

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

+ **CRL.M.C. No.2497/2008**

% **Date of Decision: 13.08.2008**

Meena Chaudhary Sharma .... Petitioner  
Through Ms.Seema Gulati, Advocate.

Versus

CBI .... Respondent  
Through Mr.Harish Gulati, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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The petitioner has filed this petition under Section 482 of the Criminal Procedure Code seeking direction to the designate Court to hear the protest petition of the petitioner on merits pursuant to order of this Court.

On the complaint of Smt.Rahiman Bai Guddi dated 6<sup>th</sup> November, 1997 lodged with Police Station Roop Nagar, Delhi a regular case RC.2(A)/2001/DAD dated 28<sup>th</sup> February, 2001 under Section 120-B, 193, 506 IPC and Section 15,13(2) read with 13(1)(d) of P.C Act, 1988 against Ms.Kulwant Kaur Sidhu, Ravinder Godbole, Rajender Prasad Tiwari, Bhim Sen, Matloob Ahmad, Manoj Kumar and Ved Prakash

Arora was registered. The allegations were that Ms.Kulwant Kaur Sidhu had made illegal attempts of forceful encroachment upon the land of the complainant by forgery and fabrication of documents in order to usurp the land of the complainant. There were allegations of harassment and terrorization of the complainant by all possible means by way of false kalandaras, armed assault and threatening calls.

A chargesheet was filed on 18<sup>th</sup> August, 2003 under Section 120-B, 447 and 506 of IPC and Section 13(2) read with Section 13(1)(d) of P.C Act, 1988 and substantive offences under Section 13(2) read with Section 13(1) (d) of P.C Act, 1988 against Ms.Kulwant Kaur Sidhu, Rajender Prasad Tiwari, Bhim Sen, Matloob Ahmed and Abrar Hussain. However, it is alleged that during investigation sufficient evidence to launch prosecution had not come on record against Manoj Kumar, Ravinder Godbole and Ved Prakash Arora and therefore, these persons were not made accused. Consequently, against the chargesheet filed by CBI on 18<sup>th</sup> June, 2003 in the Court of Special Judge, CBI, Patiala House Courts, New Delhi, the daughter of the complainant filed a protest petition on 8<sup>th</sup> January, 2004.

On 22<sup>nd</sup> July, 2004, the Special Judge, CBI, passed an order holding that regarding the protest application it is for the complainant to have proper recourse to law and the appropriate application be filed at appropriate stage of evidence as there is no sufficient evidence to launch prosecution against said three persons. It

was also held that in order to assess whether there is sufficient evidence to launch prosecution case against these three persons, the documents which had been filed by the complainant were not to be looked into and the relevancy of those documents has to be appreciated only at the stage of evidence.

Against the order dated 22<sup>nd</sup> July, 2004 of Special Judge, CBI, the criminal revision petition No.570/2004 under Section 482 of the Criminal Procedure Code was filed in this Court, which was disposed of on 17<sup>th</sup> May, 2006 by a learned Single Judge, sending the matter back to the Court of Special Judge for a fresh consideration of the protest petition dated 8<sup>th</sup> January, 2004 filed by the petitioner. It was clarified that petitioner shall not be permitted to travel beyond the chargesheet and the documents accompanying the chargesheet or available on record. The order dated 17<sup>th</sup> May, 2006 is as under:-

“This revision petition is directed against the order dated 22.07.2004 whereby the protest application moved on behalf of the petitioner, according to the petitioner, was not given due consideration. The basic case of the petitioner is that while certain accused have been chargesheeted for offences under Sections 120-B/447/506 IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, others, such as Manoj Kumar, Ravinder Godbole and Ved Prakash Arora have been shown either in Column No.2 or not at all although their roles have been described in the chargesheet. At this stage, it is not necessary for me to examine the case in detail. It is sufficient to note that the protest application filed by the complainant be disposed of after giving due consideration to the contentions of the petitioner. She shall, of course, be permitted to rely only on the chargesheet and the documents filed alongwith it. Accordingly, this matter is sent back to the Court of Special

Judge, (CBI) for a fresh consideration of the protest petition dated 08.01.2004 filed by the petitioner. It is made clear that the petitioner shall not be permitted to travel beyond the charge-sheet and the documents accompanying the chargesheet or available on record.

This petition stands disposed off.”

The matter was heard by the Special Judge pursuant to the remand order dated 17<sup>th</sup> May, 2006. However, the grievance of the petitioner is that she has not been heard on merits and the arguments were heard only on the maintainability of the petition and thereafter the Court has reserved the case for order on the protest petition. The case is now listed before the learned Special Judge on 19<sup>th</sup> August, 2008.

The learned counsel for the petitioner has contended vociferously that the Special Judge ought to have heard arguments on merit of the protest petition also which has not been done. The learned counsel for the respondent/CBI does not admit the same.

Since the order has not been pronounced and in case the contentions and pleas of the petitioner on merits pursuant to the order of this Court are also considered by the Special Judge before pronouncing his order no prejudice shall be caused to the respondents.

After some arguments learned counsel for the petitioner has agreed to file written submission on behalf of the petitioner on merits of the protest petition so that the same can be considered by the learned Special Judge and be disposed of in accordance with law. The

learned counsel for the respondent/CBI also has no objection in case the contentions and pleas on merits of the protest petition are filed by the petitioner by written submission and the same are considered by the Learned Special Judge.

Considering the peculiar facts and circumstances of this case, it will be just and appropriate to allow the petitioner to file the written submissions on or before 18<sup>th</sup> August, 2008, without expressing any opinion whether the learned Judge had not heard the arguments on the merits of the case. Written submissions be filed before the Special Judge, CBI by 18<sup>th</sup> August, 2008 with advance copy to the counsel for the CBI. The learned Special Judge shall consider the pleas and contentions on merits of protest petition in the facts and circumstances of this case.

With these directions, the petition is disposed of.

Dasti under the signatures of the Court Master.

**August 13<sup>th</sup> , 2008.**  
'K'

**ANIL KUMAR, J.**