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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL PUBLIC INTEREST LITIGATION (ST.) NO.88 OF 2014**

Ketan K. Tirodkar	... Petitioner in person
Vs.	
Central Bureau of Investigations	... Respondent

Mr. Ketan K. Tirodkar, Petitioner in person.
Mr. H.S. Venegavkar, APP, for the Respondent - CBI.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 9th FEBRUARY, 2015

PC.

. We have heard the Petitioner appearing in person. He states that he is not pressing the grounds/ contentions raised in paragraph Nos.2, 3, 4, 5, 8 and 10. He states that as far as first two lines in paragraph 11 at page 5 are concerned, the allegation is not a part of his complaint to CBI. As far as the allegations in first two lines on page 6 are concerned, he states that there is already an inquiry which is entrusted to CBI and, therefore, in this Petition he is not seeking any relief. Thus, he states that he is confining his case in this Petition to the allegations made in paragraph Nos.6, 7 and 9 of this Petition. Thus, he has given up the prayers to the extent of the allegations contained in the other paragraphs of the Petition.

2. Today, he has filed an additional compilation which contains a copy of the complaint addressed by him to the Director, CBI, Mumbai. Though the complaint does not bear any date, he states that it is filed about two weeks prior to the filing of this Petition. In view of the statement of the Petitioner appearing in person recorded above, the relief prayed for in terms of the complaint will have to be confined to the averments made in paragraphs 6, 7 and 9 of the Petition. The substantive prayers in this Petition read thus :-

- “A] This Hon'ble Court may be pleased to direct the Central Bureau of Investigations to seek sanction of the Apex Court to register a Preliminary Enquiry into the incidents cited above; and more known to the benches of this Court;
- B] The CBI be directed to constitute an SIT of staff/ officers from the Tanna House ACB branch to conduct the enquiry in fair manner;
- C] The SIT so constituted be directed to file progress reports before an honest bench of this Hon'ble Court [members of which or parents of such members have not had any flat or house from the State];”

3. We have perused the averments made in the Petition. The Petitioner appearing in person has taken us through the relevant part of the decision of the Apex Court in the case of *K. Veeraswami vs. Union of India and Others*¹. He also invited our attention to the majority view as

¹ 1991 SCC (3) 655

well as the view expressed by L.M. Sharma, J. He urged that the observations made by L.M. Sharma, J are not inconsistent with the majority view. He submits that even going by the majority view, consent or permission of the Hon'ble Chief Justice of India is not required for making a preliminary inquiry on his complaint before registration of FIR. He urged that the CBI should be directed to record his statement on the basis of the complaint.

4. The submission of the learned counsel appearing for the CBI is that it is for the Petitioner to approach the appropriate authority and seek sanction. The Petitioner appearing in person submits that the CBI should proceed with the preliminary enquiry and the question of sanction will come at a later stage.

5. We have considered the submissions without going into the issue of maintainability of this Criminal PIL. We have perused the averments made in paragraph 6. The averments made in paragraph 6 are in relation to a judicial order passed by a learned Judge of this Court. Certain submissions have been made by the Petitioner appearing in person about the legality of the said order. Even paragraph 7 of the Petition deals with a judicial order. As far as paragraph 9 is concerned, the Petitioner appearing in person stated that though the learned Judge

has declined to take up the concerned matter, the allegations against the learned Judge need to be gone into. The allegations made in the said paragraphs are very vague.

6. As far as the allegations based on judicial orders are concerned, there is a complete protection to the Judges under the provisions of Judges (Protection) Act, 1985 . On this aspect, it will be necessary to make a reference to the decision of this Court dated 5th December, 2014 in Criminal Writ Petition No.4188 of 2014 (*Mohini Naraindas Kamwani and Anr. vs. Shri P.V. Hardas and Ors.*). Paragraphs 25 and 26, this Court has held thus :-

25. Our attention is invited to the provisions of the Judges (Protection) Act, 1985 and in particular Sections 3 and 4 thereof which read thus:

3. Additional protection to Judges. – (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of subsec. (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.
4. Saving. The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges.

26. The mandate of Section 3 is very clear. No Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function. The Section 4 saves the protection granted under the other enactments like Section 77 of the Indian Penal Code. **The learned Advocate General placed reliance on a decision of the learned Single Judge of this Court in the case of N.V. Shamsunder in which the learned Single Judge has held that a conjoint reading of Sections 3 and 4 of the said Act of 1985 makes it clear that the protection given to a Judge for any act, thing or word committed, done or spoken by him while discharging official or judicial duty/function is absolute.** The learned Single Judge also considered the provisions of the Judicial Officers' (Protection Act), 1850 and in particular Section 1 thereof and observed that the earlier enactment granting protection only to action taken in good faith has been done away with by the said Act of 1985. **We concur with the view taken by the learned Single Judge on the interpretation of Sections 3 and 4 of the said Act of 1985."**

(emphasis added)

7. Hence, there is a complete protection granted to Judges against a prosecution for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. The submission of the Petitioner appearing in person is that his grievance is not confined to the merits of the judicial order. He states that his grievance is wider.

8. It will be necessary to make a reference to the majority view in the case of *K. Veeraswami*. The submission of the Petitioner appearing in person is that the prohibition imposed by the Constitution Bench is in respect of registering First Information Report under Section 154 of the Criminal Procedure Code, 1973 against the Judges of High Court, Chief Justices of High Courts and the Judges of the Supreme Court. He submitted that no First Information Report(FIR) can be registered against the aforesaid Judges without consultation with the Chief Justice of India. He tried to distinguish between a preliminary enquiry which may lead to registration of FIR and the registration of FIR itself. Relying upon the compilation of documents, he submitted that in another case, without approaching the Hon'ble the Chief Justice of India, the CBI has made a preliminary enquiry.

9. It will be necessary to make a reference to what is held by the majority view in the case of *K. Veeraswami*. The majority Judgment was delivered by Shetty, J for himself and on behalf of Venkatachaliah,J. The Hon'ble the Chief Justice concurred with the view taken by Shetty and Venkatachaliah,JJ. Paragraphs 59 and 60 of the majority view read thus:

“59. There is however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain

safeguards. Section 6 providing for prior sanction from the competent authority and directing that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity will have a far reaching impact on the Judge and the litigant public. The need therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. In the instant case the then Chief Justice of India was requested to give his opinion whether the appellant could be proceeded under the Act. It was only after the Chief Justice expressed his views that the appellant could be proceeded under the provisions of the Act, the case was registered against him. Mr Tulsi, learned Additional Solicitor General submitted that he has no objection for this Court for issuing a direction against the Government of India to follow that procedure in every case. But counsel for the appellant has reservations. He maintained that it would be for the State to come forward with a separate enactment for the Judges consistent with the constitutional provisions for safeguarding the independence of the judiciary and not for this Court to improve upon the defective law. In our opinion, there is no need for a separate legislation for the Judges. The Act is not basically defective in its application to judiciary. All that is required is to lay down certain guidelines lest the Act may be misused. This Court being the ultimate guardian of rights of people and independence of the judiciary will not deny itself the opportunity to lay down such guidelines. We must never forget that this Court is not a court of limited jurisdiction of only dispute settling. Almost from the beginning, this court has been a law maker, albeit, in Holmes's expression, 'interstitial' law maker. Indeed, the court's role today is much more. It is expanding beyond dispute settling and interstitial law

making. It is a problem solver in the nebulous areas. In this case, we consider it no mere opportunity: it is a duty. It is our responsibility and duty to apply the existing law in a form more conducive to the independence of the judiciary.

60. The Chief Justice of India is a participatory functionary in the matter of appointment of Judges of the Supreme Court and the High Courts. [Articles 124(2) and 217(1)] Even for transfer of a Judge from one High Court to another the Chief Justice should be consulted by the President of India. [Article 222] If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India. [Article 217(3)] Secondly, the Chief Justice being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence it is necessary that the Chief Justice of India is not kept out of the picture of any criminal case contemplated against a Judge. He would be in a better position to give his opinion in the case and consultation with the Chief Justice of India would be of immense assistance to the government in coming to the right conclusion. **We therefore, direct that no criminal case shall be registered under Section 154, CrPC against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter.** Due regard must be given by the government to the opinion expressed by the Chief Justice. **If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered.** If the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received the government shall consult any other Judge or Judges of the Supreme Court. There shall be similar consultation at the stage of examining the question of granting sanction for prosecution and it shall be necessary and appropriate that the question of sanction be guided by and in accordance with the advice of the Chief Justice of India. **Accordingly the directions shall go to the government. These directions, in our opinion, would allay the apprehension of all concerned that the Act is likely to be misused by the executive for collateral purpose."**

(emphasis supplied)

The directions issued by the Apex Court cannot be narrowly construed as contended by the Petitioner. The emphasis is on protecting the independence of Judiciary. The opinion of the Hon'ble the Chief Justice of India is given primacy for deciding whether a case is a fit one to proceed under Prevention of Corruption Act. A Judge of a High Court can be proceeded against under Criminal Law only if the Hon'ble the Chief Justice of India is of the view that the case is a fit case. The narrow interpretation suggested that a preliminary investigation/inquiry can be made on the basis of a complaint against a Judge without the consent of the Hon'ble the Chief Justice of India will defeat the very object for issuing the aforesaid directions by the Apex Court. In fact even a preliminary investigation such as the one now sought could constitute one form of the harassment that is sought to be prevented. The Apex Court has held that the protection granted by the provisions relating to sanction is not adequate for the Judges. Therefore, we do not agree with the Submission of the Petitioner that a preliminary investigation/inquiry can be made on the basis of a complaint against a Judge without following the aforesaid directions of the Apex Court.

10. Even assuming that in some other case CBI proceeded without following the directions of the Apex Court, a Writ Court cannot

issue a direction to CBI to proceed without the consultation with the Hon'ble the Chief Justice of India in terms of the aforesaid directions. We may note here that in fact, in prayer clause (A), the Petitioner has sought directions to the Central Bureau of Investigation to seek a sanction of the Apex Court "to register a preliminary enquiry". Thus, even the Petition proceeds on the footing that for initiating even a preliminary enquiry, "sanction of the Apex Court" will be necessary. Prayers (B) and (C) are consequential to Prayer Clause (A). However, the submission made before the Court is contrary to the first prayer.

11. The Petitioner relied upon the observations made by Sharma, J. The said observations read thus:

"85. The State is an organisation committed to public good; it is not an end in itself. Its different branches including the legislature, judiciary and the executive are intended to perform different assigned important functions. Judiciary has a duty to dispense justice between person and person as also between person and State itself. To be able to perform its duties effectively, the Judges have to act "without fear or favour, affection or ill will". They must, therefore, be free from pressure from any quarter. Nobody can deny this basic essence of independence of judiciary. But for the judiciary to be really effective, the purity in the administration of justice and the confidence of the people in the courts are equally essential. It is to achieve this end that the higher judiciary has been vested with the power to punish for its own contempt. This has become necessary so that an aggrieved or misdirected person may not cast aspersions on the court which may adversely affect the public confidence. If the community loses its faith in the courts, their very existence will cease to have any meaning. A person with a just cause shall not approach the court for

a legal remedy, if according to his belief the decision of the court would be given on extraneous consideration and not on the merits of his claim. People will return to the law of the jungle for settling their dispute on the streets. These aspects are common for the entire judiciary, whether higher or subordinate, and to my mind no classification is permissible separating one category from another.”

The said observations are made in a separate Judgment which does not disagree with the directions contained in the majority view.

12. There is another issue of the power of the CBI to entertain such a complaint made by the Petitioner directly to CBI. The CBI is bound to consider the law on this aspect. On the basis of vague but sweeping allegations made in the Complaint, for the reasons which we have recorded above and subject to what is observed above, we are unable to grant any relief to the Petitioner. Accordingly, we reject the Petition.

(A.K. MENON, J)

(A.S.OKA, J)