

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 20.08.2015
Judgment Pronounced On: 02.09.2015

**W.P.(CRL) 725/2015 & CRL.M.A. Nos.5285/2015, 9819/2015,
10286/2015**

ADESH KUMAR GUPTA

..... Petitioner

Through: Mr. R.N. Mittal, Sr. Advocate with
Mr. K.C. Mittal, Ms. Suman
Chaudhry and Ms. Ruchitra Mittal,
Advocates

versus

CBI

..... Respondent

Through: Mr. Sanjeev Bhandari, SPP with
Inspector Harish Chandra, ACB/CBI

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J

1. The present writ petition seeks the following prayers:-

- “(a) In the nature of certiorari quashing the FIR RC No.DAI-2014-A-0040 under section 168 of the Indian Penal Code against the petitioner registered by the respondent at CBI, Anti Corruption Branch (ACB), New Delhi and consequent proceedings arising therefrom.
- (b) Quash and set aside the impugned order dated 21.11.2014 passed by the Ld. CMM, (South), Saket Court, New Delhi and the proceedings therefrom.

- (c) Pass such other order restraining the respondents, their offices and the IO from taking any further action against the petitioner on the basis of FIR and the impugned order or stay the operation of the impugned FIR and the order dated 21.11.2014.
- (d) Pass such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. The petitioner is an officer belonging to the Indian Telecommunication Services (ITS), 1986 Batch and is presently posted as General Manager, Bharat Sanchar Nigam Limited, Noida, Gautam Budh Nagar, Uttar Pradesh.

3. The facts leading up to the filing of the present petition are encapsulated as under:-

- (a) An application dated 21.11.2014 purportedly under section 155 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') was filed before the Court of CMM, Saket Court, New Delhi by one Sh. Nishit Mishra, Superintendent of Police, CBI, ACB, New Delhi. In the said application it was *inter alia* averred that the petitioner herein who was a public servant had engaged himself in private business, in association with his wife, Ms. Meenakshi Gupta, and promoted a company called M/s Tuhina Fashions Garments Pvt. Ltd. in the year 2005.

Name of the said company was subsequently changed to M/s AMG Infra Developers Pvt. Ltd. in order to enter into the telecom business as well.

- (b) It was also alleged that the petitioner promoted another company namely M/s AMG Infocom Pvt. Ltd. and that the said company was used as a supplier of telecom equipments to various telecom companies.
- (c) The application further alleged that the petitioner had opened roaming Current Account No.6284015016554 on 22.05.2008 with ICICI Bank, Sector-50, Noida in the name of M/s AMG Infra Developers Pvt. Ltd. under his signatures and in the capacity of a Director of the said company.
- (d) It was further alleged that on 16.12.2008, the petitioner was replaced by his son Mr. Vibhor Gupta as the cheque signing authority of the said company M/s AMG Infra Developers Pvt. Ltd.
- (e) Furthermore, it was alleged that on 25.09.2006 a roaming current account No.025305001329 was also opened by the

petitioner with ICICI Bank, Sector-61, Noida under his signatures.

- (f) It was lastly alleged that the petitioner signed some of the cheques from the said account of M/s AMG Infra Developers Pvt. Ltd. as its authorized signatory between the year 2006 to 2009.
- (g) The case of the CBI, therefore, is that the petitioner herein being a public servant was prohibited from indulging in private trade and business and, therefore, *prima facie* a case under section 168 of the Code was committed.
- (h) On the basis of the above allegations, the said application dated 21.11.2014 sought permission to register an FIR in terms of section 155 of the Code.

4. By way of the impugned order dated 21.11.2014, the learned CMM, Saket Courts, New Delhi passed the following order:-

“21.11.2014

Present: Inspector Anand Swaroop on behalf of complainant.

Shri Nishith Mishra, SP, CBI, ACB, New Delhi along with Shri Ratan Deep Singh, Ld. APP.

Heard on the application under section 155 Cr.P.C. seeking permission to investigate the offence under section 168 IPC.

Perused the complaint. The complaint, prima facie, discloses the commission of aforesaid offence and this court is of the opinion that it would be in the interest of justice if the matter is thoroughly investigated to unearth the truth and to fix the culpability of suspect.

In view of the above, the complainant is given permission to investigate into the matter and proceed further in accordance with law.

Copy of this order be given dasti, as prayed for.

(VIVEK KUMAR GULIA)
Chief Metropolitan Magistrate (South)
Saket Courts, New Delhi/21.11.2014”

5. On 20.11.2014, barely a week after the passing of the impugned order, an FIR bearing RC No.DAI-2014-A-0040 (mistakenly under section 154 CrPC) also impugned herein, was registered at the instance of the said Sh. Nishit Mishra, Superintendent of Police, CBI, ACB, Delhi.
6. Thereafter on 17.12.2014, the CBI submitted an application under section 93 of the Code for issuance of a search warrant of the petitioner's premises. The said application was allowed by the learned CMM, Saket Court, New Delhi by way of an order passed on the same date.
7. The present petition has been filed by the petitioner, since he is aggrieved by the order passed by the learned CMM, Saket Court, New Delhi as well as the alleged acts of omission and commission on behalf of the CBI.

8. Assuming arguendo that the facts were as the other side contends, Mr. R.N. Mittal, learned Senior Counsel appearing on behalf of the petitioner urged the following points for the consideration of this Court:-

- i) Non-compliance of mandatory provisions of section 155(1) of the Code.
- ii) The application and all the proceedings subsequent thereto are not maintainable as being barred by limitation.
- iii) The impugned order dated 21.11.2014 betraying lack of application of mind.
- iv) The applicant and the investigator in the proceedings impugned herein being the same, the action taken is impermissible in law.
- v) Lastly, it was urged that the CBI had overreached the order of this Court dated 13.04.2015 and included the name of the petitioner in the "agreed list", in violation of an injunction restraining them by way of the said order from taking any coercive action.

9. Per contra Mr. Sanjeev Bhandari, learned Standing Counsel appearing on behalf of the CBI would urge that although the FIR impugned herein under section 168 of the IPC was inadvertently registered in the wrong proforma, the said mistake was subsequently corrected by way of an

application allowed by the learned CMM, Saket Court, New Delhi. Learned counsel would further urge that the FIR impugned herein was registered after obtaining necessary permission to investigate, as required under section 155 of the Code, from the learned CMM, Saket Court, New Delhi. Counsel appearing on behalf of the CBI would lastly urge that the present proceedings are not barred by time. In this respect reliance is placed on the provisions of section 469(b) of the Code.

10. At this stage, it would be pertinent to note that on a specific query from the Court, counsel for the CBI fairly admitted that the “informant” in the present case was not referred to the concerned Magistrate. In this behalf, counsel would urge that it is not mandatory to disclose the name of the “informant” as per the provisions of the Code and that a Self Contained Note was recorded by the DIG, CBI, which is an internal confidential communication between different units of the CBI. In order to buttress this submission, Mr. Sanjeev Bhandari, learned Standing Counsel appearing on behalf of the CBI invites my attention to the decision in **The Public Prosecutor vs. Pocku Syed Ismail and Anr.**, reported as **1973 Cri LJ 931**.

11. I have heard the counsel for the parties and perused the record. The following legal issues arise for adjudication by this Court:-

- i) Whether the impugned order was passed in violation of the procedure prescribed under section 155 of the Code?
- ii) Whether the proceedings against the petitioner are barred by limitation?

12. The focal point of controversy is centered on the question of compliance with the procedure prescribed under section 155 of the Code. It is, therefore, relevant to produce the said provision:-

“155. Information as to non- cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.”

13. The above provision refers to “information as to non-cognizable cases

and investigation of such cases”. A plain reading of sub-section (1) of section 155 of the Code provides that on receiving information, disclosing the commission of a non-cognizable offence, the officer in charge is firstly required to record the substance of the said information in a book kept for this purpose and secondly refer the informant to the Magistrate.

14. It is an admitted position that an offence under section 168 IPC is a non-cognizable offence. It is also an admitted position that in the impugned FIR in the Column No.4 provided for “Type of Information”, it is described as “oral”. It is, therefore, evident that no written information ever existed. Assuming for the sake of argument that the Self Contained Note recorded by the DIG, CBI was the information, the CBI did not refer the said DIG, CBI as the “informant” to the Magistrate. Furthermore, the CBI admittedly did not place the Self Contained Note of the DIG before the concerned Magistrate at the time of filing the application. Glaringly enough, the said application did not even contain a reference or mention to the said Self Contained Note. To compound matters, the author of the said application dated 21.11.2014 one Sh. Nishit Mishra, Superintendent of Police, CBI, ACB did not appear before the concerned Magistrate in support of his application. Instead a junior officer one Inspector Anand Swaroop,

unconnected with the application, appeared in Court on behalf of the “informant”.

15. In *Kathiravan vs Commissioner of Police* reported as (2011) 1 CTC 395 it was observed:-

“26. The offences listed in Arokiya Marie's case as heinous crimes regarding which a direction can be issued under Section 482 Cr.P.C to register a case in order to ensure that the evidence of such crime do not get erased by passage of time can be supplemented by other offences of grave nature and the offences exclusively triable by the court of sessions. In such cases also the High Court under Section 482 Cr.P.C shall exercise its discretion under Section 482 Cr.P.C to issue a direction for registration of a case. In other cases, the High Court shall not issue a positive direction to register cases. The same does not mean that the police can simply keep quiet. Even in cases wherein the complaint discloses the commission of non-cognizable offences alone, the police officer who is receiving the complaint cannot simply keep such a complaint without following the procedure prescribed under Section 155 of the Cr.P.C. Section 155 Cr.P.C reads as follows:

155. Information as to non-cognizable cases and investigation of such cases. –

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

27. As per Sub-section (2) of Section 155, no police officer can investigate a non-cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial. **But taking umbrage under the said clause, the police officer cannot be allowed to remain inactive without following the procedure prescribed in Section 155 Cr.P.C. Sub-clause (1) of Section 155 Cr.P.C enjoins a duty on the police officer in-charge of a police station who receives information regarding commission of a non-cognizable, within the limits of such station to enter such information in a book kept for that purpose and refer the informant to the Magistrate. The section mandates the police officer in charge of the police station to refer the informant and not the information alone to the Magistrate concerned.** Experience has shown that in all cases wherein the police are of the view that the offences made out are non-cognizable, they think that they need not register a case and need not refer the informant to the Magistrate concerned. It is to be noted that Section 155 Cr.P.C does not prohibit registration of a case if the averment discloses the commission of a non-cognizable offence alone. What is prohibited is to investigate the same without obtaining the order of the Magistrate. **By the omission on the part of the police to refer the informant to the Magistrate concerned if such**

police officer is of the view that the complaint discloses only a non-cognizable offence, the procedure prescribed in Sub-section (1) of Section 155 is being made a dead letter in practice. The said practice, according to the considered view of this Court, will amount to miscarriage of justice, which has got to be remedied by issuing suitable directions in this regard to the police officer concerned in exercise of this Court's inherent power under Section 482 Cr.P.C.

28. Therefore, this Court deems it fit to classify the cases into cases in which a direction to register a case could be granted and cases in which such a direction cannot be granted. In the second category of cases, instead of directing the police to register a case, it shall be just and appropriate to issue a direction to the police officer concerned to register a case if he comes to the conclusion that a cognizable offence has been made out by the contents of the complaint **or to refer the informant to the Magistrate concerned as per Section 155(1) Cr.P.C if he comes to the conclusion that the information (complaint) discloses only a non-cognizable offence.** Apart from the above said two classes of cases in which different directions are to be issued, there are other cases which have been got to be closed, after recording the submissions made on behalf of the respondent that FIRs have been registered on the basis of the complaint concerned in such petitions.”

(Emphasis Supplied)

16. The above decision underlines the sanctity of the procedure prescribed under the provisions of section 155 of the Code. The said provision clearly mandates the police officer, in charge of a police station, to refer the “informant” and not the information alone, to the Magistrate concerned.

Admittedly, in the present case, neither the information regarding the commission of a non-cognizable offence was recorded in the register, as mandated by the said provision, nor was the “informant” referred to the concerned Magistrate.

17. As far back as in **Nazir Ahmed v King Emperor** reported as **AIR 1936 Privy Council 253(2)** it was held that:-

“18....the rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden....”

(Emphasis Supplied)

18. The decision in *Nazir Ahmed (supra)* was followed and reiterated by the Hon’ble Supreme Court in **State of Uttar Pradesh vs. Singhara Singh and Ors.** reported as **1964 (4) SCR 485** as well as **Manohar Lal Sharma vs. Principal Secretary and Others** reported as **(2014) 9 SCC 516**. The view that when the law prescribes a particular procedure to be followed in exercising power that vests with an authority, only that particular procedure is to be followed and none else is the law of the land and holds the field.

19. In this context I am reminded of the luminous observations of Hon’ble Supreme Court in **Viteralli v. Seton**, **359 U.S. 535: 3L.Ed. 1012** that were

echoed by the Hon'ble Supreme Court in the landmark decision reported as

R.D. Shetty vs. International Airport Authority of India and Ors., AIR

1979 SC 1628 wherein it was observed as follows:-

“An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

20. It requires no reiteration that observance of due process of law is fundamental in the effective functioning of the executive machinery. The Supreme Court, since 1950, in the celebrated decision in **A.K. Gopalan vs. State of Madras**, reported as **AIR 1950 SC 27** has emphasized and re-emphasized the importance of following due process. The CBI is a premier investigating agency professing high standards of professional integrity and must be held strictly to those standards. Resultantly, the CBI ought to have followed the procedure mandated by law in the recording of the relevant information and further ought to have referred the “informant” to the Magistrate. *Ex facie* this mandatory statutory requirement was violated and not complied with in the present case.

21. In view of the aforesaid discussion, the question “whether the impugned order was passed in violation of the procedure prescribed under section 155 of the Code”, is answered in the affirmative. The concerned Magistrate has clearly erred in allowing the application filed on behalf of the CBI.

22. The submission made on behalf of the CBI that no prejudice was caused to the petitioner and that the Self Contained Note being confidential in nature need not have been produced before the concerned Magistrate, is not tenable.

23. The decision cited by the CBI, namely, *Pocku Syed Ismail (supra)*, in order to buttress the submissions is of no avail since it does not apply to the facts and circumstances of the present case. In that case, the offence alleged to have committed was a cognizable offence.

24. Insofar as, the other issue that arises for consideration in the present petition, relating to the “proceedings being barred by limitation”, is concerned, it is observed that as per the admitted case of the CBI itself, the alleged non-cognizable offences were committed between the years 2005 to 2009, as evident from a reading of the said application dated 21.11.2014. It is relevant to note that in the impugned FIR, Column No.3(b) describes the

period of offence as 2005 to 2009. However, in Column No.3(c), no date as to when the information was received, has been mentioned. Further, the said application dated 21.11.2014 filed on behalf of the CBI does not mention the date on which the relevant information was received by the CBI. Even at the time of making submissions, no date qua the receipt of the relevant information was specified on behalf of the CBI. The counter affidavit filed on behalf of the CBI is silent on the date on which the commission of the alleged offence came to their knowledge. As such, the CBI cannot be heard to urge that the said application which was preferred in the year 2014, is within the period of limitation. The provision of section 468 of the Code clearly bar the CBI from taking action beyond the period prescribed therein.

25. Furthermore, it is relevant to note that in a Criminal Miscellaneous Application No.9819/2015, the petitioner contended that the Department of Telecommunications had handed over the annual property returns pertaining to the petitioner to the CBI by way of letter dated 17.06.2010 which contains the name of the companies in question. This fact is not denied by the CBI in their counter affidavit. Consequently, the second issue that arises for determination by this Court is also answered in the affirmative. The proceedings against the petitioner also fail as being barred by limitation.

26. In view of the above legal position, the other points urged on behalf of the petitioner do not, in my view, require determination.

27. However, apropos the submission that the impugned order betrays lack of application of mind, it would suffice to state that in **Kranti Associates Private Limited v. Masood Ahmed Khan & Others**, reported as (2010) 9 SCC 496, it was observed by the Supreme Court as follows:-

“47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.

- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See: *David Shapiro in Defence of Judicial Candor* (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See: *Ruiz Torija v. Spain*, (1994) 19 EHRR 553, at 562 para 29 and *Anyia v. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein

the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

28. In S. Purnachandra Rao and Anr. vs. State of A.P. and Anr.,

reported as **2014 (4) Crimes 214 (A.P.)**, a Single Bench of the Andhra Pradesh High Court was adjudicating on the legal issue as to whether the Magistrate has to show application of mind on the facts of the case at the time of permitting the police to investigate a non-cognizable offence. The Court recorded the submissions appearing on behalf of counsel for the parties as follows:-

“4. Relying upon the judgments of the Apex Court in *Anil Kumar and Ors. v. M.K. Aiyappan and Anr.*, (2013) 10 SCC 705; *Sajjal Agarwal vs. State of A.P. and Anr.*, 2011 (1) ALD (Cri) 70 (AP); *Medwin Hospital rep. by its M.D. B. Kameshwara Rao vs. State of A.P. Pollution Control Board*, (2013) 10 SCC 705; *Assistant Commissioner Commercial Tax Department Works Contract and Leasing Kota v. Shukla and Brothers*, (2010) 4 SCC 785; *Union Bank of India and Ors. Jai Prakash Singh and Anr.*, (2007) 10 SCC 712, the learned counsel for the petitioner **strenuously contends that reasons are to be recorded showing application of mind while directing the police to**

investigate into the non-cognizable offences under Section 155(2) Cr.P.C., failing which great prejudice would be caused to the accused.

5. Relying upon the judgments of the Apex Court in *Kanti Bhadra Shah and Anr. vs. State of West Bengal*, 2000 (1) SCC 722 and *Kunhumamed v. State of Kerala*, 1981 Cri LJ 356, the learned counsel for the respondent would contend that no reasons are necessary while granting permission to register a crime. **According to him, the reference made under section 156(3) Cr.P.C.; and the permission granted under section 155(2) Cr.P.C., are quite distinct and different in nature. He strenuously contends that reasons are required to be given while refusing to give permission to register a crime and not while granting permission to register a crime. He further submits that the impugned order shows application of mind while granting permission to register the crime and as such, the same warrants no interference from this Court under section 482 Cr.P.C. The point for consideration is whether the impugned order warrants interference of the Court for not giving reasons while directing the police to investigate a non-cognizable offence.”**

(Emphasis Supplied)

29. The Court after considering the decision relied upon by the parties and analyzing the provision of section 155 of the Code, observed as follows:-

“15. Neither the Criminal Procedure Code nor the Indian Penal Code define the word Order. Oxford English Dictionary, Second Edition, Vol.X defines Order as :

- 23.a. An authoritative directions, injunction, mandate; a command, oral or written; an instruction.
- 24.spc. A. Law. A decision of a court or judge, made or entered in writing ; in the Supreme Court, a direction of the court or a judge other than a final judgment.

FERDICOs Criminal Law and Justice Dictionary defines Order as under :

To issue a command or instruction. A mandate, command or direction issued by a judicial officer in exercise of judicial authority and entered in Court record.

Therefore the word Order; in Section 155 (2) and Section 156 (3) Cr.P.C., cannot be lost sight of as the same assume lot of significance. **It is always said that reasons are the lifelines of an order.**

16. Dealing with the importance of giving reasons while passing orders, the Apex Court in *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota Vs Shukla and Brothers*, held as under:

“A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment

without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.”

17. Further, under Section 155 (2) Cr.P.C., it is always open to the Magistrate either to grant permission or refuse to grant permission. When such a discretion is vested in the Magistrate, it is desirable that the Magistrate shall give reasons while empowering the police officer to investigate into a non-cognizable offence, so that the aggrieved person will be in a position to know the reason for acceptance or rejection of his application, otherwise there is every possibility of misuse of Section 155 (2) Cr.P.C. In case such a power is given to a police officer, he may misuse his official position and harass the accused person (*Sajjal Aggarwal Vs State of Andhra Pradesh*).

In *Tilaknagar Industries Ltd., and Others Vs State of A.P., and another*, AIR 2012 SC 521, *State of Haryana and Others Vs Bhajan Lal and Others*, AIR 1992 SC 604 the Apex Court held that the statutory safeguard given under Section 155 (2) Cr.P.C., of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexacious investigation.

18. A Full bench of Allahabad High Court in *Shyam Lal Sharma Vs King Emperor*, AIR (36) 1949 Allahabad 483 (FB) held as under :

“Section 155 Cr.P.C., occurs in Chapter XIV of the Code, which deals with investigation of the offence. It makes a marked distinction between cognizable

and non-cognizable offences. It authorizes police officer incharge of a police station to investigate the cognizable offence without the order of a Magistrate, but forbids the police officer from investigating a non-cognizable case unless, ordered by a Magistrate to do so. Section 155 (2) Cr.P.C., shall deal with this matter and reads thus”

XXXX XXXX XXXX XXXX XXXX

XXXX XXXX XXXX XXXX XXXX

20. It is evident that it was intended by this piece of legislation that a non-cognizable offence could not be investigated by the police unless, the Criminal Court possessed of necessary jurisdiction, is moved by a complainant to take cognizance of the offence or unless a Magistrate of the description mentioned in the Section, considers it desirable that the offence should be investigated, the Section occurs in a statute dealing with administration of criminal justice which is administered in public interest and not in the interest of any private individual. It could not have been intended, therefore, that a Magistrate should order the investigation arbitrarily or capriciously. **On the other hand, it may be legitimately assumed that it was intended that before making the order of investigation, he would carefully consider all the relevant circumstances, that make it desirable that a non-cognizable offence should be investigated in public interest.**

21. From the above, it is clear that the Magistrate while either referring the case to the police under Section 156 (3) Cr.P.C., **or while ordering investigation into a non-cognizable offence under**

Section 155 (2) Cr.P.C., has to show application of mind to the facts of the case. It may not be necessary for the Magistrate to pass a reasoned order. The order under reference or order directing registration of a non-cognizable offence should contain some information showing application of mind to the case on hand.

24. The argument of the learned counsel for the respondents that the order dated 09.10.2013 show application of mind, and that the same warrants no interference from the Court cannot be accepted. It would be relevant to extract the order dated 09.10.2013 which reads as under :

“You are hereby accorded permission to conduct investigation under Section 504, 506 (II), 120 (B) IPC on the report given by Musunuri Srinivasa Rao, R/o.Flat No.505, 3-6-69, Venkataramana Towers, Basheerbagh, Hyderabad and filed report.”

25. The said order only refers to according permission to conduct investigation on the basis of the report given by one Srinivas Rao. It does not reflect anything more than lodging of a report. Therefore, it cannot be said that the impugned order was passed by the Magistrate after applying his mind to the facts of the case. It appears to be a case where the learned Magistrate in a routine manner accorded permission for registration of a crime and investigation of the case.”

(Emphasis Supplied)

30. The impugned order dated 21.11.2014, extracted hereinabove, clearly

demonstrates that the concerned Magistrate has acted in a casual, cavalier and routine manner. The said order only refers to the grant of permission to investigate into the matter mechanically without assigning any reasons and cannot be countenanced by this Court. The same deserves to be set aside.

31. Before parting with this judgment, I would be failing in my duty if I do not advert to the order passed by this Court on 13.04.2015, restraining the CBI from taking coercive steps against the petitioner. Despite and in purported violation of that restraining order, the CBI entered the name of the petitioner in the “agreed list” on account of the impugned FIR. In response to that, the CBI in its counter affidavit has admitted that the same is a matter of record. In this behalf, it is observed that the insertion of the petitioner’s name in the “agreed list” is an exercise to be conducted between the head of the concerned department as well as the CBI and coordinated by the vigilance department. The head of the concerned department i.e. Chief General Manager, Bharat Sanchar Nigam Limited has already written to the CBI for removal of the name of the petitioner from the “agreed list”. But the CBI has chosen not to comply. The submission of the CBI that the petitioner’s name was included in the “agreed list” on the recommendation of the department concerned, further, compounds the refusal on the part of

the CBI to delete the petitioner's name from the "agreed list" despite having been asked by the head of the concerned department in writing to do so. This act of omission on behalf of the CBI cannot be sustained. The action of the CBI can be characterized as the fruit of the forbidden tree and falls with the tree. Consequently, inclusion of the petitioner's name in the "agreed list" is set aside and quashed.

32. No other point was urged by the parties before this Court.

33. The writ petition is allowed. The impugned order dated 21.11.2014 as well as the impugned FIR being RC No.DAI-2014-A-0040, registered by the Anti Corruption Branch, CBI, New Delhi are hereby set aside and quashed and a direction is issued to the CBI to remove the petitioner's name from the "agreed list". All the pending applications stand disposed of.

34. No order as to costs.

SIDDHARTH MRIDUL, J

SEPTEMBER 02, 2015

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