

I- R-1

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

Date of Decision: August 20, 2015

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CRL.M.C. 4255/2012

CENTRAL BUREAU OF INVESTIGATION THR. INSPECTOR
SATENDRA SINGH Petitioner

Through: Ms. Sonia Mathur, Standing
Counsel for CBI

versus

NCT OF DELHI & ORS.Respondents

Through: Mr.Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Mr. A.K. Pandey, Advocate for
respondent No.2
Mr. Manjit Singh Ahluwalia,
Advocate for respondents No.3 &
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CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The question which arises for consideration in this petition is whether a Magistrate can direct further investigation after the cognizance of the offence is taken. Impugned order directs further investigation at the Charge stage in RC No.AC.3/2004/A0002/SPE/CBI/ACU-III/New Delhi for the offences under Section 120-B read with Sections 420/468/471 of IPC and Section 13 (2) read with Section 13(1)(d) of *The*

Prevention of Corruption Act.

At the hearing, learned Standing Counsel for petitioner- CBI submits that in *Rajneesh Kumar Singhal Vs. The State (National Capital Territory of Delhi)* 2001 (57) DRJ 411 (FB) further investigation was sought by the complainant, whereas in the instant case, it has been sought by the accused. Learned standing counsel for petitioner-CBI submits that impugned order has not specifically directed that on what lines further investigation is to be conducted. To point out the infirmity in the impugned order, learned Standing Counsel for petitioner-CBI submits that in paragraph No.75 of the impugned order, trial court has directed the Director, Central Bureau of Investigation to conduct further investigation and file supplementary charge-sheet and such like directions are not consonance with the law. Learned Standing Counsel for petitioner-CBI points out that the trial court has adversely commented on the conduct of Investigating Officer while labeling it to be arbitrary and transcending the line of faith and proceeding towards culpability, without any justification.

Ms. Sonia Mathur, learned Standing Counsel for petitioner-CBI, further submits that by now 45 witnesses out of 100 witnesses have been already examined and there is no point in directing further investigation into the so called grey areas and no fishing probe is required to be done by the investigating agency, as the material on record is sufficient to secure the conviction of accused and that if any further material comes to light, then the court is within its powers to invoke Section 319 of Cr.P.C. In support of her contentions, learned Standing Counsel for petitioner-CBI relies upon decision in *Randhir Singh Rana Vs. State (Delhi Administration)* (1997) 1 SCC 361.

To controvert the submissions advanced by learned Standing Counsel for petitioner-CBI, learned counsel for respondents relies upon decisions in *Ram Lal Narang Vs. State (Delhi Admn.) Vs* AIR 1979 SC 1791; *Union Public Service Commission Vs. S. Papaiah & ors.* 1997 VII AD S.C. 265 and *Rajneesh Kumar Singhal Vs. The State (National Capital Territory of Delhi)* 2001 (57) DRJ 411 (FB) to submit that the real accused have been made witnesses and so, to bring out the truth, further investigation is essential for fair trial.

Learned counsel for contesting respondents points out that Mr. Jayesh Bhai, who was engaged for lifting the rice from FCI godown ought to have been made an accused and instead thereof, his employee *Mahesh Chander Amlani* has been made an accused, which infact weakens the prosecution case and the real accused are not brought to trial.

Learned counsel for contesting respondents has drawn attention of this Court to paragraph No.52 of the impugned order to submit that the trial court has rightly observed that the charge-sheet filed is silent as to what investigation has been conducted qua the offence under Section 468 of the IPC regarding collection of specimen hand-writing and signatures of accused- *Narinder Singh Batra; Mahesh Chander Amlani* and other persons like *Manish Parekh etc.* for getting the same compared with the questioned documents for scientific opinion on the forgery aspect.

At this stage, Ms. Sonia Mathur, learned Standing Counsel for petitioner -CBI, submits that the observations made in paragraph No.52 of the impugned order are pre-judicial to the prosecution and on the basis of such observations, direction for further investigation is totally unwarranted, as the merits of the case are not required to be pre-judged at

the charge stage.

Upon hearing both the sides and on perusal of the impugned order, material on record and the decisions cited, this Court is of the considered view that further investigation is not altogether ruled out after cognizance of the offence is taken. No doubt there is no provision in the Code of Criminal Procedure which bars the Magistrate, before whom the report under Section 173 (2) of Cr.P.C. is filed, to direct further investigation even in a case where cognizance of the offence is already taken. However, on a bare perusal of the impugned order, this Court finds that even if further investigation is directed, then the Investigating Officer is to be directed to conduct further investigation and not the Director, Central Bureau of Investigation and in any case, no direction can be issued to file supplementary charge-sheet. The direction which can be issued while ordering further investigation is to file supplementary report which is not necessarily supplementary charge-sheet. All this will depend upon the outcome of further investigation. This Court is constrained to note that the observation made by the trial court in the impugned order about conduct of Investigating Officer being arbitrary is not at all warranted. Further investigation is not to be conducted on the line suggested by the defence and fishing enquiry cannot be ordered in the guise of further investigation. If after recording of the evidence, it is found that the persons who have been made witnesses were involved in the commission of offence, then there is no bar for the trial court to exercise its powers under Section 319 of Cr.P.C and to summon them as accused.

While entertaining this petition, operation of the impugned order

was stayed and in the meanwhile, trial of this case has fairly progressed. Deposition of 45 witnesses has been recorded. In such a situation, direction for further investigation is indeed unwarranted. If on the basis of evidence already recorded, trial court finds that it is a fit case for exercise of its powers under Section 319 of Cr.P.C., then it is open for the trial court to do so and infact, at any stage of trial, the trial court is well within its rights to invoke Section 319 of Cr.P.C..

In view of the facts and circumstances of instant case, this Court finds that direction for further investigation is uncalled for and hence, impugned order is hereby quashed while not commenting on the merits lest it may prejudice either side before the trial court.

(SUNIL GAUR)
JUDGE

August 20, 2015

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