

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Revision Application No.39 of 2013
(Shailesh Kulkarni V/s The Union of India, the Ministry of Railways,
New Delhi and others)

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's orders

[Shri Shriniwas Deshpande, Adv for applicant.
 Shri S.B. Ahirkar, APP for resp.nos.2 and 3.
 Shri Lambat, Adv for resp.no.5.
 Shri V.D. Muley, Adv for resp.nos.8 and 9.]

CORAM : A.B. CHAUDHARI, J.
DATED : 15.06.2015.

Heard the learned Counsel for the
 rival parties.

Shri Shriniwas Deshpande, the
 learned Counsel for the applicant
 invited my attention to the application
 that was filed by the revision applicant
 before the trial Court for production of
 record of investigation conducted by
 the Central Bureau of Investigation
 [CBI] in the application made by CBI
 for closure of the case. He contended
 that the CBI itself found that there
 are fabricated bills which were prepared
 by the accused person and still the CBI
 thought it fit to opt for its closure.
 He contended that supply of documents

was necessary in terms of the Supreme Court judgment in the case of *Gangadhar Janardhan Mhatre Vrs. State of Maharashtra and others*, reported at AIR 2004 SC 4753(1). In it, it is stated that the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report .

Shri S. Deshpande, the learned Counsel submitted that the CBI ought to have provided the statement of all the witnesses from the record of investigation to enable the applicant to file effective reply to the application for closure. Therefore, he argued this Court to grant an opportunity afresh.

The learned Counsel for the CBI has opposed this application and submitted that after completion of investigation the entire matter was referred to the Central Vigilance Commission [CVC] as per procedure. The CBC found that it was not worth so also necessary to file criminal prosecution and instead the CBC is

recommended holding of departmental enquiry for major penalty. The CBI considered the report of the CBC and therefore filed the closure report. It is the contention of the CBI that it found loss of only Rs. 15,000/- to the revenue and therefore it was not worth to pursue the criminal case. Shri S.B. Ahirkar, the learned Counsel for the CBI then pointed out that the applicant in fact had taken the inspection on various dates and therefore the supply of statements or record of inspection again was not necessary. He, therefore, prayed for dismissal of this application.

I have gone through the impugned order so also the record. It is clear that admittedly the applicant was given an opportunity of inspecting the record and the papers on 08-02-2011, 09-02-2011 and 10-02-2011 in the office of the CBI. Thereafter, he did not make any application to the trial Court about his dissatisfaction, if any, nor made any grievance about the inspection. This was sufficient opportunity for him. The judgment of the Supreme Court is not

applicable, since in that case the opportunity was not given which is not the case in the case in hand. Then the CBC found that it was not worth to prosecute the criminal case in view of the loss of Rs. 15,000/- to the revenue which was too worth. I am satisfied with the recommendation made by the CBC for holding departmental enquiry for major penalty which is the correct view of the matter other than prosecuting criminal case in the above facts and situation.

In view of above, I do not find any perversity in the view taken by the CBI to file closure report. At any rate, the impugned order does not suffer from any infirmity or error. In the result, I find no merit in the application, hence, the following order is passed :-

Order

Criminal Revision Application No.
39 of 2013 is dismissed.

JUDGE