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

+ W.P.(CRL) 370/2015 and Crl.M.A.2719/2015

CENTRAL BUREAU OF INVESTIGATION Petitioner
Through: Mr.Sanjeev Bhandari, Spl. PP for CBI

versus

KRISHAN MURARI GUPTA Respondent
Through: Respondent in person.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
17.05.2016

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1. This writ petition has been filed by the CBI with the following prayer:-

(i) to quash order dated 04.04.2014 passed by the Ld. Spl. Judge: CBI, Tis Hazari Courts, Delhi and consequently set aside and quash order dated 23.10.2013 passed by the Ld. Spl. Judge: CBI, Tis Hazari Courts, Delhi.

(ii) to issue direction for accepting the Closure report filed by CBI in FIR No.RC 03(A)99-DLI/CBI/ACB/New Delhi dated 11.02.1999 under Section 120B, 420, 467, 468, 471, IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act against the respondents and others.

2. Mr.Sanjeev Bhandari, learned Special PP for CBI has submitted that case FIR No.RC-DAI-1999-A-0003 dated 11.02.1999 under Sections 120-B/420/467/468/471 IPC and under Section 13(2) r/w 12(1)(d) of Prevention

of Corruption Act has been registered at ACB, CBI. The closure report under Section 170 Cr.P.C. was submitted before the learned Special Judge, CBI in the year 2013. However, the same was not accepted and vide order dated 23.10.2013, the Court simply observed that it is not a case of no evidence found by the CBI but of refusal to grant sanction for prosecution. The file was directed to return to the CBI alongwith documents. Thereafter again after further investigation, the closure report was submitted by the CBI but for the reasons recorded in the order dated 23.10.2013 observing that there was no occasion for the CBI to file closure report, it was not accepted and file was ordered to be consigned to Record Room vide order dated 04.04.2014.

3. Mr.Sanjeev Bhandari, learned Special PP for CBI has submitted that the competent authority has refused to grant sanction for prosecution. The closure report has been submitted repeatedly before the learned Special Judge, CBI but without passing any effective order, the Court has ordered for consignment of the file to the Record Room. The CBI is not aware how to proceed with the matter when the investigation has resulted into submission of closure report and nothing further is required to be done by the CBI after refusal of the sanction by the competent authority.

4. Mr.Sanjeev Bhandari, Special PP for CBI has submitted that once closure report has been submitted by CBI, learned Special Judge could not have simply consigned the file to the record room and he could have exercised the option available to him in accordance with provision under Section 190 CrPC. It has also been submitted that so far as grant or refusal of sanction is concerned, for the offence under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act no cognizance can be taken by the

Court in case of refusal of sanction to prosecute by the Competent Authority.

5. The orders passed by the learned Special Judge CBI on 23.10.2013 and 04.04.2014 are extracted hereunder:-

23.10.2013

Present: Sh. Brajesh Shukla, Sr. PP for CBI.

Closer report has been filed by CBI under Section 170 Cr.P.C. FIR in the matter, was registered with the allegations that Sh. K.S. Chauhan, the then Chief Magistrate, Syndicate Bank, Green Park Extension, New Delhi, in conspiracy with Sh.K.M. Gupta, being Proprietor of M/s Mukta Sons and Smt. Madhu Gupta W/o Sh. K.M. Gupta, being the Proprietor of M/s. Curio Palace, misused his official position and allowed credit facilities relating to Banking Credit Limit, foreign documents, bill purchase as well as bank guarantee and because of the said criminal misconduct and conspiracy, a sum of `52,26,539/- of Syndicate Bank was rendered bad debt.

After conclusion of the investigation, CBI had approached the Chief Vigilance Office, Syndicate Bank, Head Office, Manipal, Karnataka, for according sanction to prosecute Sh. K.S. Chauhan, the then Chief Manager and Sh. C.S. Ventakatakrisna, Officer from Syndicate Bank, Green Park Extension Branch, New Delhi and vide letter dated 19.03.2002, Chief Vigilance Officer, Sh. S.V. Raghavedran of Syndicate Bank, conveyed the refusal of sanction to prosecute said K.S. Chauhan and C.S. Ventakatakrisna. As per the closure report filed, it is stated that some steps were further taken on behalf of the CBI towards investigation of the case and now closure report has been filed with the conclusion that no concrete/sufficient evidence, oral as well as documentary, was found to establish the involvement of the accused persons in the commission of the offence in the case.

It appears to be a case of the refusal of sanction to prosecute the public servants involved in the matter and not a

case of inadequate or no evidence. There was no occasion for CBI to approach the vigilance officer of the Syndicate Bank at its Headquarter in Manipal, Karnataka, if there was no evidence found by CBI. As such, final report in the matter cannot be accepted, as it is a case of refusal of sanction.

File is directed to be returned to CBI alongwith documents filed. Court proceedings relating to the matter be consigned to record room.'

'04.04.2014

Present : Sh. Brajesh Shukla, Sr. PP for CBI alongwith Insp. S.K. Singh.

Earlier Closure report was filed in the matter by CBI on 29.08.2013 under Section 173 Cr.P.C. and same was not accepted as per the order dated 23.10.2013. Again stating the same facts, present closure report has been filed. There was no occasions for the CBI to file the closure report in view of the order dated 23.10.2013 and this report is also not accepted for the reason given in the order dated 23.10.2013.

File be consigned to record room.'

6. Case FIR No.RC-DAI-1999-A-0003 under Sections 120-B/420/467/468/471 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act was registered on 11.02.1999 by ACB, CBI.
7. Closure report has been submitted before the learned Special Judge, CBI twice. While passing the order dated 23.10.2013, the learned Special Judge, CBI has observed that it is a case of refusal of sanction. For the offence punishable under Section 13(2) read with Section 13(1)(d) of PC Act, cognizance cannot be taken with previous sanction from the competent authority as required under Section 19(1) of PC Act.

8. It is equally well settled that the Special Judge cannot issue the direction to CBI to obtain sanction. CBI has already brought to the notice of the Special Judge that sanction in this case has been refused.

9. In the case reported as ***Vasanti Dubey Vs. State of Madhya Pradesh*** (2012) 2 SCC 731, the legal position in this regard has been reiterated as under:-

'19. The instant matter is one such example and is one steps ahead wherein the Special Judge was confronted with yet another legal impediment of lack of sanction for prosecution giving rise to a peculiar situation when he noticed and recorded that he could not proceed in the matter under the Prevention of Corruption Act without sanction for prosecution, but in spite of this he directed to obtain sanction, ordered for reinvestigation and consequently refused to accept closure report.

20. Since the Special Judge in the instant matter refused to accept the closure report dated 18.05.2004 without any enquiry or reason why he refused to accept it which was submitted by the Special Police Establishment, Lokayukta Office, Jabalpur after reinvestigation for which reasons had been assigned and there was also lack of sanction for prosecution against the Appellant which was necessary for launching prosecution under the Prevention of Corruption Act, we deem it just and appropriate to hold that the Special Judge clearly committed error of jurisdiction by direction reinvestigation of the matter practically for the third time in spite of his noticing that sanction for prosecution was also lacking, apart from the fact that the Special Police Establishment, Lokayaukta Office, after reinvestigation had given its report why the matter was not fit to be proceeded with.

21. We are therefore of the considered view that the Special Judge in the wake of all these legal flaws as also the fact that the Special Judge under the circumstance was not competent to

proceed in the matter without sanction for prosecution, could not have ordered for reinvestigation of the case for the third time by refusing to accept closure report dated 18.05.2004. This amounts to sheer abuse of the process of law resulting into vexatious proceedings and harassment of the Appellant for more than 10 years without discussing any reason why he disagreed with the report of the Lokayukta and consequently the closure report which would have emerged if the Special Judge had carefully proceeded in accordance with the procedure enumerated for initiation of proceedings under the Code of Criminal Procedure.'

10. The procedure to be followed by learned Special Judge, CBI is prescribed under Section 5 of Prevention of Corruption Act and the case is to be tried as warrant trial by the learned Special Judge.

11. In case the final report sent to the Special Judge is a closure report mentioning that no case is made out against the accused, the learned Special Judge is within his power to ignore the conclusion drawn by the investigating agency and take cognizance of the case. However, for the offence punishable under Sections 7, 10, 11, 13 and 15 of Prevention of Corruption Act, cognizance cannot be taken without previous sanction for prosecution being obtained in this regard.

12. The learned Special Judge is at liberty to follow the options available under the law but cannot order consignment of the file without passing any effective order on the closure report submitted by the CBI.

13. Thus, the impugned orders 23.10.2013 and 04.04.2014 passed by Special Judge are set aside. The closure report which has already been ordered to be consigned to Record Room stands revived. The learned Special Judge is directed to proceed with the closure report in accordance with the provisions of law.

14. Writ petition stands allowed in above terms.
15. A copy of this order be sent to the concerned Court for information and compliance.

As prayed, copy of the order be given *dasti* to the parties.

PRATIBHA RANI, J.

MAY 17, 2016
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