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

Date of Decision: May 28, 2015

+ **CRL.M.C.1030/2013**

SEEMA CHISTI

..... Petitioner

Through: Mr. Saurabh Mishra & Mr. Ankit
Kumar, Advocates

versus

MAJOR GENERAL V.K.SINGH (RETD.) & ANR .. Respondents

Through: Respondent No.1-in-person
Mr. B.R.Handa, Special Public
Prosecutor for CBI

+ **CRL.M.C.1146/2012**

SHISHIR GUPTA

..... Petitioner

Through: Mr. Saurabh Mishra & Mr. Ankit
Kumar, Advocates

versus

MAJOR GENERAL V.K.SINGH (RETD.) & ANR .. Respondents

Through: Respondent No.1-in-person
Mr. B.R.Handa, Special Public
Prosecutor for CBI

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above-captioned two petitions, quashing of complaint CC

No.322/1/2009 titled *Major General V.K.Singh (Retd.) v. CBI* as well as common summoning order of 6th February, 2012 is sought on identical grounds while questioning the authority of respondent-complainant to file the aforesaid complaint and both the petitions are heard together and are being disposed of by this common judgment.

Petitioners are the Editor & Dy. Executive Editor of Indian Express, Delhi Edition.

At the hearing, learned counsel for petitioner has drawn the attention of this Court to Sub-Section 3 of Section 13 of *Official Secrets Act, 1923* which reads as under:-

*“No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the²⁸ [Appropriate Government]²⁹ [***] or some officer empowered by the²⁷ [Appropriate Government] in this behalf”*

Learned counsel for petition submits that respondent-complainant is a retired Major General from Army who claims to be prolific writer. Respondent-complainant is sought to have addressed a letter of 26th December, 2008 to Director, CBI with copy of Article titled “*What Went Wrong: The Inside Story*” by *Shishir Gupta* in Indian Express and according to respondent-complainant, the said Article infringes the provisions of the *Official Secrets Act, 1923*. Impugned summoning order noticed the facts as noted in the complaint, in question, and without briefly advertng to the nature of contents of the said article has opined that there is enough material for prosecution against petitioner for offence under Section 3 & 5 of the *Official Secrets Act, 1923*.

Learned counsel for petitioner relies upon Apex Court decision in *K.Chandrasekhar v. State of Kerala & Ors.* (1998) 5 SCC 223 and decision of this Court in *Rakesh Kumar Jain v. State Thru CBI* 75(1998) DLT 141 to submit that in the afore-cited decisions, it has been reiterated that the complaint under the *Official Secrets Act, 1923* can be filed under the orders of the Central Government and by none else. Thus, quashing of complaint in question as well as impugned summoning order is sought.

Respondent No.1 appears in person and seeks to argue these petitions himself. Respondent No.1 supports the impugned order and submits that there is no illegality in the impugned order and the complaint ought to be tried in accordance with law because the contents of the impugned article certainly infringes provisions of the *Official Secrets Act, 1923*. It was pointed out by first respondent that he had written a letter to CBI and the authorities concerned for granting sanction for the prosecution of petitioners but it is evident from the Communication of 7th November, 2008 from Ministry of Home Affairs that authorization under Section 13 of the *Official Secrets Act* shall be issued at the request/proposal of the prosecuting agency and no authorized agency had approached Ministry of Home Affairs for permission/sanction under the *Official Secrets Act, 1923*. So, it is submitted that proceedings arising out of complaint in question ought to continue.

Upon hearing both the sides and on perusal of the complaint in question, impugned summoning order and the decisions cited, I find that on bare perusal of Sub-Section 3 of Section 13 of *Official Secrets Act, 1923*, it becomes crystal clear that complaint under this Act can be instituted by an order or under the authority from appropriate

Government. Apex Court in *K.Chandrasekhar* (supra) has declared in no uncertain terms that it cannot be disputed that the complaint under the *Official Secrets Act, 1923* can be instituted by or at the instance of Central Government and any State Government. On this aspect, the pertinent observations of the Apex Court in *Rakesh Kumar Jain* (supra) are as under:-

“We conceive no doubt that sub-section (3) of Section 13 envisages only the filing of the complaint, by order of or under authority from the appropriate Government or by an officer empowered by such Government.”

Applying the afore-noted dictum of the Apex Court to the facts of the instant case, this Court has no hesitation in holding that the complaint filed by respondent No.1 is not maintainable. During the course of hearing, respondent No.1 wanted to know as to what is the remedy available with respondent No.1 to seek redressal of his grievance. It is but obvious that respondent No.1 has to approach the Central Government for initiating the proceedings under the *Official Secrets Act, 1923* and if no action is taken, then respondent No.1 can always invoke the writ jurisdiction of this Court under Article 226 of Constitution of India. This is of course without prejudice to the rights of petitioners to maintain that no case under the *Official Secrets Act, 1923* is made out against them.

Be that as it may.

Since the complaint in question under the *Official Secrets Act, 1923* has been instituted by first respondent in private capacity therefore,

it is quashed. Consequentially, the summoning order of 6th February, 2012 is also quashed with liberty to first respondent to approach the Central Government for redressal of his grievance and it is expected that as and when such a request is received from first respondent, the Central Government shall proceed further in accordance with the law.

With aforesaid observations, both the petitions are disposed of while refraining to comment upon the merits.

(SUNIL GAUR)
JUDGE

MAY 28, 2015

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