

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

+ **CRL.M.C. 2243/2012 & CrI.M.A. 7968/2012 (stay)**

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Reserved on: 1st February, 2013

Decided on: 14th March, 2013

DR.ANUP KUMAR SRIVASTAVA

..... Petitioner

Through Mr. Sidharth Aggarwal, Mr. Gautam
Khazanchi, Advs.

versus

STATE THR. CBI

..... Respondent

Through Ms. Sonia Mathur, SC for CBI with
Mr. Sushil Dubey, Adv. with Insp.
R.L. Yadav.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner impugnes the order dated 20th January, 2012 passed by the learned Special Judge dismissing the application of the Petitioner under Section 6(A) of the Delhi Special Police Establishment Act, 1946 (in short the DSPE Act), the orders dated 1st March, 2012 and 13th March, 2013 taking cognizance in respect of charge-sheet and quashing of RC-AC1 2012-A0001 including all investigation and judicial proceedings originating therefrom.

2. Learned counsel for the Petitioner contends that it is the admitted position that the Petitioner is a Joint Secretary level officer of the Central

Government and in view of Section 6(A) of the DSPE Act, 1946 no enquiry or investigation could be initiated against him for an offence falling under the Prevention of Corruption Act, 1988 (in short the PC Act) without the previous approval of the Central Government. In the above-mentioned case not only enquiry and investigation were initiated which culminated into filing of a charge-sheet and taking of the cognizance thereon in gross violation of Section 6(A) of the DSPE Act, 1946. This Court in *Dr. R.R. Kishore Vs. CBI* 142 (2007) DLT 702 quashed the investigation committed in breach of the mandatory provision of Section 6(A) of the DSPE Act and directed the Respondent to reinvestigate the matter in case approval under Section 6(A) of the DSPE Act was granted by the Central Government. Despite the fact that the Petitioner brought to the notice of the CBI, even prior to his arrest, that the approval under Section 6(A) of the DSPE Act was mandatory, the CBI in complete violation of the DSPE Act and the decision of this Court continued with the investigation and filed the charge-sheet. Even if the contention of the CBI was to be accepted that the time was short and they had to lay a trap to catch a public servant red-handed as per the CBI Crime Manual, the CBI could have taken the necessary approval before the arrest of the Petitioner even after start of investigation. The provisions in the CBI Crime Manual have been held to be statutory and imperative as per the decision of the Hon'ble Supreme Court in *Vineet Narayan Vs. Union of India* (1998) 1 SCC 226. Further at the time of registration of FIR, there was no information available with the CBI or anyone else to predict that they will lay a trap and such trap would be successful or there will be arrest made at the spot while accepting or attempting to accept illegal gratification as the source information did not inform how and at what time the alleged illegal

gratification was going to be transferred from co-accused Hemant Gandhi to Lallan Ojha. Further in the present case no arrest was made while accepting or attempting to accept illegal gratification and thus the basic ingredients required for invoking sub-Clause 2 of Section 6(A) DSPE Act were not attracted in the present case. The proceedings conducted by the CBI on 2nd January 2012 in pursuance of RC-AC1 2012-A0001 cannot be termed as trap proceedings involving arrest on the spot while receiving or attempting to receive illegal gratification. Though CBI claims that the entire investigation started on the basis of source information on 2nd January, 2012 and it was not aware of the intercepted conversations till 6th January, 2012, however the same is belied by its own documents which show that on 4th January, 2012 CBI recorded specimen voice samples of accuseds Lallan Ojha, Hemant Gandhi, Dilip Aggarwal along with specimen voice sample of one Rajesh Verma driver of accused Hemant Gandhi and Reena Gandhi wife of accused Hemant Gandhi at CFSL. Reliance is also placed on *Ms. Mayawati Vs. Union of India and Ors. (2012) 8 SCC 106* wherein the Hon'ble Supreme Court quashed the second FIR being in violation of the mandatory provisions of Section 5 & 6 of the DSPE Act. Relying upon *General Officer Commanding, Rashtriya Rifles Vs. Central Bureau of Investigation and Anr. (2012) 6 SCC 2008* it is contended that if the law requires sanction and the Court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio for want of sanction. Reliance is also placed on *Krishan Murari Lal Sehgal Vs. State of Punjab (1997) 2 SCC 587* and *H.M. Caire Vs. Union of India and Ors. 2008 (Suppl) GLT 446*. Reliance is also placed on *Krishan Murari Lal Sehgal Vs. State of Punjab (1997) 2 SCC 587*

wherein the Hon'ble Supreme Court held that previous approval does not mean subsequent ratification and *H.M. Caire Vs. Union of India and Ors. 2008 (Suppl) GLT 446* wherein the Guwahati High Court quashed the investigation conducted by the Respondent CBI being in derogation of mandate of Section 6(A) of the DSPE Act.

3. Learned counsel for the CBI adverting to the facts states that in the above-mentioned FIR registered on 2nd January, 2012 the Petitioner was named as accused No.1. Since immediate trap was to be laid, the approval as required under Section 6(A)(1) of the DSPE Act was not essential, and the case falls under Sub-Section 2. The Appellant and his co-accused were to accept the illegal gratification in the office however the Appellant did not reach the office rather got himself admitted in the hospital. Raids were conducted on the house and the office of the Petitioner on the said date and since the Petitioner was hospitalized, he was not immediately arrested. The transaction did take place and the money was recovered from the car of co-accused Lallan Ojha. Two co-accused Lallan Ojha and Hemant Gandhi were arrested on the same date and thus in view of the urgency of the matter, the contentions of the learned counsel for the Petitioner are unfounded. There is no illegality in the impugned order passed by the learned Special Judge holding that the sub-Section 2 which is a non-obstante clause was applicable to the facts of the case and in view thereof, no sanction was required for conducting enquiry or investigation. Reliance is placed on *Mr. Manjit Singh Bali Vs. Central Bureau of Investigation CRL. A. Nos. 1913 & 2013 of 2010* decided by the Mumbai High Court on 29th November, 2010 wherein while considering the decision of this Court in *R.R. Kishore* and it was held that

sub-Section 6(A)(1) DSPE Act did not grant a blank protection to an employee of the Central Government of the level of the Joint Secretary and above and distinguished the judgment of this Court in *R.R. Kishore* stating that in *R.R. Kishore* there was no arrest to be made on the spot and hence the basic ingredients were missing.

4. I have heard learned counsel for the parties. The brief narration of facts is that RC-AC1 2012-A0001 was registered at 10.15 PM on 2nd January, 2012 on a source information for commission of offence under Section 120B IPC and Section 7, 8, 10, 12 and 13(2) read with 13(1)(d) of the PC Act against the Petitioner, who was Commissioner, Central Excise, Delhi-I Commissionerate, Lallan Ojha, Superintendent, Commissionerate- Delhi- I, Hemant Gandhi, Dilip Aggarwal, Anand Aggarwal and Others. The allegations as set out in the FIR were that a reliable source had informed that Hemant Gandhi is having close contacts with the Petitioner, Lallan Ojha and other officials of the Central Excise for obtaining illegal gratification by corrupt and illegal means from the businessmen. The source further revealed that on 28th December, 2011 a team of officials of Central Excise, Delhi-I led by Lallan Ojha conducted a surprise check raid at the godown/ premises of Dilip Aggarwal and Anand Aggarwal at Rama Road. Lallan Ojha in conspiracy with the Petitioner, Hemant Gandhi and others, negotiated with the owners of godown for illegal gratification in lieu of not taking any action against them and finalised the bribe amount of Rs. 60,00,000/- to be paid by these private persons. This was conveyed by Lallan Ojha to the Petitioner Hemant Gandhi. It was further learnt that Hemant Gandhi was in regular touch with Dilip Aggarwal and Anand Aggarwal and had received from

them a huge amount of money as part of the illegal gratification along with a cheque of Rs. 20 lakhs issued by Anand Aggarwal as security for the remaining amount on 30th December, 2011. On the request of Dilip Aggarwal, Hemant Gandhi spoke to Lallan Ojha and the Petitioner for reducing the amount of illegal gratification. Both the public servants asked Hemant Gandhi to meet them in their office located at ITO New Delhi on 2nd January, 2012. Lallan Ojha also asked Hemant Gandhi to bring Rs. 3 lakhs as his share out of the amount of illegal gratification obtained as above from Dilip Aggarwal on behalf of Central Excise officials. It was reliably learnt that Rs. 3 lakhs was to be delivered to Lallan Ojha at ITO office on 2nd January, 2012. Since the information disclosed the commission of the offences noted above, the abovementioned FIR was registered and in the FIR itself it was noted that though the Petitioner was holding office of a public servant equivalent to Joint Secretary but in view of the provisions of Section 6(2) of the DSPE Act, prior permission for conducting investigation against him is not required in this case.

5. Learned counsel for the Petitioner stresses that on the face of allegations in the FIR, since no specific time and place was available, there was no urgency and the invocation of sub-Clause 6(2) of the DSPE Act was illegal whereas learned counsel for the Respondent contends that since raid had to be conducted on the same day as money was to be transacted, in view of the urgency Sub-section 2 of Section 6 of DSPE Act was clearly attracted. A perusal of the FIR reveals that after 28th December, 2011 a surprise check/raid was conducted on the godown of Dilip Aggarwal and Anand Aggarwal and negotiations for the bribe amount were going on. As per the information

received at 10.15 AM on 2nd January, 2012, on the same day Rs. 3 lakhs were to be transacted and delivered to Lallan Ojha at his ITO office on 2nd January, 2012. On receipt of an information regarding cognizable offence, a FIR was bound to be registered. Since the money was to be transacted on the same day, the CBI was required to conduct a raid and make their best endeavour to catch the accused red-handed. The Petitioner is named in the FIR. Having started with the investigation for receiving or attempting to receive illegal gratification and the proposed meeting of Hemant Gandhi with Lallan Ojha and the Petitioner, the CBI could not have waited for the sanction before conducting the raid.

6. Before adverting to the contention of the learned counsel for the Petitioner regarding the judgment of this Court in *R.R. Kishore* (supra), it would be relevant to note the facts therein. In the said case one Mr. Handa was running a diagnostic centre and was allegedly conducting pre-natal test to determine the sex of the foetus, which could ultimately result in female foetus. The Petitioner therein demanded Rs. 80,000/- from Shri Handa to put his case right which was to be paid in two lots of Rs. 40,000/- each. At that point of time Shri Handa got a complaint registered with the CBI on 16th December, 2004 at 2.00 PM. In the said case no time was given by R.R. Kishore when the complainant therein had to bring the money. Thus, the CBI without prior approval registered the FIR without any preliminary enquiry and proceeded to lay a trap. For the said purpose the complainant therein was made to speak with the Petitioner therein over the phone which conversation was allegedly recorded. During the conversation, the Petitioner therein agreed to accept a certain sum of money in the evening of 16th

December, 2004 and thus the concerned Inspector proceeded with the pre-trap formalities and conducted the trap. Shri Handa met the Petitioner therein on 14th December, 2004 and the Petitioner therein informed him that the members of the appropriate authority had become corrupt, were demanding Rs. 20,000/- each and therefore the Petitioner demanded a sum of Rs. 80,000/- from Shri Handa in two-three days. The complainant also alleged that the Petitioner therein acceded to the complainant's request of paying the same in two installments. It is thus apparent that there was no urgency as no time for acceptance of illegal gratification was fixed and the same was fixed on the telephone after registration of FIR when the complainant was made to talk to the Petitioner therein on the telephone which conversation was allegedly recorded. It is in this light this Court held that Section 6(A)(1) of DSPE Act is mandatory in nature and in the said case the question of applicability of Section 6(A)(2) of DSPE Act did not arise. Thus the reliance of the Petitioner on *R.R. Kishore* (supra) is misconceived.

7. Whether sub-Section (1) or sub-Section (2) of Section 6(A) of the DSPE Act is applicable will have to be determined on the facts of the case. Section 6(A) of the DSPE Act reads as under:

“6A. Approval of Central Government to conduct inquiry or investigation

(1) The Delhi Special Police Establishment shall not conduct any enquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to

(a) the employees of the Central Government of the Level of Joint Secretary and above ;and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government Companies, Societies and local Authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988.)”

8. In the present case on 2nd January, 2012 transfer of bribe money had to take place though the exact time and place was not known, however it was contemplated shortly and thus the CBI was required to act with due dispatch and hence at that stage it could not have and was not required to comply with Section 6(A)(1) DSPE Act.

9. This brings me to the second limb of the argument of the learned counsel for the Petitioner that even assuming CBI was required to act in due dispatch on 2nd January, 2012, the proceedings on the said day could be said to be only recovery proceedings as money had already been allegedly transacted and Rs. 3 lakhs were recovered from the car of Lallan Ojha parked in the parking of ITO complex, no further proceedings qua the Petitioner were carried out and the Petitioner was arrested much later and thus the CBI ought to have taken the permission before arresting the Petitioner. To deal with this submission, it would be necessary to narrate the facts that proceeded the registration of FIR as per the Respondent. As per the status report and learned counsel for the CBI after registration of FIR another source information revealed that Rs. 3 lakhs were delivered by

Hemant Gandhi to Lallan Ojha through his personal driver and were kept in car No. DL-4c AD 4421 AVEO Chevrolet (Black colour) of Lallan Ojha parked in the back side parking of Central Revenue Building, ITO New Delhi. In pursuance of the said information, a team of CBI officers/ officials including two independent witnesses reached C.R. Building where Lallan Ojha was apprehended and Rs. 2,96,500/- were recovered from the dicky of his car parked in the back side parking of C.R. Building. Dilip Kumar Yadav, the driver of Lallan Ojha confirmed that this packet was delivered to him by unknown person at the instance of Lallan Ojha. The proceedings continued and Lallan Ojha was formally arrested. Lallan Ojha disclosed the involvement of Hemant Gandhi and the Petitioner. Thus another team of officials was sent to arrest Hemant Gandhi at Punjabi Bagh who was arrested at 2.20 PM from his office. Simultaneously another team of officers raided the Petitioner's house and office at 4.00 and 7.00 PM respectively, however the Petitioner was not available and later on it was revealed that he was admitted in the hospital. The statement of the driver of the Petitioner was recorded. Since the Petitioner was admitted in hospital he was finally arrested on 13th January, 2012 after he was discharged from the hospital and his application for anticipatory bail was dismissed by this Court on 10th January, 2012. The Petitioner raised this plea of non-compliance of Section 6(A)(1) DSPE Act before this Court in the anticipatory bail application, however the same was turned down.

10. Thus the issue now to be decided is whether after the investigation had started on 2nd January, 2012 being a case of urgency under Section 6(A)(2) of the DSPE Act, was the CBI required to take permission before the arrest

of the Petitioner. Learned counsel for the Petitioner has relied on the following provisions of CBI Manual.

“COMPLAINTS AND SOURCE INFORMATION
8. SOURCE INFORMATION REPORTS

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8.27 The source information once developed must be submitted in writing giving all available details with specific acts of omissions and commissions and copies of documents collected discreetly. The internal vigilance enquiries or departmental enquiry reports should normally not be used as basis for submitting the Source Information. The SP concerned after satisfying himself that there is *prima facie* material meriting action by CBI and further verification is likely to result in registration of a regular case, would order verification if it falls within his competence. In the cases which are within the competence of higher officers, he will forward his detailed comments to the DIG and obtain orders from superior officer competent to order registration. The verification of SIRs must begin only after the Competent Authority has approved its registration. At this stage a regular SIR number will be assigned to the SIR which will also be entered in the Source Information sub-module of CRIMES Module with all other details.

8.29 After registration, verification may be entrusted to an officer other than who has submitted the SIR. As far as possible, the requisition of records/documents should be avoided during verification of SIRs. In case, it is absolutely necessary to do so, the requisition must go to the concerned Vigilance Officer under the signatures of the SP after obtaining permission from the DIG concerned. It must be ensured that no record/documents are requisitioned before the Competent Authority has passed orders for registration of an SIR.

8.30 However, if the Source Information Report is likely to result in laying a trap to catch a public servant red handed or where surprise check becomes necessary and the time available is short, the SP may after keeping the Competent Authority

informed take further steps and submit the file subsequently for regular approval.

8.33 After verification, the Verifying Officer should submit his detailed report, wherein it should be specified whether the allegations of the SIR have been substantiated or not. The Verifying Officer should invariably mention whether the subject matter of the SIR has already been looked into by the department or its Vigilance Wing and the action taken thereon. He would also make specific recommendation whether the matter may be closed, referred to the department, or a Regular Case or Preliminary Enquiry could be registered for open probe. In case, the recommendation is for registration of a Regular Case, the names of the individuals against whom the case could be registered must be clearly mentioned. Sections of law under which the case is sought to be registered, should be specified. The provision of Section 6A of DSPE Act may be kept in view while making such recommendations. The SP may, thereafter, analyse the verification report and issue orders if the individual against whom the case is to be registered comes within his competence. In other cases he would record his detailed and specific comments and forward the matter to DIG who may either pass appropriate orders or forward the file to the Competent Authority through his superiors for obtaining orders. While processing the matter, the SP must ensure that the same matter is not being enquired into departmentally and if so, he must make specific recommendation as to why it is necessary to have a CBI probe in the said matter.

REGISTRATION AND FIRST INFORMATION REPORT

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10.6 If a case is required to be registered under the Prevention of Corruption Act 1988 against an officer of the rank of Joint Secretary and above or a Government appointee in the Central Public Sector Undertakings, prior permission of the Government should be taken before enquiry/investigation as required under Section 6-A of the DSPE Act except the case under Section 7 of the P C Act wherein the registration is

followed by immediate arrest of the accused. In case, involvement of another Government servant of the above-mentioned rank(s) is revealed during the course of investigation, a fresh permission as required under Section 6-A of the DSPE Act, which should be obtained at the earliest. The permission so obtained should form an integral part of the FIR or the Case Diary, as the case may be.

SEARCHES AND SEIZURES

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13.9

(d) In case during the course of a search/investigation/enquiry, the involvement of an Officer of the level of Joint Secretary and above becomes apparent, the inquiry/investigation against the latter would be initiated only after obtaining permission u/s 6-A of DSPE Act.”

11. Learned counsel for the Petitioner has strenuously relied upon guideline 13.9(d) stating that even after the start of search/ investigation/ enquiry if the involvement of the officer of Joint Secretary level becomes apparent, it is mandated that the enquiry/ investigation against the latter would be initiated only after obtaining permission under Section 6(A) of the DSPE Act. Learned counsel for the Respondent contends that in the present case the investigation qua the Petitioner started immediately on registration of FIR as the Petitioner’s involvement was known from the source information itself and he was named in the FIR as accused No.1. Unfortunately on the raids being conducted on that date the Petitioner could not be arrested as he had avoided the same by getting admitted in the hospital and in such an eventuality guideline 13.9(d) has no application. Having read Clause (d) of guideline 13.9 it is apparent that the same would have application in a case where not at the outset but during the course of a

search/ investigation/ inquiry, the involvement of an officer of the level of Joint Secretary and above becomes apparent. In the case in hand, the Petitioner was named as accused No.1 on the day one and hence it cannot be said that his involvement came to be revealed later on and thus before arrest compliance of Section 6(A)(1) of the DSPE Act ought to have been made. In the present case admittedly no enquiry was conducted prior to the registration of FIR and on registration of FIR the investigation commenced. In *H.N. Rishbud Vs. State of Delhi (2007) 15 SCC 699* the Hon'ble Supreme Court defined investigation as the collection of entire material for the purpose of laying a charge-sheet. It was held:

5. To determine the first question it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in *Liverpool Borough Bank v. Turner* [(1861) 30 LJ Ch 379] , “there is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed”. (See *Craies on Statute Law*, p. 242, Fifth Edn.) The Code of Criminal Procedure provides not merely for judicial enquiry into or trial of alleged offences but also for prior investigation thereof. Section 5 of the Code shows that all offences “shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code” (except in so far as any special enactment may provide otherwise). For the purposes of investigation offences are divided into two categories “cognizable” and “non-cognizable”. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable

offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under Section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what “investigation” under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes “all the proceedings under the Code for the collection of evidence conducted by a police officer”. For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in Section 162. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for

the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the

material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.

12. In the case in hand after the registration of FIR another source information was received that the money had been transacted and Rs. 3 lakhs was delivered to the driver of Lallan Ojha. Thus immediately a raid was conducted. The two co-accused Lallan Ojha and Hemant Gandhi were arrested and their disclosure statements recorded. From the car of Lallan Ojha Rs. 2,95,000/- and other incriminating documents were recovered. Raids were conducted at the house and office of the Petitioner. All these actions of the CBI fall within the ambit of investigation not only against co-accused Lallan Ojha and Hemant Gandhi but also against the Petitioner, as in a case of conspiracy the acts of co-accused committed in furtherance of the common object are attributable to the co-accused. Thus, to state that investigation qua the Petitioner started only after his arrest would be incorrect as all the acts performed by the CBI after the registration of FIR

were part of investigation qua the Petitioner as well. Since investigation had already commenced against the Petitioner, Clause (d) of Guideline 13.9 of the CBI Crime Manual has no application to the facts of the present case.

13. In view of the aforesaid discussion, petition and application are dismissed.

(MUKTA GUPTA)

MARCH 14, 2013
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