Central Bureau Of Investigation vs Kapil Wadhawan on 24 January, 2024

Author: Bela M. Trivedi

Bench: Pankaj Mithal, Bela M. Trivedi

2024 INSC 58 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 391 OF 2024
(@ SPECIAL LEAVE PETITION (Crl.) No. 11775 OF 2023)

CENTRAL BUREAU OF INVESTIGATION …APPELLANT(S)

VERSUS

KAPIL WADHAWAN & ANR. …RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. Leave granted.

2. The appellant-CBI has sought to challenge the impugned order dated 30.05.2023 passed by the High Court of Delhi at New Delhi in CRL. M.C. No. 6544 of 2022 upholding the order dated 03.12.2022 passed by the Special Judge (PC Act), CBI-08, New Delhi (hereinafter referred to as the Special Court), by which respondent nos. 1 and 2 have been granted default bail under Section 167(2) Cr.P.C.

3. The short facts giving rise to the present appeal are that an FIR bearing no. RC2242022A0001 came to be registered in CBI, AC- VI / SIT, New Delhi on 20.06.2022, on the basis of the complaint lodged by Sh. Vipin Kumar Shukla, DGM, Union Bank of India, Nariman Point, Mumbai, for the offences punishable under Section 120-B r/w Section 409, 420 and 477A of IPC and Section 13(2) r/w Section 13(1)(d) of PC Act, 1988 (hereinafter referred to as the PC Act), against Dewan Housing Finance Corporation Ltd. (DHFL) and 12 other accused persons/companies. It was alleged in the said FIR inter alia that the DHFL, Sh. Kapil Wadhawan, the then Chairman and Managing Director, DHFL, along with 12 other accused persons entered into a criminal conspiracy to cheat the consortium of 17 banks led by Union Bank of India, and in pursuance to the said criminal

conspiracy, the said accused persons/entities induced the consortium banks to sanction huge loans aggregating to Rs. 42,000 crores approx. and thereafter they siphoned off and misappropriated a significant portion of the said funds by falsifying the books of account of DHFL and deliberately and dishonestly defaulted on repayment of the legitimate dues of the said consortium banks, and thereby caused a wrongful loss of Rs. 34,000 crores to the consortium lenders during the period January, 2010 to December, 2019.

4. The respondent no. 1- Kapil Wadhawan and respondent no. 2- Dheeraj Wadhawan came to be arrested by the appellant-CBI in connection with the said FIR on 19.07.2022 and were remanded to judicial custody on 30.07.2022.

5. After carrying out the investigation, a chargesheet for the offences under Section 120B r/w Section 206, 409, 411, 420, 424, 465, 468 and 477A of IPC and Section 13(2) r/w 13(1)(d) of PC Act came to be filed by the CBI against 75 persons/entities including the respondent nos. 1 and 2 on 15.10.2022.

6. Respondent nos. 1 and 2 filed an application under Section 167(2) of Cr.P.C. on 29.10.2022 before the Special Court seeking statutory bail on the ground that the chargesheet filed by the CBI was incomplete and no final report as defined under Section 173(2) Cr.P.C. was filed within the statutory period provided under Section 167(2) Cr.P.C., or in the alternative seeking their release from judicial custody in view of lack of jurisdiction of the court as there was no approval under Section 17A of the PC Act as amended in 2018.

7. The Special Court vide the order dated 26.11.2022 held that the Special Court had the jurisdiction to deal with the matter and the bar under Section 17A of the PC Act was not applicable to the facts of the case. By a separate order dated 26.11.2022, the Special Court took the cognizance of the alleged offences against all the 75 accused and issued production warrants against the present respondent nos. 1 and 2 (A-1 and A-2) as also against accused no. 7. The Special Court also issued warrants/summons against the other accused.

8. Thereafter, the Special Court vide the order dated 03.12.2022 holding that the investigation was incomplete and the chargesheet filed was in piecemeal, further held that the respondent nos. 1 and 2 (A-1 and A-2) were entitled to the statutory bail under Section 167(2) Cr.P.C.

9. The appellant-CBI, being aggrieved by the said order dated 03.12.2022 passed by the Special Court filed a petition being Crl.M.C. No. 6544 of 2022 before the High Court under Section 482 r/w Section 439(2) of Cr.P.C. The High Court vide the impugned order dated 30.05.2023 dismissed the said petition and upheld the order dated 03.12.2022 passed by the Special Court. SUBMISSIONS:

> 10. The learned ASG, Mr. S.V. Raju for the appellant vehemently submitted that the chargesheet was filed by the appellant-CBI on the completion of the investigation qua 75 accused including the present respondents stating that further investigation qua some other accused was pending, which did not mean that an incomplete chargesheet was filed against the respondents.

Learned ASG submitted that report under Section 173 Cr.P.C. filed by the CBI was complete containing all the details as required by law. In the instant case, the statutory bail under Section 167(2) Cr.P.C. has been granted by the courts below after the Special Court took the cognizance of the alleged offences against the respondents, which is against the statutory scheme of the Code. According to him, it is only when a chargesheet is not filed and investigation is kept pending, the benefit of the proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender, however once the chargesheet is filed, the said right of the accused ceases, and such a right does not revive merely because a further investigation remains pending within the meaning of Section 173(8) of the Code. To buttress his submissions, Mr. S.V. Raju has placed heavy reliance on the decision in case of Dinesh Dalmia vs. CBI1. He also relied upon the judgment in M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence2, to submit that where the accused fails to apply for default bail when his right accrues, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished.

11. Per contra, the learned Senior Advocate Mr. Mukul Rohatgi for the respondent no. 1 submitted that the issue of cognizance had nothing to do with the default bail, in as much as the right under Section 167(2) is a statutory right, when the chargesheet is not filed within the prescribed time limit and even if filed, a complete chargesheet is not filed. According to him, the courts below have concluded that it was an incomplete chargesheet that was filed by the CBI, which entitled the respondents to the statutory right of getting the benefit of default bail under Section 167(2) of Cr.P.C. Mr. Mukul Rohatgi has relied upon the decision in Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & Anr.3 to buttress his submission that cognizance is not relevant basis for 1 (2007) 8 SCC 770 2 (2021) 2 SCC 485 3 (2013) 3 SCC 77 determining whether the investigation is complete or not for the purpose of default bail under Section 167(2) Cr.P.C. Reliance is also placed on the decision in case of Rakesh Kumar Paul vs. State of Assam4, to submit that if the chargesheet is not filed and the right for default bail has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. Mr. Rohatgi sought to distinguish the Dalmia's case (supra) relied upon by Ld. ASG Mr. S.V. Raju by submitting that in the said case, the accused was absconding and the chargesheet was already filed, whereas in the instant case, the chargesheet filed has been held to be incomplete. According to him, the concurrent findings recorded by two courts, unless perverse should not be interfered with, even if there was an error of law. He further submitted that once the bail is granted and interim order staying the operation of such order passed by the High Court is not passed by the Supreme Court, the proceeding partakes the colour of cancellation of bail for which the criteria are absolutely different.

12. Learned Senior Advocate Mr. Amit Desai appearing for the respondent no. 2 adopted the arguments made by the Ld. Senior 4 (2017) 15 SCC 67 Advocate Mr. Mukul Rohatgi for the respondent no. 1, and further submitted that the filing of chargesheet was a subterfuge or ruse to defeat the indefeasible right of the respondents conferred under Section 167(2) Cr.P.C.

ANALYSIS:

13. In the instant appeal, the main question that falls for our consideration is, whether the respondents were entitled to the benefit of the statutory right conferred under the proviso to sub section 2 of Section 167 Cr.P.C, on the ground that the investigation qua some of the accused named in the FIR was pending, though the report under sub-section (2) of Section 173 (Chargesheet) against respondents along with the other accused was filed within the prescribed time limit and though the cognizance of the offence was taken by the special court before the consideration of the application of the respondents seeking default bail under Section 167 (2) Cr.P.C.?

14. For better appreciation of the submissions made by the learned Counsels for the parties, the relevant parts of Section 167 and Section 173 are reproduced as under: -

"167. Procedure when investigation cannot be completed in twenty-four hours. –

1. .....

2. The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that— [(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b).....

(c).....

173. Report of police officer on completion of investigation.

— (1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The investigation in relation to 3 [an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the police station.] 5 Subs. by Act 45 of 1978, sec. 13(a), for paragraph (a) (w.e.f. 18-12-1978). 6 Inst. By Act 5 of 2009, sec. 16(a) (w.e.f. 31-12-2009). (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section

170. [(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under 2 [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given. (3).....

(4).....”

15. There cannot be any disagreement with the well settled legal position that the right of default bail under Section 167(2) Cr.P.C. is not only a statutory right but is a right that flows from Article 21 7 Ins. By Act 5 of 2009, sec. 16(b) (w.e.f. 31-12-2009). of the Constitution of India. It is an indefeasible right, nonetheless it is enforceable only prior to the filing of the challan or the chargesheet, and does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to the accused after the filing of the challan. The Constitution Bench in Sanjay Dutt vs. State through CBI, Bombay (II)8, while considering the provisions of Section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with Section 167 (2) Cr.P.C. had very pertinently held that:-

> "48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it

8 (1994) 5 SCC 410 remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab [(1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] .)

16. In Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & Anr. (supra), the appellant-accused had sought default bail under Section 167(2) on the ground that though the chargesheet was filed within the stipulated time, the cognizance was not taken by the court, for want of sanction to prosecute the accused. The court dispelling the claim of the accused held: -

> "17.In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the

> investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge- sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.
>
> 18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced.

During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."

17. Again, in Serious Fraud Investigation Office vs. Rahul Modi & Ors.9, this Court following Suresh Kumar Bhikamchand Jain (supra) observed: -

> "11. It is clear from the judgment of this Court in Bhikamchand Jain (supra) that filing of a charge-sheet is sufficient compliance with the provisions of Section 167, CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in Bhikamchand Jain (supra)." 9 2022 SCC OnLine SC 153

18. In the instant case as transpiring from the record, the respondents (A1 and A2) were arrested in connection with the FIR in question on 19.07.2022, and the report (the chargesheet) running into about 900 pages under Section 173(2) was filed by the CBI against the respondents along with other 73 accused on 15.10.2022. In the said report it was stated in Para no. 66 that: -

> "66. With regard to ascertaining roles of remaining FIR named accused persons namely Sh. Sudhakar Shetry, M/s Amaryllis Realtors & M/s Gulmarg Realtors, remaining CAs (who had audited balance sheets of e-DHFL & Shell companies and who had facilitated the promoters), ultimate beneficiaries/end use of diverted funds through shell companies & other Wadhawan Group Companies, the DHFL officials, insider share trading of DHFL shares, bank officials, NHB officials and other connected issues, further investigation u/s 173 (8) of Cr. PC is continuing.
>
> List of additional witnesses and additional documents will be filed as and when required.
>
> It is, therefore, humbly prayed that the aforesaid accused persons may be summoned and be tried in accordance with the provisions of law."

> 19. The Special Court thereafter had taken cognizance of the alleged offences as per the order dated 26.11.2022. It appears that earlier the Special Court had rejected the application of the respondents (accused) seeking statutory bail under Section 167(2) Cr.P.C., however at that time the issue was whether qua the offences against the respondents, period of sixty days or ninety days was applicable for grant of mandatory bail due to non-filing of chargesheet by the investigating agency, and it was held by the Special Court that the period of ninety days was applicable in case of the respondents, in which the chargesheet could be filed by the CBI. The respondents thereafter filed another application under Section167(2) after the cognizance of the offences was taken by the Special Court, on the ground that the chargesheet filed against them was an incomplete chargesheet.

> 20. The bone of contention raised by the learned Senior Counsels for the Respondents in this appeal is that the appellant – CBI having kept the investigation open qua other respondents as stated in Para 66 of the chargesheet, the ingredients of Section 173 Cr.P.C.

could not be said to have been complied with and therefore the report/ chargesheet under Section 173 could not be said to be a complete chargesheet. It is immaterial whether cognizance has been taken by the court or not. According to them the chargesheet filed against the respondents and others was a subterfuge or ruse to defeat the indefeasible right of the respondents conferred under Section 167(2) Cr.P.C.

21. In our opinion, the Constitution Bench in K. Veeraswami vs. Union of India and Others10 has aptly explained the scope of Section 173(2).

"76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in Satya Narain Musadi v. State of Bihar [(1980) 3 SCC 152, 157 : 1980 SCC (Cri) 660] that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence." 10 (1991) 3 SCC 655

22. In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173 (2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175 (5). As settled in the afore-stated case, it is not necessary that all the details of the offence must be stated.

23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.

24. In Dinesh Dalmia (supra), this Court has elaborately explained the scope of Section 167(2) vis-à-vis Section 173(8) Cr.P.C. The paragraphs relevant for the purpose of this appeal are reproduced hereinbelow: -

> "19. A charge-sheet is a final report within the meaning of sub- section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.
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> 20. Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-

sheet under sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

21. .....

22. It is true that ordinarily all documents accompany the charge-sheet. But, in this case, some documents could not be filed which were not in the possession of CBI and the same were with

GEQD. As indicated hereinbefore, the said documents are said to have been filed on 20-1-2006 whereas the appellant was arrested on 12-2-2006. The appellant does not contend that he has been prejudiced by not filing of such documents with the charge-sheet. No such plea in fact had been taken. Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. The charge-sheet has been acted upon as an order of cognizance had been passed on the basis thereof. The appellant has not questioned the said order taking cognizance of the offence. Validity of the said charge-sheet is also not in question.

23 to 27.....

28. It is now well settled that the court takes cognizance of an offence and not the offender. (See Anil Saran v. State of Bihar [(1995) 6 SCC 142 : 1995 SCC (Cri) 1051] and Popular Muthiah v. State [(2006) 7 SCC 296 : (2006) 3 SCC (Cri) 245] .)

29. The power of a court to direct remand of an accused either in terms of sub-section (2) of Section 167 of the Code or sub- section (2) of Section 309 thereof will depend on the stages of the trial. Whereas sub-section (2) of Section 167 of the Code would be attracted in a case where cognizance has not been taken, sub-section (2) of Section 309 of the Code would be attracted only after cognizance has been taken.

30. If submission of Mr Rohatgi is to be accepted, the Magistrate was not only required to declare the charge-sheet illegal, he was also required to recall his own order of taking cognizance. Ordinarily, he could not have done so. (See Adalat Prasad v. Rooplal Jindal [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927] , Subramanium Sethuraman v. State of Maharashtra [(2004) 13 SCC 324 : 2005 SCC (Cri) 242 : (2004) 7 Scale 733] and Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi [(2007) 5 SCC 54 : (2007) 2 SCC (Cri) 444 : JT (2007) 5 SC 529] .) It is also well settled that if a thing cannot be done directly, the same cannot be permitted to be done indirectly. If the order taking cognizance exists, irrespective of the conduct of CBI in treating the investigation to be open or filing applications for remand of the accused to police custody or judicial remand under sub-section (2) of Section 167 of the Code stating that the further investigation was pending, would be of no consequence if in effect and substance such orders were being passed by the court in exercise of its power under sub-section (2) of Section 309 of the Code.

31 to 37.....

38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation

despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

25. In view of the afore-stated legal position, we have no hesitation in holding that the chargesheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation qua other accused was pending. Both, the Special Court as well as the High Court having committed serious error of law in disregarding the legal position enunciated and settled by this Court, the impugned orders deserve to be set aside and are accordingly set aside.

26. The respondents-accused shall be taken into custody in this case, if released on default bail pursuant to the impugned orders. However, it is clarified that observations made in this judgment shall not influence the Special Court or High Court while deciding the other proceedings, if any pending before them, on merits.

27. The Appeal stands allowed accordingly.

..... J.

[BELA M. TRIVEDI] ..... J.

[PANKAJ MITHAL] NEW DELHI;

JANUARY, 24TH 2024