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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.33185 of 2016 IN/AND
CRM-M-27328 of 2010 (O&M)
Date of decision: October 26, 2016**

Gulbarg Singh

.....Petitioner

Versus

The Central Bureau of Investigation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. A.P.S. Tung, Advocate for the petitioner.

Mr. S.S. Sandhu, Advocate for applicant-respondent-CBI.

Mr. Shilesh Gupta, Addl. AG Punjab.

A.B. CHAUDHARI, J (Oral)

CRM No.33185 of 2016

Heard.

Application is allowed and with the consent of learned counsel for the parties, the main case, i.e. CRM-M-27328 of 2016 is taken up for hearing today itself.

CRM-M-27328 of 2010 (O&M)

By this order, the present petition, i.e. CRM-M-27328 of 2010 would be disposed of.

Vide detailed judgment and order dated April 25, 2016, the Apex Court examined the issue at length and finally came to the conclusion that the issue about sanction will have to be gone into by

the trial Judge himself. I quote Para-38 from the said judgment and order of Apex Court which reads thus:-

“38. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case of discharge of official duty and as the deceased was involved in terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials no record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial Court to decide the question afresh in the light of the aforesaid principles from stay to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial Court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the Court that there was a reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.”

In my opinion, reading of Para-38 of the judgment and order of Apex Court as stated above shows that the Apex Court has clearly indicated what is to be done by the trial Judge. Be that as it may, there is no need to dwell on that aspect of the matter. In the result, this petition is disposed of in terms of Para-38 of judgment and order of the Apex Court which shall be followed by the learned trial Judge in its letter and spirit.

(A.B. CHAUDHARI)
JUDGE

October 26, 2016

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No