

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

+ **CRL.M.C. 257/2016**

Order reserved on : February 01st, 2016

Date of Decision : February 10, 2016

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through Mr.Tushar Mehta, ASG with
Ms.Sonia Mathur, Standing Counsel
for CBI.

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through Mr.Dayan Krishnan, Sr. Adv. with
Mr.Rahul Mehra, Standing Counsel
(Crl.), Ms.Richa Kapoor, ASC (Crl.),
Ms.Aakash Lodha, Mr.Rohit Kaul,
Ms.Vedika Mittal, Mr.Sanyog
Bahadur, Mr.Shekhar Budakoti &
Mr.Ashish Negi, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The petitioner-Central Bureau of Investigation (CBI) has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against the Government of NCT of Delhi (hereinafter referred to as “respondent no.1”) for quashing and setting aside the order dated 20.01.2016 (hereinafter referred to as “impugned order”), passed by the learned Special Judge, CBI, Patiala House Courts, New Delhi in FIR RC No.

DAI-2015-A-0042 dated 14.12.2015, under Section 120-B of Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

At the outset, counsel for the petitioner submitted that the respondent no.2-accused Rajendra Kumar has been added as proforma respondent, so no notice was issued to him.

2. The facts enumerated from the record are that on the basis of source information, the FIR of the present case was registered on 14.12.2015 against accused Rajendra Kumar and other co-accused persons. The allegations levelled are that the accused Rajendra Kumar while working in different capacities in Delhi Government, promoted and illegally facilitated M/s Endeavour System Pvt. Ltd. by misusing his official position as public servant and also facilitated tenders to the said firm through ICSIL. After registration of FIR in question, an application under Section 93 Cr.P.C. was moved by the petitioner before the Court below for issuance of search warrant. The application was allowed and search warrant was issued allowing the petitioner to search the premises as mentioned in the application. On 15.12.2015, the petitioner conducted searches at various places

including the office of accused Rajendra Kumar and seized various incriminating documents. On 21.12.2015, execution report was filed before the Court with the request to allow the retention of seized documents. An application was filed by the respondent no.1 before the Court for release of documents seized by CBI on the ground that the same were not required for investigation. Notice of the said application was issued to the petitioner. During pendency of the said application, respondent no.1 requested that the petitioner should provide copies of the seized files to them. Photocopies of all the seized files were provided to the respondent no.1. On 20.01.2016, the Court below directed the petitioner to release the original documents to the respondent no.1 as mentioned in para 8 of the application.

3. Feeling aggrieved by the passing of the impugned order, the present petition has been filed by the petitioner seeking quashing and setting aside of the impugned order mainly on the grounds that the order of returning the seized documents at this stage would hamper the investigation; give undue favour to the accused persons and there is error in the impugned order while going into the relevancy of the documents and registration of FIR in question without having

preliminary inquiry.

4. I have heard the learned ASG for the petitioner as well as learned Senior Counsel for the respondent no.1. I have meticulously gone through their arguments as well as material available on record.

5. The admitted position is that the FIR in the present case was registered on 14.12.2015 under Section 120-B IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against accused Rajendra Kumar and others. An application under Section 93 Cr.P.C. was moved by the petitioner on 14.12.2015 before the Court for issuance of search warrants. The Court vide order dated 14.12.2015 issued the search warrants and directed the petitioner to file the compliance report. In pursuance of the search warrants, the search was conducted on 15.12.2015 as per search list.

The CBI filed the execution report of search warrants and sought permission for retention of seized documents in the Court on 21.12.2015.

On 21.12.2015, an application was also filed by the respondent no.1 for release of documents seized from the office of Rajendra Kumar. A request was made on behalf of the respondent no.1 before

the Court to direct the CBI to provide the copies of the seized files. On 31.12.2015, copies of the documents were supplied to the respondent no.1. On 20.01.2016, the impugned order was passed vide which the petitioner was directed to return the seized documents in original as mentioned in para 8 of the application of the respondent no.1.

6. Operative paras. 58 & 59 of the impugned order are reproduced as under :

58. But in view of the above discussions, CBI is directed to return the documents in original as mentioned in para 8 of the application to the applicant. However, CBI is at liberty to retain the photocopies of these documents and applicant i.e. Govt. of NCT Delhi is directed to depute responsible officer to sign and stamp on those photocopies so that in future there will not be any dispute about the true nature of the photocopies. Applicant i.e. Govt. of NCT Delhi is also directed to maintain the sanctity of the original documents so released. CBI is also at liberty to inspect the original documents at any point of time by visiting the applicant's office.

59. Application disposed off accordingly. Needless to say if CBI requires any of the released documents in original during the investigation, it is at liberty to seize it back in accordance to law.

7. On the basis of arguments advanced, the sole question to be decided by this Court is :

Whether the documents in question are required to be retained for the purpose of investigation?

8. On hearing the learned counsel for the parties and on the perusal of record, it is clear that the case of the petitioner is premised on the grounds that the investigation is at the initial stage and disclosing the relevancy or considering the relevancy of the documents in the impugned order at this stage is not sustainable in the eyes of law.

9. Argument advanced by the learned ASG for the petitioner is that the impugned order passed is not sustainable. The argument advanced is that during search in the office premises of the accused Rajendra Kumar, certain incriminating documents were found and same were seized. It is argued that relevancy of documents is the domain of the Investigating Officer and the Courts cannot interfere in the investigation conducted by the investigating agency. It is further argued that if the documents, as sought, are returned in original to the respondent no.1, it would prejudice the investigation; help the accused

persons and would hamper the fair investigation. It is the consistent stand of the petitioner that in some of the documents, there are writings in pencil and if the same are returned, the writings can be destroyed.

10. In support of the contentions, learned ASG has relied upon judgment in the case of ***R.P. Singh v. J.A.C. Saldanha and others*** (1980) 1 SCC 554 in which it was observed that :

26.This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

27.Some attempt was made to impress us with utterly irrelevant factors as to how much freight TISCO is paying to the railways every year and even the amount which may become payable in view of the disputed facts was also paid some time prior to the filing of the first information report. We would refrain from making even an implied observation on any facts involved in the dispute. The case is not at a stage where the court is called upon to quash the proceedings as disclosing no offence but the case is at a stage where further investigation into the offence is sought to be thwarted by interference in exercise of the extra-ordinary jurisdiction. Apart from reiterating the caution administered way back in Khawaja Nazir Ahmad's (supra) case that unless an extra-ordinary

case of gross abuse of power is made out by those in charge of investigation as noted in *S.M. Sharma v. Bipen Kumar Tiwari & Ors* the Court should be quite loathe to interfere at the stage of investigation, a field of activity reserved for police and the executive....

In *J.A.C. Saldanha's* case (supra) the Hon'ble Apex Court is of the considered opinion that the intervention of the Court is warranted on the completion of the investigation and the investigation is the sole domain of the Investigating Officer. It is not disputed by the parties that the investigation of the case is the sole domain of the Investigating Officer, rather the case of the respondent no.1 is that the respondent no.1 has nothing to do with the investigation of the case. Admittedly, counsel appeared for the respondent no.2 accused/respondent no.2 and submitted that he had not shown any concern with the release of the documents and the proceedings on the application of respondent no.1, rather claimed that he has unnecessary been made respondent in the present petition. Even the stand of the petitioner is that the accused/respondent no.2 was a proforma respondent, so this Court did not issue notice to the respondent no.2.

Similarly, in another judgment relied upon by the learned ASG in the case of *Union of India v. Prakash P. Hinduja and another*

(2003) 6 SCC 195, it was observed by the Hon'ble Apex Court that :

13. The provisions referred to above occurring in Chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the Magistrate under Section 173, the requisite details have to be submitted by the officer in charge of the police station without any kind of interference or direction of a Magistrate and this will include a report regarding the fact whether any offence appears to have been committed and if so, by whom, as provided by clause (d) of sub-section (2)(i) of this Section. These provisions will also be applicable in cases under Prevention of Corruption Act, 1947 by virtue of Section 7A thereof and Prevention of Corruption Act, 1988 by virtue of Section 22 thereof.

11. Further argument advanced is that the investigation is at the initial stage and the relevancy of the documents seized need not to be

disclosed, demonstrated, showed or looked into by any other person except the Investigating Officer. On this point, the learned ASG has also relied upon judgments in the cases of ***Director, Central Bureau of Investigation and others v. Niyamavedi (1995) 3 SCC 601; State of Bihar and another v. P.P. Sharma, IAS and another 1992 Supp (1) SCC 222; State rep. by Inspector of Police, SPE/CBI/ACB v. Renukadevi 1999 Cr.L.J. 2955; M/s. Naushad Leather Finishers and others v. Union of India and others 2013 SCC OnLine ALL 2701; State of Karnataka v. K.Krishna Gowda and another 2006 Cr.L.J. 259; Chandan Panalal Jaiswal and another v. State of Gujarat and others 2004 SCC OnLine Guj 15 and Noorkhan v. Sk. Jakeere and another 2003 SCC OnLine Bom 36.***

12. Further argument advanced is that the FIR was registered on 14.12.2015 and the search warrants were taken on 14.12.2015. The search was conducted on 15.12.2015 and the documents were taken into custody. On 21.12.2015, an application for return of original documents was moved by the respondent no.1. Neither there was any stage to examine the documents nor was there any stage to demonstrate the relevancy in the open Court which is contrary to the

fairness of the investigation. In the impugned order, it was not required to enter into the relevancy of the documents during the pendency of the investigation and that too, at the initial stage of investigation.

13. Apart from the arguments on the privacy of the investigation, learned ASG for the petitioner further argued that in the impugned order, the jurisdiction has been exceeded while entering into the question such as reasons for seizing the documents at the time of search conducted on 15.12.2015 and conducting the preliminary enquiry.

14. The advancement of the argument culminates into the undisputed fact that the search was conducted in pursuance of the search warrant and the documents seized were voluminous. The view taken in the impugned order that there was requirement to examine the relevancy of the documents at the time of seizing the documents, is neither justifiable nor desirable. Admittedly, the search was conducted at numerous places and against various persons because in the present case accused/respondent no.2 Rajendra Kumar was working as Senior IAS officer and was posted as Principal Secretary

to the Chief Minister, Delhi at the relevant time. During the said raid, several documents were seized from the Government offices. Neither it was possible to check each and every document at the spot nor was it possible to scrutinize the documents for the purpose of seizing the same. No doubt as per clause 14.19 of the CBI Manual, the Investigating Officer should not seize unnecessary documents, but it would not out of context to say that the necessity of the documents could be judged only by going through the documents which did not appear to be feasible at the time of conducting the raid. More the reason, Section 93(1)(c) of the Cr.P.C. reads as under :

93. When search-warrant may be issued.—

(1)(a)xxxx

(b)xxxxxxx

(c)where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection.

As per Section 93(1)(c) of the Cr.P.C., search warrant is issued when the documents in general are to be taken into custody for the purpose of examination. In the present case, after conducting search and seizing the documents, the Investigating Officer after going through the documents was of the opinion that the documents were

required for the purpose of investigation.

15. The case of the investigating agency i.e CBI is that the FIR dated 14.12.2015 was registered for the commission of offences under Section 120-B IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption, Act, 1988 against accused Rajendra Kumar and other accused persons for entering into criminal conspiracy and for committing criminal misconduct by public servant by abusing his official position to obtain for himself or for any other person any pecuniary advantage. It was alleged against accused Rajendra Kumar that he caused pecuniary advantage to himself or to others while working on various official positions and in pursuance of same, search warrant dated 14.12.2015 was taken from the Court along with list Annexure 'A'. The list Annexure 'A' reads :

1. Complete data of all e-mails and messages of accused persons.
2. Record/diaries about payment made to accused persons as illegal gratification to public servants and payment made to other private persons for cartel.
3. Pen drives, hard disk, memory cards, CDs, mobile phones etc. containing the data related to the case.
4. Correspondence files of M/s ICSIL related to the various project given by Delhi govt. and details of subsequent payments released to M/s ICSIL.
5. EOI documents, RFP documents, Tender files, Technical bids, Financial Bids, Correspondence files,

Award of work documents etc in respect of FIR projects to M/s Endeavour System Pvt. Ltd. for ICSIL.

6. Documents, if any, showing quid pro quo obtained by accused officials of M/s ICSIL and other accused public servants.
7. Documents showing recommendations made by the accused public servants in respect of various questioned work awarded to M/s Endeavour System Pvt. Ltd. by ICSIL.
8. Documents pertaining to Bank accounts, FDRs, NSCs and other investments made by accused public servants.
9. Documents pertaining to investment in the immovable assets made by accused public servants.
10. Any other documents relevant to the case.

After obtaining the search warrant, search was conducted on 15.12.2015. An application was moved by the respondent no.1 for return of documents and during the pendency of the same, certified copies of the documents were given by the CBI. Thereafter the application was argued at length. The investigating agency/ Investigating Officer took the specific plea before the Court that the documents seized were required for the purpose of investigation.

16. The documents sought to be returned, mentioned in para 8 of the application of the respondent no.1, are as under :

- (i) That all files/documents placed under

Annexure A-3 specified under head 'A' in para 7 above, which are replicated herein below for read reference namely:

1)One binded Register Diary for the year 2013,

2)One binded Register Diary for the year 2014,

3)A bunch of paper slips containing 1 to 7 slips,

are totally unrelated/unnecessary for the purposes of the investigation in the present case.

These files at Serial No.1 and 2 above which have been seized from the Office of Chief Minister on 15.12.2015, are registers (though labeled year 2013 and 2014 respectively) maintained for noting down the telephone numbers and appointment details pertaining to day to day functioning of Chief Minister's office. That various telephone numbers, mobile numbers and other details of meetings etc were scribed in these registers. Similarly, the document/papers seized as mentioned in item no.3 above, contained some numbers, e-mail ID's. That due to seizure of these documents, State's office is facing extreme difficulties in contacting and establishing communication with officers of various departments of GNCTD. The entire work and functioning of State's office is greatly hampered, paralysed and dislocated. Thus the Govt. of NCT of Delhi and in-turn its citizens have been made to suffer immensely on account of indiscriminate seizure carried out in total non-compliance of procedural safeguards and laws relating to requisition and seizures of documents for purposes of

investigation. The repeated request of officers of the applicant to provide photocopies of documents seized, too was turned down in utter violation of provisions of clause 14.20 of the CBI manual.

- (ii) That file at serial no.5, of Annexure-B of search list of CBI (para of Annexure A 4 herein) i.e. “one red bounded register Diary 2015” was also indiscriminately seized. This file too was meant for noting down meetings date of CM office. That daily schedule and functioning in CBI office has been malafidely turned topsy turvy by raiding staff of CBI. Here again the repeated request of officers of applicant to provide photocopies of documents seized too was arbitrarily turned down in utter violation of provisions of clause 14.20 of the CBI manual.
- (iii) That the file bearing No.F.1(3@)/2008/Admn/Tpt/Vol-I mentioned at S.No.3 of Annexure-B of search list of CBI (part of Annexure A-4 herein) was created in the year 2008 with the subject matter of Hiring of Manpower through outsourcing. The Department of Services presently hiring Data Entry Operators (DEOs) through M/s. ICSIL since May-June, 2013 and before that DEOs were appointed on contractual basis. This file has 2 other Volumes i.e. Vol.II and Vol.III which has been mentioned Sl. No.2(a) and 2(b) of Annexure B of search list of CBI (Again part of Annexure A-4 herein). That more than 150 posts of LDCs and UDCs are lying vacant in the Transport Department. Therefore, from May, 2013,

Transport Department had engaged 130+ DEOs on contractual basis. The outsourcing was done and extended till 31.12.2015 with due concurrence of services, IT and Finance Department of GNCTD. All these three files were sent to the Services Department, GNCTD with the request to provide LDCs and UDCs against the vacant post before 31.12.2015, or to facilitate alternate arrangement [extending the engagement of 158 Nos. (130+28) Data Entry Operators (Contractual) for further six months as alternative option]. This file was sent keeping in view the fact that the agreement of IT with ICSIL & NIELIT for providing staff on outsourcing basis is expiring on 31.12.2015. That these DEOs make up a substantial part of work of zonal transport offices, in absence of regular DASS cadre staff. Therefore, these DEOs are very crucial for functioning of zonal transport offices. The work in these offices will come to stand still in absence of these DEOs, if regular DASS cadre staff is not provided to replace them after 31.12.2015. That furthermore, Govt. of NCT of Delhi is to implement odd even formula for private vehicles to control and safeguard the environment from high pollution levels in the city and thus the Government staff in the Transport Department would be of urgent necessity for smooth working of the State run public transport. The raiding officials of CBI oblivious of these difficulties, indiscriminately carried out the seizure inspite of the fact that these documents were not at all relevant or necessary for instant investigation. It is relevant to point out that

here again CBI blatantly and brazenly refused to provide photocopy of these files as well.

- (iv) That further file bearing No.F.1(32)/2008/Admn/TPT/Pt-I, mentioned at Sl.No.1 of the Annxure-B of Search List of CBI (part of Annxure A-4 herein) was created in the year 2014 for requirement of additional DEOs to implement the E-rickshaw policy and was sent to Services Department for urgent action. This file too is totally unrelated/unnecessary to the investigation of the instant case, however, CBI still seized the same indiscriminately in violation of all norms and procedures known to cannons of principles and law laid down for requisition, search and seizures during investigation.
- (v) That the CBI indiscriminately took the screen shot image and print out of the Cabinet decision No.2153 dated 11.6.2015 as mentioned in Item 11 of Annexure-B of Search List of CBI (part of Annexure A-4 herein). This Cabinet decision is not even remotely related with the ongoing investigation. This decision pertains to Food & Supply Department and has nothing to do with any of the Departments concerning which allegations are levied the FIR/RC. That pertinent it is to mentioned that the CBI officials did not stop at taking the seizure of the screen shot and print out of the aforesaid cabinet decision, they later in the day around 5 pm. on 15.12.2015, sent a message that they wanted to peruse the file No.3/2013/GAD/CM. Accordingly, Shri

Prabhat Thakur, Superintendent showed the file to the officers of the CBI. After inspection of the file the CBI indiscriminately seized the said original cabinet decision no.2153 [issued through File No.F.3/3/2013/GAD/CM/dsgadiii/2495-2506 dated 16.6.2015 (1 sheet) through production cum seizure memo as annexure herein as ANNEXURE A-6. The sole motive of CBI in the instant case was to cause harm to the Govt. of NCT of Delhi and dislocate, paralyse and hamper its smooth functioning.

- (vi) That five files relating to MIS, ICSIL, produced by Dy. Secretary IT seized through production cum seizure memo, copy of which is placed as ANNEXURE A-7 is also not in any way related to the ongoing investigation of the instant case.

17. In the impugned order, error has been committed and jurisdiction has been exceeded in accepting the claim of the return of the documents, selected by the respondent no.1, mentioned in para 8 of the application as it over shadow the investigation.

18. Furthermore, in the impugned order observations regarding diary mentioned at sl. no.5, file mentioned at sl. no.3, volumes of file at sl. No.2(a) & 2(b) and file at sl. No.1 in para 37; observations regarding files relating to M/s ICSIL in para 38 and observations

regarding the original cabinet decision no.2153 dated 11.06.2015 in para 39 have been made which are neither justifiable nor desirable as the relevancy is to be examined by the Investigating Officer and not by the Court and the same tantamounts to interference in the investigation conducted by the Investigating Officer.

19. Admittedly, the documents asked to return are voluminous and are the subject matter of investigation which is on initial stage. Direction given in the impugned order to disclose the relevancy of the documents is neither justifiable nor desirable nor sustainable in the eyes of law at this stage. It would be pertinent to mention here that such inquiry in the open Court or in the reply would hamper the entire investigation and would amount to unnecessary interference in the investigation. It is against the principle of privacy, as the investigation which is the sole domain of the Investigating Officer and his mindset need not to be disclosed during the pendency of the investigation and required to be disclosed only at the time of filing the charge sheet before the Court. Needless to say that the Court has ample power to consider the relevancy of the documents filed along with the charge sheet by the Investigating Officer on the completion

of investigation. The Court is always empowered to release the unrelayed documents by the investigating agency.

20. As discussed above, examination of the documents collected by the Investigating Officer at the initial stage of investigation culminated into exceeding of the jurisdiction in the impugned order.

21. Apart from the discussion made above, in para no.55 of the impugned order, observation has been made that the CBI registered the FIR in question without conducting preliminary inquiry, which tantamounts to exceeding of jurisdiction, particularly when the application did not show any concern about the registration of FIR but it was only for the return of the documents seized at the time of conducting the raid in pursuance of the search warrant dated 14.12.2015. Such observations may even affect the ultimate judgment to be passed at the finality of the trial and thus the same are not warranted to be made in the impugned order. A reading of para 55 of the impugned order shows the commission of error and exceeding of jurisdiction.

22. Furthermore, apart from the discussion made above, there are apparent contradictions in the findings given in the impugned order

inasmuch as in para 44 it has been mentioned that “*There is no dispute to the proposition that the courts has no power to interference in the investigation neither can give direction in what manner the police should conduct the investigation, and police has unfettered discretion to investigate into the offences*”, but the impugned order shows the examination of individual document and relevancy of the same at the initial stage of investigation just after seizing the documents.

Similarly, in para 58 of the impugned order, *direction has been given to the CBI to return the documents in original with the liberty to retain the photocopies and asked the Govt. of NCT of Delhi to depute responsible officer to sign and stamp on photocopies on the premise that the documents are not relevant for the purpose of investigation.* On the contrary in para 59 of the impugned order, it was opined that *if CBI requires any of the released documents in original during the investigation, it is at liberty to seize it back in accordance with law.*

23. It would be pertinent to mention that the documents were seized in pursuance of the search warrants by conducting raid in various offices. Thus, it is not desirable first, to return the seized documents

and then to re-seize the documents (as mentioned in para 59 of the impugned order) despite the consistent claim of the Investigating Officer that there were some pencil entries and other similar things which could be destroyed and the character of the originality of the documents may be affected.

This Court is of the considered opinion that requirement of documents for the purpose of investigation is to be examined and decided by the Investigating Officer and any direction to interfere in the same is not justified.

24. In the impugned order, there is also failure to exercise the jurisdiction in not considering and examining the application dated 21.12.2015 filed by the CBI for retention of seized documents. It is apparent that no order on the application of the CBI regarding submission of execution reports of search warrants and request for retention of seized documents has been passed.

25. The **bone of contention** of the argument advanced by the learned Senior Counsel Mr. Dayan Krishnan for the respondent no.1 is that the search warrant was issued on 14.12.2015 and Annexure 'A' was attached along with that to search and seize the documents. It

was vehemently argued that at the time of search, it was the duty of the Investigating Officer that the search should have been conducted to seize the documents mentioned in the search warrant only and no document beyond the same should have been seized and also to examine the relevancy of the seized documents then and there only.

26. In support of the above contentions, learned Senior Counsel for the respondent no.1 relied upon judgment in the case of ***Central Bureau of Investigation v. Ashok Kumar Aggarwal (2014) 14 SCC 295*** in which it was observed that :

Thus from the above, it is evident that the CBI Manual, being based on statutory provisions of CrPC, provides for guidelines which require strict compliance. More so, in view of the fact that the ratio of the judgment of this Court in *M.M. Rajendran* has been incorporated in the CBI Manual, the CBI Manual itself is the best authority to determine the issue at hand. The court has to read the relevant provisions of the CBI Manual alone and no judgment of this Court can be a better guiding factor under such a scenario.

In the next judgment relied upon by the Senior Counsel for the respondent no.1 in the case of ***State of Haryana and others v. Ch. Bhajan Lal and others AIR 1992 SC 604***, it was observed that :

The sum and substance of the above deliberation results in a conclusion that the investigation of an

offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'DivinePower' which no authority on earth can enjoy.

On similar point, judgments in the cases of ***Sakiri Vasu v. State of U.P. and ors. AIR 2008 SC 907; Lalita Kumari v. Govt. of U.P. and ors. AIR 2014 SC 187; M.P. Sharma and ors. V. Satish***

Chandra AIR 1954 SC 300; V.S. Kuttan Pillai v. Ramakrishnan and anr. AIR 1980 SC 185; Shyam M. Sachdev v. The State and another 1991 Crl.L.J. 300; Vineet Narain and ors. V. Union of India and anr. AIR 1998 SC 889 and S.K. Srivastava v. Gajanand Patriwalla 1956 Cri.L.J. 1396 have also been relied upon.

27. The argument advanced by the learned Senior Counsel for the respondent no.1, in the facts and circumstances stated above, does not appear to be cogent inasmuch as moving the application under Section 93 Cr.P.C. for issuance of search warrants is part of the investigation and does not curtail the power to conduct the investigation by the Investigating Officer. The investigation was being conducted against accused Rajendra Kumar who at the time of search was working as Principal Secretary to the Chief Minister, Delhi. Thus, asking for the relevancy of the documents by moving the application for the release of original documents is neither justifiable nor desirable at the initial stage of investigation as it could hamper the investigation in the matter. More the reason, the respondent no.1 has no connection with the accusation against accused Rajendra Kumar. Section 93 Cr.P.C. is meant to facilitate the investigation and is not meant to over shadow

the scope of investigation and the details of documents given in the application or annexure thereto does not curtail the scope of investigation. Thus, the raising of plea to curtail the investigation is not sustainable.

28. This Court is of the considered view that the moving of the application under Section 93 of Cr.P.C. for issuance of search warrant does not curtail the scope of the investigation into the allegations and for considering the other factors for the purpose of investigation. Mere mentioning of the period of offence does not curtail the power of the Investigating Officer to seize the documents subsequent to the same as it was in the continuation of the material required for the investigation during subsequent period also. More the reason that item no.10 of the annexure to the application under Section 93 Cr.P.C. says “*Any other documents relevant to the case*”. Thus, the argument advanced by the learned Senior Counsel for the respondent no.1 that the Investigating Officer was required to stick to the documents mentioned in annexure to the application only and cannot enlarge the scope of seizure of the documents for the purpose of investigation, does not appear to have any force.

29. *As discussed above, the impugned order is full of either exceeding of jurisdiction or failure to exercise the jurisdiction. The issuance of directions to return the documents at the time of initial investigation despite having consistent stand of the CBI to retain the documents for the purpose of investigation to reach to a logical conclusion; making the unnecessary observations in para 55 with regard to conducting the proceedings by the petitioner; having contradictory views in paras 58-59 and 44; directing to return the documents in original selected by the respondent no.1 in para 8 of the application and having failed to exercise the jurisdiction to consider the application for retention of documents by the CBI, culminates into the impugned order not sustainable in the eyes of law.*

30. The claim of the CBI to retain the documents for the purpose of investigation is justifiable. Accordingly, the impugned order dated 20.01.2016 is hereby set aside and the petitioner/Investigating Officer is at liberty to retain the documents during the pendency of the investigation.

31. Needless to say that two sets of the copies of the documents have already been supplied to the applicant/respondent no.1, once

during the pendency of the application before the Court below and second time during the pendency of the present petition. The documents in sealed cover filed by the petitioner, lying with the Registrar General of this Court, has not been referred by either of the parties, so the Registrar General is directed to return the original sealed cover to the petitioner.

32. The present petition is disposed of accordingly.

33. The application Crl.M.A. 1136/2016 is also disposed of.

34. Copy of the order be given to both the parties under the signature of the Court Master.

(P.S.TEJI)
JUDGE

FEBRUARY 10, 2016
dd