6307XXX588 during the period from September, 2019 to February, 2020 which clearly indicates that the accused no. 1 and accused no. 2 were known to each other and that is why unlawful gain/benefit has been sought by accused no. 1 to accused no.2.

(v) One PW Sh. Giasuddin Mazumdar also specifically stated that he is the registered



owner of the mobile number 7760XXX628 and that he had worked with accused no. 2 for around six months and during his tenure, he has purchased the said SIM card from the market and handed it over to the petitioner/accused no. 2.

(vi) There are two more witnesses, namely, Gagan Rana and Amit Kumar who specifically stated that mobile No.7760XXX628 has been used by the petitioner/accused no. 2 and they have received calls from said mobile number from petitioner which shows that the said mobile number was used by the accused no.2/petitioner only, though the said number was obtained fraudulently or with mala-fide intention in the name of some other person, namely, Giasuddin Mazumdar.

(vii) In the instant case, offence under Section 120B IPC has been alleged and it is a settled proposition of law that such offence of conspiracy is committed in secret and discreetful manner and, therefore, it is not always possible to have direct evidence and everything said, written, done or pursued in furtherance to such conspiracy are relevant facts as per Section 10 of the Indian Evidence Act, 1872.

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(viii) There are various other instances which have been narrated by various witnesses who were examined under Section 161 Cr.P.C. to show existence of sufficient ground to frame charge for the aforesaid offences.

(ix) The Ld. Counsel for petitioner argued that the prosecution did not bring on record any material to show that any wrongful loss has been caused to government, as alleged. In this regard, it is seen that some of the witnesses specifically claimed that a vehicle was used by the accused no.2/petitioner at some point of time though the detail of the specific driver, out of three on duty, could not be ascertained. This is a matter of evidence and trial and at this stage, it cannot be said that in the absence



2024:DHC:1418



of name and identify of the driver, a fact of using of vehicle cannot be proved.”

27. I find no infirmity in the above reasoning of the learned Special Judge.

28. Accordingly, I find no merit in the present petition. The same is dismissed. The petitioner shall pay costs of Rs.35,000/-, to be deposited with the Delhi State Legal Services Authority within a period of two weeks. The costs so deposited shall be utilised by the Delhi State Legal Services Authority for providing counselling/psychological support to the POCSO Victims requiring such assistance.

NAVIN CHAWLA, J

FEBRUARY 20, 2024/rv/ss

Click here to check corrigendum, if any