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

+ W.P.(CRL) 2436/2016 & CrI. M.A. No.12853/2016

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through Ms. Rajdipa Behura, SPP with Mr.
Philomon Kant, Ms. Kriti Handa, Ms.
Hansika Sahu and Ms. Damini K,
Advs

versus

R K YADAV Respondent

Through Mr. Satish Tamta, Sr. Adv with Ms.
Nisha Narayanan, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **17.01.2018**

1 The Central Bureau of Investigation (CBI) has filed the present petition seeking setting aside of the order passed by the Special Judge dated 28.05.2016. Submission is that the Special Judge by the impugned order had directed the CBI for an investigation into the complaint made by respondent No. 2 in terms of provisions of Section 202 of the Cr.PC; the earlier Special Judge vide the impugned order dated 18.02.2013 had passed a same order of investigation; he had directed the CBI to carry out the investigation against the accused persons with regard to their alleged disproportionate assets. This order was the subject matter of challenge before the High Court. The High Court while disposing of the W.P. (CrI) No.903/2013 on 23.12.2015 had set aside the order of the Trial Court/Special Judge dated 18.02.2013. The Special Judge again passing an identical order and being in the teeth of the order passed by the High Court has

clearly committed an illegality. This illegality is liable to be set aside.

2. In the course of arguments, learned counsel for respondent No.2 points out that the High Court has probably not appreciated the law in the correct perspective and there was ample power with the Special Judge to order an inquiry in terms of Section 202 (2) of the Cr.PC. The order suffers from no infirmity. An inquiry into the assets of the petitioner was called for and this is clear in view of the fact that in the complaint filed by respondent No. 2, 10 witnesses were examined at the pre-summoning stage and it was only thereafter that the inquiry was ordered.

3 This Court is in wholesome dis-agreement with the submission of the respondent.

4 Record shows that the respondent had filed a complaint under Section 200 of the Cr.PC alleging that one R.K. Yadav, Director of RAW had acquired assets which were disproportionate to his income and an inquiry under Section 13 (1)(e) of the Prevention of Corruption Act be initiated against him. This was in the year 1996. This complaint was dismissed. Pursuant thereto, a second complaint was filed by the respondent. This was in the year 1999. Nothing happened to that complaint either. The third complaint under Section 200 of the Cr.PC was filed on 30.10.2009 by the respondent. 10 witnesses were examined at the pre-summoning stage. On 18.02.2013, in this factual scenario, the Special Judge considering the provisions of Section 202 of the Cr.PC called upon the SP, CBI to carry out investigation regarding ownership and value of the

properties which are allegedly owned by R.K. Yadav and his family.

5 The Special Judge had noted that 13 witnesses had been examined by the complainant including himself. This order dated 18.02.2013 was the subject matter of a writ petition before the High Court. The High Court vide its order dated 23.12.2015 passed in W.P. (Crl.) had set aside the order dated 18.02.2013. The learned Single Judge of this Court was of the view that the order passed by the Special Judge on 18.02.2013 directing the CBI to conduct an investigation and proceed with the complaint is untenable and without jurisdiction. Various citations including the law laid down by the Punjab and Haryana High Court as also by the Apex Court were discussed. The writ petition was allowed and the order dated 18.02.2013 was set aside.

6 The complaint was yet pending before the Special Judge. The Special Judge vide impugned order had passed an identical order. This identical order (18.02.2013) is impugned before this Court. The submissions which were considered by the earlier Special Judge had been considered by the new Special Judge. The new Special Judge in the impugned order has probably forgotten the disciplinary hierarchy and overlooked the fact that the order of his predecessor dated 18.02.2013 had been set aside by a higher Court i.e. by this Court. The Special Judge considered the same arguments which had been advanced at the time when the order dated 18.02.2013 had been passed which were again addressed before the High Court and noted particularly in paras 6 to 8 of the order of the High Court (dated

23.12.2015) again proceeded to examine the legal position. The Special Judge in this impugned order relying upon the judgment of the Apex Court reported as (2013) 2 SCC 435 Udai Shankar Awasthi Vs. State of Uttar Pradesh & Another was of the view that the Special Judge was empowered to order an investigation. The relevant extract of the said order reads as under:-

“Accordingly, it is hereby directed that the Director, CBI, shall depute an officer, not below the rank of a Superintendent of Police, to conduct the investigations, regarding the income and assets of the accused persons, as per the provisions of Section 202 Cr.PC in the light of the above mentioned judgments of the Hon’ble Supreme Court and to submit a complete report to this court. It is further directed that the aforesaid investigations shall be concluded by the concerned S.P., CBI, preferably within a period of three months from today.

A copy of this order, along with the complete paper book, consisting of the copy of the complaint and the various documents submitted by the complainant in the court, alongwith his complaint dated 30.10.2009, be sent to the Director, CBI, immediately for information and necessary compliance.”

7 This Court is of the view that this order which has been passed by the Special Judge is in the teeth of the order passed by the High Court which had set aside an identical order passed by the earlier Special Judge on 18.02.2013. The Special Judge in the impugned order has the audacity to review the order passed by the High Court. It is nothing short of that.

8 This petition deserved to be allowed and necessary strictures are required to be passed against the erring officer who has taken it upon himself to re-examine the same factual scenario which had been set to rest by the order dated 23.12.2015 passed in W.P. (CrI.) No.903/2013. Even presuming that the High Court had committed an error and had not appreciated the law in the manner in which the respondent wishes to argue, it would have been open for the respondent/complainant to have assailed the order dated 23.12.2015 passed by the High Court before the Apex Court. He could not have obtained an identical order from the Special Judge. The Special Judge has clearly committed an illegality. This illegality is accordingly set aside.

9 Writ petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 17, 2018

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