

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

Date of Decision: 3rd February, 2015

+ CRL.M.C. 4955/2014 and Crl. MA No. 16954/2014 (stay)

CENTRAL BUREAU OF INVESTIGATION Petitioner
Through: Mr. R.V. Sinha, Standing Counsel for
CBI with SI R.K. Sangwan, I.O

versus

STATE Respondent
Through: Ms. Nishi Jain, Additional Public
Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
% **(ORAL)**

Impugned order of 20th October, 2014 directs the concerned SP, DIG, as well as Director of CBI to obtain written explanations from the Investigating Officer to submit Action Taken Report against the erring officials in proceedings in R.C. No. BDI/2014/E/0007 of CBI, BS & FC 30/09/2014 titled *CBI vs. Amit Arora & Ors.*

Learned Standing Counsel for petitioner/CBI submits that Investigating Officer had sought six search warrants and Bank Officers were the members of the search team and their statements under sub-section 5 of Section 100 of Criminal Procedure Code, 1973 are not to be recorded. It is submitted that Section 100 of Criminal Procedure Code, 1973 cannot be literally construed to say that

independent respectable persons from the locality have to be joined in the search and recovery proceedings. To assail the impugned order, it was submitted by learned Standing Counsel for CBI that judicial notice cannot be taken of the fact that private citizens seldom come forward to join the search proceedings and so the Bank Officers were joined as members of the search team. Therefore, there was a substantial compliance of Section 100 of Cr.P.C. and so that directions are unwarranted and thus, quashing of the impugned order is sought.

Learned Standing Counsel for petitioner/CBI submits that till date no person has been arrested and so, notice of this petition is not required to be issued. List of witnesses who were the members of the search team has been placed on record.

Upon hearing and perusal of the impugned order, material on record and list of witnesses so placed on record, I find that Officers of Union Bank of India, Syndicate Bank, Bank of India, Oriental Bank of Commerce and Indian Overseas Bank were the members of the search team.

The principle of *audi alteram partem* has been recapitulated by the Apex Court in the following words:-

“In our view, the High Court was not justified and correct in passing observations/strictures against Appellants 2 and 3 without affording an opportunity of being heard, and it is in violation of a catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration

before courts of law unless it is really necessary for the decision of the case.” [State of W.B. v. Babu Chakraborty (2004) 12 SCC 201].

and

In State of W.B. v. Babu Chakraborty, the principle was reiterated by stating that the High Court was not justified and correct in passing observations and strictures against Appellants 2 and 3 therein without affording an opportunity of being heard. [Om Prakash Chautala v. Kanwar Bhan (2014) 5 SCC 417].

During the course of hearing, it was submitted by Standing Counsel for the CBI that before passing of the impugned order, the explanation from the Investigating Officer was not sought and had it been done so, it would have been brought to the notice of the trial Court that Bank Officers were associated in the search proceedings.

Since Bank Officers were associated during the search proceedings, therefore, passing of the impugned order was unwarranted. Resultantly, this petition is allowed and the impugned order of 20th October, 2014 is hereby quashed.

(SUNIL GAUR)
Judge

FEBRUARY 03, 2015
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