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

+ **W.P.(C) 7232/2018**

AJAY GARG

..... Petitioner

Through: Mr Vijay Aggarwal, Ms Chandni Kumari, Mr Shailesh panday, Ms Barkha Rastogi and Mr Shekhar Pathak, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr Narender Mann, Spl. PP., CBI for CBI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.07.2018

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“A. Issue necessary Writ of Mandamus or any other appropriate Writ to the Respondent thereby directing the Respondent to refrain from extracting such information from the Petitioner by way of office memos or any other communication on the administrative side which violates fundamental right under Article 20 (3) of the Constitution of India.

B. Issue necessary Writ of Mandamus or any other appropriate Writ, thereby directing the Respondent not to take any adverse action or draw any adverse inference against the Petitioner for not furnishing information asked vide office memo dated 29.05.2018 (Annexure P-4) and 18.06.2018.”

2. The petitioner states that an FIR (FIR No. 7(A) dated 16.05.2018) has been lodged against the petitioner, *inter alia*, alleging as under:

“It has been learnt through a reliable source that Sh. Ajay Garg, Assistant Programmer, System Division CBI, New Delhi while working in the said capacity in CBI during the period, from 06.09.2011 to 26.12.2017 has been in possession of assets disproportionate to his known sources of income for which he cannot satisfactorily account for it is also alleged that he had acquired huge assets in his own name and in the names of his family members by corrupt and illegal, means and by abusing his official position as a public servant. It is alleged that Sh. Ajay Garg joined CBI as Assistant Programmer, System Division on 06.09.2011.”

3. Mr Aggarwal, learned counsel appearing for the petitioner contends that the said FIR is being investigated. He states that since criminal investigation with regard to allegation of disproportionate assets is pending, the respondent is precluded from seeking any information in this regard by way of issuing memos, which are impugned in the present petition. According to Mr Aggarwal, initiation of criminal proceedings precludes respondent no.1 from initiating any departmental action.

3. The above contention is unmerited. The memos issued to the petitioner by the respondent calling upon him to make the necessary disclosures are founded on the fact that the petitioner is an employee of the respondent and the respondent, in its capacity as an employer, can always seek information from the petitioner as may be required. The respondent is also well within the rights to institute any departmental or disciplinary proceedings if it is found that the petitioner has misconducted himself. The fact that such misconduct also amounts to criminal offence for which a

separate proceeding is pending does not in any manner fetter the respondent from instituting a departmental action.

4. Mr Aggarwal, also referred to the decision of the Supreme Court in ***M. S. Sheriff v. State of Madras: AIR 1954 SC 397*** and drew the attention of this Court to paragraph 15 of the said decision, wherein the Court had observed: “*as between the civil or criminal proceedings we are of the opinion that criminal matters should be given precedence.*” The said decision is wholly inapplicable in the facts of this case. The question involved in that case was whether an appeal lies to the Supreme Court under Section 476-B of the Criminal Procedure Code from an order of a Division Bench of a High Court directing filing of a complaint for perjury.

5. The Supreme Court has, in a number of cases, explained that criminal proceedings and departmental proceedings stand on separate footing (See: ***Nelson Motis v. Union of India and Anr: (1992) 4SCC 711*** and ***Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd. Haldia & Ors.: (2005) 7 SCC 764***)

6. In the case of ***HPCL v. Sarvesh Berry: (2005) 10 SCC 471***, the Supreme Court observed as under:-

“8. The purposes of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.”

7. The petition is, plainly, unmerited. It is, accordingly, dismissed with costs quantified at ₹25,000/-. The cost shall be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from today.

VIBHU BAKHRU, J

JULY 16, 2018
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