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

\+ **<u>CRL.M.C. No.787/2014 & Crl.M.A. No.2683/2014</u>**

Date of Decision : June 02^{nd}, 2016

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner
Through: Ms. Sonia Mathur, Standing Counsel for CBI

versus

OM ARORA & ORS ..... Respondents
Through: Mr. Ashwani Matta, Senior Advocate with Mr. Dinkar Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

<u>P.S.TEJI, J.</u>

1. The present petition has been filed by the petitioner/Central Bureau of Investigation under Section 482 of the Code of Criminal Procedure for quashing of the order dated 13^{th} August, 2013 passed by learned Special Judge**,** Patiala House, New Delhi and the order dated 10^{th} December, 2013 passed by the Special Judge (PC Act), CBI**-**02, New Delhi, thereby declining the request claiming privilege and direction to CBI to make available the request letter/communication sent by CBI seeking approval granted vide approval dated 8^{th} September, 2010.

2. The facts giving rise to the present petition are within the narrow compass. A case was registered by the CBI against Mr.Om

Arora, Mr.Bakshish Singh, Mr.Rajinder Singh and others under Section 120 of the Indian Penal Code read with Sections 7, 8, 12, 13(2) read with Section 13(1)(d) of PC Act on the basis of source information on 3rd August, 2011. As per the allegation in the FIR, Mr.Om Arora, Director of M/s Quantum Securities Pvt. Ltd., came to know about the raid which was being conducted by the Income Tax Department, through another director of the company namely Mr.Sanjay Dutt, who informed him that the search team of Income Tax Department had conducted search at the premises of Shri Om Arora earlier also. It is mentioned in the petition that thereafter, Shri Om Arora, in connivance with Mr.Bakshish Singh, ITO (Retd.), entered into a criminal conspiracy and pursuant thereto, a deal was negotiated between the two for payment of illegal gratification of Rs.25,00,000/- to one Shri Rajinder Singh, ITO and other search team members, for avoiding scrutiny of accounts of the company and other investment related documents in depth. The said amount was paid to Mr.Rajinder Singh, ITO on 29th October, 2010 at his residence by virtue of which Mr.Rajinder Singh, ITO, deliberately ignored certain documents which also included documents relating to the properties of Mr.Om Arora.

3. A chargesheet was filed in the above mentioned case on 28th December, 2012 against Mr.Om Arora, Mr.Bakshish Singh and

Mr.Sanjay Dutt. In this case, the accused Mr.Om Arora & Mr.Bakshish Singh moved an application on 4th March, 2013 for supply of deficient documents which were mentioned in the charge sheet. Mr.Om Arora also requested for supply of documents sent by CBI requesting the telephone surveillance. A reply to the said application was filed by CBI opposing the production of documents i.e. request of CBI for telephone surveillance, because of the reason that the same had not been relied upon by the prosecution at the time of investigation of the case. The said application of the respondents was allowed vide order dated 13.08.2013 and CBI was directed to produce the record pertaining to the proposals pursuant to which permission/order dated 08.09.2010 was issued by the Ministry of Home Affairs.

4. An application was, thereafter, preferred by the CBI under Sections 123 & 124 of Indian Evidence Act, 1872 claiming privilege on the ground that necessary permission for intercepting transmission of registered mobile number of Mr.Om Arora was obtained and the same was used to keep the activities of suspects under surveillance. Vide order dated 10th December, 2013, the Trial Court rejected the request of the CBI claiming privilege under Sections 123 & 124 of Indian Evidence Act, 1872 and CBI was once again directed to make available the request

letter/communication sent by CBI seeking approval granted vide approval dated 8th September, 2010.

5. It is contended by learned senior counsel for the petitioner that the documents/correspondence ordered by the Trial Court vide order dated 13th August, 2013 are top secret in nature and also relates to the affairs of the State viz. for the maintenance of law and order, economic/social stability and provide corruption free society for which the State is committed and their disclosure will lead to contrary effect on the functioning of surveillance on the persons suspected to be acting in contravention of law and public interest. The approval order dated 8th September, 2010 has already been placed on record and there is no need to supply any other related document. In support of his contention, learned senior counsel for the petitioner relied on ***Dharambir v. Central Bureau of Investigation 148 (2008) DLT 289***; ***Manjeet Singh Khera v. State of Maharashtra (2013) 9 SCC 276*** and ***The State of U.P. v. Raj Narain & Ors. (1975) 4 SCC 428.***

6. In support of his arguments, learned senior counsel for the petitioner/CBI relies on paras 9.9 & 9.10 of the pronouncement in ***Dharambir v. C.B.I. (supra)***, which reads as under:-

> "9.9. A reading of Sections 173(5)(a) and Section 207(v), Cr.P.C. indicates that there is very little discretion left with the Court to substitute its opinion as

to what the prosecution should be relying upon for proving its case. Where the prosecution categorically States in the charge-sheet that it is relying on only certain documents and not others, it is not possible for the Court to overlook that and insist that the prosecution should also rely upon some other document that it has gathered and therefore should provide the accused with a copy thereof. It does appear that in the matter of documents, the Court does not have the discretion of the type urged by the counsel for the petitioners.

9.10 There are also good reasons why the trial Courts should not be asked to undertake the task of requiring copies of all documents gathered by the prosecution during investigation to be provided to the accused notwithstanding the fact that the prosecution says that it is relying only upon some of them for the purposes of the case. There are limited powers of the criminal Courts circumscribed by the Cr.P.C. To expect a Judge to sit in judgment over what the prosecution considers to be documents worth relying upon even at the pre-charge stage or is to require the trial Court to perform a task it is plainly not expected to perform upon a reading of the various provisions of the Cr. P.C. The Cr. P.C. also envisages that at different stages of the progress of the criminal proceedings, the trial Court is expected to get increasingly involved. For instance, the degree of scrutiny of materials at the stage of cognizance will of course not be a strict as at the stage of pre-charge and charge and would increase at the stage of framing of charge. There are provisions to take care of contingencies when in his defence the accused wants to summon documents or witnesses. There is also Section 91 Cr. P.C. However, for the purposes of the present case, it is sufficient to observe that at the pre-charge stage, the trial Court is not expected to insist that copy of each and every document gathered by the prosecution must be furnished to the accused irrespective of what the prosecution proposes to rely upon."

(Emphasis supplied)

7. On the other hand, learned counsel for the respondents submitted that the documents ordered to be supplied by the Court below were not supplied by CBI within the prescribed period and on 28th May, 2013, the investigating officer of CBI sought permission to place on record the requisite documents apart from the order dated 8th September, 2010. The matter was thereafter adjourned to 9th & 10th July, 2013 and thereafter to 13th August, 2013. It is alleged that the CBI thereafter took several dates to supply the requisite documents as and also filed a reply to the applications of the petitioner which was disposed of by order dated 26th April, 2013 wherein CBI took the stand that since requisition made to Ministry of Home Affairs on the basis of which the order dated 8th September, 2010 was passed, had not been relied upon in the charge sheet, therefore, the petitioner would not be entitled to the copy of the said requisition letter. In support of his contention, learned counsel for the respondents relies on the judgments in the case of ***Manu Sharma v. State 2010 (1) SCC 1***; ***Amar Chand Butail v. Union of India AIR 1964 SC 1658*** & the judgment passed by this Court in ***Crl.M.C. No.2873/2015*** titled ***CBI v. Dharambir Khattar***.

8. I have heard learned counsel for the parties, perused the

available records and gone through the judgments relied upon by the parties.

9. It is the consistent stand of the CBI that the communications made by them to the Ministry of Home Affairs regarding surveillance of the phone of the respondents cannot be made available to the respondents for the reasons that it contained the information not only about the respondents only but several other suspects also and in case the said communication is made available, it would be against the public interest. It is also the case of the CBI that if such communication is made available, it would lead to hampering the investigation done against several other suspects. Such documents are highly sensitive in nature and are of utmost secrecy.

10. Special procedural advantages and protections are enjoyed by the State. One of such protections operates in the field of evidence is in the nature of a privilege regarding the production of certain documents and disclosure of certain communications, which is enumerated in Sections 123 and 124 of the Indian Evidence Act, 1872. Under the said Sections, CBI in the present case and such government agencies enjoy certain privileges from production of certain documents and disclosure of certain communications before the courts.

11. In the present case, the documents/letters/communications demanded by the respondents are unpublished official record relating to various suspects including the respondents-herein. Therefore, it would not be safe to supply such documents which would either hamper the investigation of other cases to be conducted by CBI or which are against the public interest. In the considered view of this Court, the CBI cannot be directed to supply the request letter/communication sent by it seeking approval granted by the Ministry of Home Affairs vide order dated 08.09.2010.

12. In the facts and circumstances mentioned above, the orders dated 13.08.2013 and 10.12.2013 passed by the Court below are hereby set aside.

13. The petition and application, if any, are disposed of accordingly.

(P.S.TEJI)
JUDGE

JUNE 2nd, 2016
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