

I- R-3 & 4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: August 20, 2015

(i) + **W.P.(CRL) 226/2010**

BIPIN CHANDER PAUL KAKKAR Petitioner

Through: Mr. P.P. Malhotra, Senior
Advocate, with Vineet Malhotra,
Mr. Neeraj Chaudhari &
Mr. Akshay Chandra, Advocates

versus

CBI Respondent

Through: Mr. Narender Mann, Special
Public Prosecutor, with Mr. Manoj
Pant and Ms. Utkarsha Kohli,
Advocates for respondent-CBI

(ii) + **CRL.M.C. 3947/2012 & Crl.M.A. No. 18933/2012**

SANJAY MALIK Petitioner

Through: Mr. K.K. Patra, Advocate

versus

CBI Respondent

Through: Ms. Sonia Mathur, Standing
Counsel for CBI with Mr. Sushil
Kumar Dubey, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
(ORAL)

In the above captioned two petitions, quashing of impugned order of 14th July, 2008 and RC No.S18/ 2001/E001/CBI for the offences under

Section 120-B read with Sections 420/468/471 of IPC and proceedings emanating there-from is sought on merits as well as on the basis of '*No Objection Certificate*' of 21st July, 2005.

Since quashing of impugned order and FIR is sought on identical grounds, therefore, the above captioned two petitions were heard together and are being disposed of by this common order.

At the hearing, Mr. P.P. Malhotra, learned senior counsel for petitioners submits that quashing of impugned order and FIR is not only sought on merits but also on the basis of *No Objection Certificate* of 21st July, 2005 issued by *State Bank of Bikaner and Jaipur*. Learned senior counsel for petitioners further submits that on a bare reading of FIR in question, no offence is made out against petitioners and it is a fit case for exercising jurisdiction under Section 482 of Cr.P.C by this Court.

Learned counsel appearing for respondent-CBI in the above captioned two petitions inform that the case is now before the trial court at the final stage.

After hearing both the sides and on perusal of the afore-noted '*No Objection Certificate*' of 21st July, 2005 and material on record, this Court finds that the extra ordinary inherent jurisdiction under Section 482 of Cr.P.C. is to be exercised with circumspection and sparingly. On this aspect, the pertinent observations of the Apex Court in *State of Orissa v. Ujjal Kumar Burdhan* (2012) 4 SCC 547 are as under: -

"It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised

sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere."

The pertinent observations of Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors.* (2011) 12 SCC 437 on the feasibility of efficacious remedy being available are as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Applying the afore-noted dictum of the Apex Court to the facts of instant case, this Court is of the considered opinion that petitioners have an alternate and efficacious remedy to urge the pleas taken herein before the trial court at this advanced stage i.e. final stage and so, this Court refrains from exercising its extra ordinary inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings arising out of RC No.S18/ 2001/E001/CBI *dehors* the evidence recorded.

So far as the quashing of RC No.S18/ 2001/E001/CBI on the basis

of purported *No Objection Certificate* of 21st July, 2005 is concerned, I find that the Communication of 21st July, 2005 from the concerned bank to the co-accused clearly states that the outstanding dues have been paid and accepted by the concerned bank without prejudice to the case pending with CBI. Thus, it becomes clear that in view of Apex Court's dictum in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466, the so-called '*No Objection Certificate*' cannot be relied upon for quashing the criminal proceedings, which are at the fag-end.

Consequently, the above captioned two petitions and application are disposed of without considering the merits of the case while leaving it open for the trial court to consider it at the final stage.

(SUNIL GAUR)
JUDGE

August 20, 2015

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