

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

Date of decision: 08th FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 61/2023 & CM APPL. 3424/2023**

MUKESH SHARMA

..... Appellant

Through: Mr. Surender Gupta, Advocate

versus

**MINISTRY OF FINANCE, REPRESENTED THROUGH ITS
SECRETARY & ORS** Respondents

Through: Mr. Asheesh Jain, CGSC with
Mr. Gaurav Kumar, Advocate for R-1
Mr. Ripu Daman Bhardwaj, SPP with
Mr. Abhinav Bhardwaj, Advocate for
R-3/ CBI
Mr. Anurag Ahluwalia, CGSC for
R-4/ ED

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

JUDGMENT

SATISH CHANDRA SHARMA, C. J.

1. By way of the instant LPA, the Appellant seeks to challenge the Judgment dated 09.12.2022, passed by the learned Single Judge in W.P.(C) 11274/2022, dismissing the Writ Petition filed by the Appellant herein seeking to declare him as a Whistle Blower of a cooperative bank scam, money laundering and diversification of funds by Housing Development Infrastructure Limited (HDIL) through its Director in connivance with the management of Punjab and Maharashtra Cooperative Bank.

2. It is stated that one Rakesh Kumar Kuldipsingh Wadhwan, one Gautam Mehra, one Pawan Mehra and one Romy Pawan Mehra had floated several companies only for the purpose of getting funds from the nationalized banks and the amounts received from the nationalized banks had been siphoned off. It is stated that as per the information gathered by the Appellant, the said Rakesh Kumar Kuldipsingh Wadhwan, Gautam Mehra, Pawan Mehra and Romy Pawan Mehra formed various companies between 2004-2014. It is stated that they floated several companies and took bank loans from Punjab and Maharashtra Cooperative Bank, Yes Bank Limited and other banks. It is stated by the Appellant that it is only after his complaints that the bank scam was unearthed. It is stated by the Appellant that the Appellant has taken a substantial risk in the process of unearthing the bank scam and instead of giving him protection and declaring him a whistle blower no credit has been given to the Appellant herein. Aggrieved by this, the Appellant herein approached this Court by filing a Writ Petition, being W.P.(C) 11274/2022, seeking an order for declaring him as a Whistle Blower.

3. The learned Single Judge by the Judgment impugned herein has dismissed the Writ Petition stating that there is no provision to declare a person as a Whistle Blower and further the question as to whether the Appellant's letters, complaints and efforts did result in unearthing the scam or not would require detailed investigation of facts which cannot be traversed by a Writ Court. The learned Single Judge has further observed that this Court can commend the Appellant if he has played a role in unearthing the said scam, and for discharging his duty as a responsible citizen and no further reliefs can be granted by this Court. The learned

Single Judge has granted liberty to the Appellant herein to avail any remedy which might be available to him under any statute which entitles him to be rewarded.

4. Heard learned Counsel for the parties and perused the material on record.

5. Learned Counsel of the Appellant places reliance on the Whistle Blowers Protection Act, 2014 and states that the Appellant should be declared as a Whistle Blower under the said Act.

6. The said contention of the Appellant is untenable. The Whistle Blowers Protection Act, 2014 was brought in to protect anyone who exposes corruption or misuse of power by any public servant. It was found that persons who were responsible for unearthing corruption and wilful misuse of power by public servants were subjected to threats and harassment, and several whistleblowers had even lost their lives in the process. In order to provide protection to such Whistle Blowers on the recommendations of Law Commission and to eliminate corruption and misuse of power, the Whistle Blowers Protection Act, 2014 was brought in. The purpose of the Act was to set up a mechanism to receive complaints of corruption or wilful misuse of power by any public servant and provide adequate safeguards against victimisation of the person making such complaints.

7. Section 4 of the Whistle Blowers Act lays down the procedure for receiving the complaints made by a person which has to be made before a competent Authority. Section 5 provides for an inquiry in relation of the complaints received by the competent authority which includes initiation of proceedings against the concerned public servant. Steps to redress the loss caused to the Government as a result of the corrupt practice or misuse of

office or misuse of discretion of the public servant has been laid down. Chapter V of the Whistle Blowers Protection Act, 2014 gives protection to the persons making such disclosures. Sections 11 to 13 of Chapter V of the Whistle Blowers Protection Act, 2014 read as under:

“11. Safeguards against victimisation.—(1)The Central Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act.

(2)If any person is being victimised or likely to be victimised on the ground that he had filed a complaint or made disclosure or rendered assistance in inquiry under this Act, he may file an application before the Competent Authority seeking redress in the matter, and such authority shall take such action, as deemed fit and may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimised or avoid his victimisation:

Provided that the Competent Authority shall, before giving any such direction to the public authority or public servant, give an opportunity of hearing to the complainant and the public authority or public servant, as the case may be:

Provided further that in any such hearing, the burden of proof that the alleged action on the part of the public authority is not victimisation, shall lie on the public authority.

(3) Every direction given under sub-section (2) by the Competent Authority shall be binding upon the public

servant or the public authority against whom the allegation of victimisation has been proved.

(4) Notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-section (2), in relation to a public servant, shall include the power to direct the restoration of the public servant making the disclosure, to the status quo ante.

(5) Any person who wilfully does not comply with the direction of the Competent Authority under sub-section (2), shall be liable to a penalty which may extend up to thirty thousand rupees.

12. Protection of witnesses and other persons.—If the Competent Authority either on the application of the complainant, or witnesses, or on the basis of information gathered, is of the opinion that either the complainant or public servant or the witnesses or any person rendering assistance for inquiry under this Act need protection, the Competent Authority shall issue appropriate directions to the concerned Government authorities (including police) which shall take necessary steps, through its agencies, to protect such complainant or public servant or persons concerned.

13. Protection of identity of complainant.—The Competent Authority shall, notwithstanding any law for the time being in force, conceal, as required under this Act, the identity of the complainant and the documents or information furnished by him, for the purposes of enquiry under this Act, unless so decided otherwise by the Competent Authority itself or it became necessary to reveal or produce the same by virtue of the order of the court.”

8. If the Appellant herein is indeed a Whistle Blower, then it is for him to approach the competent authority. As correctly pointed out by the learned

Single Judge, this Court, while entertaining a Writ Petition under Article 226 of the Constitution of India, cannot go into questions of facts regarding the role of the Appellant herein in unearthing the scam and also as to whether the inquiries etc. have been conducted under the Whistle Blowers Act or not.

9. Needless to state that in case the Appellant herein approaches the competent authority for adequate protection and safeguards from harassment, it is for the competent authorities to consider his case in accordance with law and take appropriate action thereafter.

10. The learned Single Judge has already given liberty to the Appellant to take such steps as permissible to him under the law. This Court does not find any infirmity with the order passed by the learned Single Judge.

11. Accordingly, the instant LPA is dismissed, along with pending application(s), if any, with the above observations.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 08, 2023

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