IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No.M-37039 of 2014 (O&M)
Date of Decision: October 24, 2017

Chandra Shekhar

......PETITIONER(s).

VERSUS

Central Bureau of Investigation

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gautam Dutt, Advocate
for the petitioner (s).

Mr. S.S. Sandhu, Advocate
for respondent-CBI.

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SURINDER GUPTA, J.

This is petition filed under Section 482 Code of Criminal Procedure seeking quashing of FIR No.RC CHG 2008A 0022 dated 17.06.2008 (Annexure P-1) registered for the offences punishable under Sections 420, 468, 193, 201 and 207 of Indian Penal Code at Police Station Anti Corruption Bureau, CBI, Chandigarh along with all consequential proceedings including charge-sheet dated 22.05.2009(Annexure P-6).

Petitioner Chander Shekhar was arrested in case bearing FIR No.RC CHG 2008A 0022 dated 17.06.2008 registered by CBI. As per allegation in that FIR, he had demanded and accepted bribe of ₹25,000/-. After the registration of the case, house of the petitioner was also searched and cash amount of ₹45,03,450/- along with other incriminating articles and document were recovered. Subsequently, case bearing FIR No.RC CHG 2004A 0015 was registered against the petitioner under the provisions of Prevention of Corruption Act, 1988 for possessing assets disproportionate to his known source of income. Challan in those cases were presented in the Court. During the pendency of the challan, an application (Annexure P-3) was moved by Santosh Kumar as authorised representative of LVL Infrastructure staking claim on the amount of ₹45,03,450/- recovered from the house of petitioner alleging in para 5 to 7 of the application as follows:-

> "5. That Mr. D.K. Aggarwal who is the relative of Mr. Chandrasekhar, and is the promoter Director of the applicant company. The aforesaid Director Sh. D.K. Aggarwal alongwith Sh. Santosh Kumar visited Rohtak on 27th day of May, 2004 in connection with one business transaction on behalf of the company and kept the amount of ₹45,00,000/- in the safe custody of Shri Chandrasekhar in his official residence as the agreement was postponed for 8th day of June, 2004 due to some unavoidable reason. The aforesaid money was to be paid at the time of agreement on that day and it was not safe for the Directors of the company to carry such a huge amount, hence the same was kept at the premises of accused which was seized by C.B.I.
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> 6. The Entry of the amount of rupees forty five lacs finds place in the company's Auditor's Report for the year 2004-2005. The company's Auditor's report is annexed with this application as Annexure-C. "

The application was declined by the Special Judge, CBI, Ambala vide order dated 28.04.2007. LVL Infrastructure filed criminal revision bearing No.1306 of 2007 against the order of Special Judge, CBI, Ambala, which was dismissed vide order dated 20.08.2007 (Annexure-P5) with observations as follows:-

> "To me, this prayer made by the petitioner-company appears to be clearly aimed at helping the accused. It is actuated with motive and purpose. A very intelligent and not so normal method is adopted by the present petitioner-company to help the accused, who is facing the prosecution under the Prevention of Corruption Act. Obviously, he is in no position to explain the recovery of this huge amount from his residence. Thus, this known company to the accused managed by his relative is made to stand up and file this application, which is clearly aimed at bailing out the accused not only from the case but to help him with this huge amount. If by chance any court grants relief to the present petitioner-company by directing release of this amount to it, obviously the accused would be able to plead that this money does not belong to him. In this way, he would be able to take this money back via the petitioner-company, and would have valid defence to explain this huge ill-gotten wealth recovered from his residence. It is clearly noticeable from the facts that this action on the part of the present petitioner is an afterthought and a well planned move. The money was recovered from the house of the accused on 3.6.2004. During the course of investigation, no such plea apparently is raised by the accused to explain the recovery of this amount from his residence. Upon completion of investigation, charge-sheet is filed in the court on 31.7.2006. It is specifically noted by the court that during the course of investigation, the accused never provided any information or evidence in regard to this recovery. It is only after 2-1/2 years of the allegation/recovery that this present application is moved by the petitioner. The reasons given by the petitioner concern for leaving this money with the accused would

> sound puerile. No sane concern or an individual would take risk to leave such a huge amount at somebody's residence that too for safe custody. The petitioner concern could bring this huge amount to Rohtak for payment to Deepak Mittal, but did not find it safe to carry it back. Is it acceptable? Obviously, this plea has now been raised by the petitioner-company to help the accused in this case. The petitioner-company is in no position to satisfy that this money in facts belongs to it. There is no material what to talk of any sufficient material placed by the petitioner company in this regard before the court. It may not be out of place to mention that as per provisions of Criminal Law Amendment Ordinance, 1944, any property, which is ill-gotten, can be confiscated to the State. The present petition appears to be a misconceived approach on the part of the petitioner-company to seek release of this amount. This also does not appear to be a genuine and sincere move on the part of the petitioner-company. Motive is clearly seen. It is a motivated approach. ....
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> Before parting, I am inclined to direct the C.B.I., which is the investigating agency in this case, to look into the motive behind the petitioner in moving this application and to take appropriate action/proceedings in case it is found that this approach on the part of the petitioner is not a sincere one and is aimed to help the accused in order to screen the offender."

In pursuance to this direction, CBI conducted inquiry and registered FIR No.RC CHG 2008A 0022 dated 17.06.2008 (Annexure-P1) and presented challan in the court.

Learned counsel for the petitioner has sought quashing of the FIR on the ground that the offence in this case was in continuation of the offence in the main case bearing FIR No.RC CHG 2004A 0013, as such CBI could not register a separate FIR or present a separate challan. It could present a supplementary report in the main case referred above as per provisions of Section 173(8) Cr.P.C. In support of his contentions, he has relied on ***Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and another 2013(6) SCC 348 and Vinay Tyagi Vs. Irshad Ali @ Deepak and others 2013 (5) SCC 762.***

Learned counsel appearing on behalf of CBI has argued that the subject matter of the instant FIR dated 17.06.2008 constitute a separate and distinct offence, which has nothing to do with the offence of demand and acceptance of bribe money and recovery of huge cash amount from the house of petitioner. During inquiry, as per order of this Court passed in Criminal Revision No.1306 of 2007, it was found that the petitioner along with Directors of LVL Infrastructure Limited and Santosh Kumar have fabricated false documents and Audit report to lay claim over the huge amount recovered by CBI and the motive was to demolish the case of the prosecution registered against the petitioner for possessing assets disproportionate to his known source of income. This FIR is not in continuation of the offence for which FIRs were earlier registered against the petitioner. Accordingly, CBI has rightly registered the separate FIR and filed challan against the petitioner.

On giving a careful thought to the submissions of learned counsel for the parties, I find no substance in the submissions of learned counsel for the petitioner. The first FIR registered against the petitioner relates to demand and acceptance of bribe money. The second FIR relates to possession of assets disproportionate to his known source of income. Both these FIRs were registered in 2004. The cause pertaining to the instant FIR accrued on 31.01.2007 when the application was filed by Santosh Kumar on behalf of LVL Infrastructure Limited staking claim on the cash recovered from the house of petitioner. During inquiry as ordered by a Coordinate Bench of this Court, it was found that attempt has been made to help the petitioner by fabricating the account books and audit report. Consequently, the FIR was registered and matter was investigated. The offences in this case pertain to the period much after the period of first FIR and constitute separate and distinct offences and CBI has committed no error of law by registering separate FIR and filing separate charge-sheet. The observation of Hon'ble Apex Court in case of ***Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and another (supra),*** are not applicable to the facts of the present case. In that case, CBI was inquiring into killing of a person and the Apex Court has observed that alleged killing of that person could be part of conspiracy under which earlier murder had taken place. In the above case, Hon'ble Apex Court has not quashed the second FIR but passed order as follows:-

> "53. In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBI's plea that killing of Tulsiram Prajapati is a part of the

> same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to "take over" the investigation **and did not grant the relief as prayed, namely, registration of fresh FIR**, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.
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> **54. In view of the above discussion and conclusion, the second FIR dated 29.04.2011 being RC No. 3(S)/ 2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated 08.04.2011 by this Court in Writ Petition (Criminal) No. 115 of 2009 and accordingly the same is quashed.** As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial Court to decide the same in accordance with law. Consequently, Writ Petition (Criminal) No. 149 of 2012 is allowed."

It is not in dispute that power of further investigation after the submission of report under Section 173 (2) Cr.P.C., vests with the Investigating Agency. As such, the observation in case of ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others (supra),*** have no relevance in this case.

As a sequel of my above discussion, this petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

October 24, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***