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

Judgement delivered on: 05th October, 2015

+ **CrI.M.C. 4402/2014**

REKHA RANI

..... Petitioner

Through: Mr. P.K. Sharma & Ms. Richa
Diwan, Advs.

versus

CBI THROUGH ITS STANDING COUNSEL

..... Respondent

Through: Mr. Sanjeev Bhandari, Special
Public Prosecutor.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Present petition is directed against the orders dated 31st July, 2014 and 1st August, 2014 passed by learned Special Judge CBI-3 (PC Act), New Delhi in CC No. 6/13 and consequential proceedings arising out of FIR No. RC-35A/2005/DLI/CBI/ACB/New Delhi.

2. The charge-sheet filed against the petitioner and her husband Sh.Anand Kumar Singhal, was on the charges that her husband being a public servant while working on various posts at various places has possessed assets of worth Rs.1,01,74,878/- in his name and in the name of petitioner, which were disproportionate to the tune of Rs.54,34,515/- to his known sources of income. Accordingly, vide order dated 01.08.2014, learned Trial Court framed charge against husband of the petitioner for the offences punishable under Sections 13

(2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988 (hereinafter referred as the said Act). And charge against the petitioner was framed for the offences punishable under Section 109 of the IPC read with Section 13 (2) read with 13 (1) (e) of the said Act.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court has wrongly interpreted the scope of said Act which is comprehensive and self-contained in which punishments are specifically provided for abatement of certain offences, without relying on the provisions of the IPC. Such provisions are qualified in Sections 10 and 12 of the Act which make punishable only abatement of offences under Sections 7, 8, 9 and 11 of the Act. There is no provision whatsoever in the Act for punishment of any offence under any other provision in general and Section 13(1)(e) in particular. The learned Judge has erred in interpreting the scope of Section 109 of the IPC and Section 13(1)(e) and 13(2) of the Act.

4. Learned counsel further submitted that in the present case, even assuming without admitting, that her husband Shri Anand Kumar Singhal had taken illegal gratification out of which subsequently other assets were acquired in his name and in the name of the petitioner and other persons. Thus, only the husband of the petitioner has committed offence under Section 13(2) of the Act. Such acquiring of assets by others is not amounting to abatement by the petitioner. Besides this, there is no provision in Section 13(2) of the Act for punishment of abatement or punishing any other person. He further submitted that there are some assets in the name of the petitioner which cannot be a

ground to charge her for the offence of abatement to disproportionate assets earned by her husband. In other words, if her husband had taken gratification and subsequently acquired assets in the name of the petitioner or anyone else, they would for purposes of argument, utmost be only accessories after the fact, which is not punishable in India. The petitioner was having 4 times income more than her husband. Her business was flourishing and has been duly explained to the IO during investigation. However, the learned Trial Court has wrongly interpreted ambit of scope of Section 13(1)(e) of the Act which contemplates that possession of assets on behalf of public servant can be computed in computation and not income of other persons.

5. Moreover, there is no permission from the State concerned to prosecute the petitioner as well as her husband where the petitioner had been serving during the period alleged in the charge-sheet. There is no case of impersonation against the petitioner and same is time-barred even for the sake of the disproportionate income to be included not the gross one.

6. To strengthen his argument, counsel for the petitioner has relied upon case of ***M. Balakrishna Reddy vs. Director, Central Bureau of Investigation, New Delhi (2008) 4 SCC 409***. The relevant paragraphs of the same are reproduced as under:-

“15. At the outset, we must frankly admit that the two factors weighed with the High Court, namely, (i) the Head Office of the UPSC is located at New Delhi; and (ii) the appellant is an employee of Central Government and on those grounds, the Delhi Act would be

applicable have not impressed us. The said grounds, in our opinion, do not confer jurisdiction on CBI to invoke the Delhi Act. The main ground, therefore, which remains to be considered is whether 'consent' as envisaged by Section 6 of the Delhi Act has been given by the State Government of Madhya Pradesh to the Central Government so as to enable the latter to invoke the provisions of the Delhi Act. For the said purpose, it is necessary to bear in mind the relevant provisions of the Delhi Act.

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18. Section 6 is very important which requires consent of State Government for exercising powers and jurisdiction under the Act by Special Police Establishment to any area in a State not being Union Territory or Railway. The said section, therefore, may be quoted in extenso;

'6. Consent of the State Government to exercise powers and jurisdiction:- Nothing contained in Sec. 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.'

19. Plain reading of the above provisions goes to show that for exercise of jurisdiction by the CBI in a State (other than Union Territory or Railway Area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled;

(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);

(ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to any State in

respect of the offences specified under Section 3 (Section 5); and

(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6)”.

7. Learned counsel for the petitioner also relied upon case of ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal & Others (2010) 3 SCC 571***. The relevant paragraphs of the same are reproduced as under:-

“34. Section 5 of the Special Police Act empowers the Central Government to extend the powers and jurisdiction of the Special Police Establishment to any area, in a State, not being a Union Territory for the investigation of any offences or classes of offences specified in a notification under Section 3 and on such extension of jurisdiction, a member of the Establishment shall discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

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68 Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) xxxx
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(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.

69. 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”.

8. Learned counsel submitted that the petitioner was having her own business. She was independent, she had nothing to do with the income of her husband, accordingly, her income had not to be included in the income of her husband. Whereas the learned Trial Court has framed charge against the petitioner also as mentioned above. To strengthen his argument, counsel for the petitioner relied upon case of **Akhilesh Yadav vs. Vishwanath Chaturvedi & others (2013) 2 SCC 1**

whereby the Apex Court has held as under:-

“12. As far as Smt. Dimple Yadav is concerned, Mr. Dwivedi submitted that except for the fact that she is the wife of Akhilesh Yadav, who had been a Member of Parliament since 2000, there is no other ground to treat her as a public servant for the purposes of inquiry by the CBI. Mr. Dwivedi submitted that Smt. Dimple Yadav carried on her own business in agricultural produce and had her own income which had been wrongly clubbed by the Writ Petitioner with the assets of Shri Akhilesh Yadav to bring her within the ambit of the investigation by the CBI under the provisions of the Prevention of Corruption Act. It was further submitted that there is also no allegation that Smt. Dimple Yadav had, in any way, aided or abetted any public servant to commit any act which could have attracted the provisions of the Prevention of Corruption Act and including Smt. Dimple Yadav in the inquiry against those who could be said to be public servants, amounts to harassment of a private individual having a separate source of income in respect of which no offence under the aforesaid Act could be made out. Mr. Dwivedi contended that the inquiry directed to be conducted by the CBI in relation to the assets held by Shri Adkhilesh Yadav and Smt. Dimple Yadav was contrary to the procedure established by law and could not have been ordered even upon invocation of powers under Article 142 of the Constitution and was, therefore, liable to be set aside in review.

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35. In addition, the submissions made qua Smt. Dimple Yadav merits consideration, since when the order under review was passed, she had neither held any public office nor Government post and was essentially a private person notwithstanding her proximity to Shri Akhilesh Yadav and Shri Mulayam Singh Yadav. On reconsideration of her case, we are of the view that the investigation launched against her on the issue of amassing wealth beyond her known source of income, is

liable to be dropped. The review petition, so far as Smt. Dimple Yadav is concerned, is, accordingly, allowed and the investigation conducted by the CBI against her should, therefore, be dropped”.

9. As regards the provisions under Section 107 to 112 of the said Act, these are applicable on the public servant, whereas the petitioner is not a public servant. Therefore, the learned Trial Court has rightly framed charge under Section 109 of the IPC against her.

10. The fact remains that the charge-sheet against the petitioner being accused No.2 filed under Section 109 of IPC read with Section 13(2) read with 13(1)(e) of the Act. It is alleged that petitioner in conspiracy with her husband acquired property in Dehradun, impersonating as Resham Manocha. As per her income-tax returns, the petitioner had total income during the check period of Rs.84,84,210/- from her business of dry cleaning run in the name and style of Royal Dry Cleaners, whereas total expenditure in the business was of Rs.50,38,712/- and had likely savings of Rs.34,45,498/-. However, she acquired assets to the tune of Rs.74,77,827/- during the check period. Thus, the assets acquired were disproportionate to her income to the tune of Rs.40,32,329/- i.e. 47.5%.

11. Moreover, the specimen signatures and photographs of the petitioner as Resham Manocha was submitted in the office of Mussori Dehradun Development Authority (MDDA) at the time of execution of Agreement between the allottee and MDDA, were verified/attested by her husband, A.K. Singhal, while serving as JDR, Customs, Excise

& Gold (Control), Appellate Tribunal, New Delhi.

12. Reference to details of income and expenses of petitioner as reflected in D-33, that is, Statement of Income Utilization of petitioner during the check period, provided by PW-14, Sh. Kailash Chand Gupta, Chartered Accountant. The statement of PW-14, reveals that he prepared the aforesaid statement on the basis of ITRs of petitioner showing income/expenditure/investment in the assessment year 1980-92 to 2004-05.

13. The learned Trial Court has noted that PW-19 in her statement under Section 161 Cr.P.C has stated that she never applied for allotment of any flat with MDDA; she is not aware if her late husband ever applied for the same. She never deposited any money with the said Authority. She further stated that neither the photographs nor the signatures on the documents (D-56) are hers; because, she signs in Hindi, whereas, the signatures on these documents are in English. She also stated that she does not know any A.K. Singhal, who has attested photograph and signatures on these documents. PW-19 further stated that she does not know any Kailash Wati resident of Inder Puri, R/o EG-103, Inder Puri, New Delhi. Admittedly, Smt. Kailashwati is the mother of the petitioner. Moreover, as per D-56 Resham Manocha vide her letter dated 30th September, 1991 to MDDA requested for taking on record the change in her address as C/o Smt. Kailash Wati, i.e. mother of the petitioner. Whereas, PW-19 stated that she did not know any Kailash Wati and rather, never applied for any such flat. Thus, the petitioner posed as 'Resham Manocha' for obtaining allotment of the

Flat No. H-121, Phase-I, Indrapuram, Dehradun.

14. In the present case, the allegation against husband of petitioner is that he acquired disproportionate assets in his name and in the name of the petitioner and other family members out of ill gotten money. In case of *P. Nallamal vs State, 1999 SCC (Crl) 1133*, the Apex Court has held that if a non-public servant abets any offence committed by the public servant, such non-public servant shall also be liable to be tried along with the public servant.

15. In case of *Akhilesh Yadav* (supra) the issue before the Supreme Court was whether the investigation launched against Smt.Dimple Yadav on issue of amassing wealth beyond her known sources of income was liable to be dropped. Whereas, in the instant case, the investigation was over and charge sheet has been filed, accordingly, charge has been framed. Thus, said benefit is not available to the petitioner.

16. The learned Trial Court after taking into account the materials available before it, directed for framing of charges against the petitioner. The details and particulars regarding the respective role of the accused have been drawn in the charge-sheet which makes the case against the petitioner triable. By no stretch of imagination can it be said that the materials available against the petitioner, taken to be *ex facie* true, do not constitute the offences alleged. It is admitted that out of 35 witnesses, 22 prosecution witnesses have already been examined. Thus, the trial is at the advance stage.

17. It is settled law that at the time of framing of charge, the Court is not expected to hold mini trial and delve deep into the matter for the purposes of appreciating the evidence and the evidence can only be weighed when the entire material will be brought before the Trial Court. The Court was required to see at the time of framing charge whether a strong suspicion exists for commission of the offence. The Trial Court found *prima facie* case against the petitioner, accordingly framed charges.

18. By the present petition, inherent power of this Court under Section 482 Cr.P.C. has been sought to be invoked. The inherent powers are only meant to be applied *ex debito justitiae* in order to render real and substantial justice for the administration of which alone, the Court exists or to prevent the abuse of the process of the Court. It has been repeatedly held by this Court that the extraordinary powers under Section 482 Cr.P.C. has to be exercised sparingly and with great care and caution.

19. In ***R.P.Kapur vs. State of Punjab* AIR 1960 SC 866**, the Supreme Court summarized some of the categories of cases where inherent powers could be exercised for quashing the proceedings. The categories were listed in the aforesaid judgment viz. if there is a legal bar against institution or proceeding or when allegations at their face value do not constitute the offence alleged or where the allegations constitute an offence but there is no legal evidence adduced clearly, the inherent power could be exercised.

20. In *State of Haryana vs. Bhajan Lal* 1992 Suppl.(1) SCC 335, The Supreme Court though clarified that no inflexible guidelines or rigid formulae could be framed for all kinds of cases where such powers could be exercised but enumerated certain categories of cases by way of illustration wherein the powers under Section 482 Cr.P.C. could be exercised in order to prevent the abuse of the process of the process of the Court or to otherwise secure the ends of justice.

21. The husband of the petitioner during the check period worked at various places being Central Government employee, therefore, permission from the State Governments was not required to prosecute the petitioner and her husband as well. If the assets of wife of a Government servant are more than known sources, it would be presumed that she earns the said money illegally. In the case in hand, not only the petitioner, her husband's assets are even in the name of their children. The petitioner by impersonating has purchased the properties, in such a situation her income has to be added in the case in hand.

22. At the time of framing the charges, the Court had to see prima facie case, the material which is in the possession of the petitioner, cannot be considered at this stage. The Trial Court has to rely upon the charge-sheet and the material placed by the prosecuting agency. In the present case, the allegations against the petitioner and her husband are of severe nature, namely, abusing the official position. The petitioner alleged to have conspired with her husband and amassed assets as mentioned in the charge sheet and impugned orders as well.

23. In view of the above discussion and settled law, I find no discrepancy in the orders dated 31st July, 2014 and 1st August, 2014 passed by the learned Trial Court. Therefore, this Court is not inclined to interfere therewith.

24. Consequently, the petition is accordingly dismissed with no order as to costs.

SURESH KAIT, J

OCTOBER 05, 2015

Nk/mk/RS