

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

% **Judgment delivered on: 10th August, 2017**

+ **CRL.M.C. 1751/2014**

ANIL KUMAR

..... Petitioner

Through: Mr.Manoj Ohri, Sr. Adv. with
Mr.Amit Sharma, Mr.Aditya and
Mr.Abhimanyu Singh, Advocates

versus

C B I

..... Respondent

Through: Mr.Narender Maan, Spl. P.P. with
Mr.Manoj Pant and Mr.Karan
Nagrath, Adv.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. By way of the above captioned petition, the petitioner invokes the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to set aside and expunge the observation/remarks and consequently quash the directions in Judgment dated 10th December, 2012 passed by Special Judge, CBI in CC NO. 58/11 arising out of RC No. 61A/1998/CBI/ACB/ND.

2. The brief facts stated are that an FIR No.416/98 under Section 380 IPC was registered in Police Station Lodhi Colony on 23.11.1998 on the written complaint of Janardhan Yadav, Under Secretary, Staff Selection Commission (*'hereinafter referred to as SSC'*) on the allegations that some answer sheets lying in the strong room of SSC were found missing and tampered with.
3. The investigation of the aforesaid case was transferred to CBI in respect of which a RC bearing No. 61(A)/1998/CBI/ACB/New Delhi was registered on 03.12.1998.
4. After the registration of the case, the investigation was conducted, documents were seized and statement of 31 witnesses were recorded. A charge sheet was filed against accused persons namely K.K. Sood, Sanjay Rana and Joginder Singh Dahiya in the Trial Court by CBI on 01.07.2005.
5. The petitioner who is an officer with Indian Police Service of the batch 1986, belonging to Madhya Pradesh cadre, was the then Superintendent of Police, ACB, CBI, Delhi and had supervised the investigation of this case from 03.12.1998 to 30.06.2000.
6. The learned Special Judge, CBI while passing the impugned judgment dated 10.12.2012 acquitted all accused persons and blamed Inspector Virender Thakran for conducting an unfair and senseless investigation and in paragraph 58 observed that the petitioner i.e. Superintendent of Police Anil Kumar failed in his duties to supervise the investigation by Inspector Virender Thakran and others who followed suit. Thereafter, in paragraph 61 of the impugned judgment also gave directions to the Director, CBI for taking appropriate

disciplinary action against erring CBI officials responsible for improper investigation and supervision particularly Inspector Virender Thakran.

7. After passing of the impugned judgment, a letter dated 15.07.2013 was written by CBI to Government of Madhya Pradesh for taking necessary action against the petitioner herein.
8. Subsequently, vide letter dated 30.11.2013, the Director General of Police, Madhya Pradesh sought remarks of the petitioner on the impugned judgment.
9. Aggrieved by the observations/ remarks and the consequent directions made by the learned Special Judge, the petitioner herein has preferred the present petition.
10. The learned senior counsel for the petitioner has submitted that the observation in the impugned judgment is bad for want of hearing, which is a right and the principle of natural justice has been violated. The aforementioned observation is made at para 58/61 which is to be deleted /expunged and has relied upon following judgments:-
 - i. ***Om Prakash Chautala v. Kanwar Bhan & Ors*, 2014 (1) Scale 742.**
 - ii. ***State of Uttar Pradesh v. Mohammad Naim*, AIR 1964 SC 703.**
 - iii. ***The State of West Bengal & Ors. v. Babu Chakraborty*, JT 2004 (7) SC 216.**

11. The learned Special Public Prosecutor for respondent CBI in its reply, has stated that the petitioner herein had supervised the investigation of this case i.e. RC-61(A)/1998/CBI from 03.12.1998 to 30.06.2000. Thereafter, from 01.07.2000 till filing of charge sheet on 01.07.2005, Sh. Mukesh Sahay, DIG supervised the case. The respondent has also stated that the case was investigated by eight Investigation Officers of CBI during the period from 1998 to 2005.
12. The CBI in its reply has stated that vide judgment dated 10.12.2012, the learned Special Judge, CBI acquitted all the accused persons and passed strictures against officials of CBI and also gave direction to the Director CBI for taking appropriate disciplinary action against erring CBI officials responsible for improper investigation and supervision.
13. The petitioner also in support of his petition filed an affidavit dated 26.09.2016 and the relevant paragraphs c) and d) of the said affidavit are reproduced hereunder:

"c) Inspector Virender Thakran was the IO of the case. That A-2 & A-3 were arrested by IO on 13/01/1999 and produced them before the learned CMM on 14.01.1999 for seeking Police remand however, the then Ld. C.M.M., Delhi took strong exception to the conduct of the I.O. i.e. Sh. Virender Thakran and called for an explanation from the Deponent, who appeared on 16.01.1999 before Ld. CMM.

d) That, The Deponent removed the then I.O. i.e. Insp. Virender Thakran from the investigation of the present case and replaced him by Sh. Chetan Kumar, Dy. S.P., C.B.I. who was senior in rank to Insp. Virender Thakran. In fact, all the

investigation including the present case are continuously supervised/monitored upto the rank of DIG"

14. The challenge in the present petition is to the adverse remarks/observation made by Special Judge, CBI while passing the impugned judgment dated 10.12.2012 and the relevant paragraphs are reproduced hereunder:

*"58. The whole manner in which the investigation was done shows that Inspector Virender Thakran had taken the law into his own hands, threw all legal norms to the wind and acted in the most diabolical, unfair and criminal manner in falsely implicating the accused persons in this case. **It is needless to state that SP Anil Kumar failed in his duties to supervise the investigation by PW27 and others who followed suit.** As discussed above, there have been deliberate measures to conceal material documents from the Court during the trial."*

"61. A copy of this judgment be sent to the Director, CBI, Delhi for his consideration and taking appropriate disciplinary action against the erring CBI officials particularly Inspector Virender Thakran."

15. The whole question hinges around whether the aforesaid remarks were required while passing the impugned judgment?

The answer is:- **NO.**

The reasons are stated below:

- a) As per the reply of respondent CBI, the present petitioner was not investigating the case i.e. RC-61(A)/1998/CBI at the time of filing of charge sheet. The charge sheet is alleged to be filed on 01.07.2005 under the supervision of Sh. Mukesh Sahay, DIG. The said reply of CBI is reproduced hereunder:

"3. That the Petitioner Sh. Anil Kumar, the then Supdt. Of Police, ACB, CBI, Delhi had supervised the investigation of this case from 03.12.1998 to 30.06.2000. Thereafter from 01.07.2000 till filing of chargesheet, Sh. Mukesh Sahay, DIG supervised the case.

4. That this case was investigated by eight Investigation Officers of CBI during the period from 1998 to 2005."

- b) The impugned judgment does not specifically pin-point the instance/occasion wherein the petitioner failed to do his duties in relation to the investigation as charge sheet under Section 173 Cr.P.C. was filed by Mukesh Sahay, DIG and not by the present petitioner.
- c) Moreover, if at all, there is any grievance of false implication of accused persons then the remedy to be taken by the accused persons should have been initiating malicious prosecution under Section 211 IPC against erring officials of CBI.
- d) No person should be condemned unheard is the well known canon of natural justice. The remarks made in the judgment were extremely harmful to the career of the petitioner and he

should have been given a reasonable opportunity of being heard for explaining or defending himself. The passing of such remarks is bad in law particularly, when there is option of malicious prosecution under Section 211 IPC qua the erring officials of CBI and the petitioner as well.

16. The Hon'ble Supreme Court in the case of **State of West Bengal v. Babu Chakraborty**, AIR 2004 SC 4324 had observed that

“Where the public officials-in the instant case Police Officials have discharged their official duties, strictures would not be passed against them merely because the officials have violated certain statutory provisions. In the instant case no mala fide was attributed to them, they were also not given opportunity to the officials before passing the strictures against them, strictures passed against the public officials were set aside.”

17. The Hon'ble Supreme Court in the case of **Raghubir Saran v. State of Bihar**, AIR 1964 SC 1 has held that

“Every High Court as the highest Court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant passages from a judgment or order of subordinate Court and would be exercised by it in appropriate cases for securing the ends of justice. Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant

abuse by a Subordinate Court of its power such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.”

18. Therefore, the adverse remarks recorded by the Special Judge, CBI were uncalled for arriving at the decision which he has rendered. Accordingly, I expunge the extracted remarks and any remarks which have been made in the impugned judgment that is likely to affect the reputation of the petitioner.
19. Consequently, the present petition is allowed and disposed of in the above terms.
20. Let one copy of this judgment be sent to the concerned Court.
No order as to costs.

I.S.MEHTA, J

AUGUST 10, 2017