



2025:DHC:3007



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

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*Reserved on: 20<sup>th</sup> January, 2025  
Pronounced on: 28<sup>th</sup> April, 2025*

**W.P.(CRL) 1949/2019 & CrI.M.A. 31411/2019 & CrI.M.A. 33017/2024**

**BINOD GIRI**

...Petitioner

S/o. Late Shri Naba Kumar Giri,  
R/o. House No. 917-A, Upper Ground Floor  
Gali No. 8, Govindpuri,  
New Delhi-110019

Through: Mr. Tanveer Ahmad, Senior Advocate with  
Ms. Anushka Khaitan & Ms. Yashodhra  
Singh, Advocates

versus

**CBI**

.....Respondent

Through its Standing Counsel  
CBI, Delhi high Court

Through: Mr. Rajesh Kumar, Special Public  
Prosecutor with Ms. Mishika, Mr. Sanjay  
Kumar & Mr. Changez Khan, Advocates

**W.P.(CRL) 1941/2019 & CrI.M.A. 31369/2019**

**ASIF IBRAHIM DADARKAR**

.....Petitioner

S/o Sh. Ibrahim Dadarkar  
R/o 301, Green Eastern Shores,  
Gandhi Gram Road, Juhu,  
Mumbai-400049

Through: Mr. Ashish Dixit, Mr. Shivam Tiwari, Ms.  
Urmila Sharma,  
Ms. Deepika Kalra & Ms. Veenni Kakkar,  
Advocates



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**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

### **J U D G M E N T**

1. The aforesaid two Petitions have been filed by the two Petitioners, Binod Giri and Asif Ibrahim Dadarkar, the two accused in RC No.1(A) 2016-ACIII under Sections 120-B IPC and Sections 7, 12, 13 (1) (a), 13 (2) r/w 13 (1) (d) of PC Act, 1988 against the Order on Charge dated 30.04.2019 consequent to which the Charges under sections 120-B IPC and Sections 7, 12, 13 (1) (a), 13 (2) r/w 13 (1) (d) of PC Act, 1988 were framed.

2. **Briefly stated**, Petitioner/Binod Giri while working as Upper Division Clerk (UDC), CBI Vigilance Cell, CBI Headquarter, New Delhi, was marked the Vigilance Clearance References received from Ministry of Home Affairs by Ginni Rana, Deputy SP and Inspector Anil Bisht, for compliance. At times, Binod Kumar Giri used to also deal with the References received from the Reserve Bank of India (RBI). His duty entailed making the list of Companies and its Promoters for seeking requisite Vigilance clearances from all the branches of CBI, CBI Command Centre and CBI Special Units and to verify whether there was any adverse information against these Companies and their Promoters. After collecting such information, they were put in a *Note Sheet* by Binod Kumar Giri before



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Inspector Anil Bisht who would then forward the file to the Senior officers for approval from the Competent Authority. Thereafter, the Report/Reply was sent to Ministry of Home Affairs, New Delhi.

3. According to the prosecution, source information was received that Binod Kumar Giri was indulging in undesirable and illegal activities of contacting the CMDs/MDs of the concerned Companies/Entities whose clearance was sought by the Ministry and other authorities and inform them about the pending Clearances and demand illegal gratifications for processing the matter and to give a positive Clearance Report.

4. The RC was registered. The investigations revealed that accused Binod Kumar Giri had dealt with *File No.30/2015-VC (MHA)/135 dated 16.11.2015* of CBI; Vigilance Cell pertaining to the security clearance sought by Ministry of Home Affairs in respect of the *M/s. Sahara Dredging Ltd.* and its two Directors namely Asif Ibrahim Dadarkar and Ms. Humera Asif Dadarkara. An Office Memorandum (OM) dated 05.11.2015 was forwarded by the Ministry of Home Affairs to CBI and was marked by Ms. Ginni Rana to Binod Kumar Giri on 09.11.2015 for necessary action. It is stated that in this matter of vigilance of *M/s Sahara Dredging Ltd.*, Mumbai, accused No.1/Binod Giri repeatedly contacted accused No.2/Asif Ibrahim Dadarkar over phone and demanded illegal gratification from him in lieu of processing the *Vigilance Clearance Files* pertaining to their Company.

5. He provided the bank account number of one Tapan Kumar Bahera, in whose account a sum of Rs.10,000/- was deposited on 06.02.2016 by Asif Ibrahim Dadarkar through Cash Deposit Machine (CDM) SBI, Mumbai. After carrying out necessary processing, Binod Kumar Giri made a Noting on 01.12.2015 that



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nothing adverse was received from CBI Special Unit, Command Centre and CBI Branches against *M/s. Sahara Dredging Ltd* and its office bearers. *The Competent Authority granted the approval on 09.12.2015 and that the Verification Report was forwarded to Ministry of Home Affairs.*

6. During the investigations, Search was conducted at the office and residence of Binod Kumar Giri as well as at the residence of Tapan Kumar Bahera at Mumbai and numerous incriminating documents were seized. The account opening form along with the Statement of Account maintained in the name of Tapan Kumar Behera, were seized. The documents confirmed that Rs.10,000/- had been received in the Bank Account of Tapan Kumar vide two deposits amounting to Rs.5000/- each.

7. The statements of witnesses, the Bank Account Statement of B.K. Giri, SBI and the CCTV footage of the CDM were collected in which the face of Tapan Kumar Behera was visible and the transactions stood corroborated. The transfer of Rs.10,000/- to the account of Tapan Kumar Behera was confirmed.

8. Further, two mobile numbers of Binod Kumar Giri were put under surveillance by Special Unit, CBI. CDRs were collected and analyzed from 05.02.2016 to 17.02.2016 after obtaining requisite permission from Secretary, Ministry of Home Affairs, New Delhi. During this period, a total 2476 calls along with SMS, were intercepted and analyzed. It was found that 75 calls and one SMS was containing incriminating conversations and information. It was also established that one mobile number was registered in the name of Binod Kumar Giri, while the second mobile was registered in the name of his wife Smt. Shyamali Giri. The third mobile number was registered in the name of Tapan Kumar Bahera, resident of Mumbai. The fourth mobile number was found



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registered in the name of co-accused Asif Ibrahim Dadarkar. CDR of Landline number installed in the office of Asif Ibrahim Dadarkar, was also obtained.

9. It was further alleged that B.K.Giri had similarly dealt with File No.30/2015-VC (MHA)/124 dated 10.10.2015 of CBI, Vigilance Cell which pertained to security clearance of *M/s. ILFS Maritime Infrastructure Company Ltd, Mumbai* and its officials as was sought by Ministry of Home Affairs vide O.M dated 29.09.2015 in connection with the subject “*Development Operation & Maintenance of Container Terminal at Berth Nos.11 and 12 at Kandla Port on PPP Mode*”. The O.M. was marked to B.K.Giri on 01.10.2015 by Ginni Rana, Deputy SP for necessary action. The processing was done by B.K.Giri and he submitted his noting/report on 02.11.2015 on the file after which the approval so granted by the Competent Authority and Ministry of Home Affairs was duly informed vide Reply dated 04.12.2015.

10. The investigations revealed that in the month of October, 2015 B.K. Giri called Saibal De, CEO (Chief Executive Officer) of *M/s. ILFS Maritime Infrastructure Company Ltd.* who met B.K. Giri in front of CBI Office building Gate around the same time. Investigations revealed that Binod Kumar Giri had obtained a Lenovo Tablet from Saibal De; CEO of *M/s. ILFS Maritime Infrastructure Company Ltd* Mumbai. The Lenovo Tablet was dispatched to Delhi Satellite Office of *M/s. ILFS Maritime Infrastructure Company Ltd* from Mumbai on 02.11.2015 and was delivered to B.K.Giri by Sh. Vinay Kumar near the gate of CBI Headquarter Building.

11. Thereafter, on the briefing of Saibal De, Ms. Shruti Arora In-Charge of Business Development included the name of Sh. B.K. Giri in the list of persons to whom customary complementary Diwali gifts were given by the Company.



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12. During the search of the house of Binod Kumar Giri, the records pertaining to Lenovo A7-30 3G Tablet, Black, IMEI-867033021799344, was seized. It was found that this Lenovo Tablet was given for repairs to Service Centre of Lenovo at Nehru Place, New Delhi by B.K. Giri from where it was seized in the presence of independent witnesses.

13. The clearance was sought in connection with the Tender for the work of “*Capital Dredging in front of Berth No.12 (Old No.18) at New Mangalore Port Trust*” floated by the Ministry of Shipping.

14. Further investigations revealed that B.K. Giri also dealt with Clearance files of private Companies, he contacted Executives of these Companies, namely Sh. Ashwini Kakkar, Senior Manager (Operations), *M/s ComputerAge Management Services Pvt. Ltd.*; Swami Ram Tirath Nagar, Jhandewalan Ext., New Delhi of *M/s One Mobikwik Systems Pvt. Ltd.*, Golf Course Road, Gurgaon; Sh. Panjak Kathuria, Assistant Manager (Finance) of *M/s One 97 Communications Ltd. (Paytm), Noida*; Sh. Vikas Garg, *M/s One97 Communications Ltd. (Paytm), Noida*; Sh. V. Balasubramanian, President [Hosted & Managed Services (Payments)] of *M/s Financial Software & Systems (P) Ltd.*, Mumbai; Sh. Rituraj Singh, Lead Legal of *M/s Justdial, Noida*; Sh. Vishwas Patel, CEO *M/s Avenues India Pvt. Ltd.*, Santacruz (West); Sh. M.N. Srinivasu of *M/s Indialdeas.com Ltd.* Andheri (West) Mumbai and Sh. Anuj Sharma of *M/s Indialdeas.com Ltd.*, Okhla Industrial Area, New Delhi. He demanded illegal gratification from them in lieu of giving vigilance Clearance to their Companies.

15. Sh. Ravi Ailawadhi of *M/s. One Mobikwik Systems Pvt. Ltd.* admitted to have paid Rs.1 lakh to B.K. Giri on 13.02.2016, though no evidence could be collected in this regard. No other employees of the aforesaid private Companies



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paid any illegal gratifications to B.K. Giri.

16. During the investigations, specimen voice of B.K. Giri was taken and sent to CFSL, New Delhi for scientific examination which Report was awaited. However, the voice of accused B.K. Giri was got identified through the witnesses.

17. Accused Asif Ibrahim Dadarkar, however, declined to give his specimen voice sample. Therefore, his voice identification was done from intercepted voices which was identified by independent witness.

18. Mobile number of B.K. Giri used for incriminating conversations was sent to CFSL, Hyderabad for scientific investigations. The records containing incriminating handwriting of B.K. Giri have also been sent to CFSL for scientific examination.

19. *However, no evidence was found against Ms. Humera Asif Dadarkar* since she had neither spoken to B.K. Giri nor was she associated in any manner in payments of bribe to him.

20. After completion of investigations, Chargesheet under Section 120B IPC read with Sections 7/11/12/13(2) read with Section 13(d) of Prevention of Corruption Act was filed. *Vide* Impugned Order dated 30.04.2019 charges were framed against the two Petitioners.

21. They have challenged the Order on Charge dated 30.04.2019.

### **W.P. (Crl.) No. 1941/2019**

22. The Petitioner/Asif Ibrahim Dadarkar has sought to challenge the impugned Orders on the ground that there is *no material to prove demand of illegal gratification*. It is submitted that the law is well settled that mere acceptance of any amount allegedly by the way of illegal gratification or recovery thereof, in the absence of proof of demand would not be sufficient to substitute the charges under



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the PC Act. As has been held in Neeraj Dutta vs State (Govt. of NCT Delhi), Crl. App No. 1669 of 2009, demand is a *sine qua non* for offenses under the Act. It is submitted that during the arguments on charge, the Prosecution was not able to produce any material qua proof of demand and proof of demand for offences under Sections 7/13 of PC Act. The Apex Court in State through CBI vs Dr Annu Kumar Srivastav, (2017) 15 SCC 560, upheld the judgment of this Court *vide* whereby proceedings under PC Act were quashed in the absence of demand of proof.

23. It is submitted that there is **no motive or reward**. It is the case of the CBI that accused B.K. Giri demanded and accepted illegal gratification of Rs. 10,000/- from the petitioner as a motive or a reward for giving security clearance to him and his company. Contrary to this, all the official witnesses have stated that there was nothing adverse found against the petitioner, the Company and its officials. It is not the case of the prosecution that there was any adverse vigilance finding or other material against the petitioner or his Company, which was suppressed/buried by the accused Binod Giri and for which he had taken illegal gratification from the petitioner. Therefore, the finding by the Ld. Trial Court that illegal gratification was taken as motive or reward, is erroneous and contrary to the record.

### **W.P. (Crl.) No. 1949/2019**

24. The ***Petitioner/Binod Giri*** has assailed the impugned Orderson Charge on the ground that ***illegally intercepted call recordings*** grossly violated the Guidelines and law laid down by the Apex Court in PUCL v Union of India, (1997) 1 SCC 301. The said illegal call recordings alleged to be containing the voice of the Petitioner, have created a strong prejudice against him during the trial.

25. The Respondent has ***not complied with the provisions of sub-Rule (16) and (17) of Rule 419 A of the IT Rules, 1951***, coupled with Sub-Section (2) of Section



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5 of the Indian Telegraph Act, 1885 as amended *vide* the Notification dated 01.03.2007. The Respondent had not sent any request letter to the MHA for seeking permission for surveillance of the alleged telephonic conversations thereby violating sub-rule (1) of Rule 419(A) of the IT Rules, 1951.

26. Moreover, Rule 419A (2) mandates that any such Order passed thereby sanctioning interception on the basis of any existing emergency, has to be forwarded to a Review Committee within 7 days of its passing, but the concerned Authorities have blatantly disregarded all the conditions precedent for prosecution. Thus, a further violation of Rule 419A (2) and Sub-Rule (16) & (17) of Rule 419A (2), is made out.

27. It is further submitted that the ***Order dated 04.02.2016 issued by MHA is in contravention of the Provisions of the Indian Telegraph Act.*** The IO has accepted that no letter of request specifying the emergency was sent to MHA in order to obtain the Interception Order. Hence, the Order dated 04.02.2016 issued by MHA is in contravention of the provisions of the Indian Telegraph Act and the trial court ought not to have looked into the alleged recordings, before relying on them as admissible.

28. The Respondent has not complied with the Order dated 22.08.2023 of this Court *vide* which CBI Counsel had been granted two weeks time to submit the clarification in respect of whether the respondent had complied with the provisions of sub-Rule (16) and (17) of Rule 419 A of the IT Rules, 1951, coupled with Sub-Section (2) of Section 5 of the Indian Telegraph Act, 1885 as amended *vide* Notification dated 01.03.2007. Thereafter as well, even after getting multiple opportunities, learned counsel for CBI did not comply with Order dated 22.08.2023 of this Court.



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29. The *allegation of the alleged bribe of Rs. 10,000/- was well accounted* for and it formed the part of seeking help from family members and the same has been corroborated by the witness who was involved in the above transaction. Further, the respondent has failed to produce any evidence to establish the money trail or establish any connection with allegations made in the Chargesheet. Therefore, the allegations of the Respondent against the Petitioner are not tenable. Thus, it is prayed that the impugned orders be set aside.

30. **The Respondent in its Reply has stated** that sufficient oral and documentary evidence is available against petitioner to prove demand of illegal gratification by the co-accused and the agreement by petitioner to fulfill the same, which has been elaborated in the Chargesheet. It is submitted that there was motive and reward as the accused/Binod Giri was dealing with the file of *M/s Sahara Dredging Ltd.*

31. It is also submitted that the Ld. Trial Court has correctly appraised the laws at the point of framing of charge and had rightly passed the Order dated 30.04.2019 after due application of mind. The Accused persons would get ample opportunity to adduce evidence on all aspects during the Trial and the prosecution against him cannot be shut off merely on his asking. It is pertinent to mention here that *issue of demand and acceptance*, are disputed question of fact which can be determined only after recording of evidence during the trial.

32. It is further submitted that the calls were intercepted and recorded after due and proper approval of Competent Authority. The intercepted calls fully corroborate and substantiate the conspiracy and the illegal acts of the accused persons.

33. In the end, it is asserted that there is sufficient evidence against the



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petitioners for framing of Charge and that there is no infirmity in the impugned Order.

34. It is thus, prayed that the present Petitions be dismissed.

35. **Submissions heard and record perused.**

36. The case of the Prosecution is that Binod Giri, UDC, Vigilance Cell, CBI, New Delhi, was assigned the work of Vigilance Clearance of various Companies/Entities sought by the Government Departments/MHA, for various Projects. There are specific allegations that for giving the Vigilance Clearance to *M/s. Sahara Dredging Ltd, Mumbai*, he accepted Rs.10,000/- from Asif Ibrahim Dadarkar which was transferred to his account through the account of his brother-in-law, *Tapan Kumar Behera*.

37. Further, it is the case of the prosecution that he also followed the same *Modus Operandi* while giving the clearance to *M/s. ILFS Maritime Infrastructure Company Ltd, Mumbai* and took a Lenovo A7-30 3G Tablet from that Company for giving it Vigilance Clearance. This was substantiated by recovery of the Lenovo Tablet along with the incriminating documents from his house during the raid.

38. On the aspect of **no material to prove demand of illegal gratification**, the Ld. Trial Court has noted that the statement of witness Tushar Patel, the employee of accused Asif Ibrahim Dadarkar *prima facie* show that he has not only identified his own voice but also the voice of accused Binod Kumar Giri. The statement of Tushar Patel *prima facie* shows that his Boss i.e. accused Asif Ibrahim Dadarkar had directed him to pay Rs. 10,000/- to Binod Kumar Giri to whom he was talking, but he forgot due to work pressure. Later on 05.02.2016, when he was asked by Asif Ibrahim Dadarkar to pay the said Amount, he was then provided the mobile



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number of Binod Kumar Giri upon which he asked their Receptionist Ms. Ankita to collect the Bank Accountnumber of Binod Kumar Giri by making a call to him.

39. The next ground taken is that **allegation of the alleged bribe of Rs. 10,000/- was well accounted for**, however the statement of Tushar Patel is contrary to the same. However, the Ld. Trial Court has duly appreciated this aspect, while noting the money trail successfully to the Bank Account of Binod Giri.

40. The ground that there is **no motive or reward** is untenable, especially in view of the fact that the Accused/Binod Giri was dealing with the file of Accused/Asif Ibrahim's Company.

41. The other grounds raised by the Accused Persons are that the **calls were illegally intercepted and recorded and that there is no compliance of the provisions of sub-Rule (16) and (17) of Rule 419 A of the IT Rules, 1951. Furthermore, the Order dated 04.02.2016 issued by MHA is in contravention of the Provisions of the Indian Telegraph Act.**

42. These grounds are to be raised and dealt with during Trial, especially in view of the various judgments of the Apex Court stating that the Trial Court is not to make a roving enquiry into the evidence at the stage of framing of charge.

43. The Apex Court in Union of India vs. Prafulla, as 1979SC366AIR held that:

*"... At the time of framing of charges, the court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against accused has been made out ..."*

44. Further, in State of Maharashtra & Ors. vs. Som Nath Thapa Ors, 1996 (4) SCC 659, it was observed by the Apex Court that:

*"...If on the basis of materials on record, a Court comes to the conclusion that commission of the offence is a probable*



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*consequence, a case for framing of charge exists. To put it differently if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage..."*

45. Later in the case of State Vs. S. Bangarappa, 2001(1) CC Cases SC1 the Apex Court reiterated that:

*"...Time and again this Court has pointed out that at the stage of framing of charge, the Court should not enter upon a process of evaluating the evidence by deciding its worthy 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..."*

46. Much emphasis has been laid by Binod Giri that the calls had been intercepted without writing any Letter of Request to MHA.

47. Though the Letter of Request could not be traced and placed on record, but undeniably the Sanction Order of MHA authorizing the call intercepts, forms part of the Chargesheet. The evidentiary value of the intercepted calls in the absence of Letter of Request not being available can only be appreciated during the trial. This fact alone at this stage of framing of Charge, cannot outweigh the overwhelming evidence, both oral and documentary, against the two Petitioners.

48. There is *prima facie* evidence, well documented by the testimony and statements of witnesses and also by documents that *prima facie* establish that pursuant to his demands for illegal gratification for granting vigilance clearance to



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the aforesaid Companies, he accepted money/Lenovo Tablet, as a bribe. There is also money trail as well as recovery of Lenovo Tablet effected from the account/residence of Binod Giri establishing a *prima facie* case against the two Petitioners.

49. The learned Special Judge has rightly considered the *prima facie* evidence against the two Petitioners narrated in the Chargesheet. *The Charges have been rightly framed against the two Petitioners.*

50. There is no merit in the present Petitions which are hereby dismissed, along with pending Application(s), if any. The observations made herein are without prejudice to the rights and contentions of the Petitioners.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**APRIL 28, 2025**

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