

CC No : 48/2019  
RC No. : 01/DZCR/2019  
Branch : Central Region Delhi Zone  
U/S : 3 & 4 of PMLA Act  
ED Vs. Gautam Khaitan & Ors.

04.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.26/DHC/2020 dated 30.07.2020 in view of the pandemic Covid-19.

Present: Sh. N.K.Matta and Sh. Mohd. Faraz, Ld.  
SPPs for ED.  
Sh. P.K.Dubey, Ld. Counsel for accused no. 1 and 2.  
alongwith Accused Gautam Khaitan.

Ld. Counsel for accused Gautam Khaitan submits that ED has provided data of the mobile phone seized by ED, however, the same is not complete and some data supplied in the form of soft copy is not opening.

Ld. Counsel for ED submits that ED has provided more than fifty thousand hard copies of the data and also the soft copy. Ld. Counsel for ED further submits that IO will be providing the remaining data to accused.

At this stage Ld. Counsel for accused submits that the accused will be providing Apple mobile phone to IO and IO may be directed to provide the copy/clone of entire data in the mobile which shall be provided by the accused.

Ld. Counsel for ED submits that ED has no objection. ED will be providing copy or cloning the complete data in the mobile phone which shall be provided by the accused.

Ld. Counsel for the accused submits that accused will coordinate with the IO.

Thus in view of the submissions made by Ld. Counsel for the parties, ED is directed to provide complete data to the accused in the mobile phone which shall be provided by accused. **Accordingly, the application filed by accused in this regard is disposed of.**

**Put up on 14.08.2020 for compliance.**

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADC for uploading on official website of Delhi District Court.

The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



**(Arvind Kumar)**  
**Special Judge (PC Act), CBI-10**  
**Rouse Avenue Court**  
**New Delhi/04.08.2020**

CC No : 06/10  
RC : 1(A)/98-DLI/CBI, ACB, New Delhi  
U/S : 120B r/w 419, 420, 467, 468, 471 IPC and  
Sec. 13(2) r/w 13(1)(d) of PC Act 1988.  
CBI Vs. Konngam Konyak & Ors.

04.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.26/DHC/2020 dated 30.07.2020 in view of the pandemic Covid-19.

Present: Sh. Naveen Giri, Ld. PP for CBI.  
Sh. Luikang Michael, Ld. Counsel for accused  
no. 1, Konngam Konyak and accused no. 2, Mezakrol.  
Sh. Anil Thakur Ld. Counsel for accused no. 5, Badang Wapang.

Vide separate order on charge it is observed that charge for the offences punishable U/S 120B read with Section 409, 419, 420, 467, 468 and 471 IPC is made out against accused no.1 Konngam Konyak, accused no. 2, Mezakrol and accused no. 5, Badang Wapang.

Charge for the offences punishable under Section 409 and 420 IPC is made out against accused no. 2, Mezakrol.

Charge for the offences punishable under Section 419, 420, 467, 468 and 471 IPC is made out against accused no. 5, Badang Wapang.



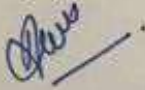


Vide aforesaid order on charge, the application filed by accused no. 1, Konngam and accused no. 2, Mezakrol U/S 227 CrPC for discharge is dismissed.

Put up on 08.09.2020 for framing of charge.

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADC for uploading on official website of Delhi District Court.

The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.

  
(Arvind Kumar)  
Special Judge (PC Act) CBI-10  
Rouse Avenue Courts  
New Delhi/ 04.08.2020

**IN THE COURT OF SH. ARVIND KUMAR  
SPECIAL JUDGE: CBI-10: ROUSE AVENUE COURTS  
NEW DELHI**

**CC No. : 06/10  
RC : 1(A)/98-DLI/CBI, ACB, New Delhi  
Section : 120B r/w 419, 420, 467, 468, 471 IPC and  
Sec. 13(2) r/w 13(1)(d) of PC Act 1988.**

**CBI ..... Complainant**

**Versus**

- 1. Konngam Konyak, the then Minister of State,  
Irrigation & Flood Control, Nagaland  
r/o Minister Hill,  
Kohima Nagaland**

**Permanent Add: PO & P/s Mon, Village Longwa  
Distt: Mon, Nagaland ..... Accused No.1**

- 2. Mezakrol S/o Late Sh. Nihobi,  
Joint Director Irrigation and flood Control,  
Kohima, Nagaland.  
r/o Vill-Viswma, Distt. Kohima, Nagaland**

**..... Accused No.2**

- 3. Neilakuo Suokhrie,**



DDO/Registrar, Deptt. of Irrigation & Flood Control,  
r/o Bapauv Hill, Kohima  
Nagaland

..... Accused No. 3  
( since deceased)

4. Khrienguozo Angami S/o Neirielie Angami SDO Stores  
Deptt. of Irrigation and flood Control,  
Kohima, Nagaland  
r/o L Khel, Kohima Village,  
Nagaland

..... Accused No. 4  
( since deceased)

5. Bandang Wapang S/o Imtiyungdang,  
PP Mechanic, SDO Store, Deptt. of Agriculture, Dimapur,  
Nagaland  
r/o LRC Coloney, SDO Store Agri Office,  
Dimapur, Nagaland

Permanent address: r/o Village Mriungviameen  
Dimapur, Nagaland

..... Accused No. 5

### Order on Charge

1. Brief facts as per prosecution are that accused namely Konngam Konyak, Mezakrol, Badang Wapang, Neilakuo Suokhrie (now deceased) and Khrieuguozo Angami (now deceased) along with P.K.Thungon, A.O.Tali, C.Sangit and Mahesh Maheshwari (already convicted vide order dated 21.07.2015 passed by my Ld. Predecessor) had entered into criminal conspiracy during the year 1993-1995 and in pursuance thereof, they had misappropriated the



funds given to Government of Nagaland which were provided and sanctioned by Planning Commission as Central Assistance for renovation and upgradation of minor irrigation projects in Nagaland during 1993-94.

2. The Government of Nagaland had moved a proposal to the Government of India, Ministry of Water Resources for grant of additional assistance of Rs. 4.10 crores for renovation and upgradation of minor irrigation projects in Nagaland during the year 1993-94. The Planning Commission sanctioned an amount of Rs. 2 Crore vide letter dated 24.01.94 for the said projects. The sanction was subject to the conditions, besides other conditions, that the State government will have to provide the balance fund of Rs.2.10 Crore for the project and that the assistance shall be released in two installments of Rs.1 Crore each and that the Central Assistance of Rs.2 Crore sanctioned shall be utilized only for renovation and upgradation and not for repair/maintenance.

3. The first installment of Rs. 1 Crore as sanctioned by the Planning Commission was released by the Finance Ministry, Department of Expenditure vide their letter No. 41(1) PF-1/CB/106 dated 21.03.94 addressed to the Pay and Accounts Officers, Ministry of Finance, Department of Expenditure, New Delhi. This installment of Rs. 1 Crore under the said proposal released by the Union Finance Ministry was kept in the Civil deposit by the Government of Nagaland



vide letter no. FIN/EXP/DR/30/93-94/IRR dated 29.03.94 addressed to the Senior Treasury Officer, Kohima and Kohima South Treasury Challan No. 5, dated 30.03.94. Thereafter vide letter no. FIN/EXP/DR/30/93-94/IRR, dated 19.04.94 of Under Secretary, Finance, Department of Expenditure, Kohima, Nagaland, the Joint Director Irrigation and Flood Control, Government of Nagaland was allowed to withdraw Rs. 50 Lakhs from the aforesaid amount of Rs. 1 Crore. Meanwhile Mezakrol, the then Joint Director, Irrigation and Flood Control, Government of Nagaland vide DO letter No. IRR/Tech.-4/94-95, dated 06.04.94 requested for permission and approval of the Government of Nagaland for procurement of sausage wire worth Rs. 20 Lakhs against the ongoing minor irrigation projects in the State. The approval of the government to the above request was conveyed to the Joint Director, Irrigation and flood control department vide letter no. IRR/MI/SW-4/93 dated 07.04.94 of Sh. R.Singh, Deputy Secretary, Irrigation and Flood Control, Government of Nagaland.

4. That before the aforesaid approval dated 07.04.94 of the Deputy Secretary, accused Konngom Konyak, the then Minister of State for Irrigation and Flood Control had issued a hand written note on a slip bearing the rubber stamp of the Minister of State Irrigation and Flood control and Fire Service, Nagaland, Kohima which read "as discussed, you may issue supply order of sausage wire for Rs.,50,000,00/- to Sh. Tali A.O. on priority basis." This note bears the signature dated 28.03.94 of Konngom Konyak and is marked to Joint





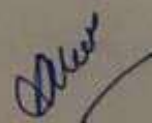
Director, Irrigation. Accused Mezakrol, the then joint Director, Irrigation and Flood Control had also put his signature under the note without date. Thereafter accused Mezakrol, even before the receipt of approval of the Government for the procurement of sausage wire, placed order no. IRR/Tech./4-93-94/561-62 dated 02.04.94 on Sh. Tali AO, Dimpaur, Nagaland for supply of 85,450 sq. meters of sausage wire. He placed another order no. IRR/Tech./93-94/571-73 dated 07.04.94 on Sh. T.Moa, Dimapur, Nagaland for supply of 57, 000 sq. meters of sausage wire. Both these supplies were to be made @ Rs. 32.50 per sq. meters. Both these orders were issued under the signature of Sh. Mezakrol, Joint Director, Irrigation and Flood Control.

5. That one of the suppliers Sh. Tali AO submitted bill dated 19.04.94 typed on a plane paper claiming Rs. 29,99,295/- against the supply of sausage wire, to the Joint Director, Irrigation and Flood Control, Nagaland. He mentioned on a hand written letter dated 21.04.94 that Demand Draft of Rs.10 Lakhs to be prepared in the favour of Thanu Thungon and another demand draft of Rs. 15 Lakhs in favour of Konngon Konyak, Mon. Accused Mezakrol, Joint Director, Irrigation and Flood Control after getting withdrawal authority of Rs.50 Lakhs vide letter dated 19.04.94 submitted the bill for clearance to the Treasury Office (South) , Kohima which was passed vide bill no. 1 on 21.04.94 and the same was sent to SBI, Lerie branch. Accused Mezakrol approached the SBI Lerie Branch and gave requisition for making DD for Rs.10 Lakhs in favour of Thanu Thungon payable at



SBI, New Delhi and got issued 5 DAC of Rs. 5 Lakhs each and one DAC of Rs.15 Lakhs all dated 21.04.94 in the name of Joint Director, Irrigation and Flood Control, Nagaland. As per the requisition, the bank also issued demand draft no. 479623, for Rs, 9,98,500/- in the name of Sh. Thanu Thungon. Thereafter, DAC No. 057631 for Rs.15 Lakhs was encashed by accused Mezakrol and demand draft no. A 685748 dated 22.04.94 for Rs.14,98,500/- was issued in favour of Konngom Konyak against requisition dated 22.04.94 by accused Mezakrol. From the amount of Rs. 10 Lakhs pertaining to DAC No. 057626 for Rs. 5 Lakhs and DAC No. 057627 for Rs. 5 Lakhs, an amount of Rs. 4 Lakhs was withdrawn in cash by Sh. Mezakrol and a Demand Draft dated 25.04.94 for Rs. 6 Lakhs was got issued in favour of Sh. T.Moa on SBI, Bazar Branch, Dimapur, Bazar Branch. Against DAC No. 057628 for Rs. 5 Lakhs, an amount of Rs. 2 Lakhs was withdrawn in cash and from remaining Rs. 3 Lakhs, another DAC no. 057635 was got issued. Finally, all the remaining DAC bearing no. 057629 dated 25.04.94 for Rs. 5 Lakhs, DAC No.057630 for Rs. 5 Lakhs and DAC No. 057635 for Rs, 3 Lakhs were encashed on 06.05.94 by accused Mezakrol.

6. The aforesaid demand draft for Rs. 14,98,500/- issued in favour of Konngom Konyak was deposited on 06.05.94 in Account no. 24/1729 of SBI Mon, Nagaland which is in the name of Konngom Konyak, r/o PO/PS Mon, Distt Mon, Nagaland, Ministry of Irrigation and Flood Control. The balance in this account at the time of deposit





of this demand draft was Rs. 588.50 and after the deposit of aforesaid draft, there are several withdrawals totalling over Rs. 14 Lakhs.

7. Demand Draft no. 479623 for Rs. 9,98,500/- Lakhs in favour of Sh. Thanu Thungon issued from SBI Lerie Branch was deposited on 25.04.94 in account no. 7798 of Vijaya Bank, Ansari road, Darya Ganj, Delhi. This amount was subsequently withdrawn. This account was fraudulently and dishonestly opened on 25.04.94 by Sh. Mahesh Maheshwari in connivance with P.K.Thungon and N.M.Jain , Sr Branch Manager, Vijaya Bank, Ansari Road, Delhi by impersonating himself as Thanu Thungon and he himself became the introducer on the basis of current A/C No. 1379 of M/s SNH India Traders Ltd. with whom Mahesh Maheshwari was one of the Directors. This amount was credited in the said account no. 7798 on 25.04.94 through clearing and the aforesaid Demand Draft for Rs. 9,98,500/- was deposited by Mahesh Maheshwari on 25.04.94 in account no. 7798. Thereafter, Mahesh Maheshwari issued cheque for Rs. 8 lakhs in favour of Prem Kumar and deposited the same on 26.04.94 in account no. 7770 of P.K.thungon in the same Bank and Rs.1,98,000/- was withdrawn by self cheque on 03.05.94. This account no. 7770 was opened on 31.03.94 with initial deposit of Rs. 1 lakh by P.K. Thungon, the then Minister of State, Ministry of Urban Affairs and Employment and Water Resources, Govt, of India, New Delhi in the name of Sh. Prem Kumar giving false address of C-113, Sarvodaya Enclave, New Delhi on 31.3.94 and also hired locker No.



288 in the same bank branch in the name of Prem Kumar.

8. The Demand Draft for Rs. 6 Lakhs issued in favour of Sh. T.Moa on 25.04.94 and another Demand Draft in his favour for Rs. 8 Lakhs issued on 06.05.94 from SBI, Lerie Branch were deposited in A/c No. 84/7789 opened on 26.04.94 at SBI, Bazaar Branch, Dimapur in the name of Sh. T. Moa. In fact, this A/c was opened by Bandang Wapang Slo Imfiyungdong, PP Mechanic, SDO, Stores dishonestly and fraudulently in connivance with Sangit AO S/o Late Sh.Chuba AO, r/o Dimapur, Nagaland impersonating himself as T.Moa. It is alleged that Sh. T. Moa is a minor son (11 years old) of Sangit AO, who is younger brother of the then Director of Agriculture. In the pay- in- slip dt. 7-5-94 for the aforesaid deposit of Demand Draft for Rs. 8 lakh in the aforesaid Account name "T Moa" was written by Sangit, A.O. This A/c was opened with a cash deposit of Rs. 1,000/-, The entire amount of aforesaid cheque was withdrawn leaving the balance of Rs. 292/- as on 13.2.99.

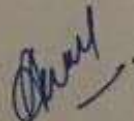
9. It is further alleged that no supply of sausage wire was made by both the suppliers and they dishonestly and fraudulently in connivance with Konngam Konyak, Neilakuo Suokhri, and others claimed and received the amount on false bills. One of the suppliers Talli A.O has signed three receipts in token of receiving Rs. 15 lakhs, Rs 4,99,295 and Rs. 10 Lakhs respectively. C. Sangit A.O impersonating himself as T. Moa has signed two receipts of





Rs.8,52,240/- and Rs. 10 Lakhs respectively. The signatures /handwritings of the accused persons have been found tallying with their specimen writings/admitted writings and signatures by the CFSL QD Experts. Sub-Divisional Officer (Stores) Sh. Khrienguzo Angami (now deceased) had shown false entries regarding receipt of sausage wire in the stock register maintained at the store of Sub-Divisional Officers (Stores), Irrigation and Flood Control Dimapur, Kohima. There are no bills/ challan of the suppliers or any other record supporting the receipt of materials. Neilakuo Suokhrie, the then Registrar/DDO in connivance with Mezakrol facilitated release of Rs. 50 Lakhs to Mezakrol from the aforesaid amount of Rs. 1 Crore of Central Assistant by getting false entries recorded in the Cash Book.

10. Thus P.K.Thungan (convict), AO Tali (convict), C.Sangit (convict), Mahesh Maheshwari (convict) and accused persons namely Konngam Konyak, Mezakrol, Bandang Wapang (SDO Stores), Neilakuo Suokhrie (now deceased), Registrar/DDO and Khrienguzo Angami (now deceased) (SDO Stores) in conspiracy with each other misappropriated the additional fund granted by the Government. No supply of sausage wire was made by the suppliers and they dishonestly and fraudulently, in connivance with other accused, claimed and received the amount on false bills. Sub-Divisional Officer (Stores) KhrienguzoAngami had shown false entries regarding receipt of sausage wire in the stock register. There is no bills/challan of the suppliers or any other record supporting the receipt of materials.

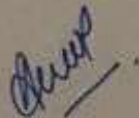


Neilakuo Suokhrie, the then Registrar/DDO in connivance with Mezakrol facilitated release of Rs.50 Lac to Mezakrol by getting false entries recorded in the Cash Book.

11. The Government of Nagaland declined to accord sanction U/S 197 CrPC and U/S 19 P.C. Act for prosecution of accused Konngam Konyak, Badang Wapang, Mezakrol, Neilakuo Suokhrie and Khrienguzo Angami. As such, on 03.07.2003, charge-sheet was filed against P.K.Thungon (convicted) , A.O.Tali (convicted), C.Sangit (convicted) and Mahesh Maheshwari (convicted) for offence U/S 120B r/w Sec.420/467/468/471 IPC and Section 13(2) r/w Section 13(1)(d) of P.C. Act and for substantive offences thereof and names of the Konngam Konyak, Mezakrol, Badang Wapang, Neilakuo Suokhrie (now deceased) and Khrienguzo Angami (now deceased) were kept in column 2 of the charge-sheet.

12. Vide Judgement dated 21.07.2015, my Ld. Predecessor has convicted the accused P.K.Thungon, AOTali, C.Sangit and Mahesh Maheshwari for the offences committed U/S under Section 120 B, 419, 420, 467,468, 471 and 409 IPC and Sections 13(2) r/w 13(1)(c) & (d) of P.C. Act, 1988 and summoned the accused Konngam Konyak, Mezakrol, Badang Wapang, Neilakuo Suokhrie and Khrienguzo Angami. The relevant portion of judgment dated 21.07.2015 passed by Ld. Predecessor is as under:-

*"210. As discussed above, the State*





Government officials including Sh. K.Konngam Konyak, then Minister of State, Irrigation and Flood Control Department. Mr. Mezakrol, Joint Director, Irrigation and Flood Control Department along with other accused Nielakuo Suokhrie (DDO), K.Angami (SDO Store) and Bandang Wapang (PP Mechanic, SDO Stores) are found to be indulged in the illegal acts for misappropriating the additional central fund. This fact is clear on bare perusal of the material submitted during investigation to the State Government, however, despite these kind of gross abuses of authority by the government officials and making of money in illegal or corrupt manner, the State Government had not accorded sanction. The conduct of State Government in this regard is deprecated. The people of Nagaland are deprived of legitimate central funds released for their development and the act of non grant of sanction for prosecution against corrupt official by State Government is in fact betrayal of public trust, it reminds whenever the higher officials are found involved in such activities, the State Governments tries to shield them from prosecution.

211. But as discussed above, in present facts and circumstances, there is no requirement to take sanction in present case from the State government and accused are not entitled protection U/S 197 CrPC. There is enough material on record for taking cognizance against accused K.Konngam Konyak, Mezakrol, Neilakuo Sukhorie, K. Angami and Badang Wapang for committing



*offences U/S 120B, 417, 420,467, 468,471, 409 IPC and Section 13(2) r/w Section 13(1) (c) and (d) of PC Act, 1988 and under all the substantive offences thereof. Accordingly, these accused persons be summoned for trial."*

13. Here it is also relevant to mention that accused no. 1, Konngam Konyak and accused no. 2, Mezakrol has assailed the aforesaid judgement passed by my Ld. Predecessor on 21.07.2015 summoning the aforesaid accused persons U/S 120B r/w 419/420/467/468/471 IPC and Section 13(2) r/w 13 (1)(C) and 13(1) (d) of P.C. Act. Hon'ble Delhi High Court has dismissed the petition filed by accused no. 1 and accused no. 2 with the observations:

*"After some arguments, the learned counsel for the petitioners submit, on instructions that they may be allowed to withdraw the present petitions which were filed assailing the summoning order passed by the Special Judge by judgment dated 21.07.2015 in criminal case no. 06/2010 arising out of the RC. No. 1(A)/1998-DLI under Section 120B r/w 419/420/467/468/471 of IPC and Section 13(2) read with 13(1)(c) and (d) of PC Act, 1988 of Central Bureau of Investigation, seeking liberty to raise the issue of need for sanction for prosecution before the Special Judge and if need be thereafter to raise other contentions touching upon the propriety of procedure applied and merits of accusations at the time of consideration of charge-sheet.*

*Ok*



*The petitions and the applications filed therewith are dismissed as withdrawn with liberty as prayed for granted. "*

14. I have heard Ld. Counsels for the parties.

**Contentions of Ld. Counsel for CBI**

15. Ld. Counsel for CBI submits that accused no. 1, Kongam Konyak, accused no. 2, Mezakrol and accused no. 5, Badang Wapang were kept in Column No. 2 in the charge-sheet as the sanction to prosecute the aforesaid accused persons was declined by the State Government and for lack of sanction they could not be tried, however, this Court at the time of passing judgment while convicting the other accused persons, has observed that sanction under Section 197 CrPC was not required. Ld. PP submits that as the offence committed by the aforesaid accused persons does not form part of official duties of a public servant and cannot be said to have been done in discharge of the official duties, hence, sanction U/s 197 CrPC was not required. It is submitted that aforesaid offences committed by



the accused persons were not the part of their official duties. Ld. PP further submits that although the CBI has applied for sanction to prosecute the above said accused persons and same was declined but it will not have any effect and the accused can be tried as per law.

16. Ld. PP submits that there is sufficient material on record to show that the accused persons have committed the aforesaid offences and hence are liable to be prosecuted for the said offences .

**Contentions of Ld. Counsel for accused persons.**

17. On the other hand Ld. Counsel for accused no. 1, Kongam Konyak and accused no. 2, Mezakrol submit that no offence is made out against the aforesaid accused persons and they have been falsely implicated in the present matter. It is submitted that accused are sought to be tried after a lapse of about 23 years from the date of incident and this fact in itself is sufficient to discharge the accused. It is also submitted by Ld. Counsel for accused that CBI has applied for grant of sanction to prosecute the accused for the offences as mentioned in the charge-sheet, however, the competent Authority after due application of mind, has refused to grant sanction, therefore, this Court cannot proceed with the matter and the accused are liable to be discharged.

18. It is further submitted by Ld. Counsel for accused no. 1,





Kongam Konyak and accused no. 2, Mezakrol that the accused no. 1 and 2 were public servants at the relevant time and the alleged offences were committed in discharge of their official duties and thus sanction U/S 197 CrPC is sine qua non for prosecution of the accused no. 1 and accused no. 2.

19. It is further submitted that the accused persons have been summoned by the predecessor of this Court ignoring the mandate of provisions of Section 319 CrPC and thus cognizance of the offence at the stage of pronouncement of judgment, is completely against spirit of the provisions of Section 319 CrPC. It is further submitted that nothing incriminating has surfaced against the aforesaid accused persons during the trial of other accused persons and number of witnesses have turned hostile and thus the accused persons have been summoned without any incriminating material against them. Ld. Counsel for accused no.3 also raised the same contentions.

20. Ld. Counsel for accused no. 1, K.Kongam Konyak and accused no. 2, Mezakrol relied upon the judgments R.Balakrishna Pillai V. State of Kerela & Anr., (1996) 1 SCC 478; N.Bhargavan Pillai V. State of Kerela, (2004) 13 SCC 217; Rakesh Kumar Mishra V. State of Bihar & Ors., (2006) 1 SCC 557; Raghunath Anant Govilkar V. State of Maharashtra & Ors.; State of Himachal Pradesh V. Nishant Sareen,



(2010) 14 SCC 527; Hardeep Singh V. State of Punjab & Ors., (2014) 3 SCC 92; Brijendra Singh & Ors. V. State of Rajasthan, (2017) 7 SCC 706; Sukhpal Singh Khaira & Ors. V. State of Punjab, (2019) 6 SCC 638.

21. I have gone through the material on record.

22. At the outset, I may state that it is settled law that at the stage of framing of charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed.

23. In **2000 SCC (Cri.) 981 State of Tamil Nadu Vs. J. Jayalalitha**, it was held by Hon'ble apex court that :-

*"This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are "groundless" or whether "there is ground*



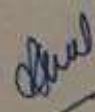


*for presuming that the accused has committed the offences." Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial."*

24. In the case of ***Kanti Bhadra Shaha Vs. State of West Bengal (2000) 1 SCC 722***, the Supreme Court has even gone to the extent of holding that there is no legal requirement that the trial court should write an order showing the reasons for framing a charge. It is quite unnecessary to write a detailed order if the proceedings do not culminate. This was considered to be a measure to avert all roadblocks causing avoidable delays.

25. Reference may also be made to the case of ***State Vs. S Bangarappa 2001 CriL.J. Page 111***, where the Apex Court emphasized the need to have the limited exercise during the state of framing charge. The court held that :-

*"Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as*



*evidence are sufficient for the court to proceed further. (vide State of M.P. Vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439)."*

26. As per prosecution accused Konngam Konyak, the then Minister of State Irrigation and Flood Control, Government of Nagaland wrote a note dated 28.03.94 to accused Mezakrol, Joint Director, Irrigation and Flood Control that supply order of sausage wire for Rs. 50 Lakhs may be issued to Tali A.O (convicted) only on priority basis. Accordingly, supply order for sausage wire of Rs. 29,99,295/- was placed on Tali AO (convicted) who had no experience or dealt with supply of sausage wire. Sh. Tali AO (convicted) submitted bill for Rs. 29,99,295/- on 19.04.94 and on 21.04.94 wrote a letter to the Joint Director that Demand Draft for Rs. 15 Lakhs to be issued in favour of accused Konngam Konyak and another DD for Rs. 10 lakhs in favour of Sh. Thanu Thungon. Accused Mezakrol got issued DD for Rs,14,98,500/- in favour of accused Konngam Konyak from the amount of Rs. 50 Lakhs of Central Government meant for upgradation and renovation of minor irrigation projects in Nagaland. This DD for Rs. 14,98,500/- was later deposited on 6.5.94 in A/C No. 24/1729 in the name of accused Konngam Konyak at SBI, Main Branch, Nagaland and the same was later withdrawn. The aforesaid amount of Rs.,14,98,500/- deposited in the aforesaid account of Konngam Konyak is the part of amount of Rs.50 Lakh which was dishonestly misappropriated by the accused in

*Handwritten signature*



conspiracy with each other.

27. Accused Mezakrol, Joint Director, Irrigation and Flood Control, Government of Nagaland placed supply order for supply of sausage wire worth Rs.20 Lakhs to T.Moa who was just 11 years old and another supply order worth Rs. 29,99,295/- to Tali AO (convicted) who never dealt with supply of sausage wire or any other material. The order of Rs.29,99,295/- was placed even before receipt of required government approval. He got issued DD for Rs.9,98,500/- from SBI Leiri Branch, Nagaland in favour of Thanu Thungon payable at SBI, New Delhi and DD for Rs.14,98,500/- in favour of accused Konngam Konyak from the amount of Rs.50 Lakhs of Central Government assistance, meant for upgradation and renovation of minor irrigation projects. He also got issued another DD for Rs. 6 Lakhs in favour of Sh. T.Moa without receiving any material from him. Remaining amount of Rs. 19 Lakhs was withdrawn by himself by way of first getting DAC (Deposit at calls) of this amount and later encashing the same. It may be mentioned that Mahesh Maheshwari (the convict) had opened account in Vijaya Bank, Ansari Road, Delhi impersonating himself as Thanu Thungon where DD of Rs. 9,98,500/- was deposited and later on this amount was transferred/credited in the account of P.K.Thungon (convict).

28. Allegations against accused Badang Wapang (PP Mechanic) are that he dishonestly and fraudulently, in connivance with

other accused, opened saving bank account impersonating himself as T.Moa with CBI Bazar Branch, Dimapur where DD for Rs. 6 Lakhs issued in favour of T.Moa by accused Mezakrol from Rs. 50 Lakhs of Central Assistance was deposited and later on this money was withdrawn. Another DD for Rs.8 Lakhs issued from SBI Leiri Branch, Nagaland in favour of T.Moa was also deposited. It needs to be mentioned that sausage wire was not supplied by any one. Further accused no.4 Khrienguzo Angami (since deceased) had shown false entries regarding receipt of sausage wire and accused no.3 Neilakuo Suokhrie (since deceased) facilitated release of Rs. 50 lacs to accused Mezakrol by getting false entries recorded in the cash book.

29. The contention of counsel for accused persons that some witnesses have turned hostile and there is no sufficient material for framing charges is without any basis. From the facts discussed above it is clear that there is sufficient material on record for framing charges against the accused persons. It is well settled that at the stage of framing of charge court is to consider whether there is sufficient material on record to proceed further.

30. Another contention of Ld. Counsel for accused persons is that the alleged act has been done by the accused persons in discharge of their official duties as public servant and the sanction U/S 197 CrPC is required before prosecution of the accused persons and





as the sanction U/S 197 CrPC has been declined by Competent Authority, accused persons cannot be prosecuted.

31. Here it is relevant to mention some of the relevant judgements. In *Matajog Dobey Vs. H.C. Bhari (AIR 1956 SC 44)* it is held:-

*"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty..... there must be a reasonable connection between the act and the discharge of official duty; the act must bear, such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."*

32. In *B.Saha & Ors. Vs. M.S.Kochar, 1979 (4) SCC 177*, it was held by Apex Court :-

*"Para 17 that 'The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197 (1) of the code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for it is no part of an official duty to commit an offence, and never can be.' In the wider*

*Amal*

*sense, the these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonable connected with his official duty will require sanction for prosecution and the said provision."*

33. Further Apex Court in another case titled as P.Arul Swami Vs. State of Madras, AIR 1967 SC 766 held that :-

*"The protection is limited only when the act done by public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable act.*

34. The Apex Court in Harihar Prasad Vs. State of Bihar, (1972) 3 SCC 89 (SCC p.115.para 66):

*"As far as the offence of criminal conspiracy punishable under Section 120B read with Section 409 of Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are*



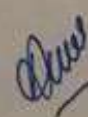


*concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar".*

35. The aforesaid view has been reiterated by the Apex Court in State of Himachal Pradesh Vs. M.P.Gupta (2004) 2 SCC 349, wherein it has been pointed out that offence under Section 467, 468 and 471 relating to forgery of valuable security, documents, respectively cannot be a part of the duty of a public servant while discharging his official duties. Therefore, want of sanction under Section 197 of the Code may not be a bar for prosecution of such public servant.

36. Recently, Apex Court in case titled "Rajib Ranjan & Ors. Vs. R.Vijay Kumar, Crl. Appeal No. 729-732/2010 dated 14.10.2014, 2015 V AD (SC) 354" held that even while discharging officials duties if a public servant enters into criminal conspiracy or indulges criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties.

37. Further Hon'ble High Delhi High Court in the judgment "State Vs. Mukesh Kumar Singh & Anr., Crl.Rev.P. 462/2017"



observed:-

*"The "safe and sure test", as laid down in the case of Centre for Public Interest Litigation (supra), is to find if the omission or neglect to commit the act complained of would have made the public servant answerable for charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts."*

38. Now it is to be seen if the act committed by aforesaid accused persons can be said to have been done by them in discharge of official duty or there was reasonable connection between the act and the discharge of official duty. The accused persons has conspired with the other persons who have already been convicted to misappropriate the amount of Rs.50 Lakh of Central Government meant for upgradation and renovation of minor irrigation projects in Nagaland. In furtherance of the said conspiracy accused Badang Bapang has opened an account in the name of T.Moa who was a minor by impersonating himself as T. Moa and further the accused Konngam Konyak had fraudulently and dishonestly got Rs. 14,98,500/-, out of this grant, deposited in his account and



misappropriated the said <sup>amount</sup> ~~account~~. The other accused Mezakrol had also got DAC of Rs. 19 Lakh and encashed them later on. It is noted that the amount of Rs. 6 Lakhs by draft was allegedly paid to the suppliers of sausage wire while in fact no such sausage wire was supplied by these contractors. The aforesaid acts of the accused persons by no stretch of imagination can be said to have been done in discharge of their official duties or cannot be said to have reasonable connection with the official duties. It cannot be the official duty of the public servant to hatch a conspiracy in order to misappropriate the government fund or commit forgery or cheat the government. It is apparent that the accused persons cannot use official duties as cloak for illegal acts. Therefore, it is clear that sanction U/s 197 CrPC was not required for the prosecution of accused persons for aforesaid offences. Thus, the CBI applying for sanction U/S 197 CrPC and refusal by the Competent Authority shall have no effect on the prosecution of the aforesaid accused persons. The judgements cited by counsels for the accused no. 1 and 2 do not help their case.

39. So far as offences U/S 13 (1)(d) punishable U/S 13(2) of PC Act are concerned, the Competent Authority has refused to grant sanction to prosecute the aforesaid accused persons. In the judgment "Chittranjan Das Vs State of Orissa", CrI. No. 820/2007 Hon'ble Supreme Court has clearly held that once the Competent Authority decline to grant sanction to prosecute public servant, the public

servant cannot be subsequently prosecuted for the said offence after his retirement. Thus it is clear that aforesaid accused persons cannot be prosecuted for the offences committed under P.C. Act.

40. The next contention of Counsel for accused no.1, 2 & 3 is regarding delay in summoning. It is clear that there is no limitation for taking cognizance or summoning accused for commission of aforesaid offences. The bar of Section 468 Cr.P.C has no application to the aforesaid offences.

41. The next contention of Ld. Counsel for accused persons is regarding validity of order passed by my Ld. predecessor summoning the accused U/s 319 CrPC. It is evident that this Court cannot review/recall its order as the same is clearly barred U/S 362 CrPC.

42. The accused No. 1 and 2 have also filed an application under section 227 Cr.P.C. for discharge of accused persons on the aforesaid grounds. In view of the above discussion, application filed by accused no. 1 and 2 is dismissed.

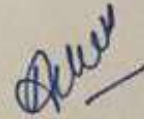
43. Thus there is sufficient material on record to frame charges against (i) accused Konngam Konyak, Mezakrol and Badang Wapang for the offences punishable under section 120B read with section 409, 419, 420, 467, 468 and 471 IPC, (ii) accused Mezakrol for the





offences punishable under section 409 and 420 IPC and (iii) accused Badang Wapang for the offences punishable under section 419, 420, 467, 468 and 471 IPC.

Date : 4-8-2020



Arvind Kumar,  
Special Judge,  
CBI-10, RADDC,  
New Delhi.

CC No : 01/2015  
ECIR : DLZO/15/2014/AD(VM)  
U/S : 3 and 4 of PMLA Act  
Directorate of Enforcement Vs. Gautam Khaitan & Ors.

04.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.26/DHC/2020 dated 30.07.2020 in view of the pandemic Covid-19.

Present: Sh. N.K.Matta and Sh. Mohd. Faraz, Ld. SPPs for ED.  
Accused no. 1, Gautam Khaitan in person.  
Sh. Vikas Pahwa, Ld. Sr. Counsel with Sh. Shadman Siddiqui  
Ld. Counsels for applicant Mohit Jain.  
Applicant Ajeit Saksena with Ms. Shreshtha Bharti, Ld. Proxy  
Counsel for applicant .  
Sh. Amar Phogat, Ld. Proxy Counsel for applicant Pankaj Kapur.  
Sh. Sachit Jolly, Ld. Counsel for applicant Rajnish Gupta.

Sh. Amar Phogat, Ld. Proxy Counsel for applicant Pankaj Kapur submits that the main counsel is not comfortable with hearing through video conferencing and matter may be adjourned and may be taken up as and when physical hearing of the court resumes.



**Under the facts and circumstances, application filed by applicant Pankaj Kapur for withdrawal of LOC is adjourned to 08.09.2020.**

Ld. Counsel for ED submits that ED has already written to the concerned authority for deletion of LOC issued against applicant Mohit Jain.

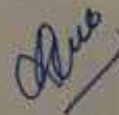
Ld. Sr. Counsel for applicant Mohit Jain submits that his application may be disposed of accordingly. Ld Sr. Counsel also submits that matter may be kept for status report by ED regarding deletion of LOC by concerned authority.

**In view of the submissions made by Ld. Counsel for ED, the application filed by applicant Mohit Jain for withdrawal of LOC is disposed of accordingly. The ED shall inform about deletion of LOC by concerned authority on 14.8.2020.**

Ld. Counsel for ED also submits that so far as LOC issued against applicants Rajnish Gupta and Ajeit Sakxena are concerned, ED needs some time as the competent authority is deliberating whether the LOC be withdrawn or suspended or continued against the aforesaid applicants. Ld. Counsel for the ED submits that ED will take decision within 7 to 10 days.

**Under the facts and circumstances, matter is adjourned to 14.08.2020.**

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADC for uploading on official website of Delhi District Court.



The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



**(Arvind Kumar)**  
**Special Judge (PC Act), CBI-10**  
**Rouse Avenue Court**  
**New Delhi/04.08.2020**