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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th September, 2018

+ CRL.M.C. 4470/2015

DILIP KAUSHIK

..... Petitioner

Through: Mr. Dhruv Gupta, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Narender Mann, Special PP
with Mr. Manoj Pant, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the sole accused in criminal case (CC No.03/2015) pending on the file of Special Judge (Prevention of Corruption Act), it having arisen out of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted by respondent Central Bureau of Investigation (CBI) upon conclusion of investigation into the case RC No.10(A)/2010.

2. By order dated 22.08.2015, which is challenged by the petition at hand under Section 482 Cr.P.C., the trial court found charge made out and put the petitioner on trial for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of

Corruption Act, 1988 (PC Act), his contention about the invalidity of the sanction for prosecution under Section 19 of PC Act having been rejected.

3. It may be mentioned here that the petitioner had earlier raised the issue of invalidity of sanction by an application seeking discharge on such count moved on 12.03.2014. The said application was made, *inter alia*, with reference to rulings of the Supreme Court reported as *CBI vs. Ashok Kumar Aggarwal*, (2014) 14 SCC 295 and *Dinesh Kumar vs. Chairman, Airport Authority of India & Anr.*, (2012) 1 SCC 53. The application was, however, dismissed by the Special Judge, by his order dated 23.04.2014, on the basis of opinion that the question of validity of sanction could not be examined at that stage, even charge not having been framed. The petitioner had challenged the said order dated 23.04.2014 by CrI.M.C.2858/2014, which is pending before another co-ordinate bench in the list of '*Regulars*'.

4. Meanwhile, the petitioner moved an application invoking Section 311 Cr.P.C. before the court of Special Judge seeking directions for examining the sanctioning authority – Mr. M.S. Sandhu, Special Commissioner on the issue of validity of sanction, placing reliance on the decision of this Court reported as *Ashok Aggarwal vs. CBI*, 2007 (4) JCC 2829. The Special Judge found merit in the said request and, thus, directed the sanctioning authority to be called for his statement to be recorded before framing of charge.

5. In compliance with the aforementioned directions in the order dated 27.07.2012, the sanctioning authority was summoned as a

witness (CW1) and examined. It is the contention of the petitioner that the evidence of CW1 brings out facts which vitiate the sanction for prosecution. He raised this issue with reference to the evidence of CW1 at the stage when the Special Judge was considering the question of charge. By order dated 22.08.2015, the Special Judge rejected the issue of validity of sanction and found *prima facie* charge to be made out which was formally framed on 02.09.2015 setting the trial in motion. It is pointed out that in taking the view on the objection to the validity of sanction, the Special Judge opted to go by the view taken by the previous order, *i.e.* order dated 23.04.2014, and has avoided any reference to, or consideration of, the arguments based on the testimony of CW1.

6. The petitioner relies on decision of this court reported as *State vs. Mukesh Kumar Singh, 2018 SCC OnLine Del 8136*, to argue that the issue of validity of sanction having been raised at the earliest point of time, the evidence of the sanctioning authority also having been recorded in such context by an order granted by the Special Judge, the contentions of the petitioner on the subject could not have been side lined and rather it was incumbent on the part of the Special Judge to take a decision on such contentions in light of the material placed on record.

7. During the course of hearing, however, it also came up that in order to appreciate the deposition of CW1 on the subject of validity or otherwise of sanction, the version, if any, of the investigating agency would also need to be kept in mind. The learned Special Public

Prosecutor for CBI agreed that, in this view, it would be appropriate that the investigating agency examines upfront the investigating officer, restricted to the subject of steps taken after completion of investigation for obtaining the sanction for prosecution, leaving the rest of the testimony to be adduced in later proceedings, this obviously if the sanction is found to be valid.

8. The learned counsel for the petitioner, against the above backdrop, submitted that in above view, he is under instructions to withdraw the present petition, reserving his contentions vis-à-vis validity of the sanction to be re-agitated before the trial court after the investigating agency has examined the investigating officer limited to the above noted aspect, his request being that the trial court may be directed to take a fresh call by a reasoned order on the issue of sanction before proceeding further with the trial of the case.

9. Ordered accordingly.

10. The counsel for the petitioner submitted that in view of the above, the other petition, Crl.M.C.2858/2014 would stand rendered infructuous and, therefore, he is under instructions and accordingly hereby undertakes to move appropriate application for the same to be dismissed as withdrawn. He assures that suitable steps would be taken in that regard within a week hereof.

11. From the above, it is clear that the CBI would be obliged to summon and examine the investigating officer ahead of all other remaining witnesses (unless already examined) and examine him

limited to the questions raised vis-à-vis the validity of sanction for prosecution, tender him for cross-examination limited to that issue, reserving its right to examine him further in later proceedings. After the evidence of the investigating officer restricted to above issue has been recorded, the Special Judge will hear both sides and pass an appropriate order dealing with the issue of validity or otherwise of the sanction for prosecution in accordance with law.

12. The petition is disposed of in above terms.

13. *Dasti* to both sides under the signature of Court Master.

SEPTEMBER 20, 2018

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R.K.GAUBA, J.