

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

1- CRM-M-6758-2015 (O&M)
Date of decision: September 16, 2015.

Central Bureau of Investigation ...Petitioner

Versus

Harsimranjit Singh & others ...Respondents

2- CRM-M-44147-2014 (O&M)

Inspector S.P.S. Sondhi ...Petitioner

Versus

Harsimranjit Singh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sumeet Goel, Advocate for the petitioner.

Mr. H.S. Bhullar, Advocate for respondent No.1.

Mr. Kunal Dawar, Advocate for respondent No.2
in CRM-M-6758 and for petitioner in CRM-M-44147.

Rajan Gupta, J. (oral)

This order will dispose of above mentioned two Criminal Misc. Petitions, one preferred by Central Bureau of Investigation and another by Inspector S.P.S. Sondhi, impugning order dated 15.12.2014, passed by Special Judge, CBI Court, Chandigarh, operative part whereof reads as under:-

“Perusal of record shows that the complaint has been forwarded by the SP, CBI to Inspector General of Police through letter dated 10.03.2014. In view of the contents of criminal complaint dated 15.12.2014 and accompanying documents it is apparent on record that there are ingredients of offences punishable under sections 120-B IPC, 13 (1) (d) of Prevention of Corruption Act and Section 384 read with 120-B IPC. Therefore, CBI is

directed to register a case and conduct further investigation in accordance with law.”

Learned counsel appearing for petitioners assert that the order passed by the Special Court is unsustainable in law in view of judgment of the Supreme Court reported as ***Central Bureau of Investigation through S.P. Vs. State of Rajasthan, 2001 (1) R.C.R. (Criminal) 574.***

Mr. Goel, learned counsel for C.B.I also contends that while registering a case under Prevention of Corruption Act, number of issues are involved including question of sanction. In certain cases, registration of FIR is preceded by a preliminary enquiry and on the basis of same, decision to register FIR is taken. Besides, it is beyond the power of Special Court to issue direction to register FIR by invoking Section 156 (3) Cr.P.C., it being a magisterial power.

Mr. Bhullar, learned counsel appearing for respondent No.1/ complainant contends that the order has been passed by the Special Court in accordance with law. According to him, no fault can be found with the said order. He relies upon judgment reported as ***Dr. A.S. Narayana Rao Vs. CBI, 2012 (189) DLT 747.***

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears that respondent Harsimranjit Singh filed a complaint (Annexure P-2) before the Special Judge, CBI Court, Chandigarh. He alleged that he was arrested by Inspector S.P.S. Sondhi, Economic Offences Wing, Chandigarh pursuant to FIR No.60 dated 19.03.2013, registered under sections 419, 420, 467, 468, 471 IPC and Section 24 of the Emigration Act at Police Station Sector 3, Chandigarh.

He was taken to the Economic Offices Wing and interrogated. Complainant gave details of his bank accounts to the police. He was made to sign eight cheques by said official. He was also taken to HDFC Bank, Sector 40, Chandigarh to verify the account and the amount available therein. He was also made to sign certain papers for breaking open his locker and transfer of money from one account to another. Later, in February, 2014, complainant came to know that four cheques issued by him in the name of two persons namely, Jaswinder Singh and Mandeep Singh had been encashed. He suspected that said persons had shared some amount with Inspector S.P.S. Sondhi. Resultantly, he made a complaint to S.P. Central Bureau of Investigation, Chandigarh. The complaint was processed by the C.B.I and forwarded to Inspector General, U.T. Chandigarh for appropriate action. Petitioner, thus, invoked the jurisdiction of Special Court for registration of case against the accused (respondents No.2 & 3 herein). Special Court passed order as reproduced in the foregoing para, directing CBI to register a case and conduct further investigation in accordance with law.

Aggrieved, Central Bureau of Investigation as well as accused S.P.S. Sondhi have preferred present petitions before this court. Same question arose before the apex court in the case *CBI Vs. State of Rajasthan (supra)*, whether a Magistrate has power to direct Central Bureau of Investigation to conduct investigation into an offence. This question arose in view of certain appeals preferred by Central Bureau of Investigation challenging judgments of High Courts of Rajasthan and Delhi, wherein similar orders passed by certain Magistrates were upheld. Hon'ble Supreme Court came to the conclusion that magisterial power could not be

extended so as to issue a direction to Central Bureau of Investigation to investigate a matter. However, this power can be exercised by the High Court under Article 226 of the Constitution or Supreme Court under Article 32 or Article 142(1) of the Constitution. Relevant paras read as under:-

“12. Section 5 of the Delhi Act enables the Central Government to extend the powers and jurisdiction of members of the Delhi Police Establishment to any area in a State. Section 6 of the Delhi Act says that “nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State”. A contention was made before us that when the State gives consent for the CBI to investigate any offence within the area of the State it would be permissible for the magistrate to direct the officer of the CBI to conduct such investigation. What is envisaged in Sections 5 and 6 of the Delhi Act is not one of conferring power on a magistrate to order the CBI to conduct investigate in exercise of Section 156 (3) of the Code.

13. True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142 (1) of the Constitution can be invoked, though sparingly, for giving such direction to the CBI to investigate in certain cases, vide *Kashmeri Devi v. Delhi Administration and Anr.*, 1988 (Supple.) SCC 482 and *Maniyeri Madhavan v. Sub-Inspector of Police and Ors.*, 1993 (3) RCR (Crl.) 624 (SC) : 1994 (1) SCC 536. A two-Judge Bench of this Court has by an order dated 10.3.1989, referred the question whether the High Court can order the CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.

15. As the present discussion is restricted to the question whether a

magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156 (3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation.”

In the judgment reported as **State of West Bengal & others Vs. The Committee for Protection of Democratic Rights West Bengal & others, 2010 (2) RCR (Criminal) 141**, Hon'ble Supreme Court dealt with the power of the constitutional courts for considering the question which arose before the Hon'ble Supreme Court was whether High Court in exercise of jurisdiction under Article 226 of the Constitution could direct Central Bureau of Investigation to investigate a cognizable offence which was alleged to have taken place within the territorial jurisdiction of the State without consent of the State Government. It was answered as follows:-

“(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to

the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. Before parting with the case, we deem it necessary to emphasize that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guideline can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.

The extra ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

It is, thus, evident that only the High Court or Hon'ble Supreme Court can entrust the investigation to CBI in exercise of powers conferred by Articles 226 & 32 respectively. This impliedly takes away the power of the Magistrate and the Special Courts to direct investigation by the CBI in a given case. Even inherent power has to be exercised by the courts sparingly and cautiously. According to ratio of aforesaid judgment, certain

self imposed limitations have to be kept in mind. Besides, it cannot be lost sight of that a case may have inter State ramifications. In which eventuality there would be no local police station in picture. Stand of the CBI is that such investigations are closely monitored at the head office level, it being a centralised agency. It is for this reason that in the aforesaid judgment, Hon'ble Supreme Court came to the conclusion that consent of the State Government was not required for investigating cases entrusted to CBI by order of the court and this would not impinge upon the federal structure envisaged by the Constitution.

It further needs to be noticed that CBI Manual provides that agency is entitled to conduct a preliminary enquiry into certain cases and thereafter take a decision where FIR is required to be registered or not. Procedure envisaged by the CBI Manual has been approved in judgment reported as **Vineet Narain Vs. Union of India, 1998 (1) RCR (Criminal) 357** . Para 63 sub para 12 reads as under:-

“The CBI Manual based on statutory provisions of the Criminal Procedure Code provides essential guidelines for the CBIs functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.”

In view of clear enunciation of law by Hon'ble Supreme Court, judgment of the single bench of Delhi High Court in **A.S.Narayana Rao's** case (supra) can be of no help to the petitioner. CBI Manual lays down elaborate procedure for conducting the investigation. In considered view of this court, Special Court is created only to conduct trial of cases which

have already been investigated by CBI in cases of corruption as well as in special crime. It is specialised agency created for investigating crimes which may be repercussions in several States. Central Bureau of Investigation is required to conduct investigation pertaining to serious cases of bribery and corruption and intricate matters of special crime, besides cases having inter-State or international ramifications. There can, thus, be no doubt that entrustment of such crimes to Central Bureau of Investigation can be only by the High Courts and Hon'ble Supreme Court in their inherent jurisdiction.

In view of above, impugned order by the Special Judge, CBI Court is unsustainable and is hereby set-aside. Petitions are allowed in the above terms.

(RAJAN GUPTA)
JUDGE

September 16, 2015
BB/Rajpal

Whether to be referred to reporter? Yes / No