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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 16.01.2018

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W.P.(CRL) 8/2016, CrI.M.A.No.102/2016 and CrI.M.A. No.103/2016
VIJENDRA SINGH JAFJA

..... Petitioner

Through Mr.K.Sultan Singh, Sr. Adv.with
Mr.Motish Kr. Singh, Mr.Saurabh
Sachdeva and Mr.Navandeep Matta,
Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION & ANR

..... Respondents

Through Mr.Narender Mann, Spl.PP for CBI.
Mr.Anil Soni, CGSC with Mr.Nivesh
Sharma and Ms.Priyanka Singh,
Advocates for R-2/UOI.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner has challenged the order dated 15.10.2015 and the order dated 23.11.2015 vide which orders of framing of charges and the actual order of framing of charges were passed by the Sessions Judge. The charges have been framed against the petitioner under Sections 120B- IPC read with Sections 420, 467,468 and 471 of the IPC and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. Submission of the learned counsel for the petitioner being that no sanction under the Single

Directive No.4.7(3)(i) of the Government of India (being the operational law at that time) having been obtained prior to the investigation and cognizance against the petitioner in terms of impugned order and the subsequent order directing framing of charge is an order without jurisdiction and liable to be set aside. Even on merits no case is made out under Section 13(1)(d) of the Prevention of Corruption Act. The argument is however confined only to the lack of grant of sanction.

2 Record shows that as per the version of the prosecution, the petitioner V.S.Jafa, a public servant and working in his capacity as the Executive Director of the TRIFED along with certain other co-accused persons (one public servant and others private persons) had allegedly diverted funds of the Government of India to private persons which funds had been allotted to them for the procurement of paddy, mustard seeds and niger seeds and by abusing their official position they caused a pecuniary benefit to themselves and to the private accused persons.

3 Record further reflects that TRIFED was a Co-operative Society which was established in the year 1984 for the welfare of the tribal societies. It was the authorized Central Government agent on behalf of the FCI for a proper and effective implementation of the procurement drive of foodgrains.

The petitioner was posted as Executive Director (ED) on deputation to TRIFED. The case of the prosecution is that the petitioner in his capacity as Executive Director of TRIFED along with others co-accused persons had abused their position as public servant and in criminal conspiracy with the private agent appointed by TRIFED caused undue pecuniary advantage to themselves in the procurement of paddy, mustard seeds and nizer seeds during the Kharib season of 1990-91 in the Bodo tribal area of Assam.

4 This Court need not delve any further into the details of the version of the prosecution as the whole line of argument propounded by the learned counsel for the petitioner is bordered on his submission that the mandatory sanction as per the Single Directive No.4.7(3)(i) issued by the Government of India which was mandatory (before prosecution of the present public servant) and not having been obtained by the Government, the entire investigation and the order of cognizance followed by the subsequent order of framing of charge are without jurisdiction; they going to the root of the matter and are thus liable to be quashed.

5 The Single Directive No.4.7.(3)(i) reads herein as under:

“4.7 (3)(i) In regard to any person who is or has been a decision making level officer (Joint Secretary or equivalent of above in the

Central Government or such offices as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary of above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank Officers who are one level below the Board of Nationalized Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.”

6 This Single Directive was in operation till 18.12.1997. It was set aside by the Apex Court in the case of Vineet Narain Vs. Union of India reported as 1998(1) SCC 226. The present FIR i.e. the RC.J(A)/97-ACV (VI) was registered against the petitioner prior in time i.e. on 24.07.1997 when the Single Directive was in operation. Submission being that the petitioner being over and above the level of a Joint Secretary it was incumbent upon the prosecution to have obtained sanction of the Secretary of the Ministry/Department before any SPE takes up any enquiry (PE or RC). This mandate not having been complied with, these proceedings are liable to be set aside. Learned counsel for the petitioner points out that in Criminal Revision Petition No.366/2006 in the case of Dr.R.R.Kishore Vs. CBI (delivered on 10.03.2016) the Court had examined the provisions of Section

6A of the Delhi Special Police Establishment Act, 1946; this provision being only the baby of the Single Directive, the Single Judge of this Court in the judgment of Dr.R.R.Kishore had noted that if cognizance is taken on the basis of an illegal investigation, even if conviction follows the only course available for the prosecution was at best to obtain a reinvestigation. A serious prejudice has been suffered by the petitioner. The Single Directive having been quashed on 18.12.1997 (in the judgment of Vineet Narian) being an order which was passed retrospective in time to the registration of the FIR against the petitioner which was on 24.07.1997 and there being nothing to show that the order dated 18.12.1997 would have a retrospective operation, the registration of the FIR against the petitioner in July, 1997 when the Single Directive was in operation is an order which is per se is illegal.

7 The respondent/CBI has opposed this submission of the petitioner. Submission is that the arguments sought to be addressed before this Court have already been considered by the Special Judge who has answered them in paras 36 to 74 of the impugned order. The Single Directive was only an Executive Instruction issued by the Central Government. It did not have any force of law. The same was struck down as being unconstitutional by the

Supreme Court in the case of Vineet Narain Vs. UOI 1998 (1) SCC 226 on 31.01.2012. Section 6A of the DPEA was thereafter struck down as unconstitutional in the case of Dr.Subramaniam Swamy Vs. Dr. Manmohan Singh and Anr. The question whether this Single Directive which was followed by the enactment of Section 6-A of the Delhi Special Police Establishment Act would have a retrospective effect or a prospective effect is a question even otherwise which is now posed before the Apex Court and the Apex Court has referred the matter to a Larger Bench. This reference to the Larger Bench was made on 10.03.2016 and the answer to the aforementioned reference will be received from the Apex Court shortly. The relevant extract of the order passed by the Apex Court in this regard in Crl. Appeal No.377/2007 CBI Vs. R.R. Kishore is reproduced herein as under:-

“The provisions of Section 6A(1) do indicate that for officers of the level of Joint Secretary and above a kind of immunity has been provided for. Whether there can be a deprivation of such immunity by a retrospective operation of a judgment of the Court, in the context of Article 20 of the Constitution of India, is the moot question that arises for determination in the present case.

For the aforesaid reasons and having regard to the provisions of Article 145(3) of the Constitution of India, we refer the aforesaid question to a larger bench for which purpose the papers may now be

laid before the Hon'ble the Chief Justice of India on the administrative side."

8 In addition, learned counsel for the CBI points out that by no stretch of imagination can it be said that the action of the petitioner was in the course of his duty and as such the requirement of sanction under Section 197 of the Cr.PC would not arise.

9 Arguments of the parties have been heard. This Court has to only answer the submission of the petitioner that the Single Directive having been quashed on 18.12.1997 and the present FIR having been registered against the petitioner prior in time i.e. on 24.07.1997, (at which time the Single Directive was in operation) and the petitioner being over and above the rank of Joint Secretary, no prosecution could be launched against him without the prior permission of the Competent Authority.

10 This Court notes that the Single Directive was admittedly only an Executive Directive which had been quashed by the Apex Court in the judgment of Vineet Narain (supra) on 18.12.1997. Section 6-A of the Delhi Special Police Establishment Act which was a follow up of this Single Directive and the question whether this immunity which was afforded in terms of Section 6-A also (now quashed) would have a retrospective

operation is a matter which has been referred to the Larger Bench by the Supreme Court in terms of its judgment dated 10.03.2016.

11 This Court is not inclined, at this stage, to quash the charge-sheet only on this submission which has been made by the petitioner. The offences for which the petitioner has been charge-sheeted are the offences under Section 420/467/468/471 read with Section 120-B of the IPC and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act. The petitioner was a public servant. While dealing with the applicability of Section 197 of the Cr.PC, the Apex Court in the judgment reported as (2007) 1 SCC 1 Prakash Singh Badal Vs. Union of India has made the following observations which would be relevant in the facts of the present case:-

“The offence of cheating under Section 420 or for that matter offence relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

12 The Apex Court in the judgment of State of M.P. Vs. Virender Kumar Thirpathi (2009) 7 SC 89 had reiterated that the function of investigation

was only to collect evidence and even presuming there is an irregularity or illegality in the course of collection of evidence, this would hardly be considered by itself to affect the legality of a trial by a Competent Court of the offence so investigated upon.

13 This Court is not inclined to grant prayer made in the present petition. Petition is without any merit. Dismissed with costs quantified at Rs.25,000/.

JANUARY 16, 2018
ndn/a

INDERMEET KAUR, J

