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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(CRL) 1433/2012**

MANOHAR SINGH & ANR Petitioners
 Through **Mr. J.P. Sengh, Senior Advocate with
 Mr. Sumeet Batra and Ms. Ankita
 Gupta, Advocates.**

versus

STATE & ORS Respondents
 Through **Mr. Saleem Ahmed, ASC and
 Mr. Dushyant Kumar, Advocate for
 State with IO/SI Sunil, PS Mehrauli.
 SI Sunil Sharma, PS Mehrauli.
 Mr. Narender Mann, Spl. P.P. with
 Mr. Manoj Pant, Advocate for CBI.**

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Date of Decision: 05th October, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J. (Oral)

CRL.M.A. 17559/2012

Allowed, subject to just exceptions.

W.P.(CRL) 1433/2012 & CRL.M.A. 17558/2012

1. Present writ petition has been filed under Article 226 of Constitution

with the following prayers :-

- a) *a writ of mandamus directing respondent no. 2 to lodge an FIR under sections 420, 467, 468, 471 & 120-B IPC and u/s 3(1)(v),(viii),(ix), (x)&3(2)(ii) and sec 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and investigate the matter as police officials and inter-state gangs of land grabber are involved and every attempt made by petitioners to get justice has been scuttled by respondent no. 6 to 18;*
- b) *a writ of mandamus, directing the respondent no. 3 to 5 not to take any action in FIR No. 624/08 till the investigation is completed and further not to interfere with petitioners' personal liberty, freedom and livelihood;*
- c) *a writ of prohibition thereby restraining respondents no. 6 to 8 from interfering with the investigation conducted by respondent no. 5 in FIR No. 624/08;*
- d) *direct respondent no. 19 to produce the statement of account and ledger entry of petitioner no. 1's SB Account no. 4424 (present number 1546000100044247) maintained with it since 1.08.1988 as all the consideration amount with respect to the alleged sale of individual plots are shown to have been made by pay order/bank draft and cheques;*
- e) *costs of the petition may also be granted in favour of the petitioner and against the respondents no. 6 to 18;*
- f) *any other appropriate writ, order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case.*

2. When it was pointed out to Mr. J.P. Sengh, learned senior counsel for petitioner that prayers (b) and (c) are contrary to each other and this Court in writ jurisdiction does not issue interrogatories , like the one sought in prayer (d), Mr. J.P. Sengh states that he is not pressing prayers (b) to (e).

3. Mr. Sengh clarifies that he is pressing only prayer (a) with regard to transfer of investigation and registration of case by CBI because the local police is in collusion with some of the private respondents who want to grab the petitioners' land. In this connection, he draws attention of this Court to the order dated 14th March, 2012 passed by learned ACMM, Saket Courts, New Delhi wherein while acquitting the accused under Sections 420/120B IPC, the trial court has held as under:-

“The authenticity of the documents produced by the complainant to the IO had not been verified. Even the IO admitted in his evidence that he had not carried out the investigation properly and made to suffer the accused persons for around 10 years. The mens rea is missing in this case that the accused persons were having any guilty intention to de-fraud or cheat the complainant.

The prosecution has failed to prove its case beyond reasonable doubt.

Accordingly, accused persons namely Manohar Singh and Ram Rattan are acquitted for the offences U/s 420/120B IPC.”

4. Mr. Sengh has also drawn attention of this Court to the judgment and order dated 4th August, 2012 passed by learned Additional Sessions Judge, Fast Track Court, Patiala House Courts, New Delhi whereby petitioner has been acquitted in FIR No. 560/2008. The relevant portion of aforesaid judgment dated 4th August, 2012 is reproduced hereinbelow:-

“51. Since accused persons in FIR no. 517/05 have been held aggressor and in view of the discussions of testimonies of injured in FIR no.516/06; the accused persons namely Manohar Lal, Praveen and Deepak in FIR no. 516/05 are acquitted for the commission of offence punishable u/s 308/34 IPC. They are on bail. So, their BB/SB are cancelled and sureties are discharged.

52. As far as the evidence in case FIR no. 517/05 is concerned , I am of the view that the prosecution has left no stone unturned to prove its case against accused Surender Kumar, Mahender Kumar Saini, Pradeep and Bua Lal as complainant and injured have assigned specific role to the accused persons. There is evidence against these accused for causing injuries on the person of Praveen and Manohar Lal. I, therefore hold accused Surender Kumar, Mahender Kumar Saini, Pradeep and Bua Lal guilty for the commission of offence punishable u/s 323/34 IPC and convict them thereunder. Copy of judgment be placed on both the files being cross cases.”

5. Having heard learned senior counsel for the petitioner and having perused the paper book, it transpires that there are a number of cases/FIRs and cross cases/FIRs between the petitioner and some of the respondents with regard to the land in dispute. A perusal of the file reveals that petitioners themselves had filed three applications under Section 156(3) Cr.P.C. seeking registration of FIRs and investigation by the local police. Since learned ASJ had set aside the direction of registration of FIRs, petitioners have approached this Court by way of two petitions being CrI.M.C. Nos. 1952/2009 and 1959/2009 which are pending adjudication before this Court. It seems to this Court that the present petition has been filed to ‘circumvent’ the adjudication of the aforesaid two petitions and to render them otiose by seeking a direction to CBI to investigate the cases.\

6. This Court is also of the opinion that the learned ACMM and ASJ in the orders referred to by Mr. Sengh have not found the local police to be inimical to the petitioners. In fact, the learned ACMM has acquitted the petitioners by giving them benefit of doubt on account of ‘sloppy’ investigation.

7. Moreover, as held by Constitution Bench of the Supreme Court in ***State of West Bengal and Ors. Vs. Committee for Protection of Democratic***

Rights, West Bengal and Ors., (2010) 3 SCC 571 a direction to CBI to conduct investigation is not to be passed merely because a party has levelled some allegations against the local police. The relevant portion of ***State of West Bengal and Ors.*** (supra) is as under:-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

(emphasis supplied)

8. Keeping in view the aforesaid, present petition and application are dismissed.

MANMOHAN, J

OCTOBER 05, 2012

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