

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

**+ Crl. M. C. 940/2011**

**Date of Decision: 01.10.2013**

**S. S. AHLUWALIA**

**.....Petitioner**

Through: Mr. Anurag Ahluwalia with Mr.  
Arjun Aggarwal, Advs.

Versus

**STATE THR CBI**

**.....Respondent**

Through: Ms. Sonia Mathur, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE M.L. MEHTA**

**M.L. MEHTA, J.**

1. This is a petition filed under Section 482 of the Criminal Procedure Code (for short 'the Code') seeking quashing of the following; FIR RC No. 6/1987, CBI/SIU-1/SIC-1 dated August 31, 1987 under Section 420 of the IPC and Section 25 of the Arms Act before the Court of the Ld. CMM, Delhi entitled "CBI v. S. S. Ahluwalia" and all subsequent proceedings emanating therefrom; the Order on charge dated January 30, 2010 and the Order framing charge dated February 10, 2010 passed by the Ld. CMM, Delhi; and Order dated November 28, 2010 passed by the Ld. ASJ, New Delhi. The facts leading to the instant petition are as follows:

2. The aforesaid FIR was filed based on a complaint received by the Deputy Commissioner (DC), Kohima, Nagaland. In the said

complaint information was given to the respondent concerning the various arms held by the petitioner and his wife while he was posted in Nagaland as Financial Commissioner. The following arms were said to be held by the petitioner against his respective license numbers, prior to the year 1985:

- i) No. 2431 MKG dated 03.03.1972 for .22 rifle bearing no. 30055, Czechoslovakia
- ii) No. 5769 NH/NEW dated 26.04.1976 for NP Bore Pistol bearing No. 31336 by Bernadally
- iii) No. 4165 NH/NEW dated 26.03.1978 for pistol/revolver bearing no. SS-57055.

The DC also further informed the respondent that, the petitioner had also applied for the issue of a .30 bore rifle vide application dated September 23, 1985. And that in the said application, the petitioner had deliberately left Column No. 13 and Column No.16 unmarked, implying that he neither possessed any weapon at the time, nor previously applied for a license. It was further stated in the complaint that by dishonest concealment of the aforesaid information, the petitioner was able to obtain License No. 9315 NH/NEW dated September 24, 1985.

3. Upon completion of the investigation, the charge sheet was filed on December 23, 1992. The charge sheet reveals that the petitioner had

acquired two weapons from M/s B.R. Sawhney & Company, Chandni Chowk, Delhi against the newly obtained license dated September 24, 1985. The charge sheet also discloses that the following words were handwritten by the petitioner, 'NP Bore Rifle' and '2000 each' below the endorsement made by the clerk in respect of the purchases. The handwriting expert has also confirmed that the said additions were made by the petitioner. The charge sheet states that the original license allowed the license holder to purchase a maximum of 200 cartridges during the year and that by adding the extra '0' to the number of cartridges, a case under Sections 467 and 471 of the IPC was made out against the petitioner.

4. Consequently, the petitioner was charged with offences under Sections 420, 467 and 471 of the IPC and Section 3(2) punishable under Section 25 of the Arms Act vide the impugned order passed by the Ld. CMM on January 30, 2010. The petitioner approached the court of the Ld. ASJ by way of revision under section 397 of the Code. The said revision was dismissed and the Ld. ASJ confirmed the findings of the Ld. CMM. Aggrieved, the petitioner has invoked the inherent powers of this Court under Section 482 of the Code.

5. The primary contention of the petitioner centers around the alleged incompetence of the CBI in carrying investigation under the Delhi Special Police Establishment Act, 1946 (for short 'DSPE Act'). In furtherance of this argument, the petitioner has assailed the propriety of the investigations carried out by the CBI in Delhi as well as in the

State of Nagaland. With respect to the investigations carried out in Delhi, the petitioner contends that there was no Notification under Section 3 of the DSPE Act, with respect to offences for which the petitioner was charged. In furtherance of this argument, the petitioner submits that the Notification dated July 9, 1971, under Section 3 of the DSPE Act, only brought offences under Sections 25 and 26 of the Arms Act within the purview of the DSPE Act. However, the offences for which the petitioner was charged viz. Section 25(1B)(a), was only added later vide the amendment to the Arms Act in the year 1983, and a fresh Notification was not passed under Section 3 to bring the newly added offences within the ambit of the CBI.

6. With respect to the investigations carried out by the CBI in the State of Nagaland, the petitioner submits that there was no Order under Section 5 of the DSPE Act, extending the jurisdiction of the CBI to conduct investigation in the State of Nagaland with respect to offences under Section 25 of the Arms Act. The petitioner further contends that the Consent dated May 16, 1988, given by Govt. of Nagaland as required under Section 6 of the DSPE Act, was subsequently withdrawn on August 23, 1989. And that any Notification which may have been passed subsequent to the registration of the FIR would not be applicable to the investigations. The petitioner also contends that the CBI could not have obtained an alternative Sanction under Section 39 of the Arms Act from the Deputy Commissioner of Police (DCP), New Delhi, when the said Sanction was not given by the Deputy

Commissioner (DC) of Kohima, Nagaland. Further, the petitioner submits that on obtaining the Sanction from the Deputy Commissioner, New Delhi, vide order dated December 18, 1992, the respondent could not revisit the Deputy Commissioner for an improved sanction based on the same set of facts, which was granted on August 21, 1996. It is his submission that once the Sanction has been granted, it cannot be modified or revised. Hence, the investigations carried out by CBI are alleged to be without jurisdiction.

7. In its reply, the respondent has taken a preliminary objection on the grounds that the petitioner has already exercised his right of revision under Section 397 of the Code before the Court of the Ld. ASJ, who was pleased to dismiss the same. And that the instant petition is filed with the sole purpose of by-passing the mandate of Section 397(3) of the Code, which bars a second revision. The respondent also contends that the withdrawal of the Consent by the Govt. of Nagaland, does not operate retrospectively. And that once the Consent was granted to the CBI to commence investigation, the subsequent revocation thereof, cannot bring to halt, the criminal justice system that has already been set in motion. The respondent further submits that the DCP, New Delhi was competent to grant Sanction under Section 39 of the Arms Act, irrespective of the refusal by the DC at Kohima, Nagaland, because two firearms were recovered from the residence of the petitioner at New Delhi. And that once the Sanction is granted, there is no prohibition on a subsequent revision of the

Sanction. And that in the present case a modified Sanction was issued only for the reason that the necessary facts of the case were not mentioned in the previous Sanction. Lastly, the respondent submits that there is sufficient material placed on record establishing a prima facie case for framing of charge against the petitioner. Hence, the impugned orders are stated to be without any error or illegality.

8. First of all, I take note of the contention of the respondent that a second revision is barred under Section 397(3) of the Code. It is settled law that there is a statutory bar qua a second revision under Section 397 (3) of the Code. The power of revision with the Sessions Court and the High Court are concurrent, thus giving the revisionist an option of approaching either of the Courts. If the revisionist has approached the Sessions Court at the first instance, he cannot, approach the High Court under revision. Having said which, the revisionist still has the right to invoke the inherent powers of the High Court under Section 482 of the Code. However, the power of the High Court under this Section ought to be used sparingly especially keeping in mind that the revisionist has already exhausted his right of revision before the Sessions Court. This position of law has been succinctly laid out in the case of ***Kailash Verma v. Punjab State Civil Supplies Corporation and Anr.***, (2005)2SCC571. The Apex Court held as under:

“[T]he power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the

*complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.” (emphasis supplied)*

9. In the case of ***State of Orissa & Anr. v. Saroj Kumar Sahoo, 2005 (13) SCC 540***, the Apex Court observed the limited extent to which the High Court could exercise its inherent powers under Section 482 of the Code as under:-

*“While exercising jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”* (emphasis supplied)

10. Being conscious of the limited powers of this Court under Section 482 Cr.P.C, I would proceed to examine the contentions of the parties and before doing so, it is pertinent to revisit the procedure stipulated under the DSPE Act. The Apex Court in the Case of ***M.***

***Balakrishna Reddy v. Director, CBI, AIR 2008 SC 1754***, has succinctly summarized the procedure prescribed under the DSPE Act.

*“[T]he Preamble of the Act states, it is an Act to make provision for the constitution of a Special Police Force in Delhi for the investigation of certain offences in the Union Territories and for the extension to other areas of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences. Section 1 declares that the Act extends to the whole of India. Section 2 provides for constitution and powers of Special Police Establishment. Section 3 enables the Central Government to investigate offences by Special Police Establishment. It reads thus:*

*‘3. Offences to be investigated by Special Police Establishment: The Central Government may, by notification in the official gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.’*

*Section 4 covers superintendence and administration of Special Police Establishment. Section 5 empowers the Central Government to extend the powers and jurisdiction of Special Police Establishment to States. The said section is also relevant and may be reproduced –*

*‘5. Extension of powers and jurisdiction of Special Police Establishment to other areas:*

*(1) The Central Government may by order extend to any area including railway areas in a State not being a Union Territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.*

*Section 6 is very important which requires consent of State Government for exercising powers and jurisdiction under the Act by Special Police Establishment to any area in a State not being Union Territory or Railway. The said section, therefore, may be quoted in extensor:*

*'6. Consent of the State Government to exercise powers and jurisdiction: Nothing contained in Sec. 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area without the consent of the Government of that State.'*

*Plain reading of the above provisions goes to show that for exercise of jurisdiction by the CBI in a State (other than Union Territory or Railway Area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled; (i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3); (ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to any State in respect of the offences specified under Section 3 (Section 5); and (iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6).'*" (emphasis supplied)

11. In the backdrop of the procedure, as noted above, I shall now proceed to decide the contentions of the petitioner regarding the investigations carried out in New Delhi. With respect to his contention

regarding the non-applicability of the DSPE Act to Section 25(1B)(a) of the Arms Act, I am of the view that the Notification dated July 9, 1971 clearly stipulates that the CBI shall have the power to investigate offences in the Union Territories with respect to offences under Sections 25 and 26 of the Arms Act. I do not find any merit in the argument of the petitioner, that a separate Notification was required under Section 3 of the DSPE Act in order to bring within the purview of the CBI, new offence under sub-section 1B(a) of Section 25 of the Arms Act, introduced by way of an amendment to the Arms Act in the year 1983.

12. The Madras High Court in the case of ***M.S. Kuppuswami And Etc. Etc. v. The State***, 1992 CriLJ 56, examined a similar question as to whether a previous Notification under Section 3, would encompass subsequent amendments to the relevant provisions referred to in the Notification. The Court observed as under:

*“15. As rightly contended by Mr. B. Sriramulu learned counsel appearing for the respondent, an amendment to the Indian Penal Code can only be made by the Parliament while a notification would be sufficient in respect of investing powers under the Delhi Special Police Establishment Act. The notification under section 6 of the Act, includes all offences under the Prevention of Corruption Act and naturally Section 5(1)(e) introduced by Act 40 of 1964, being an offence under the Prevention of Corruption Act punishable under Section 5(2) of the Act, gets within the fold of the notification, investing powers to the Delhi Special Police Establishment, to investigate offences under the Prevention of*

Corruption Act..... I hold that the notification related to offences punishable under the Prevention of Corruption Act, Section 5(2) being the penal Section and though Section 5(1)(e) was added subsequently, the previous notification will govern the subsequently added section also, since the previous notification, covers the entire Act.” (emphasis supplied)

13. I am of the view that a Notification under Section 3 of the DSPE Act, does not specify an exhaustive list of offences, which alone can be investigated by the CBI. Whereas, it enlists a ‘Class of Offences’, which can be amended from time to time, as and when the Parliament deems fit, to add newer offences falling under the same class. Adopting the reasoning of the Court in the **Kuppuswami Case** (supra), I find the said notification of July 9, 1971 sufficient enough to govern the subsequent amendment made to the Arms Act viz. Section 25(1B)(a). Since New Delhi is a Union Territory, I find that there is a valid notification under Section 3 of the DSPE Act and that the respondent had the jurisdiction to investigate into the offence committed in New Delhi.

14. With respect to the petitioner’s contention regarding the investigation not being carried out in accordance with the stipulations under the DSPE Act, it is pertinent to recapture the charges which were framed against the petitioner for offences committed in Kohima, Nagaland. An FIR was registered against the petitioner in Kohima, Nagaland for offences under Section 420 of the IPC and Section 25 of the Arms Act. Subsequently, Consent was given by the Govt. of

Nagaland under Section 6 of the DSPE Act for commencement of investigation for offences under the said provisions, by the CBI. Thereafter, investigations were carried out by the CBI in Nagaland and Delhi, based on which the charge sheet was filed in Delhi. The charge sheet also makes out an offence under Sections 467 and 471 of the IPC against the petitioner in addition to offences under Section 420 of the IPC and Section 25 of the Arms Act.

15. With regards to offences under Sections 420, 467 and 471 of the IPC, it is pertinent to note that the Order dated April 17, 1968, extends the powers of the CBI to investigate the abovementioned offences in the State of Nagaland. Regarding the offences committed under the Arms Act, it is pertinent to note that the Govt. of Nagaland, issued a Consent dated May 16, 1988 as required under Section 6 of the DSPE Act. However, the petitioner has contended that the said Consent was not properly issued in accordance with the DSPE Act, because it was not preceded by the Order under Section 5 of the DSPE Act, thereby vitiating the entire investigation carried out by the CBI. I find no merit in this argument for the following reason.

16. In the instant case, it is not disputed that the Govt. of Nagaland issued Consent under Section 6 of the DSPE Act. The said Consent is reproduced here under for the sake of brevity:

*“In exercise of powers conferred by Section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Govt. of Nagaland, hereby accords sanction to the*

exercise of powers and jurisdiction by members of the Delhi Special Police Establishment within the State of Nagaland for investigation of offences under Section 25 and 30 of the Arms Act, 1959 (Central Act 54 of 1959) and attempts, abatement, and conspiracies in relation to or in connection with said offences and any offence committed in the course of the same transaction arising out of the same facts in regard to RC.6/87-SIU.I u/s 420 IPC and 25 Arms Act relating to cheating and possession of fire-arms in violation of the Arms Act registered in SIU-I, SIC-I, CBI against Shri S.S. Ahluwalia, IAS, Secretary and Commissioner, Labour & Employment, Government of Nagaland, Kohima.” (emphasis supplied).

17. However, the petitioner assailed the propriety of the said Consent before the Ld. CMM and the Ld. ASJ on the ground that the Consent was subsequently withdrawn by the State of Nagaland. And that by virtue of the absence of Consent from the State of Nagaland, investigation carried on by the CBI was invalidated as it did not comply with the provisions stipulated under Section 6 of the DSPE Act. The Ld. CMM dismissed this contention by placing reliance on the judgment of the Apex Court in the case of **Kazi Lhendup Dorji v. Central Bureau of Investigation & Ors., 1994Supp(2)SCC116** wherein it was observed thus”

*“An Order revoking an Order giving Consent under Section of the Act, can only have prospective operation and would not affect matters in which action has been initiated prior to the issuance of the Order of Revocation.”*

18. The Ld. ASJ also concurred with the findings of the Ld. CMM, and put to rest, all contentions with respect to the propriety of the investigation carried out by the CBI in Nagaland. It is pertinent to note, that the petitioner did not raise the contention regarding the Consent not being preceded by an Order under Section 5 of the DSPE Act, before either of the lower Courts, where the parties could have tendered evidence in support of their dispositions. Having failed to raise an objection at a sufficiently early stage, the petitioner cannot raise the same for the very first time in the instant proceedings.

19. In another case involving the petitioner and the CBI, this Court, in the case of ***S. S. Ahluwalia & Ors. v. CBI***, 2011 II AD (Delhi) 305, observed:

*“My attention has been drawn to the observations made in **H. N. Rishbud** (supra) and paragraphs 22 to 28 in **R. R. Kishore v. CBI**, 2006 VIII AD (D.H.C.) 545. In the said paragraphs it has been held that where any illegality in investigations is brought to the notice of the trial court at an early stage, prosecution should be directed to take necessary steps to get the defects rectified and in a given case, the Court may direct re-investigation”* (emphasis supplied)

20. Therefore, I am of the opinion that nothing precluded the petitioner from raising objections regarding Order under Section 5 of the DSPE Act, before the lower courts. Besides, there is a concurrent finding of facts regarding the propriety of the investigations carried out by the CBI in Nagaland. It is not proper for this Court to entertain the

petitioner's objection at such a delayed stage, which cannot be examined without appreciation of evidence. In any event, the mandate in this Court under Section 482 of the Code is fairly clear. As observed in the *Saroj Kumar Sahoo Case* (supra), it is not appropriate for this Court to appreciate evidence at this stage or interfere in the proceedings unless they are groundless, or illegal, or intended only for harassment.

21. In light of the above discussion, I find that the CBI had sufficient jurisdiction to carry out the investigation in the State of Nagaland. Consequently, the argument of the petitioner that the subsequent Notification dated August 7, 1989 and Order dated July 9, 1992 being inapplicable to his case, is not tenable.

22. With respect to the contention regarding the improper grant of fresh Sanction by DCP, New Delhi, under Section 39 of the Arms Act in light of the prior refusal by the State of Nagaland to issue a similar Sanction, it is pertinent to revisit the relevant provision.

*“Section 39. Previous sanction of the district magistrate in certain cases- No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.”* (emphasis supplied)

The abovementioned provision stipulates that a Sanction must be obtained from the District Magistrate prior to the prosecution under the Act. However, the said provision does not suggest that once the Sanction is refused, it could not be sought again from another

competent authority. Further, the said provision also does not bar the review/modification of an erstwhile Sanction. The only requirement under Section 39 is that a Sanction should be issued by a ‘District Magistrate’ before the institution of prosecution.

23. The Calcutta High Court in the case of “***The Superintendent And ... v. Mahendra Singh***, 1979 CriLJ 545, had occasion to interpret the meaning of the term ‘prosecution’ as used under Section 39 of the Arms Act. The Court held as under

*“[T]he Supreme Court in the case of **Maqbool Hussain v. State of Bombay** wherein "prosecution" has been defined to mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. The above decision, in our view, instead of supporting the observations of the learned trial Judge goes against the same. We are of the view that the institution of a "prosecution" where a case is started by the Police can be by submission of a report in final form in accordance with Section 173 of the Cr.P.C. 1898 and not before that.” (emphasis supplied)*

It is also pertinent to note that under Section 2(d) of the Arms Act, a ‘District Magistrate’ in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police and includes a Deputy Commissioner, exercising jurisdiction over the whole or any part of such area.

24. With regard to the submission of the petitioner that a review or modification of the Sanction is not allowed, it would be relevant to refer to the case of *State of Himachal Pradesh v. Nishant Sareen*, 2011 [1] JCC 36. In this case, the Apex Court dealt with the grant of a second sanction given under Section 19 of the Prevention of Corruption Act as well as Section 197 of the Code. The Court observed:

*“It is true that the Government in the matter of grant or refusal to grant sanction, exercised statutory power, and that would not mean that power once exercised, cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever.”*

Since Section 39 of the Arms Act is silent about the power of review or modification of the Sanction, one cannot say that obtaining a second Sanction is barred. All that needs to be considered is whether the requirements under Section 39 of the Arms Act have been complied with. In the instant case, a Sanction was given by the Deputy Commissioner, New Delhi on December 18, 1992 and the charge sheet was subsequently filed on December 23, 1992. Both these documents have been placed on record. Thus, it is clear to me that the proper sanction was obtained by the respondent within the appropriate time and by the competent authority as a part of the offence was said to be committed at Delhi. Therefore, I find no impropriety in the Sanction obtained at New Delhi by the respondent, despite the refusal by the DCP, Kohima, Nagaland.

25. Lastly, the FIR as well as the charge sheet has prima facie made out a case against the petitioner based on which the charge was framed. The act of the petitioner deliberately not providing the information required under Columns 13 and 16 of the license application prima facie constitutes an offence under Section 420 of the IPC. Further, a confirmation of the handwriting expert that the petitioner has added the number '0' to the word '200 cartridges' in the license, makes out a case against him under Sections 467 and 471 of the IPC. Lastly, on finding the petitioner to be in possession of more than three firearms, it is prima facie clear that he is liable to be tried under Section 25 (1B) read with Section 3(2) of the Arms Act. Having made the above observations, the Court at this stage need not go into the evidentiary value of the documents placed on record. It is sufficient if the prosecution is able to make out a prima facie case against the petitioner, enough to carry on with the trial.

26. In light of the factual matrix and the legal principles applicable to them, I find no infirmity or illegality in the impugned orders of the Ld. CMM or the Ld. ASJ warranting interference by this Court. The petition having no merit is hereby dismissed.

**M.L. MEHTA, J.**

**OCTOBER 01, 2013**

kk/rmm