

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-41341 of 2014
Date of decision : 09.04.2015**

Smt. Ravinder Kaur

.....Petitioner(s)

Versus

Central Bureau

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Davinder Bir Singh, Advocate
for the petitioner.

Mr. Sumeet Goel, Standing Counsel
for the respondent-C.B.I.

ANITA CHAUDHRY, J.

1. The petitioner has preferred this petition under Section 482 Cr.P.C. for quashing FIR No.RC3(A)/2005 dated 12.04.2005, registered under Sections 13(2) read with Section 13(1)(e) of Prevention of Corruption Act and Section 109 IPC. The prayer made herein is to quash the FIR and the final report presented by the prosecutors.

2. Baldev Singh Sandhu, posted as Commissioner of Income Tax (Computer Operation) along with his wife(petitioner), brother, father and mother have been named in the final report prepared under Section 173 Cr.P.C. The officer is accused of alleged acquisition of disproportionate assets. The basic stand taken by the

petitioner is that the family members and the extended family have been arrayed as an accused when only one of them was a public servant. The other plea taken by the petitioner is that the FIR was registered in 2005 and CBI took seven years to complete the investigation.

3. The petitioner had submitted that in the initial report prepared in July, 2009, the prosecutor had calculated the disproportionate assets of the extended family to the tune of 244%, while the individual disproportionate assets/expenditure relating to the husband of the petitioner, the petitioner and the son was computed to be 202%. In the revised report, the disproportionate assets of the extended family was reduced to 160% while that of the petitioner and her family was reduced by 25%. The petitioner has further pleaded that the report was sent to the disciplinary authority for sanction and the Member (Personnel and Vigilance) of the Central Board of Direct Taxes did not agree with the report for grant of sanction and referred the matter back to the CVC for reconsideration. It was pleaded that there was a difference of opinion between the CVC and the disciplinary authority and there was no documentary evidence to establish that assets had been acquired by the wife were Benami and adding the name of the petitioner was unjustified and without basis.

4. Upon notice, short reply had been filed by CBI. Plea has been raised that the role of the petitioner had appeared during the course of investigation and on completion of investigation, charge-sheet has been filed against accused persons including the

petitioner. It was pleaded that cognizance has been taken by the Court which the petitioner has not challenged and had filed the petition, though the FIR was registered in 2005. It was pleaded that the case was fixed for framing of charge and no application for discharge has been filed. It was pleaded that the petitioner was raising disputed question of fact which was beyond the purview of Section 482 Cr.P.C. It was pleaded that sanction for prosecution was obtained from the competent authority before filing the charge-sheet under the Prevention of Corruption Act.

5. The learned counsel for the petitioner submits that the statement 'B' which is part of the challan is available at page no.17 of the record. It was urged that if we add up the claims and also add the share value, it would be seen that there are no disproportionate assets. It was urged that the CBI had not considered the documents and an application was filed by them and CBI have admitted them. It was urged that the year of acquisition of the property is important and the value existing during the check period should not have been considered. It was urged that the income-tax returns had been filed where they have explained the property and the jewellery. The counsel for the petitioner extensively referred to the report given by the Member (Personnel and Vigilance) CBDT. It was urged that the Hon'ble Apex Court in ***Dimple Yadav Vs. Vishwanath Chaturvedi and others (2013) 2 SCC 1***, was hearing a Review Petition but had held that the investigation launched against the wife was liable to be dropped as there was no ground to treat her as a public servant for the purposes of inquiry by the CBI. Reference was specifically made

to paragraph no.12 of the judgment.

6. The submission of the learned counsel for the CBI was that the view taken by the Member (Personnel and Vigilance) CBDT was not approved by the CVC and sanction was accorded and the report given by the Member (CBDT) is not part of the challan and all the questions being raised here can only be gone into by the Court before whom the challan has been filed. It was urged that whatever explanation the petitioner has to make, relate to the defence evidence and cannot be considered now. It was urged that there was a delay in submitting the challan as the sanction had taken time but after the challan had been filed, it is the accused who are seeking adjournments. It was contended that the powers under Section 482 Cr.P.C. can not be invoked nor it is permissible to look into the material, as that is the function of the trial Court. It was contended that the proceedings cannot be quashed on the ground that there was a declaration in the income-tax returns. It was contended that the FIR had been registered in 2005 and the check period was April, 1999 to March, 2005 and whether the subsequent income-tax return will have to be considered it is for the trial Court to see and not in these proceedings. My attention was drawn to the copy of the report prepared under Section 173 Cr.P.C. and it was urged that towards the end there is a reference to the sanction and they were placing the sanction order dated 05.10.2012 on record. Reliance was placed upon ***State of Madhya Pradesh Vs. Awadh Kishore Gupta and Ors. 2004(1) RCR (Crl.) 233, State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. 1991(1) RCR (Crl.) 383, State of Karnataka Vs. M.***

Devendrappa 2002(1) RCR (Crl.) 480, State of Andhra Pradesh Vs. Goloconda Linga Swamy and another 2004(3) RCR (Crl.) 831 and State of Orissa and another Vs. Saroj Kumar Sahoo 2006(1) RCR (Crl.) 324.

7. The issue to be examined here is whether powers under Section 482 Cr.P.C. should be exercised in this case. It is settled that the inherent power which the Court possess under Section 482 Cr.P.C. can be exercised as an exception and not the rule. It envisages three circumstances under which the inherent jurisdiction can be exercised, which are:-

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of process of court
- (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.

8. **In R.P. Kapur. vs. State of Punjab (AIR 1960 SC 866),** the Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;
- (ii) Where the allegation in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

9. When exercising jurisdiction under Section 482 of the Code, the High Court does not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relate to cognizable offences to prevent the abuse of process of any Court or otherwise to secure the ends of justice and were set out in detail in [State of Haryana and others vs. Ch. Bhajan Lal and others \(AIR 1992 SC 604\)](#). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated are as follows: -

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. In **State of Madhya Pradesh Vs. Avadh Kishore Gupta 2004(1) RCR (Criminal) 233** the Hon'ble Apex Court while dealing with a petition by the State of Madhya Pradesh under Section 482 Cr.P.C. questioning the judgment of the Madhya Pradesh High Court held that it was not permissible for the Court to act as if it was a trial judge and the Court was not required to appreciate evidence to conclude whether the materials produced were sufficient for convicting the accused. Reference there was made to **Smt. Chand Dhawan Vs. Jawahar Lal & Ors. 1992(3) RCR (Criminal) 534 (SC)** wherein it was observed that Court should not act on Annexures to the petitions under Section 482 of the Code which cannot be termed as evidence without being tested and proved.

11. The powers possessed by the High Court under Section 482 of the Code are very wide but it requires caution in its exercise and the Court has to be careful that its decision is based on sound

principles. The inherent power can not be exercised to stifle a legitimate prosecution. The proceedings cannot be quashed on the ground that the assets were declared in the income-tax returns. The Court cannot quash the proceedings when the matter has been investigated and charge-sheet has been submitted. The documents have to be examined and tested before the trial Court.

12. The case in hand when tested on the principles laid down by the Courts, I find that it is not a fit case where the investigation and the proceedings should be quashed. There is a distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which on appreciation may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court will not embark upon an inquiry whether the evidence is reliable or not. That is the function of the trial Judge. The provisions are not an instrument to short-circuit a prosecution and bring about its sudden death. In *Ch. Bhajan Lal's* case (supra) a note of caution was added that the powers should be exercised sparingly and in rare and rarest cases. The present case does not fall under any of those categories. It would be inappropriate to assess the material in these proceedings. It is not a case where the complaint does not disclose any offence. There are no allegations of mala fides. The Court does not function as a Court of appeal or revision nor it is a case where the continuation of the proceedings would be an abuse of process of Court. No ground for quashing is made out.

The petition is dismissed. However, this order shall not be construed as if any opinion has been expressed on the merits of the case.

09.04.2015
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(ANITA CHAUDHRY)
JUDGE