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

Decided on : 23rd October, 2018

\+ CRL.M.C. 5382/2018 and Crl. M.A. 34717/2018

VILAS RAO GHODESWAR ..... Petitioner

Through: Dr. A.K. Gautam and Mr. Ravi Mehrotra, Advocates

versus

MOHAN JOHN JOSEPH ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R (ORAL)

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The petitioner being a member of Indian Civil Accounts Services (ICAS) was serving at the relevant point of time in the post of Chief Controller of Accounts (CCA) in the Ministry of Labour and Employment of the Govt. of India. On 16.01.2013, the Anti Corruption Brach of Central Bureau of Investigation (CBI) had registered a case vide RC no.DAI-2013-A-004 against him. Upon conclusion of investigation into the said case, a report under Section 173 of the Code of the Criminal Procedure, 1973 (Cr. PC) was submitted seeking his trial on charge of certain offences including under Prevention of Corruption Act, 1988 alongwith certain others. By order dated 19.04.2016, the Special Judge (Prevention of Corruption Act) discharged the petitioner in the said case. It is not disputed that a revision petition filed by the CBI is pending in this court against the said order of discharge.

The petitioner had presented a criminal complaint in the court of the Chief Metropolitan Magistrate, New Delhi against the respondent seeking his prosecution for the offence under Section 500 IPC. The Metropolitan Magistrate, by his order dated 22.04.2017, based on the said criminal complaint (no.4498/17) declined to take cognizance and closed the proceedings in the complaint case referring, *inter alia*, to the protection of Section 197 Cr. PC available to the respondent, who at the relevant point of time was working as Controller General of Accounts (CGA) in the Department of Expenditure of the Ministry of Finance, Government of India.

The petitioner approached the court of session invoking its revisional jurisdiction by Criminal Revision Petition (no.22/2017). This petition was dismissed by order dated 05.04.2018, endorsing the view taken by the court of the Metropolitan Magistrate.

It is the aforesaid two consistent orders of the two courts which are challenged by the petition at hand brought before this court invoking its inherent power and jurisdiction under Section 482 Cr. PC.

The background facts have been captured by the revisional court in the impugned order sufficiently, as confirmed by the counsel for the petitioner, in the following paragraphs :

> *"2. According to the petition, petitioner is a member of the Indian Civil Accounts Services (ICAS), 1985 batch and retired from the post of Chief Controller of Accounts (CCA) in the Ministry of Labour and Employment, Government of India on 30.11.2016. On 16.01.2013, Anti Corruption Branch of CBI, New Delhi had registered a case vide RC*

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no.DAI-2013-A-004 under Section 120B r/w Sections 420, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (P.C.Act) and filed the charge-sheet against the petitioner and other persons on 20.08.2015. Vide the order of the Special Court under the P.C. Act, the petitioner was discharged on 19.04.2016.

3. It is averred that the petitioner received a copy of the letter of Deputy Controller General of India, Ministry of Finance dated 13.10.2016 to the Controller of Accounts, Ministry of Labour and Employment to the effect that vigilance clearance in respect of the petitioner was denied as a criminal charge is pending against him. It is claimed by the petitioner that on 21.10.2016, he gave representation to the office of respondent that he has been discharged in the CBI case by the Court and requested for issuance of Vigilance Clearance Certificate as he was to retire on 30.11.2016. It is further submitted that petitioner received a copy of the letter of Deputy Controller General of Accounts dated 11.11.2016 to the Controller of Accounts to the effect that since matter was subjudice and a communication was awaited form the CBI, the office could not issue Vigilance Clearance Certificate to the petitioner. On 17.11.2016, the petitioner again submitted a representation to the office of the respondent, by referring to O.M. dated 02.11.2012, that since no criminal charge was pending prosecution against the petitioner, withholding the Vigilance Clearance of the petitioner was against the O.M. It is alleged that despite repeated reminders and representations by the petitioner to the respondent, the respondent did not issue Vigilance Clearance Certificate till the time he retired from the post of Controller General of Accounts on 31.12.2016 while in the meantime, petitioner retired from the service on 30.11.2016 without Vigilance Clearance.

4. It is alleged that respondent dishonestly, deliberately and intentionally withheld the Vigilance

Clearance of the petitioner with sole object of causing harm and injury to the reputation of the petitioner and harass him. It is averred that at the time of farewell party because in the estimation of his colleagues, petitioner's reputation as lowered down. It is averred that Vigilance clearance was given to the petitioner finally after two months of his retirement on 30.01.2017."

In the considered view of this court, the allegations set out in the complaint, as summarized above do not even make out a case of defamation within the meaning of the expression defined in Section 499 IPC. Mere non-issuance of a vigilance clearance certificate, an act of omission, does not amount to an act as can be constituted, in the given background facts, to be intended to lower the reputation of the petitioner in the estimation of others. As the competent authority to issue such vigilance clearance certificate, it was his bounden duty to cross-check with the concerned investigating or prosecuting agency to ascertain as to whether the criminal action had finally come to an end. As is conceded, the revision petition of CBI against the order of discharge is still pending consideration before this court. In this view of the matter, the discharge order granted by the Special Judge on 19.04.2016 has not yet attained finality. In these circumstances, the insistence of the petitioner for such clearance certificate to be issued was not fair or proper.

Be that as it may, the observations of the learned revisional court with reliance to rulings in *State of Uttar Pradesh vs. Paras Nath Singh, (2009) 6 SCC 372; Anil Kumar and Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705; N.K. Ganguly vs. Central Bureau of Investigation, New Delhi, (2016) 2 SCC 143* while affirming the view of the Metropolitan Magistrate vis-a-vis the need for sanction under Section 197 Cr. PC are also apt, and may be quoted, for endorsement, as under :-

> *"11. There is no personal imputation of malice or motive against the respondent. The only allegation against him in the entire complaint is that he delayed the process of issuance of Vigilance Clearance Certificate to the petitioner. Counsel for the respondent has filed a list of 40 communications exchanged between the office of respondent to different government departments / authorities including CBI, which is not disputed by the petitioner. It is also a matter of record and an admitted case of the petitioner that he was charge-sheeted by the CBI in a criminal case. Though, the petitioner was discharged by the Trial court in that case, a fact not disputed by the respondent, it is a matter of record as reflected from the communication of CBI to the office of respondent that a revision petition has been filed against that order by the CBI, which is pending in the High Court. Exchange of written communication between various government departments for processing the Vigilance Clearance Certificate, copies of which have been filed by the respondent, clearly shows that time was taken for issuance of Vigilance Clearance Certificate only for the reason that he was charge-sheeted in a criminal case by the CBI. The entire exercise in the process of issuance of Vigilance Clearance to the petitioner from the beginning to the end, in which the respondent was involved was purely attributable to the discharge of his public duty. The record shows that Vigilance Clearance Certificate was issued only when a No-Objection was given by the DoPT vide letter dated 12.01.2017, in pursuance to which the certificate was finally issued on 23.01.2017. Therefore, the sanction under Section 197 Cr. PC is mandatory for prosecution of the respondent for the offence under Section 500 IPC because he was a public servant at the time when the alleged offence of defamation was committed."*

The petition and the application filed therewith are dismissed in *limine*.

R.K.GAUBA, J

OCTOBER 23, 2018
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