

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2015

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM

Crl. R.C.No.838 of 2014

Pratap Singh Nagar

...Petitioner

vs.

State: Rep.by
Additional Superintendent of Police
CBI/EOW, Chennai

...Respondent

Revision under Sections 397 and 401 of Criminal Procedure Code to call for the records pertaining to passing of the order dated 15.7.2014 in CMP No.229/2014 in CC.2/2013 II Additional District Judge/Special Judge (CBI Cases), Coimbatore and set aside the same and thereby direct return of the documents listed out in the Schedule to the petitioner herein.

For petitioner : Mr.S.R.Rajagopal

For respondent : Mr.K.Srinivasan,
Special Public Prosecutor

O R D E R

This Criminal Revision Case has been directed against the order dated 15.7.2014 passed in C.M.P.No.229 of 2014 by the II Additional District Judge/Special Judge (CBI Cases), Coimbatore.

2. The revision petitioner, as petitioner, has filed the petition in question in C.M.P.No.229 of 2014 under section 451 of the Code of Criminal Procedure, 1973 praying to return the documents, which have been seized from his residence as well as business premises.

3. It is averred in the petition that the petitioner is a third party and he has no connection whatsoever with the offences mentioned

in C.C.No.2 of 2013. Further, it is stated in the petition that the respondent at the time of investigation has seized the documents mentioned in the petition from the residence of the petitioner as well as his business premises and those documents are not having either direct or indirect connection with the alleged offences and under the said circumstances, the said petition has been filed for getting the relief sought for therein.

4. The court below after considering the divergent contentions raised on either side has dismissed the petition. Against the dismissal order, the present Criminal Revision Case has been preferred.

5. The learned counsel appearing for the revision petitioner has contended with great vehemence that in Crl.O.P.Nos.2691 and 5356 of 2011, this Court has permitted CBI to conduct investigation and the same has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court by way of following earlier decision reported in State of Punjab vs. Davinder Singh Bhullar [(2011) 14 SCC 770] has clinchingly held that without hearing the concerned accused, transfer of investigation cannot be ordered and ultimately set aside the order passed in Crl.O.P.Nos.2691 and 5356 of 2011 and remitted the matter to the file of this Court and under the said circumstances, CBI has no locus standi to conduct investigation or to raise any objection with regard to return of documents on the basis of the petition filed by the petitioner and therefore the order passed by the court below is liable to be set aside.

6. The learned Special Public Prosecutor appearing for the respondent has also fairly conceded about the order passed by the Hon'ble Supreme Court.

7. In fact, on the side of the revision petitioner, the order passed by the Hon'ble Supreme Court in Civil Appeal No.3062 of 2015 has been submitted for perusal of the Court, wherein it has been stated to the effect that without hearing the concerned accused, transfer of investigation cannot be done and further the order passed in Crl.O.P.Nos.2691 and 5356 of 2011 by this Court is set aside and the matter has been remanded to the file of this Court. Therefore, it is quite clear that now the CBI is not having power of investigation.

8. It is an admitted fact that the documents mentioned in the petition have been seized by CBI during investigation, from the residence of the petitioner as well as his business premises. Since

as per the order passed by the Hon'ble Supreme Court, as on today, the CBI is not having power to conduct further investigation or to raise any objection with regard to return of the documents mentioned in the petition, this Court is of the view to pass the following order:

In fine, this Criminal Revision Case is allowed and the order passed in C.M.P.No.229 of 2014 in C.C.No,2 of 2013 by the court below is set aside and the petition filed in C.M.P.No.229 of 2014 is allowed.

The Court below is directed to return all the documents mentioned in C.M.P.No.229 of 2014, to the petitioner. The petitioner is directed to file an affidavit in the Court below to the effect that he shall keep all the records intact and return the same to the CBI, if the same is appointed subsequently as investigating agency.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ajr

To

1. II Additional District Judge/
Special Judge (CBI Cases),
Coimbatore
2. Additional Superintendent of Police,
CBI/EOW, Chennai
3. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.S.R.Rajagopal, Advocate SR.No. 42471

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MG (CO)

PSI (01.09.2015)