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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.725 OF 2017

Vijay Choudhary

... Applicant

vs.

Central Bureau of Investigation & Anr.

... Respondents

Mr. Sujay Kantawala a/w Brijesh Pathak i/b. M. Ramesh for the Applicant.

Ms. Rebecca Gonsalves for Respondent no.1-CBI.

Mr. Vinod Chate, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 18th JULY, 2017

P.C.

1. By this application, the applicant seeks to assail the order dated 17th June, 2017 and the request letter dated 17th June, 2017 issued by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai. By the said order and letter, the Magistrate's Court directed the petitioner-applicant to be produced before CBI/EOW/Mumbai for investigation in R.C. No.04/E/2016.
2. It is the case of the applicant that pursuant to the said order, the impugned communication was issued on the same date whereby the Magistrate's Court requested the Special Judge, Special Court for Enforcement Directorate, District Court, Indore, to issue directions to the Jail authorities, Central Jail, Indore to produce the applicant before the Additional Chief

Metropolitan Magistrate, 3rd Court, Esplanade, and for that purpose hand over the applicant CBI/EOW/Mumbai. It is the case of the applicant that he was unaware of this development. The said communication was received by the Public Prosecutor, CBI, Bhopal Camp Office, Indore, dated 22nd June, 2017 and appears to have been forwarded on that date. Thereafter the Special Court heard the applicant on the said date i.e. 22nd June, 2017 and passed an order. There is no challenge to the said order till an application was filed on 3rd July, 2017 under Section 70(2) of the Cr.P.C. for recall/cancellation of the impugned communication dated 17th June, 2017. The matter was not taken on board since the Magistrate's Court held that there was no urgency. It appears that one more application to take the matter on board on 4th July, 2017 and met with the same fate.

3. Being aggrieved by the impugned orders dated 17th June, 2017 the applicant filed this application on 10th July, 2017. Initially this was moved before the Division Bench on 14th July, 2017 but the Division Bench declined to hear the matter since it pertained to the jurisdiction of Single Judge. That is how it came to be mentioned for circulation before this Court. Initially circulation was granted for 25th July, 2017. However, the matter was mentioned once again on the ground of extreme urgency. Ms. Gonsalves appearing on behalf of the respondent had made a statement yesterday that the order has been executed and the applicant had been produced. This was contested on behalf of the applicant. Hence the matter

was listed today.

4. At the hearing today, Mr. Kantawala, the learned counsel for the applicant submitted that the impugned orders are in violation of the letter and spirit of an order of the Supreme Court dated 23rd June, 2014 passed in Special Leave Petition no.4634 of 2014 which concerned a series of offences in which the applicant is accused and which order would also be applicable in connection with FIR no.RC0682014E001 dated 1st October, 2014. According to him, there was several banks which had filed complaints against many accused including the present applicant and that in every such case the order of the Supreme Court dated 23rd June, 2014 would operate and 72 hours notice will have to be given to the accused if the CBI was desirous of arresting the petitioner. It is not in dispute that the petitioner is arrested after dated 23rd June, 2014 after compliance of the directions of the Supreme Court the petitioner has since been lodged in the Central Jail at Indore. The grievance made today is that the order of Supreme Court requiring 72 hours notice has been breached because the C.B.I. had filed the application seeking production under section 267 of the Cr.P.C. on 15th June, 2017 and obtained an order without disclosing the fact that the Supreme Court clearly directed 72 hours notice to be given in the event of the agency intending to arrest the accused. Mr. Kantawalla has relied upon the contents of the application to point out that the C.B.I. submitted before the Court that accused was "at large and elusive during

the investigation” and despite knowledge of the fact that 72 hours notice was required to be given this aspect was suppressed in the Magistrate's Court.

5. Today the application is opposed on behalf of the C.B.I. by Ms. Gonsalves on the ground that the order of the Supreme Court does not apply in the facts of the instant case since the order giving rise to Special Leave Petition no.4634 of 2014 was passed in Criminal Application no.1132 of 2012 on 30th April, 2014 by a Division Bench of this Court wherein the petitioner was one of the applicants. The said order pertained to complaints which were filed by the Bank Securities and Fraud Cell of the agency (CBI, BS & FC New Delhi) in respect of FIR's referred paragraph 1A of the order of the Division Bench dated 30th April, 2014 whereas the present case involved offences which were being investigated by the Economic Offence Wing of the Central agency and on F.I.R bearing R.C. No.04/E/2016 -CBI, EOW and there was no connection between the two offences namely the one forming subject matter of the present application and those which were subject matter of SLP no.4634 of 2014.

6. It is not in dispute that the order of the Supreme Court dated 23rd June, 2014 was also extended to FIR no.RC0682014E0011 dated 1st October, 2014 and that the present FIR is not subject to the restrictions imposed upon the agency. In any event, as I see it, this is an application under

Section 267 and the issue is whether custodial interrogation is required or not is to be dealt with by the Magistrate on merits and in accordance with law.

7. In the circumstances, no interference is called for at this stage. Hence, I pass the following order:-

- (i) Application is dismissed.
- (ii) The Metropolitan Magistrate Court will decide the application on its own merits without being influenced by any of the observation in this order.

(A. K. MENON, J.)