

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 17th March, 2015
Judgment Pronounced on: 17th April, 2015

CRL.REV.P. 88/2008

R.P.S. PANWAR

..... Petitioner

Through: MR. R.P. Kapur, Adv.

versus

C.B.I.

..... Respondent

Through: Mr. Narender Mann, Spl. PP with
Mr. Manoj Pant and Ms. Utkarsha
Kohli, Advs.

WITH

CRL.REV.P. 89/2008

LAXMI DEVI PANWAR

..... Petitioner

Through: MR. R.P. Kapur, Adv.

versus

C.B.I.

..... Respondent

Through: Mr. Narender Mann, Spl. PP with
Mr. Manoj Pant and Ms. Utkarsha
Kohli, Advs.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. By this common judgment, both the revision petitions bearing
Crl. Rev. P. 88/08 & 89/08

Nos.88/2008 and 89/2008 have been disposed of as the order under challenge is common order and both the petitioners were sent for trial in one charge-sheet.

2. Aggrieved by the order dated 10.01.2008, passed by learned Special Judge (CBI) whereby the applications filed by the petitioners were dismissed, the present revision petition has been filed by the petitioners. The petitioner R.P.S. Panwar had filed the application seeking discharge for want of sanction, whereas the petitioner Laxmi Devi Panwar had filed the application for discharge as no previous sanction was obtained and cognizance was barred under Section 19 of the Prevention of Corruption Act as well as under Section 197 of the Code of Criminal Procedure.
3. Factual matrix, as emerges from the record, is that the CBI filed a charge-sheet against the petitioners and other accused persons for the commission of offence under Section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act and Section 109 IPC. It was alleged that the petitioner R.P.S. Panwar was a retired General Manager from BSNL, petitioner Laxmi Devi Panwar was his wife, accused Mukesh Kumar Panwar & Dinesh Kumar Panwar were his sons and fifth accused Gyan Prakash Agarwal @ G.P. Agarwal was the Chartered Accountant. It was alleged that during the check period w.e.f. 01.04.1999 to 16.09.2003, the petitioner R.P.S. Panwar acquired movable/immovable properties in his name and in the name of his family members which were disproportionate to his known sources of income. An FIR of the

case was registered. On completion of investigation, charge-sheet was filed.

4. During the pendency of trial, the petitioner R.P.S. Panwar had moved the application for declaring the investigation of the case as illegal and for dropping of the prosecution and his discharge as per Section 6(A) of the Delhi Special Police Establishment Act (hereinafter shall be referred to as DSPE Act), whereas the petitioner Laxmi Devi Panwar had moved the application for quashing of proceedings for the want of sanction under Section 197 of Cr.P.C. as well as under Section 19 of the Prevention of Corruption Act. Learned Special Judge dismissed both the applications of the petitioners vide common order dated 10.01.2008.
5. Feeling aggrieved by the same, the petitioners preferred the present revision petition to set aside the order passed by the learned Special Judge (CBI).
6. It was argued by the learned counsel for the petitioner R.P.S. Panwar that the petitioner was duly covered by Section 6-A of the DSPE Act which was in force mandated that no inquiry or investigation could be conducted except with the previous approval of the Central Government. The CBI had not obtained any approval in the case of the petitioner who was posted equivalent to the post of Joint Secretary.
7. In support of the contentions, learned counsel for the petitioner has

referred to a judgment in case of *T.S. Ramaswamy vs. State of Tamil Nadu 1994 Cri.L.J. 545*. Facts of the said case were that the accused had attained superannuation on 31.03.1985 and charge sheet was filed on 30.04.1985, but he was suspended from service on 08.12.1984 on the basis of criminal offence alleged against him. The Madras High Court held that in view of case law and also rule 5 of the Railway Discipline Rules, accused continued to be in service as the order of suspension was not modified or revoked. It was further held that in the circumstances, sanction under Section 6(1) of the Prevention of Corruption Act was mandatory and in the absence of valid sanction, the entire prosecution was held to be vitiated.

8. There is no dispute to the fact that on the relevant date, the petitioner R.P.S. Panwar was posted as General Manager and was of the level of a Joint Secretary. The FIR of the present case was registered on 12.09.2003. The contention of the petitioner is that he was having protection of Section 6-A of the DSPE Act as no inquiry or investigation can be conducted by CBI for the offence alleged to have been conducted under the Prevention of Corruption Act against an employee of the level of Joint Secretary and above except with the previous approval of the Central Government.
9. Section 6-A of the DSPE Act reads as under :

“6-A. Approval of Central Government to conduct inquiry or investigation.—(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged

to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to –

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988 (49 of 1988).”

10. On the other hand, the counsel for the respondent submitted that the constitutional validity of Section 6-A of the DSPE Act was under challenged in Hon’ble Supreme Court and which has been finally decided in judgment ***Subramanian Swamy vs. Director, Central Bureau of Investigation and Another (2014) 8 SCC 682***. The Hon’ble Apex Court held Section 6-A(1) of the DSPE Act invalid and violative of Article 14 of the Constitution. Para 99 of the judgment reads as under :

“In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to: (a) the employees of the Central Government of the level of Joint Secretary

and above, and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of Act 45 of 2003 to that extent is also declared invalid.”

11. In view of the law of the land as propounded by Hon’ble Apex Court in case of ***Subramanian Swamy*** (supra), the provision under Section 6-A(1) of the DSPE Act has been strike down declaring invalid and *ultra vires* to the provision of the Constitution of India under Article 14.

Keeping in view the judgment of Hon’ble Apex Court, the contention made by the counsel for the petitioner does not sustain and the revision petition is dismissed accordingly.

12. In revision petition No.89/2008, the contention of the petitioner Laxmi Devi Panwar is that she was a public servant at the relevant time; she was posted as Vice Principal in a government school; she is being prosecuted under Section 109 of IPC; no sanction either under section 19 of the P.C. Act nor under section 197 of Cr.P.C. has been obtained.

13. In ***State Through Central Bureau of Investigation vs. Parmeshwaran Subramani and Another (2009) 9 SCC 729***

Hon’ble Apex Court has observed that previous sanction of the Government is not provided for the offence punishable under

Section 12 of the Act. Section 12 of the Act provides for punishment for abetment of offences defined in Section 7 or 11.

Relevant para from the judgment reads as under :

“Keeping in view the aforesaid legal principles the inevitable conclusion is that the High Court fell into error in reading into Section 19 of the Act, the prohibition not to take cognizance of an offence punishable even under Section 12 of the Act without previous sanction of the Government which is not otherwise provided for. The language employed in Section 19 of the Act is couched in mandatory form directing the courts not to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 only, alleged to have been committed by a public servant, except with the previous sanction of the Government.”

14. The contention of the petitioner is without any legal force inasmuch as the petitioner has not been charge-sheeted for the offences committed under the Prevention of Corruption Act. The petitioner has not been charge-sheeted for commission of abetment as provided in Section 12 of the Prevention of Corruption Act. When the petitioner has not been charge-sheeted as such, there was no need to obtain sanction as provided under Section 19 of the Prevention of Corruption Act.
15. The petitioner has been charge-sheeted for commission of abetment under Section 109 of IPC. Section 197 of Cr.P.C. provides that no Court shall take cognizance against a public servant of offence which is alleged to have been committed while acting or purporting

to act in the discharge of his official duty except with the sanction of the Government. The offence alleged against the petitioner is that she abetted her husband in accumulating assets disproportionate to his known sources of income. Sanction of the Government is necessary only when the offence alleged to have been committed by a public servant during discharge of his official duty. The offences complained against the petitioner Laxmi Devi Panwar are in no way related to official discharge of any duty. So, she is not entitled to any protection of Section 197 Cr.P.C. as well.

16. However, the case is at the charge stage and the petitioners are at the liberty to raise their contention before the trial court at the time of arguments on charge and the order passed in the present case shall not cause prejudice to the contention to be made before the learned trial Court.
17. In view of the foregoing discussion, both the revision petitions are disposed of accordingly.

P.S.TEJI, J.

April 17, 2015
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