

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

+ CRL.M.C. 3380/2011

Date of Decision : 01.11.2011

Akhand Pratap Singh Petitioner
Through: Mr. U. U. Lalit, Sr. Adv. with
Mr. Harish K. Sharma, Adv.

versus

CBI Respondent
Through: Ms. Sonia Mathur, Adv.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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

V.K. SHALI, J. (oral)

1. Issue notice.
2. Ms. Sonia Mathur, the learned Counsel accepts notice on behalf of CBI
3. Rule.
4. With the consent of the parties, I proceed to decide the matter finally.
5. I have heard the learned senior counsel Mr. U.U. Lalit for the

petitioner and Ms. Sonia Mathur, the learned counsel for the respondent and have gone through the impugned order.

6. The petitioner has challenged the order dated 24.05.2011, by virtue of which the learned Special Judge, CBI-II had dismissed the application of the petitioner for dropping the proceedings against him on the ground that the question of consent of the State Government as per Section 6 of the Delhi Special Police Establishment Act, 1946 stands settled.
7. Brief facts of the case are that a case bearing R.C. No. 2(A)2005/CBI/SPE-ACU-V was registered against the present petitioner on 19.03.2005 under Section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 on the allegation that the present petitioner, former Chief Secretary of U.P. and an IAS Officer of Cadre (1967) during the period 01.01.1978 to 31.05.1991, had allegedly amassed assets disproportionate to the known sources of his income which were to the tune of ₹21,45,872/- in the form of movable and immovable properties in his name and in the name of his family members and others. It was further alleged in the FIR that the petitioner had illegally earned vast sums of money during his service tenure and he was suspected to have laundered the

same in immovable assets in the name of his married daughters, family members and others through various private limited companies. Various other allegations were also made which are not very relevant for the purpose of deciding the present issue.

8. The petitioner had filed a writ petition in Allahabad High Court praying for quashing of the FIR as well as for grant of bail on account of the fact that the provisions of Section 438 Cr.P.C. are not applicable to the State of U.P. One of the pleas which was raised in the writ petition was that the respondent/CBI could not have investigated into the matter as there was a lack of consent required under Section 6 of the Delhi Special Police Establishment Act, 1946. This plea of the petitioner was negated by the Allahabad High Court. Feeling aggrieved, the petitioner had preferred an SLP in the Supreme Court bearing no. 6928/2009.
9. In the meantime, investigations by the CBI culminated into filing of a charge sheet in the Court of Special judge, Delhi. The petitioner had filed a petition in the High Court of Delhi seeking issuance of a writ of mandamus to the respondent to enforce the provisions of Section of 6 of the Delhi Special Police Establishment Act, 1946 and further for quashing of all the

actions taken by the respondent no.3/CBI. It was contended that CBI acted in violation of the specific mandate of law by the registration of FIR No. 2(A)/2005/CBI/SPE-ACU-V. This writ petition bearing W.P.(Crl.) No. 1073/2008 was also dismissed by the learned Single Judge of this Court on 5th March, 2009.

10. Feeling aggrieved by this order also, an SLP was preferred before the Supreme Court bearing no. 2636/2009 challenging the order of High Court of Delhi.
11. Both the orders of Allahabad High Court as well as the High Court of Delhi based on two separate writ petitions were dismissed by the Supreme Court vide order dated 31.08.2009 with certain liberty having been granted to the petitioner. The order reads as under:

"Learned senior counsel appearing for the petitioner seeks leave of the Court to withdraw the Special Leave Petitions. Permission granted. The Special Leave Petitions are, accordingly, dismissed as withdrawn. However, the petitioner would be at liberty to raise all the questions available to him in law, in accordance with law at the appropriate stage."

Sd/-

Justice V.S.Sirpurkar
Justice Deepak Verma

12. In view of the liberty having been granted, the petitioner filed an application before the learned Special Judge, Delhi raising the question of non-grant of consent by the State of U.P. as a ground for dropping the proceedings against him. It was on the basis of this application that the impugned order has been passed from which the petitioner is feeling aggrieved. The learned Special Judge in the impugned order has observed that the Special Leave Petition was dismissed by the Apex Court, and therefore, in such circumstances the order of High Court of Delhi remains binding upon the Special Court and the issue regarding the consent of State Government as per Section 6 of the Delhi Special Police Establishment Act, 1946 stands settled.
13. It was contended by Mr. Lalit, the learned senior counsel for the petitioner that the conclusion arrived at by the learned Special Judge is totally erroneous as the question of grant of consent cannot be treated to have been settled in the light of the fact that the Apex Court had given the liberty to the petitioner to raise all such pleas available to him in accordance with law at an appropriate stage. It was, therefore, submitted by Mr. Lalit, the learned senior counsel for the petitioner that the liberty having

been given to the petitioner, he was well within his right to raise the question of non-grant of consent by the State of U.P. before the learned Special Judge, though the learned Special Judge might have disagreed with the petitioner regarding the stage at which it could have been raised, but he could not have observed that the matter stands concluded by the Apex Court, and therefore, he is bound by the decision of Delhi High Court.

14. It is contended that in case the impugned order is not set aside, it will do incalculable harm to the petitioner and it would be contrary to the directions passed by the Apex Court giving the liberty to the petitioner, which will be rendered otiose.
15. Ms. Sonia Mathur, the learned counsel for the CBI has contended that though the opportunity had been granted to the petitioner but this opportunity was confined to be availed only at the appropriate stage. It was contended by her that in the instant case 'at the appropriate stage' would mean a stage when the parties have adduced their evidence meaning thereby that this issue could have been raised by him only at the stage of final arguments.
16. I have carefully considered the submissions raised by the respective sides. I have also perused the record and the order

passed by the Apex Court.

17. The observation passed by the learned Special Judge that the question of grant of consent by the State Government stands settled by the High Court of Delhi and the said finding is binding on him, is erroneous, in the light of the fact that though the Special Leave Petition filed by the petitioner in the Apex Court was withdrawn but what is noticeable is that the Apex Court had given an liberty to the petitioner to raise all such questions available to him in law at an appropriate stage which obviously would include the question of grant or non-grant of consent by the State of U.P. for registering, prosecuting and filing the challan against the petitioner, though it was to be done by him at an appropriate stage. A question may arise as to what is the appropriate stage. Obviously the appropriate stage in the present case would be the stage of framing of charge. It has been held by the Apex Court that if such an opportunity has been given to a party to raise the plea or to file afresh the writ petition then such a liberty cannot be curtailed. Reliance in this regard can be placed on case titled **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P.** (1987) 1 SCC 5. The only question which remains to be seen is as to whether

the question of dropping the proceedings against the petitioner for want of consent under Section 6 of the Delhi Special Police Establishment Act, 1946 was raised at an appropriate stage or not. In this regard, it is observed that there are various stages when an accused can come out of the dragnet of the criminal trial. One of the important stages at which he can come out is certainly at the stage of framing of charges. In this regard, the provisions of Section 227 and 228 Cr.P.C. are relevant which are reproduced as under:

"227. Discharge.-- *If, upon consideration of the record of the case and the documents submitted herewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

228. Framing of charge.—(1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*

(a) Is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate) shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused.

12. Therefore, in my considered opinion, the stage of framing of charges would have been an appropriate stage for the petitioner to raise the plea for dropping of proceedings against him. In the instant case, the petitioner filed an application for dropping the proceeding against him without permitting the case to arrive at the stage of the framing of charges. Even if such an application was filed by the petitioner without their being an appropriate stage, I feel that only two options were available to the learned Special Judge either to postpone the decision on the application till the framing of the charges or to alternatively reject the application with the observations that the petitioner was free to file an application raising the question of non-grant of consent at the stage of framing of charges. On the contrary it seems that the learned Special Judge had fallen into an error by observing that by withdrawing the special leave petition in the Apex Court, the petitioner had foreclosed all his rights to raise such plea and moreover that his right to raise the plea stood concluded in terms of the judgment of the High Court of Delhi. I, accordingly, feel that the impugned order is not sustainable in

the eyes of law and is accordingly set aside with the direction to the learned Special Judge to consider the application of the petitioner for dropping the proceedings or in other words consider the question of the discharge of the accused on the ground that there was a lack of consent in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 at the stage of framing of the charge. Accordingly, the impugned order is not sustainable and is set aside.

13. Expression of an opinion herein before may not be treated as an expression on the merits of the case and the question of non-grant of consent shall be decided by the learned Special Judge without being influenced in any manner whatsoever by the observations of this Court.

NOVEMBER 01, 2011
KP

V.K. SHALI, J