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

+ WP (CRL.) 882/2009

% *Judgment dated 7th December, 2011*

RIPUN BORA

..... Petitioner

Through: Mr. Madan Bhatia, Sr. Advocate with
Mr. Nageshwar Pandey, Mr. Anup
Sinha and Mr. A.K.Pandey, Advs

versus

STATE (THROUGH CBI)

..... Respondent

Through: Mr. P.K. Sharma, Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

G.S.SISTANI, J. (ORAL)

1. The present writ petition has been preferred by the petitioner seeking quashing of the RCAI 2008 A004 dated 02.06.2009 under sections 9 and 12 of the Prevention of Corruption Act (hereinafter to referred, as 'PC Act') and all subsequent proceedings emanating therefrom against the petitioner.
2. The facts leading to the filing of present writ petition are that proceedings have been initiated against the petitioner upon registration of RCAI 2008 A004 under sections 9 and 12 of the Prevention of

Corruption Act. The said RC was registered upon a written complaint by one Sh. A.B. Gupta, DSP CBI alleging that the petitioner had approached the complainant AB Gupta, through one Mr. Mukul Pathak and offered him illegal gratification for clearing his name from the murder case RC 5(S)/2005-Kol dated 06.06.2005 of one Danial Topno which was being investigated by the complainant. The name of the petitioner emerged as a suspect in the said murder case only upon the statement dated 29.05.2007 of one Sh. Kamal Nath under section 164 Cr.P.C. After investigation of the case RCAI 2008 A004, charge-sheet was filed by the CBI on 31.07.2008 and the learned CBI Special Judge took cognizance of the said case against the petitioner vide order dated 07.08.2008 under section 12 of the PC Act and 120-B of the IPC.

3. As per the chargesheet filed on 31.07.2008 before the CBI Special Judge, during April/ May 2008, petitioner Shri Ripun Bora alongwith one Mukul Pathak and one Ramesh Kumar Maheshwari entered into a criminal conspiracy in order to offer bribe to complainant Shri A B. Gupta for getting the name of the petitioner cleared from the murder case. In pursuance of the said criminal conspiracy, Shri Mukul Pathak on behalf on the petitioner, contacted Shri A.B. Gupta over telephone and fixed a meeting with Shri AB Gupta at Delhi on 16.05.2008 when Shri AB Gupta was on official tour to Delhi.
4. It is further alleged in the chargesheet that on 16.05.2008 the petitioner and Sh. Mukul Pathak met Shri AB Gupta in room No.103 in Hotel Jukaso Inn, while one Shri Ramesh Kumar Maheshwari waited in the reception of the hotel. In the said meeting the petitioner offered an amount of Rs.15 lakhs as bribe to Shri AB Gupta for clearing the name of the petitioner from the said murder case. The bribe amount was

enhanced to Rs.17 lakhs at the instance of Shri Mukul Pathak in the said meeting. Petitioner Shri Ripun Bora, in the said meeting, told Shri AB Gupta that the first installment of Rs.10 lakhs would be delivered in a week's time and the remaining Rs.7 lakhs would be delivered after the filing of chargesheet in the murder case thereby clearing the name of petitioner.

5. Thereafter Shri Mukul Pathak, on behalf of Shri Ripun Bora, pursued the matter with Shri AB Gupta over telephone and eventually fixed the date of 02.06.2008 for a meeting at Delhi, where the first installment of Rs.10 lakhs was decided to be delivered. Since, Shri AB Gupta was not willing to accept the bribe; he lodged a complaint on 02.06.2008 to the Joint Director, AC (HQ), CBI, New Delhi. Accordingly, the instant case was registered against the petitioner Sri Ripun Bora and Mukul Pathak u/s 120-B IPC read with Section 9 and 12 of PC Act, 1988. The FIR was entrusted to Sh. Surrender Malik, Inspector, CBI, ACU I, New Delhi who laid a trap against the petitioner and Shri. Mukul Pathak on 02.06.2008 in presence of two independent witnesses and also constituted a team of CBI Officials. After completion of the pre-trap formalities, the team, along, with the independent witnesses, proceeded towards Hotel Jukaso Inn, Sunder Nagar, New Delhi and two rooms Room Nos. 213 and 215 were booked in the name of two fictitious persons, Rakesh Agarwal and Sunder Lal respectively. An audio-video-cum-transmitter was discreetly installed in the room no. 213 and a Sony handi-cam with receiver was installed in room no. 215. A separate audio transmitter was also kept in the pocket of the complainant.
6. As per the chargesheet, petitioner and Sh. Mukul Pathak arrived at Hotel Jukaso Inn and asked the receptionist to book a room. On refusal

by the receptionist, they informed the receptionist that they already have a guest in room no. 213 on which they were informed that the said guest has booked two rooms which raised suspicion in the mind of the petitioner and he left the Hotel. Thereafter, the petitioner called the complainant to inform that he visited the hotel but on knowing that two rooms have been booked and that some crime branch officials are present, he left the Hotel. The said information was denied by the complainant and subsequently, asked the complainant to fix a meeting the next day. On the next day, i.e., on 03.06.2008, the petitioner called up the complainant to inform that he would reach the Hotel by 12 noon. However, on visiting the Hotel the petitioner again got suspicious and left the Hotel. He called up the complainant to inform that he has been immediately summoned to Assam Bhawan by the Chief Minister for some talks and asked the complainant to make some other programme. However, the complainant assured the petitioner that he is alone in the room and that the money can be delivered to him in the hotel room only and not otherwise. Accordingly, the petitioner arrived at Hotel Jukaso Inn and met the complainant in the restaurant at the ground floor of the Hotel where the petitioner repeatedly requested the complainant to accept the money kept in the car or to accept the money from the driver who would deliver it in room no. 213 but the complainant refused to accept the money from the driver and returned back to room no. 213. Thereafter, the petitioner after taking the orange colour bag from the car went to room no. 213 and rushed away immediately after throwing the orange colour bag in the room. On this, the complainant gave the pre-decided signal “Apni More Prabhur Nishana” and the trap team caught the petitioner outside room no. 213 and hence the chargesheet was filed

charging the petitioner under section 120-B IPC read with section 12 of the PC Act.

7. At the outset, it is contended by the counsel for petitioner that the entire case had been concocted and engineered illegally and is in utter violation of the mandatory provisions of the Code of Criminal Procedure and also against the provisions of Section 12 of the PC Act on account of utterly mala fide motives inspired by the political rivals of the petitioner who wanted to finish his political career and to use the complainant occupying the position of a DSP/CBI as an instrument for designing a nefarious strategy to implicate the petitioner in a case of bribery.
8. Alleging malafide against the CBI, the Counsel for the petitioner submits that registering of the instant case is in complete violation of the CBI manual and the procedure established by law. It is further stated by the counsel that the procedure of investigation mentioned in the CBI Criminal Manual on conducting verification / preliminary enquiry before registering a Regular Case has not been followed. Neither any verification was conducted as envisaged in Chapter 8 of the CBI Criminal Manual nor any preliminary inquiry as contemplated in Chapter 9 of the Criminal Manual was conducted before registering the RC against the petitioner on 02.06.2008. Reliance is placed upon the case of *P.Sirajuddin v. State of Madras* reported at AIR 1971 SC 520 and more particularly at para 17 which reads as under:

“17.....Before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misdemeanor or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a

responsible officer. The lodging of such a report against a person, especially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable.....”

9. A further reliance has been placed upon the case of *State of Haryana v. Bhajan Lal* reported at AIR 1992 SC 604 wherein the Supreme Court has given its approval to the aforesaid law laid in the case of *P. Sirajuddin (supra)*. Reliance has been placed upon *Vineet Narain v. UOI* reported in (1998) 1 SCC 226 to aver that the non-compliance with the mandate of law is violative of Article 21 of the Constitution.
10. It is next submitted by counsel for the petitioner that the RC registered on 02.06.2008 pertaining to the incident of 16.05.2008 does not disclose any cognizable offence, which is a condition precedent for the registration of the FIR as contemplated under section 154 Cr.P.C. He also alleges that unexplained delay has been caused in lodging the criminal complaint on 02.06.2008. The case of the petitioner is that the complainant, A.B. Gupta, DSP/CBI who lodged the FIR by misusing his official position in the CBI not only violated the mandatory provisions of Section 154 of Cr.P.C. which makes it incumbent that

before any FIR is lodged some cognizable offence must have been committed and that in the absence of commission of any offence no FIR could be lodged or registered but further violated the mandatory law declared by the Hon'ble Supreme Court in *P. Sirajuddin (supra)*.

11. It is also alleged by the counsel for petitioner that the CBI was under statutory obligation to register a separate FIR for the incident occurred on 03.06.2008 and thus the entire investigation conducted after the incident of the 03.06.2008 is illegal and unconstitutional.
12. That it is the case of the petitioner that CBI officer by misusing his authority had lodged an FIR and had got it registered through a Superintendent of Police of CBI in utter violation of the mandatory provisions of Section 154 Cr.P.C. The entire proceedings which were initiated against the petitioner on the basis of a wholly illegal FIR contrary to the mandatory procedure of the provisions of the Code of Criminal Procedure are therefore wholly illegal, non-est and barred by law.
13. It has been vehemently argued by the counsel for petitioner that the complainant Sh. A.B. Gupta had himself instigated/ abetted the accused person for making the payments & committing the offence. The complainant himself booked the rooms in the hotel and also arranged the independent witness. While conducting the trap he played the role of an investigator/ entrapper and has himself organized and executed the trap. The raid conducted, is without any authority of CBI Director and has thus disregarded the procedure mentioned in the CBI Crime Manual casting a shadow of doubt on the entire investigation procedure.
14. Questioning the applicability of section 12 of PC Act, it was argued that the facts contained in the FIR as well as the charge sheet makes it clear

that Section 12 has no application at all and the petitioner has not committed any offence under Section 12 of the PC Act. Substantiating the aforesaid contention, it was further argued that Section 12 of the PC Act applies when a person abets or instigates a public servant to accept the bribe in terms of Section 7 of the PC Act. It has no application at all when the public servant himself instigates and abets a person to instigate and abet him to accept the bribe or to incite him to give him the bribe. It is the contention of the petitioner that as per the facts stated in the FIR and the charge sheet it was the CBI Officer who was instigating and abetting the petitioner to instigate and abet him to receive the bribe and was inciting him to give him the bribe which he had no intention to receive but his whole purpose was to implicate the petitioner in a criminal offence of bribe.

15. The counsel for petitioner has vehemently argued that the utter malafides of the case against the petitioner are further eloquently manifested by the fact that while the FIR was registered under Sections 9 & 12 of the PC Act when by no stretch of imagination either of the two sections were applicable at all but when the charge sheet was filed, Section 9 was dropped deliberately because that would have required sanction under the provisions of the PC Act and only Section 12 was retained which had no applicability on the facts stated in the charge sheet and the allegations made against the petitioner when Section 12 itself also have no applicability at all on the basis of the allegations made against the petitioner either in the FIR or in subsequent facts and events alleged in the charge sheet.
16. It was next averred that it is significant that nowhere is there even a remotest whisper that the petitioner in fact offered any money or bribe

to Sh. AB Gupta. The only allegation against the petitioner is that the petitioner threw an orange colour bag from outside the room which was allegedly occupied by Sh. AB Gupta and rushed away. There is no evidence whatsoever of any bribe having passed on from the hands of the petitioner to complainant Sh. AB Gupta at all.

17. That it is the case of the petitioner that sequence of alleged events and facts contained in the subsequent chargesheet narrated and reproduced at the instance of the complainant, Sh. A.B. Gupta on their very fact show not only the utter falsehood, malafide nature and oblique & extraneous motivation but also the execution of a well planned nefarious design to implicate the petitioner in a false case of bribery and it has been further submitted that the facts on the face of it establish that the petitioner has been falsely implicated in the present case at the behest of political rivals so as to ruin his political career.
18. Lastly, it is contended that continuation of the aforesaid proceedings against the petitioner amount to gross violation of the fundamental rights of the petitioner under Article 21 of the Constitution of India and the said proceedings are therefore liable to be quashed by this Hon'ble Court in the exercise of its extra ordinary jurisdiction. The case of the petitioner is completely covered by the law declared by the Hon'ble Supreme Court in the *State of Haryana Vs. Bhajan Lal* reported in AIR 1992 SC 604.

CBI SUBMISSIONS

19. Refuting the contention of the counsel for the petitioner for violation of the provisions of the CBI Manual, the counsel for respondent CBI argued that the exercise of verification of the complaint and conducting

preliminary inquiry is normally made in the cases where the allegation are made against a public servant, who has committed an offence while discharging his public duty. The complaint in the instant case was made against a suspect in a murder case and not against any public servant who has committed an offence while discharging his official duty. The petitioner who was a suspect in the murder case was offering bribe to the complainant (Investigating Officer) to exercise his influence in protecting him in the murder case. The petitioner herein is not being prosecuted in his capacity as a former public servant or the former minister of a State Government. He is a suspect in a murder case and thus the privileges available to a public servant cannot be made available to the petitioner in this case. It was further argued that the case of *P.Sirajuddin (supra)* is not applicable in this case, as it pertains to a situation where there is a complaint against a public servant discharging his public duty.

20. It is further contended that the verification / preliminary inquiry is not possible in the case of Traps, as the whole objective will get frustrated, if the factum of the case is disclosed to the accused in advance. It has been quite unambiguously provided in para 10.16 of the CBI Crime Manual that in trap case, the FIR should be registered as soon as a bona fide complaint / information is received. Reliance has been placed upon para 9.1, 9.2, 10.1 and 10.16 of the CBI Criminal Manual to aver that no preliminary enquiry or verification was required in the present case.
21. It is next argued that the preliminary enquiry is an open enquiry, registration of which would lead to altering the offender, who is offering or demanding the bribe. If preliminary enquiries are registered

in trap cases, no corrupt person, be it the public servant committing the offence of Section 7 or 13 of the PC Act or any other person abetting the said offence, would get apprehended. That is why in the para 10.16 of the CBI Manual, it is provided that in trap cases, FIR should be registered as soon as a bona fide complaint / information is received. The instant case is a trap case, wherein the petitioner has abetted the offence of Section 7 of the PC Act, 1988. Therefore, since the complaint of Shri AB Gupta disclosed commission of a cognizable offence, the FIR was registered and the trap was laid.

22. It is next contended by counsel for respondent CBI that assuming, though not admitting that there is an irregularity in investigation, the same cannot result in vitiating the entire proceedings. The only provision which deals with the proceedings being vitiated due to certain irregularities is Section 461 of the Cr.P.C. The Cr.P.C. has laid down the omissions and irregularities which either vitiate the proceedings or not, but does not anywhere specifically state that a mistake committed by a police officer during the course of investigation be said to be an illegality or irregularity, which makes it clear that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial. It was also averred that even violation of the provision of the Code would not amount to any illegality. Reliance has been placed upon *Paramjit Singh v. State of Punjab* reported at (2007)13 SCC 530 and *Niranjan Singh v. State of UP* reported at 1956 SCR 734
23. It is further averred that Chapter 35 of the code of Criminal Procedure would show that section 460 and 461 deal with such proceedings which are vitiated by irregularities in proceedings and those proceedings

which are not vitiated due to irregularity. It is contended that the case of the petitioner is not covered by Chapter 35. Reliance has been placed upon *AC Sharma v. Delhi Administration* reported at 1973 (1) SCC 726 and *State of Bihar v. Rajendra Agrawalla* reported at (1996)8 SCC 89.

24. It is next submitted that a bare reading of the complaint filed by the complainant on 02.06.2008 makes out a case for commission of an offence under Section 12 of PC Act, 1988. The complaint discloses that the incident occurred in the 2nd week of April, 2008 and then on 16.05.2008. In both the incidents the accused is making an offer of huge sum of money to the complainant to clear his name in the murder case being investigated by the complainant Sh. AB Gupta. The complainant, on the offer being made to him, decided to report the matter to CBI and thus made a criminal complaint to Joint Director (ACU) CBI New Delhi. Had the complainant chosen to accept the money an offence under section 7 of PC Act would have been made out but since the complainant was firm and did not accede to the illegal offers made by accused person no offence under Section 7 was committed. The PC Act however, deals with people who abet the commission of an offence under section 7 PC Act by way of prosecution under section 12 of the Act, whether or not the offence under section 7 PC Act is committed.
25. As regards the contention of counsel for the petitioner that a separate FIR should have been registered for the incident that occurred on 03.06.2008, the counsel for respondent contends that the incident of 16.05.2008 is the offence in itself and the incident of 03.06.2008 is a part of the same transaction. The counsel has placed reliance on *TT Antony vs. State of Kerala* reported at 2001 (6) SCC 181 and more

particularly at paragraph 20 to substantiate the aforesaid contention which reads as under:

“20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.”

26. It is submitted that the complainant being a straight and upright officer of CBI decided to expose the corrupt mind of accused person who has held the position of minister in the State and had thought of purchasing the complainant by offering him lakhs of rupees. The investigating officer/complainant reported the matter to the Anti Corruption Zone and extended complete co-operation in laying the trap and getting the accused person arrested at the spot. It is submitted that no trap is successful without the help and assistance of complainant. He just did his duty, firstly by reporting the matter to CBI and secondly by assisting the investigating team in organizing the trap. The submissions made by petitioners regarding over involvement of complainant in assisting trap team are totally baseless and absurd.

27. Thus, the contention of the counsel for petitioner may be summarized as under:

- i. The petitioner has been falsely implicated in the present case.
- ii. No FIR could have been registered in the absence of any cognizable offence and since the FIR is illegal, all subsequent proceedings arising therefrom are also illegal and are liable to be quashed.
- iii. No preliminary enquiry has been conducted by the CBI, as per the decision laid down by the Supreme Court of India in the case of P.Sirajuddin (supra).
- iv. The investigation has been done in violation of the CBI Manual which has the force of law.
- v. FIR pertains to two separate incidents dated 16.05.2008 and 02.06.2008 and therefore, separate FIRs should have been registered for the two incidents.
- vi. No offence has been made out under section 12 of the PC Act.

28. The contentions of the counsel for respondent CBI can be summarized as under:

- i. No verification or preliminary enquiry is required in the present case and the provisions of the CBI Manual have been duly followed without any deviations.
- ii. The investigation has been carried out complying with the provisions of Cr.P.C as well as the CBI Manual and even if there is any irregularity, it does not vitiate the proceedings

- iii. *P. Sirajuddin (supra)* is not applicable to the case of the petitioner as the petitioner has not been charged as a public servant in discharge of his official duty but as a suspect in a murder case.
- iv. No separate FIR was required to be registered as the both the incidents were in the course of same transaction/offence.
- v. Section 12 of PC Act is clearly made put against the petitioner.

29. It has been vehemently argued by the counsel for petitioner that the proceedings have been initiated in utter violation of the CBI Manual which require that a preliminary investigation must be conducted before registering a regular case against a public servant and a strong reliance has been placed upon *P. Sirajuddin (Supra)*. Refuting the aforesaid contention, the counsel for CBI has urged that the petitioner is not entitled to avail the benefits prescribed for public servants as these benefits can be availed only in discharge of official duty and the offence that the petitioner has been charged with does not come within the purview of his official duties. It is contended that the petitioner though a Minister, has been charged as an accused who tried to bribe the investigating officer, complainant in the present case, to clear his name from the murder case. A strong reliance has been placed by counsel for CBI on paras 9.1, 9.2 , 10.1 and 10.16 of the CBI Manual (Crime) which read as under:

“9.1 When, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicate

serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority. Sometimes the High Courts and Supreme Court also entrust matters to Central Bureau of Investigation for enquiry and submission of report. In such situations also which may be rare, a 'Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of a complaint and source information reveals commission of a *prima facie* cognizable offence, a Regular Case is to be registered as is enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that *prima facie* there has been commission of a cognizable offence. When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a Regular Case must be registered instead of a Preliminary Enquiry. It is, therefore, necessary that the SP must carefully analyse material available at the time of evaluating the verification report submitted by Verifying Officer so that registration of PE is not resorted to where a Regular Case can be registered. Where material or information available clearly indicates that it would be a case of misconduct and not criminal misconduct, it would be appropriate that the matter is referred to the department at that stage itself by sending a self-contained note. In such cases, no 'Preliminary Enquiry' should be registered. In cases, involving bank and commercial frauds, a reference may be made to the Advisory Board for Banking, Commercial & Financial Frauds for advice before taking up a PE in case it is felt necessary to obtain such advice.

9.2 While proposing registration of a Preliminary Enquiry pertaining to the abuse of official position by a public servant in the matter of business/commercial decision, the important difference between a business risk and a *mala fide* conduct should be kept in mind with view to ensure that while corrupt public servants are suitably dealt with the *bona fide* business/commercial decisions taken by public servants in discharge of their official duties are not taken up for unnecessary probe.”

Further paras 10.1 and 10.16 read as under:

“10.1 On receipt of a complaint or after verification of an information or on completion of a Preliminary Enquiry taken up by CBI if it is revealed that *prima facie* a cognizable offence has been committed and the matter is fit for investigation to be undertaken by Central Bureau of Investigation, a First Information Report should be recorded under Section 154 Criminal Procedure Code and investigation taken up. While considering registration of an FIR, it should be ensured that at least the main offence/s have been notified under Section 3 of the Delhi Special Police Establishment Act. The registration of First Information Report may also be done on the direction of Constitutional Courts, in which case it is not necessary for the offence to have been notified for investigation by DSPE. The FIRs under investigation with local Police or any other law enforcement authority may also be taken over for further investigation either on the request of the State Government concerned or the Central Government or on the direction of a Constitutional Court. As the resources of CBI are limited, administrative arrangements have been worked out vis-à-vis local Police as detailed in this Manual and Policy Division instructions as regards registration of cases. The guidelines regarding the type of petty cases, which should normally not be taken up for investigation, are also mentioned in the Manual and instructions of the Policy Division.

10.16 In trap cases under Sections 7 and 13 of the P.C. Act, 1988, the FIR should be registered as soon as a *bona fide* complaint/information is received attracting the provisions of Sections 7 and 13 of the P.C. Act, 1988. After the trap materializes, investigation should continue under the same case number. If the offence is to be investigated by an officer of a rank, who cannot investigate the case without permission from a Magistrate, as contemplated under Section 17 of the P.C. Act of 1988, it will be necessary for the Investigating Officer to obtain requisite permission, from the Court soon after the case is registered. In case, the trap materializes, it will be necessary for the Investigating Officer, if he is below the rank specified in Section 17 of the P.C. Act of 1988, to report the developments to

the Magistrate and obtain further permission for investigation of the offence of obtaining gratification other than legal remuneration punishable under Sections 7 and 13 of the P.C. Act, 1988 and of criminal misconduct punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.”

30. A bare perusal of the above provisions of the CBI Manual makes it clear that a distinction is carved out between a preliminary inquiry and a regular case. A Preliminary enquiry may be converted into a regular case in terms of para 9.1 of the CBI Manual as soon as sufficient material becomes available to prima facie constitute a cognizable offence. A preliminary enquiry is not a mandatory procedural requirement under the CBI Manual and is to be resorted to only when complaint or information so received is not adequate to justify registration of a regular case under the provisions of section 154 Cr.P.C and it only when the verification of the complaint or information reveals commission of a prima facie offence that a Regular Case is registered against the accused person. A reading of clause 10.16 of the CBI Manual further makes it clear that the said clause is not applicable to the present case since it pertains to trap cases under section 7 and 13 of the PC Act while the case against the petitioner has been registered under section 12 of the PC Act. Moreover, the said clause uses the expression “bona fide complaint/information” which further makes it clear that the investigating officer/police official must do some verification or enquiry so as to come to a conclusion that the complaint or information received merits some credence or is “bona fide”.

31. Having said that preliminary inquiry is not a mandatory requirement under the CBI Manual (Crime), it is important to also take note of the

law laid down by the Apex Court in *P. Sirajuddin v. State of Madras* reported at AIR 1971 SC 520 which is as under:

“17.....Before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misdemeanor or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, especially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable.”

32.The above view of the Apex Court has further been reiterated in *State of Haryana v. Bhajan Lal (Supra)* wherein the Apex Court has agreed with the above view taken in Sirajuddin’s case. The relevant paras are extracted as under:

“77. In this connection, it will be appropriate to recall the views expressed by Mitter, J. in *P. Sirajuddin v. State of Madras*¹⁸ in the following words: (SCC p. 601, para 17)

“Before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by

a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general The means adopted no less than the end to be achieved must be impeccable.”

78. Mudholkar, J. in a separate judgment in *State of Uttar Pradesh v. Bhagwant Kishore Joshi*¹⁹ at p. 86 while agreeing with the conclusion of Subba Rao, J. (as he then was) has expressed his opinion stating: (SCR pp. 86-87)

“In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it.”

79. We are in agreement with the views, expressed by Mitter, J. and Mudholkar, J. in the above two decisions.”

33. ***P. Sirajuddin (supra)*** as well as ***State of Haryana v. Bhajan Lal (supra)*** pertains to preliminary inquiries/ verification only as regards the matters where the accused is a public servant. However, it is apposite to take note of the case of ***Lalita Kumari v. Government of Uttar Pradesh*** reported at (2008)14 SCC 337 wherein the Apex Court was posed with the question, as is also involved in the present case, as to whether upon receipt of information by an officer in charge of the police station disclosing cognizable offence, it is imperative for him/her to register a case under section 154 of the Code of Criminal Procedure, 1973 or a discretion lies with him/her to make some sort of preliminary enquiry before registering the same. In view of conflicting decisions of the Apex Court on the aforesaid issue, the Division Bench of B.N.

Agrawal and G.S. Singhvi, JJ. referred the matter to a larger Bench. The said question is thus pending before the larger bench in the Apex Court and it would not be appropriate to make any observations as regards the said issue in the present case.

34. It is pertinent to state that the petitioner, by way of the present petition under Articles 226 & 227 of the Constitution read with section 482 Cr.P.C, has approached this Hon'ble Court seeking the quashing of the RC AI 2008 A004 initiated against him as well as the proceedings that emanated therefrom. Before, advertent to the facts of the case in the light of the law laid by the Apex Court, I find it necessary to reiterate the law as regards the power of this Hon'ble Court to quash a FIR/complaint. The Apex Court, in the case of *State of Haryana v. Bhajan Lal and Others* reported at AIR 1992 SC 604, realizing that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae to give an exhaustive list of myriad kinds of cases wherein such power should be exercised, has elaborately, though not exhaustively, dealt with the circumstances under which the court can exercise power under section 482 to quash FIR either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Furthermore, in *Inder Mohan Goswami v. State of Uttaranchal* reported at (2007)12 SCC 1, the Apex has elaborately discussed the law evolved by judicial precedents as regards quashing of FIR/complaint/proceedings. The relevant extract of the judgment is as under:

“Scope and ambit of courts' powers under Section 482 Cr.P.C

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and

substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 Cr.P.C though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*¹ Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys*² stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In *R.P. Kapur v. State of Punjab*¹ this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

¹ AIR 1960 SC 866: (1960)3 SCR 388

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

28. This Court in *State of Karnataka v. L. Muniswamy*² observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case

² (1977)2 SCC 699: 1977 SCC (Cri) 404

has been followed in a large number of subsequent cases of this Court and other courts.

29. In *Chandrapal Singh v. Maharaj Singh*³ in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at SCC p. 467 as under:

“A frustrated landlord after having met his waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.”

30. The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

31. This Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*⁴ observed in para 7 as under: (SCC p. 695)

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case

³ (1982) 1 SCC 466 : 1982 SCC (Cri) 249

⁴ (1988) 1 SCC 692 : 1988 SCC (Cri) 234

also quash the proceeding even though it may be at a preliminary stage.”

32. In *State of Haryana v. Bhajan Lal*⁵ this Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

- 1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

⁵ 1992 suppl (1) SCC 335 : 1992 SCC (Cri) 426

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

33. This Court in *Janata Dal v. H.S. Chowdhary*⁶ observed thus: (SCC p. 355, para 132)

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.”

⁶ (1992) 4 SCC 305 : 1993 SCC (Cri) 36

34. In *G. Sagar Suri v. State of U.P.*⁷ this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

35. This Court in *Roy V.D. v. State of Kerala*⁸ observed thus: (SCC p. 597, para 18)

“18. It is well settled that the power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.”

36. This Court in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*⁹ observed thus: (SCC p. 128, para 8)

“8. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into

⁷ (2000) 2 SCC 636 : 2000 SCC (Cri) 513

⁸ (2000) 8 SCC 590 : 2001 SCC (Cri) 42

⁹ (2005) 1 SCC 122 : 2005 SCC (Cri) 283

the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

37. In *Indian Oil Corpn. v. NEPC India Ltd.*¹⁰ this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

35. Thus, it is trite law that the courts can quash the FIR/complaint as well as the proceedings so to prevent the abuse of the process of the law and to secure the ends of justice. Furthermore, if the allegations as set out in the FIR/complaint, even if taken to be uncontroverted and true, are so absurd and improbable so as to shock the conscience of the court, the Court is justified in quashing such proceedings so as to prevent the accused from great hardship and injustice. Adverting to the facts of the present case, a perusal of the contents of the chargesheet filed by the CBI itself shows the absurdity in the allegation so leveled against the petitioner and the manner in which the trap proceedings were executed by the respondent CBI. It has been fairly conceded by the CBI in the chargesheet that when the petitioner reached Hotel Jukaso Inn in the evening of 02.06.2008, the receptionist told the petitioner that the complainant has booked two rooms in the hotel which made the

¹⁰ (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188

petitioner suspicious and he left the Hotel. The petitioner then called the complainant telling him about his suspicion since two rooms were booked by the complainant and that crime branch officials were present in the Hotel. It is highly unlikely that despite there being a suspicion, the petitioner would again call the complainant and would ask him to fix a meeting on the very next day for the same purpose of tendering the bribe money. However, even on the next day when the petitioner visited the Hotel, he got suspicious after getting to know from his sources that two persons are present in room no. 213 and also that some police personnel are present in room no. 215 who have been staying there since the previous day. It is beyond any imagination that despite such a strong suspicion even on the second visit to the Hotel, the petitioner, who is a Minister in the Assam Government, would again call up the complainant and ask him to fix another time for the meeting to hand over the bribe money at the same Hotel. A further perusal of the chargesheet makes it evident that the complainant was repeatedly instigating the petitioner to hand him over the bribe money assuring that there are no police officials in the Hotel and that the complainant would take bribe money only from the petitioner and only in room no. 213. It is further hard to believe that when the complainant refused to accept the bribe money through the driver of the petitioner, the petitioner himself proceeded to the room to hand over the bribe money running the risk of being caught despite being suspicious of the circumstances. It is pertinent to state here that the petitioner is not a common man or a layman to have ignored the suspicions but was the then Minister of Education in the Government of Assam who was fully aware of the consequences of being trapped red

handed while handing over the bribe money. All these circumstances raise a cloud of suspicion on the prosecution story.

36. I further find that it is extremely unusual that though the murder case is registered in Kolkata, the complainant is also a CBI Officer is posted in Kolkata; the complaint was lodged by the complainant only in Delhi. No cogent and plausible explanation has been rendered as to why an officer posted at Kolkata would travel all the way to Delhi at state expenses to lodge a complaint more so when in the complaint itself, it has been alleged that the petitioner expressed his inability to visit Delhi due to the nature of his work and would like to meet the complainant in Kolkata or Guwahati and it was the complainant only who expressed his inability to meet in Kolkata or Guwahati and said that he could meet the petitioner only in Delhi. In the said circumstances, it would have been most unnatural not to lay a trap in Kolkata or Guwahati but to lay a trap in Delhi. The enthusiasm of the complainant to shift the entire matter to Delhi is unexplainable as the same would mean that the complainant would have to take leave from his office in order to travel to Delhi at State expenses so as to lay trap against the petitioner, who is stationed in Kolkata. It is further strange that a hotel in one of the most posh colonies, i.e., Sunder Nagar is selected to lay down the trap where two rooms are booked. All the above circumstances certainly show that the entire trap proceedings were being stage managed and the complainant was more enthusiastic than the petitioner.
37. Furthermore, a perusal of the chargesheet also makes it clear that an active role has been played by the complainant himself in organizing the trap against the petitioner. It was the complainant who had booked rooms in Hotel Jukaso Inn and was constantly instigating the petitioner

to deliver the bribe money to him in room no. 213 only. Thus, the allegations as leveled are so absurd that no prudent man can come to a logical and just conclusion that there is sufficient ground to proceed against the petitioner.

38. Furthermore, as per the prosecution's own version, the bribe was offered by the petitioner Sh. Ripun Bora on 16.05.2008 whereas the complaint was filed only on 02.06.2008 that is to say after a delay of 18 days and no reason has been given by the prosecution as to why the complainant had remained silent from 16.05.2008 to 02.06.2008 and why the complaint was not filed on the day on which the bribe has alleged to have been offered by the petitioner to the complainant. There is not even an averment on the said issue by the counsel for respondent CBI. Furthermore, no cogent and plausible explanation has been rendered by the counsel for the State for the delay in lodging the FIR especially in the light of the aforestated facts which would show as to how meticulously the alleged trap was laid by booking two rooms in a posh colony of New Delhi, i.e., Sunder Nagar and using electronic equipments like audio-video recorders and Sony handycam so to record the trap proceedings. By the perusal of the transcripts of telephonic conversations between the complainant and the DIG, CBI, placed on record by the counsel for petitioner, a bleak explanation has come to light that the delay in lodging the complaint was due to the fact that the complainant was disturbed and had sleepless nights. Even in the complaint, the complainant has stated that he was disturbed and was unable to attend office due to tension. However, the said explanation does not come to the rescue of the respondent CBI in the light of the fact that the complainant was a CBI official and that too of the rank of a

Deputy Superintendent of Police and to state that due to tension, being disturbed and having sleepless nights is an explanation far from satisfaction and in fact it is absurd.

39. It has been vehemently argued by the counsel for petitioner that the trap had been conducted without the authority of any CBI Director and thus, the trap is illegal. It has been further argued that the complainant Sh. AB Gupta has himself acted as an entrapper or the investigating officer and himself organized the entire trap which is in violation of law. The counsel has placed reliance upon Annexure 6-A of the CBI Manual to aver that a PE/RC can be registered against present and former Ministers of Central/State governments only by a CBI Director and only a CBI director has the power to take decision as regards the verification of source information/complaint against such Ministers. However, in the present case the CBI Director was kept in dark and the trap laid down against the petitioner was not under the authority of any CBI Director. I find force in the argument advanced by the counsel for petitioner. Para 8.5 of the CBI Manual deals with the complaints for which no verification is required but para 8.6 of the Manual deals with complaints where verification should be taken up. Furthermore, para 8.8 of the CBI Manual categorically states that a complaint received against a Minister or former Minister of Union Government must be put up to the Director, CBI for appropriate orders. However, in the present case, there was no authorization by the CBI Director to lay a trap against the petitioner no was any verification conducted. Infact, a perusal of the complaint makes it evident that while 7 copies of the complaint were forwarded to different officials of the CBI; no copy was forwarded to the CBI

Director who is the official empowered to deal with complaint against Ministers. The relevant paras are reproduced as under:

“Complaints in which Verification should be taken up

8.6 The following categories of complaints may be considered fit for verification:-

- i. Complaints pertaining to the subject-matters which fall within the purview of CBI either received from official channels or from well-established and recognized public organizations or from individuals who are known and who can be traced and examined.
- ii. Complaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of CBI, which can be verified.

8.7 If any complaint against a Minister or former Minister of the Union Government, or the Union Territory is received in any Branch, it should be put up to the Director, CBI, for appropriate orders. The relevant file of the Branch should remain in the personal custody of SP concerned. In case the complaints are received against members of lower judiciary these may be forwarded to the Registrar of the High Court concerned and the complaints received against members of higher judiciary may be forwarded to Registrar General of Supreme Court through the Joint Director (Policy).”

40. As regards the contention of the counsel for petitioner that a second FIR should have been registered for the incident that occurred on 03.06.2008, I do not find any force in the aforesaid contention in the light of the law laid by the apex Court in *TT Anthony v. State of Kerala* reported at (2001)6 SCC 181 wherein it has been held that there cannot be a second FIR on receipt of every subsequent information in respect of the same

cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

41. Thus, in the light of the observations made above, the chargesheet RC AC 12008 A0004 and the proceedings emanating therefrom are hereby quashed as I am of the view that the proceedings have been initiated against the petitioner in utter abuse of the process of law and the quashing thereof would secure the ends of justice.

42. The writ petition is disposed of accordingly.

G.S. SISTANI, J.

DECEMBER 7th, 2011

msr.