

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

CRM M-3248 of 2013

Date of decision : 16.03.2016

Central Bureau of Investigation

....Petitioner

V/s

Vijay Kumar

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sumeet Goel, Advocate for the petitioner.

Mr. Vijay Kumar respondent in person.

RAJAN GUPTA J.

Present petition is directed against the order passed by Special Judge, CBI whereby he has exercised his power under section 156(3) Cr.P.C. to direct Superintendent of Police, Central Bureau of Investigation to register a FIR and investigate the matter.

It appears that a complaint was made by respondent before the Special court, CBI seeking registration of case for commission of offence under appropriate sections. It was alleged that one B.P. Chopra, General Manager of Punjab National Bank in collusion with other senior officials had caused loss of ₹3,30,56,483.95/- to public exchequer till 25.07.2012 by granting undue financial benefits to certain persons who were Directors of V.N. Luxury House Ltd. and Proprietors of M/s Home Arts and M/s Bench Mark. All three units were operating in Industrial Plot No. 219, Industrial Area, Phase-II, Panchkula. After considering the evidence, Special court entertained the complaint and gave direction to Central Bureau of Investigation to register a FIR. Order has been challenged by Central Bureau of Investigation. At the

outset, it is submitted that similar order passed by same Presiding Officer has already been set-aside by this court in case CRM M-6758 of 2015 titled as *Central Bureau of Investigation vs. Harsimranjit Singh & ors.* decided on September 16, 2015.

Aforesaid statement is not disputed by respondent appearing in person.

Operative part of the aforesaid judgment reads as under:-

It is, thus, evident that only the High Court or Hon'ble Supreme Court can entrust the investigation to CBI in exercise of powers conferred by Articles 226 & 32 respectively. This impliedly takes away the power of the Magistrate and the Special Courts to direct investigation by the CBI in a given case. Even inherent power has to be exercised by the courts sparingly and cautiously. According to ratio of aforesaid judgment, certain self imposed limitations have to be kept in mind. Besides, it cannot be lost sight of that a case may have inter State ramifications. In which eventuality there would be no local police station in picture. Stand of the CBI is that such investigations are closely monitored at the head office level, it being a centralised agency. It is for this reason that in the aforesaid judgment, Hon'ble Supreme Court came to the conclusion that consent of the State Government was not required for investigating cases entrusted to CBI by order of the court and this would not impinge upon the federal structure envisaged by the Constitution.

It further needs to be noticed that CBI Manual provides that agency is entitled to conduct a preliminary enquiry into certain cases and thereafter take a decision where FIR is required to be registered or not. Procedure envisaged by the CBI Manual has been approved in judgment reported as Vineet Narain Vs. Union of India,

1998 (1) RCR (Criminal) 357. Para 63 sub para 12 reads as under:-

"The CBI Manual based on statutory provisions of the Criminal Procedure Code provides essential guidelines for the CBIs functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials."

In view of clear enunciation of law by Hon'ble Supreme Court, judgment of the single bench of Delhi High Court in A.S.Narayana Rao's case (supra) can be of no help to the petitioner. CBI Manual lays down elaborate procedure for conducting the investigation. In considered view of this court, Special Court is created only to conduct trial of cases which have already been investigated by CBI in cases of corruption as well as in special crime. It is specialised agency created for investigating crimes which may be repercussions in several States. Central Bureau of Investigation is required to conduct investigation pertaining to serious cases of bribery and corruption and intricate matters of special crime, besides cases having inter-State or international ramifications. There can, thus, be no doubt that entrustment of such crimes to Central Bureau of Investigation can be only by the High Courts and Hon'ble Supreme Court in their inherent jurisdiction.

In view of above, impugned order by the Special Judge, CBI Court is unsustainable and is hereby set-aside. Petitions are allowed in the above terms."

It appears that similar view has been expressed recently by a division bench of Kerala High Court in case reported as *Central Bureau of Investigation vs. State of Kerala & ors.* 2015 CriLJ 1111.

Under the circumstances, present petition is allowed and order dated 20.09.2012 passed by Special Judge, CBI is hereby set-aside.

March 16, 2016

Ajay

(RAJAN GUPTA)
JUDGE

Referred to Reporter- Yes