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

+ **W.P.(CRL) 229/2017**

IRSHAD ALI @ DEEPAK

..... Petitioner

Through

Mr.M. Sufain Siddiqui, Adv. with
Mr.M. Tabish Zia, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through

Ms.Rajdipa Behura, SPP with
Mr.Philomon Kani, Ms. Kriti Handa,
Mr.Vignaraj Pasayat & Ms. Karnika
Singh, Advs. for CBI.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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11.07.2017

Crl.M.A.1409/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(Crl.) 229/2017

Heard.

The petitioner, by the aforesaid writ petition, seeks the following two reliefs:

- a. *“Direct the respondent/CBI to forthwith conduct re/denovo/fresh investigation in RC No.RC.3(S)/2007/SCU.V/CBI/SCR.II/NEW DELHI, Dated : 27.07.2007, which was registered on the orders of this Hon’ble Court for conducting in-depth investigation of FIR*

No.10/2006, P.S.Special Cell, Delhi Police; to bring out the truth; and

- b. Pass any other further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

The petitioner and another were made accused vide FIR No.10/2006 lodged by the Special Cell, Delhi Police with the allegation of waging war against the state.

Taking into account the fact that the petitioner was working as an informer for the Special Cell and the Intelligence Bureau for the last several years and other grounds demonstrating false implication, the Delhi High Court transferred the investigation of the FIR by Special Cell to the CBI (Respondent) to conduct investigations. It has been submitted that the CBI, on investigation, did not find any complicity of the petitioner in the crime and submitted a closure report and recommended for discharge of the petitioner. The report of the CBI also, perhaps, indicated taking of action against the erring officials for fabricating false evidence against the petitioners.

The aforesaid closure report of the CBI was not accepted by the Trial Court.

Upon challenge by the petitioners, this Court directed the Trial Court to consider the report filed by the CBI only and not get influenced by the chargesheet filed by the Special Cell. This order of the High Court was challenged before the Supreme Court of India. The Supreme Court gave three options to the learned Trial Court viz to either (i) discharge the accused or (ii) take up the trial in accordance with law or if dissatisfied on any aspect of investigation, (iii) to direct for further investigation. The Trial Court,

subsequent thereto, decided to hold trial on the basis of the report of the Special Cell against the petitioner.

Finding the evidence against the petitioner wanting, the Trial Court acquitted the petitioner of all charges vide judgment and order dated 22.12.2016.

Learned counsel appearing for the petitioner has tried to impress upon this Court that the CBI, while submitting the closure report, did not conclusively investigate the matter and consequently could not pin point as to how/which of the police officials were responsible for fabricating false evidence against the petitioner. It was further submitted that the closure report filed by the CBI also revealed that the investigation with respect to the role of other police officials was being continued in order to fix the identity of the responsible person. It is, thus, stated that the CBI has not concluded the investigation and therefore must be directed for further investigation in the matter so as to bring out the truth. It is submitted on behalf of the petitioner that if the responsibility of the concerned police officials is not fixed, it would only be in the nature of a serious infraction of the cherished rights of the petitioner for a fair investigation so that he may also know as to why he was falsely implicated and by whom.

A passage from the judgment delivered in **Dharam Pal vs. State of Haryana: (2016) 4 SCC 160** has been extracted in the petition which is being reproduced below:

“25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and

just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

The petitioner has also reminded this Court of the meaningful statement made by John Marshall, former Chief Justice of US Supreme Court namely “power of judiciary lies not in deciding cases, nor in imposing sentences, not in punishing for contempt, but in the trust, confidence, faith of

the common man.”

The petitioner was made accused vide FIR No.10/2006 registered by the Special Cell on 09.02.2006 wherein he was shown to be a member of Al Badr, a terrorist outfit. Shortly thereafter, finding the implication of the petitioner to be doubtful, CBI was entrusted with the task of investigating the case. As stated earlier, CBI gave a clean chit to the petitioner. Nonetheless, the petitioner was ultimately put on trial but was acquitted.

How else would this fact be taken if not as a vindication of the rule of law and the petitioner having being given justice ultimately!

At the trial, the chargesheet submitted by the Special Cell, sending up the petitioner for trial was taken as the basis for prosecution. The closure report of the CBI was never tested. It remained beyond the pale of consideration of the Trial Court. For want of sufficient evidence, as has been argued, the petitioner was acquitted of all charges. It would be very difficult, after about 11 years, to find out as to what prompted whom to falsely implicate the petitioner. Since the CBI report was never tested at the trial, there was no material before the Trial Court regarding fabricating of false evidence. Asking/ordering for a fresh investigation would serve no effective purpose. Before exercising the aforesaid discretion of ordering for a de-novo investigation, any court must, first, satisfy itself that there is some reason to doubt false implication. Many a times, charges against the accused persons fail at the trial. That does not necessarily mean and entail that a further inquiry be conducted as to why that accused was put on trial. The rule of law and the spirit of justice only subscribe to the view that nobody should be held guilty in the absence of any cogent and complete evidence. There is no complaint whatsoever against any particular police official

regarding fabricating of evidence for deliberately maligning and prosecuting the petitioner. The petitioner worked with the Special Cell as an informer for several years. There would be no reason, except for the own assessment of the petitioner that his erstwhile employers, on being dissatisfied with him for his refusing to go to a terrorist camp in J&K to gather further information, have framed him and his associate in a false case.

Since the closure report of the CBI was never tested at the trial, this Court does not consider it to be at all necessary to order for a further investigation or to ask the CBI to carry out investigation for pin pointing as to why and by whom from amongst the special cell of the Delhi Police, the petitioner was framed.

Finding no merit in the writ petition, the same is dismissed.

ASHUTOSH KUMAR, J

JULY 11, 2017
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